New Zealand
Law Journal
Incorporating "Butterworth's Fortnightly Notes"

"We advance in years somewhat in the manner of an invading army in a barren land; the age that we have reached, as the phrase goes, we but hold with an outpost, and still keep open our communications with the extreme rear and first beginnings of the march."
—R. L. Stevenson (Virginibus Puerisque).

Vol. VII. Tuesday, November 10, 1931. No. 19

Our Lack of Contemporary History.

In the September issue of *The London Mercury* a writer deplores the fact that so many of New Zealand's early settlers died without leaving any record behind them. He regrets in particular the lack of social memoirs dealing with the incidents of our national story. And he adds: "One result is that the historian is seriously handicapped. He is confined to official and newspaper records for his knowledge of events. The inter-play behind the scenes from which important decisions often spring—the private conversation and conference, the personal motive that is never aired on platform or in the House—these things are closed to him."

What is thus said in a general way, may be applied with striking force to the history of Bench and Bar in this country. We talk glibly at times about the traditions of our profession; but we have few of local manufacture. What traditions we venerate, we have imported from the British Isles; and these we have learnt from the written word of those who extended the field of our knowledge by perpetuating for us the happenings of their professional days. Our local traditions are too vague, if they exist at all. The fault lies in the fact that we have a very meagre literature of legal life written as its history was being made, and by the men who were making it. It is the contemporary record that is of paramount value. When we contemplate our lack of means for acquiring any knowledge of the men who pioneered the profession in this our own land, we feel that someone has cheated us of a birthright that should have been ours.

Where shall we seek the record of our pioneers in the law? What do we possess of the biographies or the autobiographies, of the "lives" or the letters, of the man who in past years stood where we now stand, and spoke the professional language that is familiar to our ears? Truth to tell, we have very little. Bench and Bar, with one brilliant exception, have so far neglected a duty they owed to the generations who would follow after.

Is there any reader of the JOURNAL who can tell us anything worth while about "Francis Fisher, Esq.," who was the first Attorney-General to hold office in New Zealand? He was sworn in at the first session of Governor Hobson's Executive Council which was held on May 24, 1841. All that we know of this leader of our infant Bar is the fact of his having purchased at the first land sale held in Auckland, three lots of suburban land containing sixty-four acres three roods and four perches at a cost of 140*l.* 8*s.* 6*d.* This sale, on September 1, 1841, is historic; but we would like to have something more about the Attorney-General than it has contributed to our store of knowledge.

Of Sir William Martin, our first Chief Justice, we have only a slight contemporary record. Rusden mentions him in relation to the constitutional questions that stirred the passions of our early statesmen; but he gives us little of the personal characteristics of a very great man. Mr. Attorney-General Swainson, his contemporary and friend, wrote more than one book; but he is more concerned with politics in which he cut an insignificant figure, than with the law of which he was an honoured exponent. In his *New Zealand and Its Colonisation*, he records one glimpse of the first Chief Justice on circuit: the occasion on which he journeyed overland on foot from Wellington to Auckland by way of Taupo, in 1843.

In *Poenamo*, the late Sir John Campbell lifts for an instant the veil which shrouds incidents of the early dispensing of justice in this country:

"We had parsons without churches and magistrates without Courts; but we scrambled through our divinity and our law somehow or other, so that we should be held in esteem as a Christian and properly-behaved people.

"For instance, here is an entry of date the 15th May: 'To-day saw Mr. —— sitting before his *whare* administering justice under the canopy of heaven.'"

The year was 1841: but who was the judge or magistrate whose memory is obliterated by the dash?

When we search through the pages of written recollections, we find that as a profession we have been sadly neglected. Mr. Robert Gilkison, in his recently-published *Early Days in Central Otago*, gives some interesting facts relative to a few of the cases decided in Dunedin in the 'sixties, and he tells of the vicissitudes of the magistracy in that stirring time. Scattered here and there among the memoirs of men outside the ranks of the law, we have a few thumb-nail sketches: for example, the late Mr. H. B. Morton relates some of the personal characteristics of Sir George Arney, C.J., in *Recollections of Early New Zealand*. Now, if Judge Maning, had applied to his experiences in the Native Land Court the vivid pen and personality that has made *Old New Zealand* a classic for all time, what a rich heritage would have been ours!

