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"In the art of advocacy the first essential is to interest the judge in the problem presented."
—*Lord Macmillan.*

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Default Clauses in Sale Agreements.

The recent decision of the Court of Appeal in *Wellington Brick Co. Ltd. v. Jansen* (July 3rd) attracts attention to the subject of "default clauses" in agreements for the sale and purchase of land. The vast majority of such agreements contain a clause conferring, or at all events purporting to confer, upon the vendor certain rights in the event of the purchaser making default in any of the payments of purchase money or interest stipulated for, or in the event of his committing a breach of any of the other provisions of the agreement. There has been for a long time now apparent among conveyancers in this country a tendency —a tendency, we believe, not existing in England— to make such a clause as drastic as possible in its terms and to make it a kind of an "omnibus" provision giving the vendor practically every right which the law knows.

In *Dee v. Montgomery*, (1927) N.Z.L.R. 628, the default clause entitled the vendors: (a) to compel specific performance of the agreement, (b) to sue for any moneys unpaid, (c) to resell, and to recover any deficiency in price and (d) to re-enter, all moneys paid by the purchaser being forfeitable to the vendor as liquidated damages. The purchaser had expressly repudiated the contract and the vendors sued for damages at common law. It was contended on behalf of the purchaser that the maxim *expressio unius est exclusio alterius* applied and that the vendors were restricted in the event of the purchaser's default, to one or other of the four remedies mentioned. But MacGregor, J., delivering the judgment of the Court said, at p. 632:

> "We are unable to agree with this contention. The clause in question does not in terms apply to the circumstances that have arisen here, where the defendant has entirely repudiated the whole agreement and absolutely refused to perform it on his part. It obviously would apply in the event of any default being made by the defendant in the course of carrying out the contract, whether by non-payment of money or by non-performance or non-observance of any agreement on his part. In any such case this clause would no doubt enable the plaintiffs to treat the incidental default of the defendant as a complete breach or renunciation of the contract. But when, as here, the defendant has already renounced the whole contract before performance there is no occasion to resort to this express clause at all, and the plaintiffs are free to resort to the ordinary remedies provided by law, and which they have claimed to enforce in the present action—viz., specific performance, or, in the alternative, damages."

Dee v. Montgomery (*sup.*) was followed by Ostler, J., in *Guilford Timber Co. Ltd. v. Wright*, (1930) N.Z.L.R. 545, where the agreement contained a default clause in somewhat similar terms and the vendor sued for the deposit and stamp duty which the purchaser had agreed to pay. The learned Judge held that the vendor was entitled to do so and said that he saw no indication in the agreement that the parties intended that either should be deprived of any remedy available to him apart from the contract.

In *Wellington Brick Co. Ltd. v. Jansen* the vendor was suing for damages at common law; there had been no express repudiation of the contract by the purchaser, but a repudiation by conduct. The default clause conferred upon the vendor the following "powers": (a) to rescind, all moneys paid by the purchaser being forfeited, and to resell and recover any deficiency in price from the purchaser, (b) to enforce specific performance of the agreement, and (c) to re-enter and sell as a mortgagee under the Land Transfer Act and recover any deficiency in price from the purchaser. It was contended that the case was distinguishable from *Dee v. Montgomery* (*sup.*) and *Guilford Timber Co. Ltd. v. Wright* (*sup.*) because there had been no express repudiation by the purchaser, and MacGregor, J., thought this question and others raised of sufficient difficulty to warrant removing the case to the Court of Appeal. That Court (Myers, C.J., Herdman, MacGregor, Blair and Kennedy, JJ.) however, held that the case was indistinguishable from *Dee v. Montgomery* (*sup.*). Myers, C.J., said:

> "It is, I think, indistinguishable from *Dee v. Montgomery* and other cases of that class. Clause 11 of the agreement does not in my opinion exclude the common law rights of the vendor at all events where there has been repudiation of the contract."

The result of these authorities clearly is that a clause of the type under consideration does not exclude the vendor's common law rights where there has been a repudiation express or implied by the purchaser. Where the vendor is suing for damages as on a total breach of the agreement he must, of course, apart altogether from the effect of the clause, show an express or implied repudiation before he can succeed. But what is the position when the vendor is seeking some remedy to obtain which he does not at law have to establish a repudiation? Such a situation would arise for instance if he sought specific performance or if he sought damages for breach of a particular stipulation not going to the root of the contract. It seems that it can only be said that if the default clause is one of the "omnibus" type, but fails to give him expressly the remedy he seeks, and if a repudiation of the agreement cannot be established, there is at all events a danger that he may be held not entitled to any remedy except those expressly mentioned in the clause. We put it no higher than that there is such a danger, for we cannot help feeling that it might be open to the Court, notwithstanding *Dee v. Montgomery* and certain other cases, to take the view that these clauses, however inartistically drawn, are intended as an added protection to the vendor and are not intended to limit his rights.

We cannot help wondering, however, what real justification there is for the form of "omnibus" default clause now in vogue among conveyancers. Would it not be better to provide in the clause only for such rights and powers as the law itself does not give? And, in any event, whatever form the clause takes, should it not be expressed to be without prejudice to any rights or powers the vendor may have either at law or in equity? Further we can see no justification for the usual form of such clause purporting to confer on the vendor the right to forfeit not only the deposit but also all instalments of purchase money paid by the purchaser. Such a provision is most plainly a penalty and unenforceable, and it is difficult to see what advantage is gained from a mere *brutum fulmen.*

Court of Appeal.

Myers, C.J.
Herdman, J.
MacGregor, J.

June 22, 24; July 17, 1931.
Wellington.

SOUTHLAND BOYS' AND GIRLS' HIGH SCHOOL BOARD v. INVERCARGILL CITY.

Rating—Exemption—Vacant Land Vested in High School Board But Not Used for Purposes of School — Land Not Held for Crown Purposes and Not Exempt From Rates—Education Act, 1914, Ss. 87, 88, 92-97, 100, 159—Amendment Act, 1920, Ss. 20, 23—Amendment Act, 1921, S. 5—Municipal Corporations Act, 1920, S. 384—Rating Act, 1925, S. 2—Southland Boys' and Girls' High Schools Act, 1877.

Appeal from a judgment of Kennedy, J., on appeal from a decision of the Stipendiary Magistrate at Invercargill, affirming the decision of the Magistrate that certain vacant land vested in the Southland Boys' and Girls' High School Board but not used for public school purposes or for any of the purposes mentioned in S. 158 of the Education Act, 1914, was liable for rates levied by the respondent Corporation. The appellant Board was constituted by the Southland Boys' and Girls' High Schools Act 1877—and was the controlling authority of the Southland Boys' and Girls' High Schools, both secondary schools within the meaning of S. 2 of the Education Act, 1914, and named in the Ninth Schedule to that Act. The appellant Board had in fact for more than 50 years carried on and was still carrying on the Southland Girls' High School. The lands, in respect of which rates were claimed, were purchased by the Board out of the income from endowments granted by the King and invested by the Board for the purposes of the Southland Girls' High School and were transferred to the Board in 1913. Prior to 1927 those lands were improved by the Board for the purpose of a sports ground for the School and they had been held by the Board for that purpose. Since 1926, however, the lands had not been used as a sports ground or for any other purpose of a school. The Board had not let the lands.

Solicitor-General (Fair, K.C.) for appellant.
Cooke and **James** for respondent.

MYERS, C.J., said that the case was very near the borderline, but on the whole His Honour had come to the conclusion that the judgment appealed from should be upheld. The learned Solicitor-General made his submissions elaborately and ably, but, summed up in a few words, the argument might be put thus: that lands belonging to the respondent, other than those which came within the express exemption under the Rating Acts, were rateable up to 1903 and possibly up to 1920, but that in the earlier of those years, or if not in the earlier, then certainly in the later, the land was in effect confiscated—or as the Solicitor-General preferred, tactfully annexed—by the Crown indirectly by an Act or Acts of the Legislature dealing with the subject of Education generally; and that consequently the land belonged to the Crown and was, therefore, no longer rateable. The tactful annexation referred to connoted that the effect of the legislation whereby the land came to belong to the Crown instead of the Board was passed without the Board or anyone else except those responsible for the drafting of the legislation appreciating its effect. His Honour was by no means clear that that was the effect of the legislation relied upon by the Solicitor-General, nor did he think that that was the effect intended by those responsible for the legislation. No doubt the powers of the High School Board under the Southland Boys' and Girls' High Schools Act, 1877, had been much cut down by subsequent legislation, but the Act still remained in existence, and so did the Board. S. 89 (1) of the Education Act, 1914, enacted that: "The secondary schools named in Parts I and II of the Ninth Schedule hereto shall be controlled by the Boards or governing bodies constituted in accordance with the Acts establishing such schools"—and the Southland Boys' and Girls' High Schools were included in Part II of the Schedule. If it had been intended that the ownership of the lands should be changed from the Board to the Crown the Legislature could, and should, have said so in plain terms somewhat on the lines, for example, of what was done by S. 19 of the New Zealand University Amendment Act, 1914, in respect of the Taranaki Scholarships Endowment lands where the lands were expressly declared to be vested in the Crown. His Honour did not think it necessary to add anything more to what had been said in the judgment appealed from and was being said by the other members of the Court except that the argument of the Solicitor-General had not satisfied His Honour that the land in question belonged to the Crown so as to be exempt from rates.

HERDMAN, J., said that if the land in question in the appeal was not being used for any of the purposes stated in S. 158 of the Education Act, 1914, or, if it were not used for any of the purposes stated in paragraph (e) of S. 2 of the Rating Act, 1925, or, if the land were not owned, used or occupied by the Crown or used for purposes of the Crown, then the appellant Board was liable for rates in respect of that land. In 1877 the Southland Boys' and Girls' High School Board was created by the Southland Boys' and Girls' High School Act of 1877. It was constituted a body corporate by that statute and it had never since lost its corporate character. Notwithstanding the vicissitudes through which the education system of New Zealand had passed during the last 54 years the Board still existed as a definite and distinct statutory entity carrying on the business of education within a certain locality. The Act of 1877 provided that the body corporate was to have a perpetual succession and a common seal, and that it might hold lands. It might sue and be sued and it might do and suffer all such things as corporate bodies might do and suffer. The Court was informed during the hearing of the appeal that no express repeal had been made of any provision in the statute, but parts of the Act had, no doubt, been impliedly abrogated or modified by legislation enacted since 1877. For the purposes of deciding the appeal it was necessary to refer to certain of the provisions of the Act. His Honour referred to Ss. 10, 11, and 13 of the Act and said that in pursuance of the powers vested in it, the Board, in 1913, acquired the lands in respect of which rates were claimed in the present action and the fee-simple thereof was conveyed to the Board. The lands were purchased for the purposes of the Southland Girls' High School but since 1926 they had not been so used by the appellant Board or by the Crown. It followed, therefore, that the lands could not escape from the payment of rates by virtue of S. 158 of the Education Act, 1914, nor were they exempt from liability under paragraph (e) of S. 2 of the Rating Act, 1925.

The appellant Board could gain immunity only by showing that the land belonged to or was vested in His Majesty within the meaning of S. 384 of the Municipal Corporations Act, 1920, or by satisfying the Court that the property was in the occupation of the Crown or of persons using it in and for the service of the Crown; that being the principle laid down in **The Mersey Docks case,** 11 H.L.C. 443; **The Queen v. McCann,** L.R. 3 Q.B. 141; **Greig v. University of Edinburgh,** L.R. 1, Sc. & Div. 350 and **Public Trustee v. The Chairman and Councillors of Waipawa,** (1921) N.Z.L.R. 1104; **Ryde on Rating,** 6th Edn. 109.

The Solicitor-General admitted in the able argument that he submitted to the Court, that, but for legislation passed in 1903 and in later years which widely extended the functions of the State in the matter of education, he could not have contended that the lands with which the present case was concerned were exempt from rates. He contended, however, that since 1877 the whole situation had been altered. Legislation passed since that year had effected a radical change in New Zealand's educational system. So drastic and fundamental was the change effected that in his view property belonging to the appellant Board was, in substance, held by it as agent or servant of the Crown. He submitted that the lands of the Board were, at present, virtually in the occupation of the Crown or of persons using it in and for the service of the Crown. That far-reaching changes in the State system of education had been effected in recent years was undoubted. The attention of the Court was called to the Secondary Schools' Act, 1903, which required "endowed secondary schools"—the school controlled by the appelland Board being one of them—to provide free places for pupils and to formulate a scheme or regulation defining its curriculum. Then in 1920 an Education Amendment Act was passed which contained provision restricting the powers of the Board of Governors of Secondary Schools. S. 23 of that statute was one of those provisions. It authorised the Governor-General by Order-in-Council to make regulations prescribing the staffs of teachers to be employed in that school and to do other things such as fixing the salaries of teachers in such schools and the conditions of their employment. By S. 20 substantial changes were made by re-defining the term "endowments" and the phrase "the net annual income derived from endowments," and other alterations had been made to which it was not necessary to refer. Notwithstanding that in New Zealand the activities of the State had penetrated far into the sphere of public education, His Honour had been unable to discover that the right conferred upon the Board as a corporate body to hold and administer lands vested in it had

been so interfered with by Parliament as to convert lands which it enjoyed in fee-simple into lands which were in the occupation of the Crown or of persons using them in and for the service of the Crown. Had Parliament, by any of the statutes which extended the functions of the Crown in the matter of education, intended to derogate from the property rights of Boards constituted like the appellant Board it could have done so expressly but that it had not done. In the case of what were termed State schools or primary schools there could be no doubt but that they were in every sense of the word State institutions. They were maintained by moneys voted from the public exchequer, those who taught were State servants and primary school lands were, no doubt, Crown lands. But it was, His Honour thought, otherwise in the case of schools controlled by bodies corporate created by Act of Parliament. When they came into existence originally His Honour imagined that it was intended that the business of secondary education should be managed and controlled by a body separated from the State and that independence had not been completely abolished, for although in recent legislation power had been taken to disestablish certain schools it was expressly stated that that provision should have no application to such a school as the appellant Board controlled. Moreover, in the Education Act, 1914, the sovereignty, so to speak, of the appellant Board was definitely preserved for S. 89 provided that that school with other like institutions "shall be controlled by the Boards or governing bodies constituted in accordance with the Acts establishing such schools."

There was, of course, no doubt that in deciding the present question it was not title or ownership that counted, but user or occupation by the Crown, or user or occupation by the Board for purposes of the Crown. But looking at the relevant legislation in that light, it seemed to His Honour that in addition to owning land and buildings the actual control and management of the schools was still to a substantial extent possessed by the Board. The institution that taught was still "the Southland Boys' and Girls' High School Board" and the land and premises were, notwithstanding the legislation that had been passed, still in effect occupied and used for the purposes of the Board. The Board might teach pupils who were willing to pay provided there was room after accommodating free-place pupils, and it might establish and maintain a boarding establishment for pupils. The State might prescribe the syllabus but the Board was still responsible for the internal management of the institution. It followed, therefore, that the lands described in the case were not being used—to quote Lord Cairns in **Greig v. The University of Edinburgh,** (*sup.*)—"Exclusively in or for the services of the Crown." The view that His Honour took in the present case appeared to accord with that of Chapman, J., in **Wanganui Borough v. Wanganui High School Board of Governors,** (1923) N.Z.L.R. p. 515. In the same year that learned Judge, in another case, **Wanganui Borough v. Wanganui Education Board,** (1923) N.Z.L.R. p. 524, held that land vested in an Education Board for the purposes of a technical school was, in the fullest sense, the property of the Board. But an Education Board was essentially a State institution. It existed by virtue of a statute which provided for education by the State. It was part of the State system. That was not so in the case of such an institution as the appellant Board. It owed its origin to a statute which, as it were, created a trust controlled by trustees charged with the management of property and a school which, to some extent, was beyond the control of the State.

MACGREGOR, J., said that at the conclusion of his interesting argument the learned Solicitor-General summed up by stating that his case was based on two main contentions: (1) that the appellant Board had before 1930 lost its existence as a legal entity, and (2) that the land in question in a substantial sense belonged, not to the Board, but to the General Government of New Zealand. His Honour might say at once that he did not consider that either of these formidable contentions had been established on the evidence before the Court for the reasons already given by the other members of the Court, as well as by Kennedy, J. Apart from those reasons, however, it appeared to His Honour that the present case might profitably be considered from a slightly different point of view. The appellant Board was originally constituted by "The Southland Boys' and Girls' High Schools Act, 1877." At all times since 1877 it had been the controlling authority of the Southland Boys' and Girls' High Schools. In 1913 the Board purchased the land in question for the purposes of the Southland Girls' High School. By virtue of S. 10 of the 1877 Act that land was held by the Board in trust for the general purposes of the Act, which of course were educational, and therefore "charitable," purposes: **Tudor on Charities,** 29. It was clear law that the Crown as *parens patriae* was the constitutional protector of all property subject to charitable trusts, such trusts being essentially matters of public concern. And the Attorney-General, who represented the Crown for all forensic purposes, was accordingly the proper person to take proceedings on behalf of and to protect charities: see **4 Halsbury,** 286. In the present case, therefore, one would have expected the Law Officers of the Crown, if they appeared at all, to have intervened in some way for the *protection* of the charitable trust, created as it was by statute more than fifty years ago. But the learned Solicitor-General, while appearing for the appellant Board, strove in an able and elaborate argument to convince the Court that the Board of Governors (the trustee of that charity) had ceased to exist as a legal entity, and further that the trust property vested in it belonged in a substantial sense to the Crown! It was surely an unusual way of "protecting" a charitable trust, to claim in that indirect way, by a legal sidewind, as it were, that the trust property had in effect reverted to the Crown itself. In such a matter as that Parliament was, of course, omnipotent. A short Act repealing the "Southland Boys' and Girls' High Schools Act, 1877," and revesting the land and other property of the appellant Board in new trustees for the Crown would be sufficient for the obvious purposes of the Educational Department. But to attain that result indirectly, under the guise of defending an action by a local body for rates, would require at the least much clearer and more convincing evidence than had been forthcoming in the present case. The land in question was at present vested in and occupied by the Board itself. The local Act of 1877 remained on the Statute Book, and the Board of Governors still controlled the Schools under and in terms of its main provisions. It was true that their powers and duties had been to some extent whittled away by later Acts and Regulations. But nevertheless their corporate existence and their controlling power over the schools still co-existed. That was indeed recognised by the Education Act, 1914, and in particular by S. 92 of that Statute. In **Ashburton High School Board of Governors v. Urquhart,** (1921) N.Z.L.R. 164, it was strongly argued as here that the Governors of a High Schools Board had since the Education Act, 1914, become mere agents of the State. But the Court of Appeal in that case did not adopt that extreme view, and decided the appeal on a different ground. No doubt since it was constituted in 1877 the appellant Board had gradually become less autonomous. In some measure, indeed, it had come under the control of the Crown through the Education Department, but that degree of Crown Control was still far from complete. Unless and until the Crown control did become complete, it could not in His Honour's opinion be asserted with success that the Board occupied that piece of land under the control of the Crown, as a bare trustee for the Crown or otherwise. To hold the land as exempt from rating would, in His Honour's judgment, be to extend the doctrine of the **Mersey Docks case** (*sup.*) unwarrantably and beyond any recorded decision.

Appeal dismissed.

Solicitors for appellant: **Macalister Bros.,** Invercargill.
Solicitors for respondent: **Longuet and Robertson,** Invercargill.

Supreme Court

Myers, C.J. April 23; June 2, 1931.
Blenheim.

JONES v. PUBLIC TRUSTEE.

Vendor and Purchaser—Rescission—Objections to Title—Land Fronting Street Subject to Provisions of S. 128 of Public Works Act, 1928—Resolution of Borough Council Unconditionally Exempting Street Approved by Order-in-Council and Exemption Registered—Subsequent Resolution of Borough Council Purporting to Impose Restrictions as to *inter alia* Height of Buildings as a Condition of Exemption—Subsequent Resolution Invalid—Purchaser Not Entitled to Rescind—Public Works Act, 1928, S. 128—Town Planning Amendment Act, 1929, S. 5.

Purchaser's action for rescission of a contract for the sale and purchase of land upon the ground that the vendor was unable to give a good title. The vendor counterclaimed for specific performance. The land which was the subject matter of the agreement was an allotment on the subdivisional plan of Section 109, fronting Charles Street in the town of Blenheim. The

land was subject to the operation of S. 128 of the Public Works Act, 1928. The offer to purchase was dated 14th December, 1929, and was accepted the following day. The defendant then applied to the Blenheim Borough Council with a view to obtaining a resolution declaring that the provision of subsection (1) of S. 128 should not apply to that portion of Charles Street which section 109 fronted, and the approval of the Governor-General in Council of such resolution. On 27th March, 1930, the Borough Council passed an unconditional resolution accordingly. An Order-in-Council was duly made on 6th June, 1930, and gazetted on 12th June, 1930, approving the resolution passed by the Blenheim Borough Council on the 27th March, 1930. On 17th June, 1930, the District Land Registrar as required by S. 128 of the Public Works Act, 1928, duly registered against the title of the land affected a memorandum of the exemption. It appeared from the correspondence that before the resolution of 25th March, 1930, was passed—namely on 20th March, 1930, an application had been made under S. 128 for the approval by the Governor-General of the Borough Council's proposed resolution. That application was not replied to until 29th April, 1930, when the Assistant Under-Secretary of the Public Works Department wrote to the Town Clerk a letter stating that the question of exempting portions of the above-mentioned streets from the provisions of S. 128 of the Public Works Act, 1928, had been carefully considered in conjunction with the Director of Town Planning, and that he was prepared to recommend that the exemptions be granted subject only to the following conditions, namely, "that the Borough Council shall by resolution determine: (a) That no building shall be erected, re-erected, altered or substantially repaired hereafter, any part of which projects above any line drawn at an angle of 45 deg. with the horizontal from the opposite side of the street on which it fronts, provided that account shall be taken of parapets but not of chimneys, ornamental towers or other such architectural features; (b) The net rentable floor space of which exceeds five times the superficial area of the street or streets on which its fronts." The letter further stated that the object of the conditions was to maintain adequate light and air space to the windows of habitable rooms facing the street, and to maintain a balance between building land utilization and the capacity of the street for traffic purposes, and that there was ample power under S. 34 of the Town-planning Act, 1926, as amended by S. 5 of the Town-planning Amendment Act, 1929, to enable the Council to enforce the conditions until such time as its town-planning scheme should have been approved. The Borough Council on 22nd May, 1930, accordingly passed a resolution to the effect that the exemption of (*inter alia*) the portion of Charles Street referred to from the provisions of S. 128 of the Public Works Act, 1928, should be granted subject only to the following conditions: "(a) That no building shall be erected, re-erected, altered or substantially repaired hereafter, any part of which projects above any line drawn at an angle of 45 deg. with the horizontal from the opposite side of the street on which it fronts, provided that account shall be taken of parapets but not of chimneys, ornamental towers or other such architectural features. (b) That no building shall be erected, re-erected, or substantially repaired, hereafter, the net rentable floor space of which exceeds five times the superficial area of the street or streets on which it fronts." On 15th October, 1930, the plaintiff rescinded the contract claiming that the effect of the resolution last mentioned was to constitute a defect in the defendant's title.

MacNab for plaintiff.

Churchward for defendant.

MYERS, C.J., said that the effect of the restriction imposed by the resolution of 22nd May, 1930, if valid, was that no building could be erected on the land in question of a height in excess of forty feet. Such a restriction, the plaintiff contended, constituted a valid objection to the title, and he relied on **In re Cox and Neve's Contract,** (1891) 2 Ch. 109 at pp. 119, 120. The provision of the Town-planning Acts referred to in the Assistant Under-Secretary's letter appeared now in S. 5 of the Town-planning Amendment Act, 1929. (His Honour read the section.) Whether the Borough Council's resolutions of 22nd May, 1930, if valid, would constitute an objection to the defendant's title which would entitle the plaintiff to rescind it was not necessary to decide, because in His Honour's opinion the resolution had no validity whatever. It was at least doubtful whether the resolution, if it purported to be made under the above-mentioned provision of the Town-planning Acts, would be valid; but that question again it was unnecessary to determine. The fact was that the resolution was not passed, nor was it intended by the Borough Council to be passed, as a resolution under the Town-planning Acts. The resolution, for whatever it might be worth, was passed at the instance of the Assistant Under-Secretary of the Public Works Department, and not in any way—to use the words of the Town-planning Act—because it appeared to the local authority that the erection of any building in the locality affected would be in contravention of any scheme of the local authority if completed and approved, or would be in contravention of town-planning principles, or would interfere with the amenities of the neighbourhood. It seemed quite plain that, so far as the Borough Council was concerned, it formed no opinion on the matter at all, but merely acted at the instance of the Assistant Under-Secretary of the Public Works Department. It was not suggested that the Borough Council had been called upon to prepare and submit, or had prepared, a town-planning scheme under either subsection (2) or (3) of S. 13 of the Town-planning Act, 1913. Moreover, there was not before the Council any application for its consent to the erection of any building, or the carrying out of any work. The powers in regard to the imposition of conditions upon the approval of the exemption of a street, or portion thereof, from S. 128 of the Public Works Act, 1928, were limited by subsection (2) of that section, whereby it was provided that such approval might be absolute or subject to such conditions with respect to the building line as the Governor-General by Order in Council thought fit to impose, and might refer to one or both sides of the road or street. The building line of the street was a line up to which buildings might be erected on land fronting the street: **Amos v. Wellington City Corporation and Attorney-General,** (1921) N.Z.L.R. 227. The conditions which the Assistant Under-Secretary sought to impose by the letter of 29th April were not justified by subsection (2) of S. 128 of the Public Works Act. The Assistant Under-Secretary did not even say that the resolution of the Borough Council would be approved only on the conditions stated in that letter, all he said was that he was prepared to recommend that the exemption be granted subject only to the conditions stated in that letter. But when one looked at the actual Order-in-Council it was found that there was no reference whatever to the Borough Council's resolution of 22nd May, 1930. It well might be that after the Assistant Under-Secretary's letter was sent to the Borough Council the Government authorities were advised that there was no power to impose the conditions mentioned in the letter and in the Borough Council's resolution of 22nd May. However that might be, the fact was that it was the Borough Council's resolution of 27th March, 1930, that the Order-in-Council approved and that approval was unconditional. The result was, in His Honour's opinion, that at the time of the plaintiff's repudiation, the defendant was, and ever since had been, in a position to give a title which was in no way defective or exceptionable. The plaintiff's action for a declaration for rescission therefore failed and the counter-claim for specific performance must succeed.