It was left to the late Mr. Justice Alpers to provide us with the only valuable contribution to legal history that we possess. His *Cheerful Yesterdays* supplies an intensely interesting but all-too-brief chapter. It is a brilliant record of life in the profession in his time. In this respect, it stands alone in our national literature.

What we chiefly need at the present time is a better environment, which looks backwards as well as forward, in which we could develop that corporate and individual professional consciousness that is noticeably lacking amongst us. In one of his recent books, Mr. Ernest Raymond suggests our present historical perspective: "'I am part of all I have met,' said Ulysses. 'All environment,' said Drummond, in a good sentence, 'is an unappropriated part of ourselves.' And of our environment that awaits us in the world, what can equal the recorded experience of the grandest, the pioneering souls? If we neglect it, we shall fail at several points to come alive. And it is a terrible thing to be partially dead."

Court of Appeal.

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

September 25; October 23, 1931.
Wellington.

R. v. HIRST.

Crimes—Child Welfare—*Mens Rea*—Whether in Order for Offence to be Committed it is Necessary for Accused to know Female was an Inmate of an Institution—"Resident in an Institution"—Interpretation—Whether Escapee at large for Six Days still "Resident in Institution"—Child Welfare Act, 1925, Ss. 24, 25.

On April 26, 1931, four girls escaped from the Girls' Home, Burwood, an Institution under the Child Welfare Act, 1925, and were arrested and returned to the Home on May 2. In the interval, they slept out in various places, on the beach, in a "bach," in a plantation, and elsewhere. They associated, in all, with some nine boys during the period, and promiscuous sexual intercourse took place. The girls' ages ranged from 16 to 20. The accused was one of those boys and he was indicted and tried in the Supreme Court at Christchurch on a charge of attempting to have sexual intercourse with one of the girls. In answer to questions submitted, the jury found that the accused had attempted to have sexual intercourse with the named girl, but that at the time he did not know that she was an inmate of the Burwood Home. Mr. Justice Adams, who tried the case, remanded the prisoner, and stated a case for the Court of Appeal, submitting the following questions: (1) Whether in order for an offence to be committed under section 24 (2) (a) of The Child Welfare Act, 1925, it is necessary for the accused to know at the time of the offence that the female with whom the offence was committed was an inmate of an institution under The Child Welfare Act, 1925. (2) Whether that female, having escaped from the Home, and having been at large from April 26, 1931, to May 1, 1931, was at the time of the offence—to wit, on May 1, 1931—resident in an institution under the Child Welfare Act, 1925.

The subsection in question is as follows: "(2) It shall be an offence against this Act, punishable on summary conviction by a fine of one hundred pounds or by imprisonment for twelve months: (a) For any person to have or attempt to have sexual intercourse with any female inmate who is at the time of the offence resident in an institution."

Held: Protection confined exclusively to children resident in institution, absolute prohibition of offences not being intended by the Statute. Onus on accused to prove he had no guilty knowledge. Jury's finding that accused did not know female concerned was an inmate of an institution, amounted to verdict of "not guilty."

Held, also, that strict interpretation of word "resident" is necessary, and "residence in an institution" must be a question of fact for the jury, if evidence justifies leaving it to them. Six days' absence, escapees living in meantime as vagrants, justified Judge in directing jury that females not "resident in an institution" when offence was committed.

A. Fair, K.C., Solicitor-General, for the Crown.
Sargent and **Twyneham** for the prisoner.

REED, J., in delivering the judgment of the Court, said that the answer to the first question depended upon whether or not the doctrine of *mens rea* applied. The law on this subject was considered by the Court of Appeal in **Rex v. Ewart,** 25 N.Z.L.R. 709, where the principal relevant authorities were cited and commented upon. It was there shown that the principles to be applied in considering whether *mens rea* is an essential ingredient of an offence are settled, and may be stated in the terms of the head note to that case, which correctly set out the effect of the several judgments.