Judgment for defendant on claim and counter-claim.

Solicitor for plaintiff: **A. A. MacNab,** Blenheim.

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

Reed, J. July 3; 10, 1931. Wellington.

IN RE GALYER.

Bankruptcy—Proof of Debt—Contingent Liability—Proof by Creditor in Bankruptcy of Deceased Guarantor for Amount of Guaranteed Debt Before Making Demand on Principal Debtor—Liability of Guarantor a Contingent Liability Capable of Estimation—Difficulty of Estimation Not a Ground for Rejection of Proof—Observations of Court as to Practical Expediency so far as Creditor concerned of Making Demand First on Principal Debtor—Bankruptcy Act, 1908, S. 109.

Motion for an order setting aside the rejection of a proof of debt. The estate of G. H. Galyer deceased was being administered by the Public Trustee under Part IV of the Administration Act, 1908. The deceased at the date of his death was overdrawn in his account at the Bank of New Zealand, and was a guarantor of three other accounts at the same Bank. The Bank proved for the amount of the overdrawn account, and for the amounts owing on the several accounts, so guaranteed, as at the date of the death of the deceased. The Public Trustee rejected the proof of debt in respect of these latter accounts upon the ground that the value of the liability could not be

estimated, and the Bank now moved that such rejection be reversed.

Marsack in support of motion.
Broad to oppose.

REED, S., said that by S. 98 (3) of the Bankruptcy Act 1908, with certain exceptions which did not in the present case apply, all debts and liabilities, present or future, certain or contingent, to which the bankrupt was subject at the date of adjudication, should be deemed to be debts proveable in bankruptcy. The liability of the deceased's estate arose on an ordinary bank guarantee which in substance rendered the deceased liable for any deficiency in the accounts guaranteed. The Bank had not called on the principal debtors to pay, and the liability was, therefore, not certain but was contingent, and S. 109 of the Bankruptcy Act, 1908, applied. It therefore became the duty of the Public Trustee on receipt of the claim by the Bank to estimate the value of the contingent liability and permit a proof of the amount so estimated. It was contended, on behalf of the Public Trustee, that such value could not be fairly estimated, and that the Court should make an order accordingly, the result of such order being that the liabilities would not be provable in the bankruptcy. It was perfectly obvious that on the information supplied to the Public Trustee it was impossible to make such an estimate. The principal parties might be financially perfectly sound for all he knew, and the liability therefore of the deceased's estate inappreciable. But that did not end the matter. **Hardy v. Fothergill,** 13 A.C. 351, was instructive. The history of the legislation in respect of the Bankruptcy Law was there traced and it was shown that as stated by Lord Halsbury, L.C. (p. 355) " the Legislature has been engaged in the effort to exhaust every conceivable possibility of liability under which a bankrupt might be, to make it proveable in bankruptcy against his estate and relieve the bankrupt for the future from any liability in respect thereof." Lord Macnaughten quoted with approval (p. 366), subject to one qualification, the statement of Mellish, L.J., in **Ex parte The Llynvi Coal and Iron Co.,** L.R. 7 Ch. 28, that ; " It is quite plain that the object of these sections is, that the bankrupt shall be absolutely relieved from any liability under any contract he has ever entered into." The qualification was the exception of " any case in which the Court on appeal thinks the value of the liability incapable of being fairly estimated, and makes an order to that effect. Such a case is conceivable, but it is one, I think, very unlikely to occur." If the guarantor were alive and the contingent liability were held not to be provable in the bankrupt estate, through being incapable of being valued, then, although he might receive his discharge, his liability under the guarantee would continue to exist, the very mischief the later Bankruptcy Acts were framed to prevent. Therefore, however extreme the difficulty of valuing the liability might be, if it was at all possible to value it, the Court would not make an order under subsection 3 of S. 109 and by so doing prevent the release of the debtor from his liability. The fact that the guarantor was dead could not, when the estate was in bankruptcy, affect the principle to be applied. His Honour referred at length to **Hardy v. Fothergill** (*sup.*) and said that if it were possible to estimate the liability in that case it was certainly possible in the present case. The Bank in the present case had proved for the full amount of the accounts owing by the principal debtors as on the date of the death of the deceased. Were the deceased alive, and not bankrupt, the Bank would have had the right to claim from him the full amount owing by the guaranteed debtors without suing the debtors first or even demanding from them the amounts owing; the deceased, however, having the rights to which His Honour would refer. The real ultimate liability of the deceased would be, however, the deficiency upon the respective accounts. As His Honour had already said he thought the present claim fell within the term contingent liability in S. 109, and that consequently only the estimated value of such liability could be proved for. In the view His Honour took, however, he did not think it was material whether the Bank was permitted to prove for the full amounts owing by the debtors or only the estimated value of the contingent liability. That view was not discussed before His Honour and he, therefore, pronounced no definite opinion ; but it should be a matter for serious consideration by the Bank. The position was that the Public Trustee had all the rights that would be possessed by the deceased were he alive and solvent. The general rule of law was that a surety might without payment, where there was an actual secured debt, call on the principal debtor to relieve him from his liability by paying off the debt, and, in proper proceedings, might obtain an order of the Court requiring him to do so : **Ascherson v. Tredegar Dry Dock and Wharf Company Ltd.,** (1909) 2 Ch. 401 ; **Rowlatt on Principal and Surety** (2nd Ed.) 184. Again, the surety, as often as he paid anything under his guarantee in relief of the principal debtor, had an immediate right of action against the latter for the amount paid : **Davies v. Humphreys,** 6 M. & W. 153. It would appear, therefore, as if the result of the Bank insisting upon proving in the estate, whether for the full amount or the estimated value of the contingency, would necessitate the calling up of the various accounts guaranteed. If the Bank had no objection to that result following it would almost appear as if it would be better for it to do that at once, and then, instead of its being necessary to hold elaborate enquiries in order to estimate the value of the liability, a definite amount would be ascertained for which the Bank could prove.

In the circumstances the better course would be for the case to be adjourned for further consideration with liberty to either party to apply. The case was accordingly adjourned to be brought on at seven days' notice by either party.

Solicitors for Bank of New Zealand : **McKenzie and Marsack,** Masterton.
Solicitor for Public Trustee : **Solicitor to Public Trustee Office,** Wellington.

Adams, J. June 1; 26, 1931
Christchurch.

TRILLO v. CHRISTCHURCH CITY CORPORATION (No. 2).

Bylaw—Municipal Corporation—Reasonableness—Necessity for Evidence of Unreasonableness—Bylaws Prohibiting Touting for or Soliciting of Fares on any Street or Public Place and Regulating Acceptance of Hirings in Vicinity of Railway Station Reasonable—Bylaw Prohibiting Sounding for Purpose of Advertisement on *or Near* any Street of Musical Instruments, etc. without Permission of Council—Bylaw Vague by Reason of words " *or Near* " but not Unreasonable—Motion to Quash Bylaw Adjourned to Enable Amendment to Cure Vagueness—Bylaws Act, 1910, S. 12—Municipal Corporations Act, 1920, S. 354.

Motion for an order under S. 12 of the Bylaws Act, 1910, quashing Sections 2, 3, and 4 of Bylaw No. 17 made by the defendant Council on 2nd March, 1927, under the provisions of S. 354 of the Municipal Corporations Act, 1920. These sections were as follows : " 2. Neither the owner, driver or conductor of a vehicle required to be licensed nor any other person shall on any street or public place tout or solicit for fares or hirings for any vehicle provided that nothing herein shall be deemed to render it unlawful for the driver while in the driver's seat of a licensed vehicle standing on a duly appointed stand in any reasonable manner to call attention to the fact that such vehicle is available to be hired." " 3. (a) No person being the driver of a licensed vehicle while there is any disengaged vehicle attended by its driver waiting on any stand in Moorhouse Avenue within a distance of 200 yards from the main entrance to the Christchurch Railway Station appointed for vehicles of the class which such person is driving shall on any street within such distance accept any hiring unless he shall have taken up his due position on such stand. (b) Section 109 of the Christchurch Bylaw No. 14 shall be read subject to the provisions of the foregoing subsection (a) hereof." " 4. No person for the purpose of the advertisement of any trade or business shall on or near any street sound or cause or permit to be sounded any musical instrument, gong, drum, bell, gramophone, megaphone or loud speaker without the permission in writing of the Council. Such permission may be given in respect of one particular occasion, or generally, and shall be revocable at will." The grounds set out in the notice of motion were : (1) that the bylaw was unreasonable and *ultra vires*, (2) that it was partial and unequal in its operation, (3) that it was oppressive, (4) that it was in restraint of trade, (5) that it was uncertain, (6) that it did not conserve public convenience and was contradictory of the Christchurch Bylaw No. 14. The relevant facts appear in the report of the judgment.

Sargent for plaintiff.
M. J. Gresson for defendants.

ADAMS, J., said that the principles on which questions affecting the validity of such Bylaws in New Zealand arose were conveniently formulated in the joint judgment of Denniston and Edwards, JJ., in **McCarthy v. Madden,** 33 N.Z.L.R. 1251, at pp. 1268, 1269, 1270. On the argument counsel for the applicant contended that Section 2 was bad because (a) it applied to every street and public place in the city, and to the

owner, driver, and conductor of every vehicle required to be licensed, not excepting vehicles used only for the carriage of goods and (b) it was contrary to the provisions of Section 93 (5) of the city Bylaw No. 14, which required the driver of a cab, motor cab, van, or motor van, if he solicited a hiring elsewhere than on a stand, to accept such hiring. The only evidence tendered by the applicant in support of the application was the affidavit of the applicant himself, and that evidence related only to the business of the Gold Band Taxi Service, Christchurch, of which he was the proprietor. The burden of satisfying the Court that Section 2 was unreasonable lay on the applicant. There was, however, no evidence to guide His Honour in considering whether the fact that the bylaw applied to all the streets and public places in the city, of itself rendered it unreasonable, and that question must be determined only on the facts of the case. The Court did not take judicial notice of such matters as the prevalence of touting for hire or the volume of traffic in any street. His Honour entirely agreed with the observations of Williams, J., in **Grater v. Montagu,** 23 N.Z.L.R. 904, at p. 907: "No doubt the Corporation ought to know the wants of the district a great deal better than the Magistrate or the Judge can know them. But still, if a state of facts is made to appear which shows that any reasonable man would consider the by-law was oppressive, the Court or a Judge can act in such a state of affairs. I should be very loth to pit my opinion against this or any other Corporation as to the validity of a by-law unless the circumstances were such as to show quite clearly that the Corporation was wrong. Naturally, under ordinary circumstances the Corporation would be the best judges of what was proper." There was nothing in the objection that Section 2 was inconsistent with Section 93 (5) of Bylaw No. 14. A driver touting or soliciting a fare off the stand committed an offence against Section 2 of Bylaw No. 17. If he then refused to accept an offered hiring he offended against the earlier bylaw. They were separate and distinct offences.