As to the scope and object of the statute, the preamble stated that it was: "An Act to make Better Provision with respect to the Maintenance, Care, and Control of Children who are specially under the Protection of the State; and to provide generally for the Protection and Training of Indigent, Neglected, or Delinquent Children." "Child" was defined as meaning "a boy or girl under the age of seventeen years." It was to be observed, however, that where a "child" as there defined once became committed to the care of one of the officers specified in the Act, and was transferred to an institution, such child, in certain circumstances, might be detained there indefinitely without regard to its age. (Section 22). This fact it was important to notice when considering whether the doctrine of *mens rea* applied to the particular offence alleged in the indictment; the female inmate of an institution might be a full grown woman of mature age. Provision was made in the Act for a "child" to be boarded out instead of being detained in an institution. It was still an "inmate" within the definition in the Act but not an *inmate of an institution.* Sections 24 and 25 dealt with offences under the Act. Subsection (1) (a) (b) (c) (d) and (e) applied to all "inmates" but specifically mentioned the two classes, inmates of an institution, and those in the custody or control of any person; subsection (e) which prohibited without lawful authority communicating with an inmate of an institution, or trespassing within the area of an institution, and not leaving when ordered to do so by the proper officer, provided that, for the purpose of enforcing this prohibition, the place where one of these boarded out children resided should be deemed to be part of an institution. Section 25 also dealt with both classes of "inmates." It was only when their Honours came to consider subsection (2) of section 24, that they found that what was an offence in the case of one class was not so in the case of the other. It would be observed that to constitute an offence under subsection 2 (a) it must be shown that the female inmate, at the time of the offence, was resident in an institution. The only prohibition against having sexual intercourse with one of the other class—those in the custody or control of any person—was directed against the husband of any person in whose charge the female inmate had been placed (subsection b). The gravamen of the offence under subsection 2, therefore, was not the illicit sexual intercourse, but of so acting with a female who at the time is *resident in an institution.* Probably it was considered by the Legislature that sufficient protection already existed for other "inmates" by the provisions in the Crimes Act relating to sexual interference with girls under the age of 16.

Although, therefore, the scope and object of the statute purported to be, *inter alia,* for the protection of children who came within its provisions, such protection was not extended—as regards sexual interference—to all such children, but was confined exclusively to children resident in an institution. The scope of the statute being thus limited there was nothing to warrant a construction that would involve holding that it was plain that the Legislature intended to prohibit the act absolutely, however innocent the person charged might be of knowledge that the female with whom he had sexual intercourse was an inmate of an institution. Further, it was to be observed that it was specifically provided, in subsection 3 of the same section, that it should be no defence in a prosecution for an offence under subsection 2 that the inmate consented to the sexual act. Had the Legislature intended that ignorance of the fact that the female concerned was an inmate of an institution should be no defence it was fairly to be presumed that it would have been so provided.

A further test was to consider "the various circumstances which make the application of the doctrine reasonable or unreasonable." In this connection, it may be observed that, if the inmates of institutions wear no identifiable costumes, it would be unreasonable to hold that the doctrine did not apply, more especially when many of these inmates were sexually precocious and of mature age.

Their Honours thought these considerations were sufficient to justify the interpretation that absolute prohibition was not intended. It was, however, to be observed that in the various divisions of subsection 1 of section 24 the words "wilfully" and "knowingly" from time to time occurred. A charge based on sections containing those words threw the onus upon the prosecution of proving guilty knowledge that the act was done wilfully or knowingly. Those words not occurring in the subsection under consideration relieved the prosecution from the necessity of proving guilty knowledge, but the commission of the act *prima facie* imported an offence, throwing on the accused the onus of satisfying the Court that he had in fact no guilty knowledge. No inference was justifiable that the omission of those words in the section under consideration imported an intention of absolute prohibition: **Sherras v. De Rutzen** (1895) 1 Q.B. 918, 921. Their Honours adopted the statement of Atkin, L.J., in **In re Mahmoud v. Ispahani** (1921) 2 K.B. 716, 731, where he says: "All I desire to say is that I myself view with some trepidation any tendency to diminish the importance of

the rule as to *mens rea* which has prevailed in respect of criminal charges. There are cases no doubt where a statute makes it plain that an offence is created without criminal intention on the part of the person who is charged, but those cases where the Court is dealing with a question of crime are to my mind in themselves anomalous; and I should hesitate to increase their number without being satisfied upon argument that this is one of them."

In the present case the jury had found that the accused did not know that the girl concerned was an inmate of an institution. That finding was, in their Honours' opinion, a verdict of not guilty.

The answer to the second question was desired as being in issue in pending proceedings against some of the other boys. Mr. Twyneham took this part of the argument; he being concerned in some of the other cases. The offence was "for any person to have or attempt to have sexual intercourse with any female inmate who is at the time of the offence resident in an institution." It was contended by the Solicitor-General that an escapee from an institution continues to be, until discharged under the statute, a *resident* of the institution. There was nothing in the statute to justify such an interpretation. As their Honours had already pointed out the statute, although purporting to be for the protection of children, who are defined as boys and girls under the age of seventeen, nevertheless provided for persons committed to an institution being in certain cases (section 22) detained in such institution till any age. If such a person were to escape and evade recapture for several years, during which a permanent residence was established elsewhere, it would be a very strained interpretation to hold that the residence was still in the institution. If it had been the intention of the Legislature that such should be law the paragraph would have ended with the word "inmate": the words "who is at the time of the offence resident in an institution" would not have been added. If the subsection had been so drafted it would have included not only inmates, in the ordinary sense, of an institution, but, by virtue of the interpretation clause, would include children boarded out, who, as their Honours had already shown, were not protected against sexual intercourse by the existing legislation, and moreover would include such "inmates" for all time until actual discharge by the Superintendent (section 22). Their Honours thought, therefore, that the words "At the time of the offence resident in an institution" must be interpreted as requiring a strict interpretation of the word "resident." The question must always be one of fact for the jury if the evidence justified leaving it to them. In the present case, the intention to abscond followed by absence from the institution for a period of six days, the girls in the meantime living as vagrants, justified a judge in directing the jury that the evidence was insufficient upon which to find that when the offence had been committed the girls were resident in the institution.

Questions answered accordingly.

Solicitor for the Crown: **Crown Solicitor,** Christchurch.

Solicitors for the prisoner: **Slater, Sargent and Connal,** Christchurch.

Supreme Court.

Adams, J. August 3, 4; September 28.
Timaru.

SCULLY v. SOUTH.

Sale of Goods—"Fructus Industriales"—Crops to be Eaten off—Whether contract for sale within Statute—Variation of terms of Written Contract by Parol Agreement—Sale of Goods Act, 1908, S. 6.

Claim for £180 alleged to be due to the plaintiff by the defendant under a contract, and £20 damages for breach of contract. On April 14, 1930, the parties entered into a contract for sale and purchase of swedes and turnips. The memo. of the contract was as follows: "14th April, 1930. I have this day sold to J. C. South for 1931 14 ac. swedes at £8/-/- 16 ac. turnips £6/-/- feeding end May and end June. Vendor to put in green oats. Purchaser to find manure and seed for oats. Swedes to be hand and horse hoed. Vendor Wm. Scully. Purchaser J. C. South. M. McColl C.F.A. Representative." The crop of oats was grown and was eaten off by the defendant's sheep. The 30 acres was then ploughed and prepared for sowing the swedes and turnips, but on account of the lateness of the season, the ground was too dry to sow down in swedes and turnips before the end of December, and the parties verbally agreed that the plaintiff should sow in turnips the 14 acres intended to be sown in swedes, and that the price for these turnips should be £6 per acre. The total area was accordingly sown in turnips by the end of December or beginning of January. The crop, however, became infected with a disease known as "club root" and with the exception of about one acre, the turnips were unfit for food and were unmerchantable. The defendant did not put his sheep on to eat any part of the crop and the plaintiff sold the turnips for £8. The plaintiff said that he required the use of the 30 acres of ground for the purpose of cultivating it for the 1932 harvest, but was prevented from so doing on account of the defendant's neglect to clear off the turnips, and, for the purpose of clearing the ground, he would require to permit any purchaser to whom the turnips might be sold to graze sheep thereon for the period required to eat off the turnips. He claimed judgment for £180, and £20 damages for breach of contract.

Held: Crop of swedes and turnips to be eaten off being "emblements," second contract unenforceable under Sale of Goods Act, 1908. The intention of the parties in the parol agreement not to determine the first, but to vary its terms. Defendant having pleaded the non-enforceability of the second contract, could not make use of that contract to avoid first contract which remained enforceable according to its terms. Plaintiff, however, failed because he was not in position to carry out terms of written contract.

Emslie for plaintiff.

Anderson and **Walker** for defendant.