Section 3 applied only to streets within a distance of 200 yards from the main entrance of the Christchurch railway station, and only when a disengaged vehicle attended by its driver was waiting on any stand in Moorhouse Avenue within such distance. That section was directed to the regulation of the traffic and the maintenance of order within the area described. The Chief Traffic Inspector in Christchurch said that the regulation of traffic at the station was essential both in the interests of the taxi-drivers themselves and of the safety of the public; that in his opinion the fairest way to regulate the traffic was to provide that every unengaged taxi should take up its position on the disengaged stand before being engaged for hire so as to ensure that each taxi-driver got a fair chance; that it was impossible to allow taxis appearing from anywhere to pick up fares at the station as several arriving at the same time caused greater danger to the public; that, unless all taxis were placed on a fair and equal position there would be constant trouble with the drivers; and that breaches of the peace had been occasioned. Having in mind the observations of Williams, J., above quoted, His Honour was satisfied that Section 3 of the bylaw was not unreasonable.

His Honour next came to Section 4 which Mr. Sargent said was the most important from the applicant's point of view. (His Honour here reviewed the evidence as to the operations of the plaintiff in soliciting by means of a loud speaker passengers for hire.) That part of the bylaw was limited to melodious or unmelodious noises made by any of the instruments named for the purposes of advertising a trade or business without the permission of the Council, and did not interfere in any way with the reasonable right of persons to play any musical or other instrument for any other purpose. A bylaw of that nature in appropriate terms might be lawfully made under S. 354 (1) of the Municipal Corporations Act, 1920, for the good rule and government of the city, subject to any proper objection to its scope or terms. Considering its limited purpose and the fact that a permission over-riding it might be given in the discretion of the Council, His Honour did not think, on the materials before him, that it was unreasonable, or that any reasonable man would consider it oppressive. In the circumstances His Honour was of opinion that the Council would be the best judge of what was proper. His Honour was of opinion, however, that the words "or near" were uncertain, but as that could be cured by a proper amendment, an opportunity should be given for that purpose.

Motion adjourned for further consideration and for the submission of an amendment.

Solicitors for plaintiff: **Slater, Sargent and Connal,** Christchurch.

Solicitors for defendant: **Izard and Loughnan,** Christchurch.

Court of Arbitration.

Frazer, J. July 3, 1931.
Christchurch.

WHALE v. N.Z. REFRIGERATING CO. LTD.

Workers Compensation — Accident — Contraction of Sciatica Through Exposure in Course of Duty to Artificial Cold After Exposure to Artificial Heat Held an Accident.

Claim for compensation under Workers Compensation Act, 1922. The plaintiff was a greaser employed by the defendant company. On the night of the 6th—7th March, 1931, he was working on night shift, stoking fires and greasing machinery. About 5 a.m. he ceased stoking operations, and at 5.45 a.m. went to take temperatures in the freezing chambers where the temperature would be from 6 degrees below to 6 degrees above zero. At the time of entering the chambers, plaintiff's body and clothes were wet with perspiration induced by the heat and effort of stoking. He stated that while in the chambers he had a fit of "shivers" and felt the cold more than usual. On rising next day, he felt pain in his hip. His wife rubbed the affected part, and he went to work as usual. During the shift he mentioned the soreness to his mate, who supplied him with embrocation. The plaintiff limped all that week. The pain, which grew progressively worse, was in the right hip and down and across the right leg. On 17th March, 1931, he saw a doctor who sent him to the hospital for massage. He was incapacitated for work from 17th March, 1931 until 11th April, 1931.

Hunter for plaintiff.
Acland for defendant company.

FRAZER, J., delivering the judgment of the Court said that the essential question in the present case was really a question of fact. A number of decisions were cited, in some of which it was held that the contraction of a disease was to be regarded as due to accident, while in other cases it was not regarded as being due to accident within the meaning of the Act. The line of demaraction, however, was fairly clear. It might be accepted that while a disease was not in itself an accident, it might nevertheless be contracted by accident, and in such a case the requirements of the Act were satisfied: **Glasgow Coal Co. Ltd. v. Welsh,** (1916) 2 A.C.1. In **Bresand v. Northern S.S. Co. Ltd.,** (1928) G.L.R., 290, a number of the earlier cases were reviewed. That case was typical of the class of cases in which the contraction of a disease could not be considered to be in the nature of an accident. A worker had been employed in the open on a cold, wet day, and had contracted rheumatism. He claimed compensation in respect of a period of temporary incapacity, but the Court held that anybody who was required to do outside work on that day might have contracted rheumatism. The plaintiff had been exposed to no special risk by reason of the place or the nature of his employment, and therefore was not entitled to recover compensation. A somewhat different class of case in which the contraction of a disease was held to give rise to a claim for compensation was exemplified in **Coyle or Brown v. John Watson Ltd.,** (1915) A.C., 1, and in **Barbeary v. Chugg,** 8 B.W.C.C., 37. In the former case an accidental breakdown in the shaft of a pit, and in the latter case a miscalculated jump by a pilot from a steamship to a pilot-boat, were regarded as factors justifying a conclusion that the contraction of a disease, more or less directly induced by the accidental happening, was due to accident. The present case was one of a somewhat different class, of which **Glasgow Coal Co. Ltd. v. Welsh** was an example. The circumstances of the present case were, in their essentials, very similar to those in **Welsh's case.** In the present case there was a greaser whose ordinary duties were in the engine room, but who had from time to time to attend to banked fires in the stokehold. On some shifts it was necessary for him to keep steam up in one or two boilers, which necessitated his doing more firing. Throwing a little coal at intervals on to a banked fire was not hot or strenuous work, but the stoking of a live fire, which had to be raked and fed at short intervals, was both hot and strenuous. On the night of March 6th—7th, an exceptional amount of firing was required, and the plaintiff had to attend continuously to that and his other duties until 5 a.m., when a stoker came on duty and relieved him of the firing. The plaintiff was not accustomed to work of this kind, and his body and clothes were wet with perspiration. At 5.45 a.m., before he had cooled down, he was required to spend three-quarters of an hour in the freezing chambers, taking temperature readings. Though

the plaintiff himself did not anticipate that he would suffer any harm from what he did, it was certain that any medical man would expect him to contract sciatica as a result. The chain of causation was complete. The man went home and to bed; when he woke some hours later he felt stiff and sore; he went back to work hoping that the pain would wear off, but it did not; he told a work-mate about his trouble, and was given liniment to rub on the affected hip; after some days had passed, feeling himself no better, he consulted a doctor and was told that he was suffering from sciatica. The onset of symptoms and the whole course of the disease were entirely consistent with the plaintiff having contracted sciatica as a direct result of his unwonted exposure to extreme artificial cold after a period of exposure to intense artificial heat. His Honour wanted to make it perfectly clear that not every case in which a man contracted sciatica could be said to be a case of accident. In **Sheerin v. Clayton,** 3 B.W.C.C., 583, a workman contracted a sudden chill and inflammation of the kidneys while working in the water of a mill-race, and died from uraemia; and Holmes, L.J., expressed the opinion that if the deceased, after working in the water, had caught an ordinary cold or chill, which, from weakness of his constitution, he was unable to shake off, and ultimately led to his death, it would be impossible to hold that compensation would be recoverable. The Court was of the opinion that the circumstances of the present case were so unusual that the contraction of sciatica by the plaintiff might properly be regarded as an accident within the meaning of the Act.

Judgment for plaintiff.

Solicitors for plaintiff: **Hunter and Ronaldson,** Christchurch.
Solicitor for defendant: **H. D. Acland,** Christchurch.

Frazer, J. June 4; 30, 1931.
Greymouth.

GREANEY v. THE KING.

Workers Compensation—Evidence—Hearsay—Admissibility of Statements of Deceased Worker to Wife and to Workmates—Statements Admitted—Duty of Court to Use Caution and to be Satisfied of Intrinsic Probability of Truth of Statements and of Veracity of Witnesses—Workers Compensation Act, 1922, S. 46.

Claim for compensation under Workers Compensation Act, 1922. The suppliant was the widow of D. P. Greaney, late of Greymouth, miner, who died of septic pneumonia on 4th November, 1930. The deceased, according to evidence given by the suppliant and by work-mates of the deceased, was apparently in his usual state of health up to the time of ceasing work at the State Colliery at Rewanui on 29th October, 1930. Enquiries made by the management disclosed nothing abnormal in his condition while at work on that day. The colliery was situated on a hill, and access to it was gained by means of a cable tramway, which was owned and operated by the State Mines Department. The men were required to use the tramway when proceeding to and returning from their shifts. There was no direct evidence of any accident to the deceased, but there was evidence that on 29th October, 1930, shortly after he left the tunnel at which the tramway terminates, the deceased was observed to be limping, and that, in response to enquiries from his workmates, he said that he had knocked or twisted his foot on a stone when getting off the cable-car. He showed his foot to one of his work-mates during the railway journey from Rewanui to Greymouth, and it was stated that there was a discolouration near the ankle, about the size of a shilling or a half-crown. He limped home from the railway station at Greymouth, and his wife bathed the foot and rubbed it with embrocation. The next day he remained at home, there being no work at the mine that day. Up to that time the deceased took the matter lightly, and evidently assumed that he had received only a trivial rick or sprain, from which he would recover in a day or two. That evening, as the foot appeared to be no better, the suppliant reported the occurrence to the general manager of the State Collieries. On the following day (31st October), the foot was swollen and tender, and Dr. Bird was sent for, and made an examination. The doctor concluded that the deceased had sprained his ankle, and that there was a possibility of anthritis developing, and he ordered him to remain in bed. On 2nd November, the foot was obviously in a worse condition, and Dr. Bird called in Dr. Moore, who considered that there was a risk of inflammation developing in the bones, and had the deceased admitted to the Grey River Hospital the same day. Blood tests were taken and an X-ray examination made, without, however revealing any definite condition. Four hours after admission to hospital, the deceased developed a severe rigor, indicating the onset of a blood-stream infection. His temperature rose, and his general condition became rapidly worse. On 3rd November, septic pneumonia was apparent, and death ensued on 4th November.

FRAZER, J., delivering the judgment of the Court said that counsel for the Crown submitted that the Court should not act on what was really hearsay evidence, and that the rule regarding admissibility of evidence not strictly legal, as laid down in **Seed v. Somerville,** 7 G.L.R. 199, should be modified. He contended that the circumstances that gave rise to a claim for compensation were more widely known at the present day than in 1903, when the Workers' Compensation Act was in its infancy; and that accordingly the Court should hesitate before accepting any but strictly legal evidence. Counsel also argued that the septicaemia from which deceased died might have developed spontaneously, without any external exciting cause, for the nasal polypi were a potential source of general infection of the blood stream.

The Court proposed to deal first with the question raised as to the admissibility of evidence of statements made by the deceased. S. 46 of the Workers' Compensation Act, 1922, provided that the Court might accept, admit and call for such evidence as in equity and good conscience it thought fit, whether strictly legal evidence or not. Chapman, J. pointed out in **Seed v. Somerville** (*sup.*) that there were cases in which, under the general law, unsworn testimony was admitted: he instanced entries made by a clerk or servant in the ordinary course of business, dying declarations, and entries in bankers' books. The learned Judge said that these exceptions rested on the improbability of the statements being false and the great probability of their being true, and that the exceptions could safely be made because it was not probable that the statements had been made in view of the litigation in which they were tendered as evidence. In the present case, there was clear and definite evidence that the deceased was apparently perfectly well when he ceased work in the mine on 29th October, and that he was limping immediately after he left the cable-car, and had a discolouration on his foot. Obviously something had happened to him between the time at which he left the mine and the time at which he left the tunnel at the foot of the tramway. He gave a perfectly natural and simple explanation at the time, and that explanation fits in with the medical evidence tendered in respect of his subsequent illness and death, as well as with the lay evidence as to his apparent condition before and after the occurrence. It was clear that the deceased regarded the matter as trivial, and not likely to produce any serious consequences. Indeed, it was improbable that one man in a thousand would attach any importance to a mere twisting of his foot on a stone; and certainly nobody would suspect that such a happening would lead to septicaemia and death. The deceased did not consult a doctor for two days after the accident, and that circumstance afforded additional evidence that he considered that the injury was a trifling matter that would right itself in a day or two. The Court was of the opinion, therefore, that the statements made by deceased to his wife and his workmates, within a few seconds to an hour after the occurrence, as to the manner in which his foot was injured, should be admitted in evidence. There was no reason why the deceased should have made an untrue statement at the time, and the surrounding circumstances rendered it unlikely that he would have done so. The Court, of course, must, in all cases in which evidence of that nature was tendered, satisfy itself of the truthfulness and accuracy of recollection of the witnesses themselves, as well as of the intrinsic probability of the truthfulness of the original statement, to the making of which they were testifying. It was proper, too, that the Court should have regard to the wider knowledge possessed by workers to-day of the far-reaching benefits of the Workers' Compensation Act, and to the possibility of evidence being manufactured for the purpose of supporting a claim; and it was necessary, accordingly, that evidence of unsworn statements made by deceased persons should be accepted only with due caution and great reserve. In the present case, however, all the circumstances pointed to the extreme probability of the deceased having injured himself in the manner described by him to his wife and his work-mates, and the Court accepted the evidence without hesitation.