ADAMS, J., after relating the foregoing facts, said that the first question was whether the contracts were within section 6 of the Sale of Goods Act, 1908. The word "Goods" in the Act included "all chattels personal other than money or things in action, and also emblements, growing crops, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale." Emblements were *fructus industriales*—the growing crops of the soil which were annually produced by the labour of the cultivator, **Wharton's Law Lexicon,** 13th edn. (1925), p. 318. In **Sainsbury v. Matthews** (1838) 4 M. & W., 343, the claim was for damages for breach of a contract to sell potatoes, the produce of certain land, to be delivered within a reasonable time. Lord Abinger said this was only a contract to sell potatoes at so much a sack on a future day. Baron Parke was of the same opinion and observed that if a tempest had destroyed the crop in the meantime, the loss would clearly have fallen on the defendant. In **Rodwell v. Phillips** (1842) 9 M. & W. 501—Lord Abinger said (p. 503), that the difference between emblements and an interest in land was that appears to be between annual productions, raised by the labour of man, and the annual productions of nature, not referable to the industry of man, except at the period when they were first planted. The latest case on the point was **English Hop-Growers v. Dering,** (1928) 2 K.B. 174 (C.A.) In that case, the appellant had in August, 1925, contracted to sell to the plaintiff all hops grown or produced on 63 acres of his land in the year 1926. It was held that hops were *fructus industriales*.

The present contracts were for the sale of turnips and swedes to be eaten off by the defendant's sheep. The crops were emblements within the meaning of section 6 of the Sale of Goods Act, 1908. The second contract was, therefore, unenforceable by action under that section. **Morris v. Baron and Co.** (1918) A.C. 1; **Benjamin on Sale,** 7th Edn. 248. It was, however, none the less a contract, and was, therefore, properly pleaded by the defendant.

His Honour found as a fact that the intention of the parties in the second contract was not to determine the first, but to vary its terms in so far only as the second contract was inconsistent with it. In those circumstances, the defendant having pleaded the non-enforceability of the second contract in order to defend the plaintiff's claim under it, was not at liberty to make use of that contract to avoid the first contract: in other words, the first contract remains enforceable according to its terms. **Noble v. Ward** (1867) L.R. 2 Exch. 135, was a case of variation of a written contract by parol agreement. Willes, J., delivering the judgment of the Court said (p. 138): "It is quite in accordance with the cases of **Doe d. Egremont v. Courtenay,** 11 Q.B. 702, and **Doe d. Biddulph v. Poole,** 11 Q.B. 713 . . . . to hold that, where parties enter into a contract which would have the effect of rescinding a previous one, but which cannot operate according to their intention, the new contract shall not operate to affect the previously existing rights. This

explained in **Morris v. Baron and Co.** (*sup.*), but was distinguished. In Morris's case Lord Parmoor said (p. 38), "In my opinion the case of **Noble v. Ward** (*supra*) was decided on the ground that it was the intention of the parties in the subsequent contract not to rescind the earlier contract, but to vary it. It was a well settled principle that a contract, which is required to be in writing, and is not in writing, cannot vary the terms of an earlier contract, where such earlier contract is required by statute to be in writing in order to be enforceable by action. If, therefore, the right conclusion should be that the parties intended not to rescind the earlier September contract, but to introduce a variation in these terms, I think that the principle in **Noble v. Ward** would have applied." Lord Dunedin (p. 23) said that he unhesitatingly accepted **Noble v. Ward** as well decided and laying down correct law.

His Honour added that what he had already said established the proposition that the defendant could not make use of the agreement for variation of the first contract in order to defeat the plaintiff's claim under the original contract, but this did not go far enough to establish the plaintiff's claim. In order to do that, it must be shown that the plaintiff was in a position to carry out the written contract according to its terms. This, however, he could not do because he had never sowed the 14 acres of swedes and had never been able to deliver either swedes or turnips. The contract was for future goods to be produced from his land. It was, therefore, plaintiff's duty under that contract to produce 14 acres of swedes and 16 acres of turnips, and the risk of loss of the crop in the meantime was his risk.

Plaintiff non-suited.

Solicitors for plaintiff: **Emslie and Cameron,** Timaru.

Solicitors for defendant: **Joynt and Walker,** Timaru.

Herdman, J. September 16, 21, 1931.
Auckland.

THE NEW ZEALAND ASSOCIATION FOR THE ADVANCEMENT OF RATIONALISM (INC.) v. HOGAN.

Municipal Corporation—Sunday Entertainments—Offence—Appellant Corporation Conducting, without Consent of Council, Meetings for Spread of Rationalism at which Lantern-Slide Talks and Moving Pictures Provided—Silver Coin Collection—Whether "Entertainment Open to Public by the Purchase of Tickets or Otherwise"—Statutory Provision Extends to Entertainments to which Public Admitted without Payment—Municipal Corporations Act, 1920, Ss. 309, 346.

Appeal from Magistrate's decision convicting the appellant corporation of the offence of holding at Auckland, on March 29, 1930, in the Majestic Theatre, an entertainment which was open to the public, whether by purchase of tickets or otherwise, in respect of which no written consent had been obtained from the Auckland City Council contrary to S. 309 of the Municipal Corporations Act, 1930. That section provided that "no concert or entertainment of any kind which is open to the public, whether by the purchase of tickets or otherwise, shall be held or given on any Sunday, Good Friday, or Christmas Day without the written consent of the Council, and then only subject to such conditions in every respect as the Council may impose." It was proved that no consent of any kind had been given to the appellant to hold an entertainment on March 29, 1931, which was a Sunday. The appellant Corporation existed for the purpose of disseminating the doctrines of Rationalism. Those who followed that cult and others assembled together at the Majestic Theatre on Sunday evenings where they listened to entertainments, which in part consisted of lectures which might have some educational value and in part diversions of a lighter character. The audiences sometimes numbered about 2,000 persons. No charge was made for admission. The public were free to enter, but what was called "a silver coin collection" was made. As a person entered he passed a notice which read: "Unless you contribute sixpence we run at a loss." The meeting of March 29, 1931, was advertised in the "Auckland Star" published on March 28. For the purpose of attracting an audience it was published that the programme consisted of "all new lantern slide talks, snappy and witty, of a topical gazette, a short address on 'Marvels of Insect Life,' illustrated with special moving pictures, and a moving picture 'The Life of Riley' being 'an amusing Police Comedy Drama with brilliant cast headed by Charlie Murray."

Held: Dismissing appeal, (1) object of Statute is to respect certain days and consequently not restricted in operation to entertainments whereat payment of some kind is a condition for admission; (2) all entertainments suppressed on such days except those to which Council grants permission; (3) Corporation, being a "person" as defined by S. 2, may be convicted and fined.

***O'Dea* and *O'Dea* for appellant.**

A. H. Johnstone for respondent.

HERDMAN, J., said that about the respectability of the entertainment provided, and of the character of the audience that witnessed it, there was no doubt whatever. Had the performance been given on a week night, it would have been unexceptionable. The question was not, was the entertainment reputable, but was it such a one as was prohibited on Sunday evenings? For the purpose of deciding the appeal there was no need to attempt to define the term entertainment. One could determine upon a consideration of facts proved whether the function was one which was or was not forbidden by the statute. It was obvious that a church service was not an entertainment within the meaning of the section. On the other hand, it was just as obvious that a musical comedy was a type of entertainment which the statute forbids. The traffic inspector of the Auckland City Council attended at the Majestic Theatre on the evening mentioned in the information, and his evidence convinced His Honour that what he witnessed was a form of Sunday entertainment, which, unless it were sanctioned by the City Council, S. 309 of the Municipal Corporations Act prohibited.

But it was contended by Mr. O'Dea that as any member of the public was entitled to enter the hall in which the Rationalist programme was given without payment, the appellant corporation could not be convicted. He submitted that the words "or otherwise" must be read *ejusdem generis* with the words "by the purchase of tickets," and that, therefore, the only entertainments prohibited were those for admission to which a person was required either to purchase a ticket or to do something else which was equivalent to paying for admission. His Honour could discover no justification for placing such a restricted construction upon the section. The word "whether" was used. The words were "whether by the purchase of tickets or otherwise." His Honour after referring to **In Re Clark** (1898)2 Q.B. 330, and **McCready v. Dunlop,** (1900) 37 Sc. L.R. 779, where some what similar phrases were considered, said that, in the present case, liability under S. 309 was not confined to cases in which admission to an entertainment could be had by buying a ticket. They had a wider signification than that. They were wide enough to cover entertainments into which members of the public might be passed without being required to pay. In England, Sunday entertainments were, unless the law had been altered recently, regulated by the Sunday Observance Act, 1780, but that statute only applied to places opened or used for public entertainments to which persons were admitted by payment of money or by tickets sold for money. Entertainments which were open to the public without payment were apparently immune. Cases decided under the English legislation were of no assistance upon the point that His Honour was at present dealing with.