(The Court reviewed certain medical evidence and entered judgment for the suppliant for £1,000 with costs.)

Judgment for suppliant.

Solicitors for suppliant: **P. J. O'Regan and Son,** Wellington.
Solicitor for defendant: **F. A. Kitchingham,** Greymouth.

Land Transfer Act.

Equitable and Unregistered Instruments.

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

(Continued from p. 168.)

Conversion of Unregistered Instrument into Registrable Right.

This brings us to the next question: Can the owner of an equitable right, used in the broad sense, under an unregistered instrument have it converted into a registrable right? The answer is supplied by *Smith v. Patterson*, 13 G.L.R. 99, in which Cooper, J., held that an agreement to execute a mortgage of land accompanied by a deposit of the title deeds is a good equitable mortgage notwithstanding S. 63 of the Property Law Act, 1908, and the equitable mortgagee is entitled to an order directing the equitable mortgagor to execute a registrable memorandum of mortgage, and by *Wellington City Corporation v. The Public Trustee*, (1921) N.Z.L.R. 423, already referred to. In that case by a memorandum of agreement entered into in 1903, the plaintiff Corporation obtained the right at any time in the future when continuing a road to its full width across a certain gully to support that road by allowing the batter thereof to rest upon the adjoining lands of the predecessor in title of the Public Trustee. The Corporation instiuted the action praying that the Public Trustee be ordered to execute in favour of the Corporation a registrable grant of a legal easement in pursuance of the 1903 agreement. Hosking, J., delivering the judgment of the Court of Appeal, said (at p. 1092): "All unregistered estates or interests in respect of which a caveat may be lodged are thus placed under the protection of the Court by enabling it to maintain the caveat on the register or to remove it therefrom. . . . When the question of the rights of the parties comes before the Court it may be that the estate or interest claimed in respect of which a caveat may be lodged is either such as the registered proprietor can presently give effect to by an appropriate instrument authorised by the Act, so as to enable the estate or interest claimed to be entered on the register—as, for example, the right of a purchaser under a completed contract for sale, or a lender under an agreement to mortgage, or of a *cestui que trust* absolutely entitled to a transfer; or, on the other hand, the estate or interest may not be found to be presently convertible—as, for instance, the right of a beneficiary not yet entitled to a transfer. Hence arises the question of what the Court may order to be done in an action for relief in respect of the caveated rights which are capable of being converted into registrable rights by means of an appropriate instrument. Where the caveat is founded on such a transaction as a completed agreement for sale the execution of a transfer by the registered proprietor would be enforceable by way of specific performance in virtue of the express or implied agreement on the part of the vendor to execute a proper instrument of assurance, and no difficulty would arise. But the present case is said to be one in which there is no express agreement to execute a further instrument. If, however, the Court is satisfied that the best means of protecting the caveated estate or interest, being one convertible as stated, is to have a proper instrument executed and registered, the question is: Has the Court jurisdiction to decree the execution of such an instrument? Then the further question would be whether the case was such that the jurisdiction ought to be exercised."

After holding that apart from the Land Transfer Act, the agreement of 1903 operated as a valid legal grant of the rights it purported to secure, although for want of legal form those rights were not registrable, Hosking, J., continued (at p. 1099): "Now, as the document in question is not registered it does not create, and, as it is not in registrable form, it is not available to create, anything more than what may be termed an equitable interest, as distinguished from the protected proprietary interest which would be conferred by registration of an instrument in proper form creating the easement. Then, has the Court jurisdiction to grant the relief sought by the appellant—namely, an order that the Public Trustee as the executor of the deceased shall execute a registrable instrument evidencing the rights? We think there is jurisdiction on the ground that the deceased and the Corporation agreed for valuable consideration that there should be a grant, which fails merely for want of form."

Voluntary Unregistered Instruments.

Can they be Recalled after Delivery and Before Registration?

Some nice points arise as to the effect of voluntary unregistered instruments, the revocation thereof, the position of a purchaser in respect of a lender for value on the security thereof, the duties payable thereon.

Views of Learned Authors.

Kerr in his *Australian Lands Titles (Torrens) System* submits (p. 147): "Whilst, inasmuch as a transfer for a nominal consideration is not one for valuable consideration, the transferor of such a transfer may recall it—as the transferee holds it neither by deed nor for value—yet the transferor will nevertheless be estopped from so recalling the transfer after it has found its way into the hands of a mortgagee as security." If, however, the transfer has been actually registered, it is irrevocable, and if the transferee took *bona fide*, although not for value, he obtains a good title on registration. See Mere Roihi's case, (1905) A.C. 176.

Hogg in his *Registration of Title to Land Throughout the Empire* says (p. 118): "That the right or claim to registration conferred by an unregistered instrument does amount to an actual interest in the land is supported by another consideration. Whether voluntary or for value, the interest which the donor or transferor purports to part with is treated as a right of property and not a mere right of action. Pending registration, the transaction (if voluntary) may be treated as an imperfect gift and recoverable (*Anning v. Anning*, (1907) 4 C.L.R. 1049, 1061). If for value, however, the transaction cannot thus be treated as recoverable, even though the transferor die, or his title be declared void: *Barry v. Heider*, (1914) 19 C.L.R. 197; *Sheerin v. Sheerin*, (1903) 5 G.L.R. 421."

Conflict of Authorities.

A Queensland case and a group of New Zealand cases support this view of the law, and a Victorian case seems to be based upon it.

In the Victorian case of *Plumpton v. Plumpton*, (1885) 11 V.L.R. 733, a certificate of title and a transfer by the registered proprietor to A for a nominal consider-

ation were lodged by A with a bank as security for an overdraft without the bank having notice of any claim to the land by any person other than A. The transfer was not registered. Molesworth, A.C.J., while holding that the bank would have been protected, if the transfer had been registered, said at p. 738: "Deposits of certificates have been recognised so as to enable the holder to stop transferring by proprietors, inconsistent with his right, and as a badge of ownership, entitling the holder to enforce transfers from all persons having no better equitable right. The proprietor sanctioning a transfer by delivering his certificate gives a title generally available, but we have never come to a system of treating properties as transferable by the manual delivery of a certificate as a symbol of ownership. A person holding a certificate as the female defendant, in depositing it as a security gives only such right as she would have against the proprietor. Cases as to allowing title deeds to be in the hands of an owner instead of an encumbrancer, and thereby enabling the owner to conceal the fact of an incumbrance, such as *Perry Herrick v. Attwood*, 25 Beav. 205, and *Briggs v. Jones*, L.R. 10 Eq. 92, to which I was referred by counsel for the bank, are not, I think, applicable to the custody of certificates of title. There is no reason to say that the plaintiff contemplated the male defendant raising money for building by depositing the certificate in the bank." He therefore said that the bank must hand over the transfer and certificate of title to the plaintiff.

Kerr (p. 146) considers that "this decision does not seem reconcilable with the Privy Council decision in *Great West Permanent Loan Co. v. Friesen*. . . . . It is to be observed that in the case before the Privy Council the holder of the documents was regarded as the agent of the owners to deal with the transfers. Similarly, in *Plumpton v. Plumpton* (*sup.*) A. might well have been regarded as the agent of the registered proprietor to deal with the bank. It is clear that, if the consideration had been substantial, the bank's claim would have priority, and it does not seem that the taker of one unregistered transfer (accompanied by the certificate of title) from the unregistered transferee is concerned as to the adequacy of the consideration, or as to whether it be paid or not, unless, of course, it appears from the terms of the transfer that it has not been paid . . . . as it did so appear in *Great West Permanent Loan Co. v. Friesen* (*sup.*). There seems no ground for drawing a distinction between the case of a person lending money on the security of an unregistered transfer for nominal consideration, and that of a person lending money on the security of a certificate of title procured on such a transfer, for, on the decisions, the bank in the case under discussion, would have been protected, if the transfer had been registered. It is submitted that, whilst, inasmuch as a transfer for a nominal consideration is not for valuable consideration, the transferor of such a transfer may recall it, yet the transferor will nevertheless be estopped from so recalling it after it has found its way into the hands of a mortgagee as security."

In *Commissioner of Stamps v. Erskine*, (1916) G.L.R. 641, the defendant executed a transfer to his brother by way of gift. When it was lodged for assessment, the defendant found that gift duty was payable, he revoked the gift and asked his brother to destroy the transfer. Sim, J., held that no interest passed until registration of the transfer, that it had been signed under a mistake, that the assessment was not final, and that the defendant could defend an action for the gift duty on the ground that the assessment was not properly made. In *Commissioner of Stamp Duties v. Halliday*, (1922) N.Z.L.R. 507, in which the gift was by way of reduction of mortgage, Sim, J., followed this decision holding that the gift was incomplete until the donor had caused the memorandum of reduction to be registered. In *Todd v. Commissioner of Stamp Duties*, (1923) N.Z.L.R. 528, at p. 533, which was a case of transfer of shares, Stout, C.J., explained that under our Land Transfer Act title is never complete until registration; no interest, legal or equitable, passes by an instrument until that instrument is registered. In *Taylor v. Commissioner of Stamp Duties*, (1924) N.Z.L.R. 499, at pp. 502, 503, Hosking, J., distinguished the case of a voluntary gift where specific performance could not be had from the case of a contract for the sale of land, where the general rule of equity is that if the contract is capable of being specifically enforced, then so long as it remains capable of being so enforced it will be treated as binding the land and as creating an equitable interest in the land itself commensurate with the relief obtainable by way of specific performance. He continued: "In view of the recognition which the Land Transfer Act itself gives to the existence of beneficial interests under trusts and otherwise, I am not prepared to wholly accept the formula that a contract for sale of land under that Act, capable of being specifically enforced, does not in equity attach to and affect the legal and equitable title as between the parties. . . . . I refer to this question perhaps somewhat irrelevantly because I believe it is yet necessary for our Courts, when the appropriate occasion arises, to determine whether it is true to say that a contract for the sale of land under the Land Transfer Act, capable of being specifically enforced, creates no interest in or does not attach to or affect the title to the land."

In *Public Trustee v. Commissioner of Stamp Duties*, (1925) N.Z.L.R. 237, Salmond, J., considered the question still open, for he said at p. 239: "It is not necessary for the purposes of this case to determine whether in any circumstances a voluntary gift of land under the Land Transfer Act can constitute, prior to actual registration, a complete gift within the rule in *Milroy v. Lord*. This question was considered by Sim, J., in *Commissioner of Stamps v. Erskine*, and a similar question in reference to gifts of shares was dealt with by the Court of Appeal in a recent case of *Todd v. Commissioner of Stamp Duties*. Even on the assumption that the principle of *Todd v. Commissioner of Stamp Duties* extends to gifts of land under the Land Transfer Act, and that the delivery of the certificate of title together with an executed transfer into the hands of the donee amounts to a complete gift, under which the donee is entitled to acquire the legal estate by registration, no such delivery took place in the present case."

(*To be continued.*)

A case in the Divisional Court had been tried before the Lord Chief Justice, Lord Alverstone, Mr. Justice Channell and Mr. Justice Darling. At the Lord Chief Justice's request Channell, J., delivered judgment first. When he had finished the L.C.J. said: "After the very able judgment of my brother Channell, I do not think I can usefully add anything." "I agree," said Darling, J.

New Zealand Law Society.

Proceedings of Council.

A meeting of the Council of the New Zealand Law Society was held at Wellington on Friday the 3rd day of July, 1931, at 2.15 p.m.

The President (Mr. A. Gray, K.C.) occupied the chair.

The District Law Societies were represented as follows:

Auckland (represented by)		Messrs. R. P. Towle, A. H. Johnstone and F. L. G. West
Canterbury	,,	Mr. H. F. O'Leary (Proxy)
Gisborne	,,	Mr. C. A. L. Treadwell
Hamilton	,,	Mr. N. S. Johnson
Hawke's Bay	,,	Mr. E. F. Hadfield (Proxy)
Marlborough	,,	Mr. H. F. Johnston, K.C.
Nelson	,,	Mr. G. Samuel
Otago	,,	Mr. J. B. Callan
Southland	,,	Mr. H. J. Macalister
Taranaki	,,	Mr. G. M. Spence
Wanganui	,,	Mr. N. G. Armstrong
Westland	,,	Mr. A. M. Cousins
Wellington	,,	Messrs. A. Gray, K.C., C.H. Treadwell and H. E. Anderson.

The Treasurer (Mr. P. Levi) was also present.

Amongst other subjects the following were dealt with:

Reduction of Charges.

In connection with the following resolution of the Council passed at its meeting held on 20th March, 1931, namely: "That having regard to the present depression a temporary reduction of 10 per cent. on all solicitor and client charges should be made, such reduction to be shown on the bill as a special discount."—a motion, pursuant to notice, was made as follows:—

> "That the resolution passed by the Council of the New Zealand Law Society on the 20th March in reference to the reduction of solicitors' fees be rescinded."

It was pointed out that the original intention was to make the reduction apply to conveyancing charges only, and that a general nominal reduction of ten per cent. upon gross earnings amounted in fact to a much greater percentage of profit costs, inasmuch as no account was taken of office expenses and overhead charges. It was also stated that although the reduction on all solicitor and client charges had not been generally adopted, it was found to be operating in some districts.

After a full discussion the motion to rescind the Council's former resolution of 20th March was put to the vote and lost.

Stamp Objections.

The following ruling of the General Council of the Bar in England (quoted in the *New Zealand Law Journal* of 31st March, 1931) upon a question relating to professional conduct and practice was considered, namely "Arising out of a question put to the Council by a barrister, it was decided that it is unprofessional that a counsel should object to the admissibility of any document upon the ground that it is not, or is not sufficiently, stamped, unless such defect goes to the validity of the document. Counsel should not take part in any discussion that may arise in support of any objection taken on the ground aforesaid unless invited to do so by the Court. It was further decided that the barrister was right in refusing a brief tendered with specific instructions to take a stamp objection."

The Council unanimously resolved to adopt a similar ruling to apply in New Zealand.

Solicitor Acting in Capacity of Insurance Agent, or as Agent for an Insurance Company.

A number of questions were submitted to the Council for consideration, following previous rulings on the subject. It was resolved as follows:

"The Council repeats its opinion that it is not in keeping with the dignity of the profession for a solicitor to carry on, or hold himself out as carrying on, any other distinct business or calling in conjunction with his profession as a solicitor. With regard to the question of a solicitor acting as agent for an insurance company, the Council, in view of the usage which exists in many districts in New Zealand, considers that this is a matter for the discretion of the individual practitioner depending on the particular circumstances, but considers it objectionable to advertise his agency in any way other than by intimation on his office premises."

Advertising Propekties for Sale.

The Council sees no objection to solicitors advertising in local papers properties for sale or to let in cases where it is their duty to do so on behalf of their clients.

Procuration Fees.

The Council entirely disapproves of a solicitor sharing with an agent a procuration fee in respect of a mortgage arranged for his client.

Service of Summons or Other Process by Registered Letter.

The Committee which had previously been set up by the Council to report upon this matter reported that the Under-Secretary, Department of Justice, while expressing a desire to assist the profession as far as he could, adhered to his former opinion, which was to the effect that the right of deciding whether a summons should be served by post or not was in the discretion of the Magistrate, and the fact that a special fee was charged for this class of work made no difference.

The Committee was of opinion that in the circumstances the ruling of the Department would not be reversed. The Committee's report was approved.

Bench and Bar.

We regret to record the death of Mr. William Joseph Joyce of Greymouth, aged sixty years. The late Mr. Joyce was born at Greymouth and received his early education on the West Coast. He was admitted to the Bar in 1891 and from that year until his death practised at Greymouth. Tributes to the memory of Mr. Joyce were paid in the Magistrate's Court at Greymouth on the 6th inst. Mr. W. Meldrum, S.M., was on the Bench and Mr. T. E. Coates, Mr. F. A. Kitchingham, Mr. W. P. McCarthy, and Mr. A. H. Paterson spoke on behalf of the profession.

London Letter.

Temple, London.
May 20th, 1931.

My Dear N.Z.,

This letter, or the beginning of it at any rate, must necessarily be of rather an obituary nature. Since my last letter of a month ago Sir Edward Clarke has died, and those of his generation, or the next generation to it, have told you all you could wish to know of him, and much more than any man of my generation could ever vouchsafe. After all, he was called some forty years before we were born ; and at an age of something under ten we were not disposed to take any very active interest in the goings-on of even His Majesty's Solicitor-General. Indeed, only yesterday my own daughter (who is a little older than that) insisted that I was trying to be funny when I explained that the Solicitor-General was neither a solicitor nor a general, but a barrister. . . . As I endeavour always to be perfectly frank with you and to give you a real, rather than any ideal picture, I think I must say that I do not think that Sir Edward Clarke meant anything whatever, save an illustrious name of legal history, to the present day of our Profession.

Schwabe was, on the other hand, very present to our minds when he incontinently died. He would often lunch at the Inner Temple Hall ; his melancholy, aesthetically or cynically melancholy, expression was a very familiar component of that atmosphere ; and everyone knew of him as once Chief Justice of the over-warm Madras, and from his case, learnt to look upon the Equator, and all the professional openings there to be found with a suspicion perhaps greater than is due. Anyone who knows the truth of the tropical area and life knows that there are types wholly suited for it and other types wholly unsuited for it. The genial, slightly corpulent, complacent rather than quick-minded, and pompous rather than lean type is the type most likely to weather the assault which the tropics make upon the liver ; and the foregoing description is an accurate description of all that Schwabe was not. But his lack of geniality was not by any means the vice of antipathy ; there was dignity in his slightly bitter, slightly disappointed attitude ; and he was worthy of the office he held, to the extent that such of us as know the conditions must always regret that Schwabe, or his family, were not physically fit to comply with them. I am particularly reminded of him, at the moment, by a spell of activity before his brother Chief Justice of the past in the Judicial Committee, Sir Lancelot Sanderson. I knew him well by sight, in the old pre-war days of his not too ample "Silk" practice in the Temple ; I wondered if he, too, was not a little disqualified by physique for the heat of India, whose High Court never seems to locate itself in her more pleasant places ; and I remark now that he, tall, dignified, tanned, sombre rather than vivacious, but full of health and years as he quite obviously is, is rather less sad than he was before he went. But then : there are forms of discontent, anxiety, disappointment, or what you will, which mature and at maturity mellow and become more attractive. Such is Sir Lancelot Sanderson's ; such was tending to become Schwabe's when he died. I think it is proper to class the two men together, since there is so much of similiarity between them. Schwabe, however, was never in the same rank of prospect or achievement as Sir Lancelot Sanderson.

The three others to die were respectively holders of the greatest and least appointments and of the appointment in between : Sir James Melville, K.C., until recently Solicitor-General ; Judge Chetwynd Leech ; and our old friend, Armstrong White. Now, how admirably suited to tropical distinction would Armstrong White have been ! Formerly a member of our Circuit, the best of all Circuits, the Oxford Circuit, and enjoying just such a practice as may keep a man alive and fed but ever on the alert for a better hole ; latterly an Assistant Registrar of the Divorce Court ; he was always of a calibre fit to weather any heat, dry or damp, and to lose a stone or two without noticing it and without losing any of a useful strength ; and he had just that elementary knowledge of all law which is required in an Official whose scope is to be unlimited and whose business is rather to learn the native than to know all from the start. I suppose he got frightened and so jumped for the little appointment when he saw it ; and who shall say he was wrong ? Judge Chetwynd Leech, the County Court Judge, was probably a man of very much greater intellectual attainment than Melville ; and it is curious to note that both of them had their origins, or source, in a Lord Chancellor's Chambers. Leech cannot have been much more than fifty ; and he was the sort of man, to all appearances, whom you would expect to emerge from the chambers of the late Viscount Cave ; learned, dry, but gentle. At least, so I found him. And I suppose Melville was what you might expect from the chambers of Viscount Hailsham, Douglas Hogg that was : a hearty, thrusting sort of cove, but lacking the development of his master's strength, when he came to face big issues, to deal with big causes, and to fight big opponents. But he has a good War, and I think that whatever our respect of him may lack (not a great deficiency, be it remembered) was made up by a considerable affection.

I trust that you do not find me disrespectful of the memory of the dead ? My apology must be this, that I for my part hope that, when my turn has come, my friends will do me the honour to speak the truth of me and will not condemn me by a flattering lie. And so I turn to the living.

The call to the Bar of your own High Commissioner in London ; a spar between Rigby Swift, J., and the blackmailing profession, in which the former sanctioned police traps for the catching of the latter ; some startling disclosures, at the meeting of our Barristers' Benevolent Association, as to the disproportion between the moneys which our successful men receive and the contributions which they make, to the remedy of the misfortunes of their brethren ; the publication of official Criminal Statistics, England and Wales, 1929, with the prefatory suggestions that acute industrial depression does lead to some increases in crime, that "the generation of juveniles which ran wild during the war contributed later to increases in the numbers of persons aged over 16 charged with indictable offences, at the time, for instance, of the General Strike," and that crime among mature adult women decreases rather than increases but "the same can hardly be said of younger women and girls ;" excitement over the new Land Tax proposed in the budget debates, and cordial thoughts as to the infinity of litigation to which the Valuation may, and should, give rise ; the institution of microphones in the divorce court, at our High Court, in London ; and

revival of the topic, "Should anyone be ever allowed to dare to appeal from the appellate courts of the Irish Free State to the Judicial Committee of the Privy Council?"—these are the events of the period to which attention may be called but upon which a London letter writer need not dwell.

I propose, rather, to dilate upon the appeals which have recently been heard, by the Privy Council, in matters concerning African Native Chiefs. We have just come away from the latter, and final, hearing of the case of Chief Tshekedi Khama, of the Bamangwato tribe in the Bechuanaland Protectorate; and I shall be disappointed if their Lordships' reserved judgment is not in favour of his appeal. You may have caught sight of the matter, in the daily press, and of its reference to the burning of the houses of his rebellious subjects, in punishment for their murderous attack upon him while sitting in council; I can only say this, while the matter remains *sub judice*, that I had no hesitation this time in making my decision as to the following of my learned leader in argument. You know what that means, and how critical a decision it sometimes is to make? Rather, I should say, you realise how often, in this matter, silence is golden, if the appeal seems to be succeeding? Well, in this instance I had no hesitation in deciding not to "follow," notwithstanding that I had what appeared to me to be a point of importance to make and notwithstanding that, when I did rise to give their Lordships some information they had earlier required—a reference to a page, an elucidation of the somewhat unusual constitution of the appellate court below—this very point was suggested to me by one of them, and as it fell out I followed without ever intending to do so. I mention this, as an indication of how I suppose the decision to be going, and as a matter generally of interest to you in respect of your own appeals. Sitting, as you will sit when you come to England to listen in to your own cases before the Judicial Committee, in such proximity to the judgment table as almost brings it about that you sit down to an intellectual meal with their Lordships, you will find that in this court even more than in others it is possible to gauge intimately the tribunal's mind and tendency. You can almost overhear their clandestine discussions with each other; and one way or another you are nicely situated, when the leading argument of your side draws to its conclusion, to assess the expediency of your "following" it with another? Of course, if the descent of your appeal to the abyss has seemed to be taking place, then you follow, upon the principle that you can do no harm, and may do some good; and it is a remarkable tribute to this tribunal that, should it be they are decided or deciding against your case, then they will give you, in your "following" speech, an uncommonly polite attention and they will not refrain from arguing with you, the more quickly to be rid of you, nor will be mute of malice, as a tribunal so often is in such circumstances. But, O my dear New Zealand, you really must come to London for yourselves to discover the particular, and most peculiar, characteristics of this tribunal, of which the like does not exist upon earth, and of which, if there are its peers in efficiency and ability, as well may be, I am sure there can be no rivals in the matter of quaint and happy atmosphere. I should like to ask your most recent, representative, visitor to this country, on this business, to inform you, in corroboration of what I say?

The case of the other Chief, which has been adjudged as well as heard out but of which I am not aware of there being any public report, is entitled *Eshugbayi Eleko vs. The Officer Administering the Government of Nigeria and Another*; it comes from the full court of the Supreme Court of Nigeria, which dismissed the Appellant's appeal from the judgment of Tew, J., discharging what by consent of the parties was deemed to be a writ of *habeas corpus* addressed to the Respondents. The Appellant had been ordered into custody on August 8th, 1925; and though within a few hours he took every legal step to question the validity of his detention, the matter is still before the Courts, and, as a result of this judgment dated 24th March, 1931, has still to be heard *ab initio* by the Supreme Court of the Colony! The case had already been before the Board on a refusal by one of the Judges, affirmed by the Supreme Court, to hear an application for a rule *nisi*, on the ground that a similar application had already been heard and determined by another Judge. It was, on that, decided that the well established rule that application in *habeas corpus* may be made to successive Judges existed in Nigeria; the case was ordered to be remitted to the Supreme Court. The early history of the Applicant's abortive attempts to establish his right to liberty is set out in the judgment delivered by Lord Hailsham, in June, 1928; I fancy I detailed it to you, and, if not, you may see (1928) Appeal Cases, at page 642. The application so remitted was originally made by notice of motion dated 8 December, 1925. The Board has recently had occasion to say, as it reminded us, in the case of *The Commissioner for Local Government vs. Kader Bahi* (the judgment is dated 27 February, 1931) that in applications for such writs as mandamus, and habeas corpus, it is important that the proper procedure should be maintained, and that the actual rule or order asked for, or made, should be formulated.