After all, in interpreting the legislation one derived the surest guidance from a consideration of its object, His Honour proceeded. It was designed for the purpose of compelling people to observe with respect certain days in the year: Sundays, Good Friday and Christmas Day. If His Honour interpreted the legislation as forbidding only entertainments for admission to which payment in some form or another was a condition he would be restricting its operation in a way that he thought was not intended. The section was designed to suppress entertainments on the days named in the section, except such as were countenanced by the City Council. A limitation of the meaning of the section in the way contended for by Mr. O'Dea would mean that entertainments of all kinds at which patrons gave contributions gratuitously could be held without risk of prosecution. Indeed, entertainments could be held which would cost no one, except those who originated them, anything and so the days mentioned in the section would not be sacrosanct, and the obvious object of the Legislature would not be achieved.

The next point taken by Mr. O'Dea was that the appellant was a corporation and that accordingly it could not be convicted of an offence. In the present instance a corporate body held the entertainment and under S. 346 of the Municipal Corporations Act, 1920, a person who did an act that was forbidden was to be deemed guilty of an offence. But the term "person" was defined in S. 2 of the statute and it included a body of persons whether incorporate or unincorporate. A like

provision appeared in the Acts Interpretation Act, 1924. It was true as was pointed out by Lord Blackburn in **Pharmaceutical Society v. London and Provincial Supply Association,** 5 A.C. 869, that a corporation could not be imprisoned, nor could it be put to death if that were the punishment for the crime. But a corporation, might be fined: **Halsbury's Laws of England,** Vol. 8, p. 391. Unless a corporation could be proceeded against under S. 309, a grotesque result would follow. To escape responsibility a number of persons need only become incorporated and they could provide entertainments on Sundays with impunity. The language used in the statute left no doubt in His Honour's mind that the Legislature intended to prohibit absolutely the holding of entertainments of the kind given by the appellant on the days mentioned in the section unless permission were given by the Council, so that the question of the existence of a guilty mind did not arise.

Appeal dismissed.

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

Solicitors for respondent: **Stanton, Johnstone and Spence,** Auckland.

Blair, J. August 13; September 16, 1931.

SELLYAR v. MORRISON.

Practice—Appeal to Court of Appeal *in Forma Pauperis*—**Security for Costs—Application to Dispense with or Reduce Security on Ground that Applicant Not Worth £25—Court of Appeal Rules, R. 22.**

Motion in Chambers for an order dispensing with the security required under Rule 22 of the Court of Appeal Rules and granting to plaintiff leave to appeal to the Court of Appeal without security or alternatively reducing the security to an amount "within plaintiff's means."

Held: The application was refused on the ground that applicant was a pauper and no good reason had been shown why he should not avail himself of the right to appeal *in forma pauperis.* The power of the Court to assign counsel and its discretion to dispense with or to reduce security in very exceptional cases, discussed. **Official Assignee v. Harding,** 16 G.L.R. 597 not followed.

BLAIR, J., said that the action was by a motor cycle rider against a motor car driver for damages in respect of injuries allegedly caused by the defendant's negligence. The action was heard by Reed, J., and a jury of twelve at the Wanganui Sittings in February last, and the jury answered the issues in favour of plaintiff. Reed, J., notwithstanding the verdict, held that there was no evidence that the plaintiff's injuries were caused by any negligence on the part of the defendant and entered judgment for the defendant with costs. The plaintiff had lodged notice of appeal from that decision. In the affidavit supporting the motion to dispense with security or alternatively to reduce it, he said he was a school teacher, twenty-five years of age, and that apart from the subject matter of the action and his wearing apparel he was not worth £25. He also said that his motor cycle was completely wrecked and was worthless and that his savings in the Post Office Savings Bank amounting to £35 had been applied towards keeping himself and paying the sum of £45 16s. 11d. towards disbursements, jury fees, doctors' and witnesses' expenses incidental to the trial and the costs of obtaining Counsel's opinion on the appeal. The affidavit further stated that he was liable for his solicitor's costs, and that he believed he could raise £40 by borrowing it from his parents if security was fixed at an amount not exceeding that sum. He offered to forego any costs of the appeal if he was successful.