The Appellant was the successor of Docemo, ruling Chief of Lagos in 1861, and on August 5th, 1925, some of the members of the house of Docemo met together and purported to depose him, whereupon the Deposed Chief's Removal Ordinance, 1917, would come into play, in his regard. The Appellant disputed their majority, their right by custom to depose, and the validity of their meeting, and so contested an order based upon the recital—"And whereas Native Law and Custom requires that the said Eshugbayi shall leave the area over which he exercised influence by virtue of his Office"—inasmuch as not only did the requirement not arise but also he "was not a Native Chief and did not hold Office."

Tew, J., referring to the definition of a Native Chief thought it would be absurd for a Court to attempt to decide whether a particular person came within it; it was within the province of the Executive alone to decide what measure of authority or control would be necessary to make a person a chief. The question of native law and custom, on the other hand, was cognisable by the Court. The Board was satisfied that the opinion, which prevailed, that the Courts cannot investigate the whole of the necessary conditions, is erroneous. In their judgment, the Governor acting under the Deportation Ordinance acts solely under executive powers and is in no sense a Court; "and," the Judgment runs: "it is the tradition of British justice that Judges shall not shrink from deciding such issues in the face of the Executive."

During the argument, it must be mentioned, Stafford, Cripps, K.C., threw over the suggestion that the conditions were not cognisable by the Courts, but contended

that on enquiry by the Courts the evidence of the Governor was conclusive that the facts were as stated ; " the Governor appointed and removed in every case, and when he said he had done so, it was so."

The material parts of the Ordinance are :—

" 2 (1) When a Native Chief or a Native holding any office under a native administration or by virtue of any native law or custom has been deposed or removed from his office by or with the sanction of the Governor, whether such deposition or removal shall have been before or after the commencement of this Ordinance the Governor may—

(a) if Native Law and Custom shall require that such deposed Chief or Native shall leave the area over which he exercises jurisdiction or influence by virtue of his Chieftainship or office ; or

(b) if the Governor shall be satisfied that it is necessary for the re-establishment or maintenance of peace, order and good government in such area, that the deposed Chief or Native shall leave such area or any part of Nigeria adjacent thereto. . . . .
order him to leave, and deport him if he does not."

The Board " had difficulty in finding in the Letters Patent or the Instructions to the Governor any express authority given to the Governor to act on his own initiative as to the appointment or deposition of Chiefs ; and they saw the necessity of reconciling the existence of the suggested powers with the rights of the Native Communities laid down by Lord Haldane in giving the judgment of the Privy Council in *Amodu Tijani vs. Secretary of S. Nigeria* (1921) 2 A.C. 399." The Board would not accept the view that the Courts of Nigeria are incapable of deciding the question whether the control of a native is recognised by a Native Community. " Compared with many judiciable issues with which Courts of the Empire are from time to time faced, the question appears simple. The questions whether an office or a dignity exists, whether a person has been appointed to it or removed from it, are all issues which the Courts will have to decide after hearing the relevant evidence tendered by either side."

The Board,—Lords Blanesburgh and Atkin, and Sir Lancelot Sanderson—allowed the appeal and the matter stands again remitted. Of the two Boards who dealt with Chief Tshekedi's appeal, the members were Lords Atkin, Russell and Macmillan, on the first occasion, and the Lord Chancellor, Lords Blanesburgh and Tomlin, and Sir Lancelot Sanderson on the second. The element common to both Appeals, both of tribunal and of subject matter as well as of Imperial importance, tends, in my view, to give such an interest to the matter as warrants my going into them at further length, when we have our judgment in the second Appeal to compare with the judgment in the first. I shall assume leave of your Lordships accordingly in a later letter.

Yours ever,

INNER TEMPLAR.

" Judges have not only to decide cases ; they have to conduct the business of their Courts, and the method of the administration of justice is scarcely less important than its products."

—Lord Macmillan.

"Law and Language."

An Address by Lord Macmillan.

" Law and Language " was the subject of an address by Lord Macmillan, one of the Lords of Appeal and a former Lord Advocate of Scotland, at the Holdsworth Club, to the degree students of the Faculty of Law, Birmingham University, on May 15th.

" To the legal profession," said his Lordship, " above all others, words and their meanings are a matter of supreme concern. The lawyer, indeed, may not unfairly be described as a trafficker in words. They are his stock-in-trade, and the annual turnover of the profession must far outstrip the almost astronomical figures of the Bankers' Clearing House. For all day and every day the lawyer is using words, whether he is framing a conveyance or a contract, advising a client about his affairs, arguing a case, writing a judgment or opinion, preparing the report of a decision—Judges, counsel and solicitors are constantly making use of words and endeavouring by the use of words to convey their meaning to others."

It was of the utmost importance for the lawyer, if he was adequately to perform his task, that he should possess a special skill in the use of language. The surprising thing was that so little conscious and systematic study was, in these days, devoted by the legal profession to the art of the right use of language. The art of words was a difficult art and a fine art, but the practice of it brought pleasure as well as profit. It was not theoretical matter. It was a matter of business. No experienced lawyer would belittle the importance of accuracy and precision in the record of his transactions and the expression of his arguments, or fail to recognise how indispensable it is to appreciate the exact meaning of the words he used. " It is not inappropriate," added Lord Macmillan, " that the Law Society should have adopted the word ' Interpret ' as its telegraphic address."

The student of law soon realised that, of all things, words were the most uncertain and ambiguous. At least half the contests of the law had their origin in the ambiguous use of language. The imperfections of the human vocabulary were as lucrative to the legal practitioner as our physical frailties were to the physican. Many controversies over words were inevitable, owing to the inherent defects of the instrument we must use, but the much larger number of them arose from want of precision in thought and expression.

" Every day the Courts are engaged in elucidating the meaning of the English language. These problems are likely to increase rather than diminish in view of the growing tendency of the Legislature to enter upon regions which were formerly regarded as outside its province, and to regulate every incident and transaction of our daily lives. The modern legislator, concerning himself with all the day-to-day affairs of the social life of the people, cheerfully imports into the Statute Book the inaccurate and colloquial language of the street and the market-place, with only the most casual appreciation of what he is doing, and so we have questions as to whether catering is a trade and as to whether a chemist who sells Lysol in an automatic machine at the door of his shop is conducting this business himself.

Whatever may be our political views, it is consoling to reflect that the increasing intervention of Parliament in the life of the people by means of imperfectly-framed statutes will, at any rate, save many lawyers from swelling the ranks of the unemployed."

Lord Macmillan's concluding words were: "It is for a more accurate and scholarly use by the practising lawyer of our ordinary vocabulary in his daily work that I plead. We have a matchless inheritance in our mother tongue and a great tradition in its use handed down to us from the Bible and Shakespeare through a long list of masters to our own day. Let us see to it that we do not suffer it to be debased in our time, and that in our generation the legal profession shall continue to merit the proud distinction of being pre-eminently the learned profession."

Correspondence.

THE EDITOR,
"N.Z. LAW JOURNAL."

Sir,

Branding of Stock.

Country practitioners might well be interested in the following:

I drew a few days ago, an ordinary bill of sale for a lender who happened to be a stock inspector. Later, he borrowed the instrument in order to peruse its terms. Later again, he brought it back to me at the same time throwing doubt upon the validity of the branding covenant because the brand mentioned was not the grantor's registered brand. I calmed his fears on that head, but he put his views in this way: "The Stock Act makes a brand *prima facie* evidence of ownership. We, who are charged with the duty of administering the Act, are careful to see that the registered brands are as dissimilar from each other as possible: we restrict each stock owner to one brand, if possible, and we will not allow stock owners to brand other than their own stock." "I am aware," he said, "that this last rule has cut across the practice of auctioneering firms of taking covenants from grantors to brand with the registered brand of the grantee. But we hold that such a practice is calculated to lead to confusion in ownership of stock. The trouble about your unregistered brand is that not having been scrutinised, it may be so similar to the registered brands of neighbouring owners as to make it difficult, perhaps, to segregate the cattle belonging to different owners."

I, in addition to the inspector, have observed a looseness in regard to requiring that the brand to be applied to mortgaged stock shall be the registered brand of the grantor and I have known that solicitors, lending companies and others have obliged grantors to brand with the grantees' brand.

It occurs to me that members of the conveyancing side of the profession may well help the administration of the Stock Act by requiring in every case the branding of stock with the registered brand of the grantor.

Yours, etc.,

"TAURUS."

Hawera, 19/7/31.

Canterbury Law Students' Society.

Address by Mr. W. J. Hunter.

An interesting address was given by Mr. W. J. Hunter recently to the Canterbury College Law Students' Society on the subject "The Vocation of a Lawyer."

The Lecturer in opening said that he was glad to place before members of the Society certain matters for their consideration after twenty-five years' experience in the profession. To him entering the profession of the law was an adventure and he had had to take risks. It had, however, been an enjoyable and interesting adventure and he would counsel all young men who had courage and ability to take reasonable risks in life when they had an end in view which was worth aiming at. He would direct their attention to the desirability of following the profession of law as a vocation and not merely as a profession, and certainly not as a business. The distinction between a profession and a business was that the ethical side was more definitely developed in the former, although no doubt a body of ethics somewhat akin to professional usage was growing up in business. It was a fine thing to feel that one had so fitted oneself for his profession that one cast no longing glances in other directions. By fitting themselves adequately for the profession they would find that it had become a vocation.

The primary object in entering a profession is to serve the public in that capacity. Money was not unimportant, but it was secondary. The profession of law then was a public service, namely, part of the machinery of the administration of Justice. It was an honourable vocation requiring knowledge, intellectual capacity and devotion to an ideal. It was of the utmost importance that the younger generation should be guided to correct valuations of what is good and what is bad in professional life.

The lecturer said that he would like to see all admissions to the legal profession made in open Court. He referred to the description which the Right Honourable D. Lloyd George has given of his admission as a Solicitor, how he attended with a clerk from the office of his firm's London Agents at an office called the Petty Bag Office or some such place, and signed a Roll, and that constituted his admission to the Solicitors' profession. Would it not impress young men more strongly with the fact that they were entering upon a dignified and learned profession as their life's work if they were admitted in open Court? Their friends and relatives might be present in Court on the great occasion.

The legal profession had high privileges. They were set apart to be consulted by persons who might resort to the Courts, to advise on every class of business or legal matter, and to prepare documents embodying agreements (and sometimes disagreements) of all kinds. They were officers of the Court. Absolute frankness, consistent with the rights of privilege of their clients, was essential between the lawyer and the Bench. They should cultivate good relations with the Bench, who were their best friends, and let the Bench see that they could be trusted. He would say nothing of living lawyers in New Zealand, but in Williams, Stout, Hosking, Skerrett and many other men of less eminence the men of his generation had a wonderful example of ability, learning, and devotion to the interests entrusted to them. If members of the legal profession were unworthy of their privileges and their duties such privileges and duties would be taken from them. No state of society was static.

There was no royal road to success in the law. There must be good abilities and alertness of mind. There must be a determination to fit members for the sphere of professional life to which they might aspire, and which they believed their particular qualifications lead them to adopt. The profession was wide. There was room for the Banco man who could argue but could not speak, for the advocate who could speak but could not argue, and for the general practitioner, who should be a good sensible man, and one who would keep his clients on the right track. A general division in the profession in New Zealand was between the Court man and the office man, which was sufficient specialisation for this country at the present time.

Mr. Hunter then went on to describe the natural qualifications and acquired characteristics required for success in advocacy and illustrated his remarks by reference to Judge Parry's book "The Seven Lamps of Advocacy," namely, Honesty, Courage, Industry, Wit, Eloquence, Judgment and Fellowship. He then

described the qualifications necessary for the office lawyer, emphasising the necessity that he should be a man of business and thoroughly understand accounts. He referred to the Solicitors' Guarantee Fund and pointed out to his hearers what a great advantage it would be to them if by the time they had been a few years in practice that Fund had become impregnable. He referred also to the great advance in the education of solicitors in England during the last century and quoted the remark of Sir Walter Scott: "A lawyer without literature and history is a mere working mason; with it he may be an architect." He pointed out to his hearers that certain qualities which make a good solicitor, for example, caution, and a certain moderation of view, may be a disadvantage to a Court man and he advised his hearers if they had any aspirations to Court work to try themselves in that capacity for some time before finally deciding on their life's work.

The lecturer then referred to the tradition in the legal profession of giving service to the public in addition to strictly professional work. They should all take up some kind of public work, giving to it what time they could spare. This was the way in which lawyers could repay to the community the debt which every professional man owed to it. "I hold every man a debtor to his profession."

Concluding his remarks Mr. Hunter said: "The law like all trades and professions is passing through hard times. Since the war we have all spent too much and we must modify our ideas. Much work has been taken from the profession yet the number engaged in it is greater than ever. The time is past when any decent fellow who was a solicitor could make £800 to £1,000 a year and live a comfortable and pleasant existence. We shall have to work hard for less money and give better service to the public. You cannot succeed without honour, ability, courage, persistence and hard work. Ask yourselves if you can qualify under these conditions and can then take the oath which will be administered to you by the Judge, that you will demean yourselves in the profession to the best of your skill and ability. If you cannot or don't care to do this, then adopt some other walk of life. If you can and will, you will enter a profession which will require all your capacity and at times will cause you acute anxiety, but you will earn the confidence of the Bench, the profession, and the public, and you will know that the traditions which have been handed down to you by the great men I have named will be passed on by you untarnished by those who shall come after you."

In moving a vote of thanks Mr. J. T. Watts said that Mr. Hunter had taken a great interest in the welfare of the Society from its inception, as appeared by old minute books. The address was the first of its kind to be delivered to them and had been very instructive, especially to the members who were just commencing their course.

Rules and Regulations.

Disabled Soldiers' Civil Re-Establishment Act, 1930. General Regulations.—Gazette No. 52, 9th July, 1931.

Native Land Amendment and Native Land Claims Adjustment Act, 1928. Amendments to Taranaki Maori Trust Board Regulations.—Gazette No. 52, 9th July, 1931.

Government Railways Amendment Act, 1931. Amendments to Regulations.—Gazette No. 52, 9th July, 1931.

Public Service Act, 1912. Amendments to Regulations relating to overtime and certain allowances and expenses.—Gazette No. 52, 9th July, 1931.

Customs Amendment Act, 1921. Notification *re* dumping duties.—Gazette No. 52, 9th July, 1931.

Finance Act, 1931 (No. 2). Regulations as to import and export of coined silver.—Gazette No. 54, 23rd July, 1931.

Customs Act, 1913. Revoking the prohibition of the importation and exportation of silver coins.—Gazette No. 54, 23rd July, 1931.

Samoa Act, 1921. Samoa Notaries Order.—Gazette No. 54, 23rd July, 1931.

Unemployment Act, 1931. Unemployment Relief Tax Regulations, 1931.—Gazette No. 55, 28th July, 1931.

Arms Act, 1920. Arms Regulations, 1931.—Gazette No. 46, 11th June, 1931.

Board of Trade Act, 1919. Revocation of Board of Trade Trading-stamps Regulations, 1931.—Gazette No. 50, 2nd July, 1931.

Bills Before Parliament.

Local Authorities' Loans. (Rates of Interest). (Right Hon. Mr. Forbes).—"Local authority" and "prescribed rate of interest" defined.—Cl. 2. Limiting rates of interest payable on loans raised by local authorities (otherwise than in anticipation of revenue) to 5% per annum where prescribed rate does not exceed 5½% per annum, and, where prescribed rate exceeds 5½% per annum. to ½% per annum less than prescribed rate. Such limitation not to restrict the power to prescribe rates of interest conferred on the Governor-General in Council by S. 114 of the Local Bodies' Loans Act, 1926.—Cl. 3. Minister of Finance may grant exemption from restrictions imposed by Act in respect of contracts or negotiations entered into before commencement of Act.—Cl. 4.

Rent Restriction Extension. (Hon. Mr. Smith). Tenant of any dwellinghouse or part thereof let as a separate dwelling within earthquake area as defined by Hawke's Bay Earthquake Act, 1931, on 3rd February, 1931, or at any time since that date, at rental not exceeding £104 per annum, may apply to a Magistrate for an order that Part I of the War Legislation Amendment Act 1916 and amendments, shall be applied to such dwellinghouse or such part thereof. Magistrate to proceed as if such application was made under S. 4 of the Rent Restriction Act 1926. No order to be made retrospective to any date earlier than 3rd February, 1931. Paragraph (s) of Subs. 1 of S. 66 of the Hawke's Bay Earthquake Act 1931 repealed.—Cl. 2. Part I of the War Legislation Amendment Act 1916 and the amendments thereof, to continue in force until 1st August, 1932. S. 3 Rent Restriction Act 1930 repealed.—Cl. 3.

Defence Amendment. (Hon. Mr. Cobbe). Provisions as to transfer from Territorial Force to Reserve. S. 5 of Defence Amendment Act 1910, and S. 9 of Defence Amendment Act 1915 repealed.—Cl. 2.

National Provident Fund Amendment. (Hon. Mr. Donald). Providing for computation of pensions payable under National Provident Fund Act, 1926 to persons employed by local authorities contributing to fund. Where local authority contributing to fund in respect of employee on terms providing for computation of pension by reference to rate of salary, notwithstanding reduction of salary, it may elect to contribute as if there had been no such reduction, and pension, when payable, shall be computed as if the salary had not been reduced.—Cl. 2. Application of S. 34 of National Provident Fund Act 1926 to pension-schemes that provide for unspecified pension-rates. S. 34 amended.—Cl. 3. Limitation of time within which application may be made for payments of special benefits out of Fund.—Cl. 4. S. 17 of National Provident Fund Act 1926 amended.—Cl. 5.

Imprest Supply (No. 2). (Right Hon. Mr. Forbes). Provides for imprest grants.—Cl. 2. To be charged as expressed in future Act.—Cl. 3.

Bank of New Zealand Amendment. (Mr. Langstone). Sec. 2 of the Bank of New Zealand and Banking Amendment Act 1898 amended by adding a proviso that persons appointed by the Governor-General in Council as directors of the Bank of New Zealand shall not, while holding such appointment, be directors or shareholders in any other bank, insurance company, or any other public or private commercial company.—Cl. 2. S. 9 of the Bank of New Zealand Act 1920 amended.—Cl. 3. S. 10 of the Bank of New Zealand Act 1920 amended.—Cl. 4. S. 13 of the Bank of New Zealand Act 1926 amended.—Cl. 5.

Public Hospitals Assisting. (Mr. Black). Any two or more Hospital Boards given authority to conduct sweepstakes for support of the public hospitals controlled by such Boards subject to a scheme being approved of by the Minister for Imperial Affairs.—Cl. 3. Act to come into operation on 1st October, 1931.—Cl. 4.

Silver and Copper Coinage. (Mr. Wilkinson). Minister of Finance may issue silver and bronze coins of specified denominations.—Cl. 4. Tender of payment if made in British or New Zealand coins to be legal tender; (a) in case of gold coins, for any amount; (b) in case of silver coins, up to forty shillings; (c) in case of bronze coins, up to one shilling.—Cl. 5. Prohibits issue of other than official coins. Penalty for breach fine not exceeding £20.—Cl. 6. Contracts, etc., to be made in coins which are current and legal tender under this Act.—Cl. 7. Powers of Governor-General as to determining weights, dimensions, designs, etc., of New Zealand coins.—Cl. 8. Consolidated Fund may be used in purchase

of bullion for currency.—Cl. 9. Coin to be deemed bullion until issued.—Cl. 10. Power of Governor-General to make regulations.—Cl. 11.

Currency. (MR. MASON). Controller and Auditor-General given power to issue currency-notes for one pound and ten-shillings. Such notes to be legal tender in New Zealand.—Cl. 3. Conditions for issue and recall of currency notes.—Cl. 4. To be offered to banks and State Advances Superintendent in proportion to amount of overdrawn current accounts owing to them.—Cl. 5. Interest thereon to be paid by persons to whom issued at ½% per annum until repayment.—Cl. 6. Security to be deposited with Controller and Auditor-General by person to whom currency-notes issued.—Cl. 7.

Licensing Amendment. (MR. MASON). See. 11 of Licensing Amendment Act 1914 amended.—Cl. 2.

Invalid Pensions. (MR. O'BRIEN). Subject to provisions of Act, every person over 16 years of age permanently incapacitated for work by reason of an accident or of being an invalid and not in receipt of an old-age, blind, or widows' pension, qualified to receive invalid pension while in New Zealand.—Cl. 2; (a) Aliens and (b) Asiatics (unless born in New Zealand or resident for 15 years) not qualified.—Cl. 3. No person to receive pension unless—(a) residing in New Zealand when claim made; (b) continuously residing in New Zealand prior to that time for at least 5 years and in good health when residence taken; (c) incapacity occurred while in New Zealand; (d) accident or state of health not self-induced or brought about to obtain pension; (e) no claim lies for compensation on account thereof; (f) income or property of applicant does not exceed old-age pension limit; (g) applicant has not deprived himself of income or property to qualify for pension; (h) relatives are unable to maintain adequately.—Cl. 4. Occasional short absences not to interrupt continuous residence.—Cl. 5. Pension not to exceed £52 per annum with extensions in case of wife and children dependants.—Cl. 6. Amount to be determined by Commissioner or Deputy Commissioner of Pensions, who may direct medical examination, claimant to have right of appeal in event of difference of medical opinions.—Cl. 7. Act to come into force on 1st January, 1932.—Cl. 8.

Amusements-Tax Amendment. (MR. BARNARD). Subs. 2 S. 7 of Amusement-Tax Act 1922 as amended by S. 3 of Amusement-Tax Act 1923 amended.—Cl. 2.

Shipping and Seamen Amendment. (MR. MASON). No right of action for damages for personal injury or loss of property to be defeated or limited by reason of any term or condition written or printed on any ticket or other document issued to any passenger and purporting to exempt from liability the shipowner with whom the contract of carriage was made, whether the passenger signed such ticket or document or whether it was read over to him or otherwise.—Cl. 2. Any passenger alleging loss or damage by reason of the negligence of any shipowner, by his servants or agents, may sue for damages not exceeding £2,000.—Cl. 3.

Local Bills.

Auckland and Suburban Drainage Amendment. (HON. MR. STALLWORTHY).

Cameron and Soldiers' Memorial Park (Masterton) Trustees Empowering. (MR. SYKES).

Stoke Water Supply. (HON. MR. ATMORE).

Wellington City Empowering. (MR. CHAPMAN).

Wellington City Milk Supply Amendment. (MR. MCKEEN).

Christchurch Tramway District Amendment. (MR. MCCOMBS).

Private Bills.

Auckland Harbour Bridge Empowering. (HON. MR. STALLWORTHY).

Wanganui Church Acre Amendment. (HON. SIR JAMES ALLEN).

Dominion Life Assurance Office of New Zealand Ltd. (HON. SIR WILLIAM HALL JONES).

"It is no part of a Judge's business to suffer fools gladly—or perhaps at all. But it is his business to see that the advocate gets every chance to state his client's case and not to let the imperfections of the advocate prejudice a just cause."

—Lord Macmillan.

New Books and Publications.

Government of Trinidad. By C. Eeis. Second Edition. (Sweet & Maxwell Ltd.). Price 37/-.

The Commercial Code of Japan, Annotated. Vol. 1. Compiled by the Codes Translation Commission, Tokyo. Half-Leather. (Sweet & Maxwell Ltd.). Price 33/6.

The International Law Association Report of the 36th Conference, New York, 1930. (Sweet & Maxwell Ltd.). Price 47/-.

Transactions of the Grotius Society. Vol. 16. Problems of Peace and War. (Sweet & Maxwell Ltd.). Price 12/-.

Trial of Dr. Smethurst. By L. A. Parry. (Notable British Trials). (Butterworth & Co. (Aus.) Ltd.). Price 9/6.

Further Points in Practice. By J. P. H. Cookson. Reprinted from Solicitor's Journal. (Solicitors' Law Stationery Society). Price 16/-.

Stone's Justices Manual, 1931. Sixty-Third Edition. Edited by F. B. Dingle (Butterworth & Co. (Pub.) Ltd.) Price 45/-.

The Province of the Law of Torts. By P. H. Winfield, LL.D. Cantab. (Cambridge Press). Price 16/-.

Bermuda Laws, 1690-1930. Three Volumes. Full Buckram. (Wildy & Sons). Price £7/5/-.

Workmen's Compensation. Twenty-seventh Edition. By W. Addington Willis. (Butterworth & Co. (Pub.) Ltd.). Price 19/-.