The plaintiff when he commenced his action was in the position that if he failed the defendant would probably never be paid the costs awarded to him. Such a position was not uncommon in actions alleging negligence on the part of defendant. The fact that all motor vehicles were insured by virtue of the provisions of The Motor-vehicles Insurance (Third Party Risks) Act, 1925, ensured that the defendant could always pay, and presumably could easily afford to pay the costs not paid by an unsuccessful plaintiff. An impecunious plaintiff therefore had the advantage, that failure in his claim costs him little while success meant the certainty of payment of the assessed damages and costs. From the defendant's point of view the position was that even if he were successful he had to pay his costs of the trial with no chance of obtaining payment of the costs awarded against the unsuccessful plaintiff. Such was the position when the case was brought before the Court of first instance, and although there might from the point of view of the defendant be elements of injustice in such a position, nevertheless it was not possible without causing graver injustice, to provide a cure by requiring from an impecunious plaintiff the finding of security before he could proceed with his action. To do so would shut the door of Courts of justice to poor people. In the result, therefore, the position remained that a poor man had available to him the right to invoke all the powers of the Court to enforce his alleged rights regardless of the fact that an illfounded claim by an impecunious plaintiff might cause the defendant serious monetary loss. The above was the position so far as concerned the Court of first instance, and the practical effect was that a poor man could always get his claim heard howsoever extreme his poverty.

But a different position arose after a litigant who had had the advantage of full trial of his claim by a competent Court and had failed in such claim wished to appeal and thus get a rehearing by a higher Court. If an impecunious litigant were entitled as of right to drag the successful party to the action into a higher Court without making any provision as to paying the costs thus imposed on the successful party, then the injustice which the law in its care for the poor people looked upon as inevitable in the Courts of first instance would be accentuated more than two-fold. For that reason, therefore, the rules of the Court of Appeal provide that any person desirous of appealing from a decision of the Supreme Court must provide security for costs. The general rule, therefore, was that when a litigant had had the advantage of his alleged grievance being fully enquired into, he must if he wanted another enquiry by a higher court provide some indemnity to the successful party in case the higher Court should uphold the decision of the Court of first instance. But in its desire to ensure that in proper cases any possible injustice that might arise by reason of the rigour of the above rule might be mitigated, the Court's Rules further provided for two classes of cases where the rigour of the rule might be relaxed. Those two classes were: (a) Cases where the Court of Appeal permitted an appeal *in forma pauperis.* (b) Cases where the Court of first instance ordered that security for appeal be dispensed with. Cases under (b) were dealt with by the Supreme Court; cases under (a) were dealt with by the Court of Appeal, which in addition to that jurisdiction would under its general powers as to leave to appeal act under (b). The provisions of the Court of Appeal Rules relating to appeals *in forma pauperis* were designed to give to an impecunious and unsuccessful litigant the right of appeal notwithstanding that the giving of leave to do so resulted in the injustice to a successful party already touched upon by His Honour. It was, obvious, however, that such a valuable right as the right to appeal *in forma pauperis* should be subject to proper safeguards so as to ensure that such appeals were permitted only in proper cases and were not made the instrument of oppression upon successful litigants. The applicant must prove—as the applicant in the present case had proved by affidavit—that he was not worth more than £25, his wearing apparel and the subject matter of the litigation excepted. Details of the nature of all payments made or promised to be paid by the pauper or by anyone on his behalf had also to be given, and the solicitor who had acted for him was compelled also to make an affidavit giving like details. The pauper had also to produce an opinion by independent counsel before whom all the papers in the action had been laid, that he was satisfied that the case was a proper one for appeal. All Court fees were remitted and the Court had power to assign counsel to the pauper and it was the duty of counsel so assigned to act. No person was permitted to charge any fees to any person admitted as a pauper. The above rules might seem to laymen as imposing difficulties in the way of poor people, but every lawyer knew that they worked well in practice and had the result of providing a simple method of facilitating appeals in every proper case. It was an unwritten law in the profession that counsel were always prepared gratuitously to advise upon all cases where an appeal was suggested by a pauper, and that was particularly the case where counsel were eminent. The Rules had these great advantages, firstly that they prevented oppressive appeals, and secondly that they facilitated the hearing of proper appeals. The forbidding of the acceptance of fees from paupers ensured also that if proceedings of a speculative character were contemplated the solicitor concerned could not participate. His Honour's reason for making special reference to the Rules relating to paupers was to point out that although according to the affidavits the plaintiff in the present case was qualified to apply for admission as a pauper, the present application was not such. One could only speculate why advantage of the rules to appeal as a pauper was not taken in the present case. It might be that there might be doubt as to whether independent counsel would advise an appeal; it might be that as no fees were to be charged by solicitor or counsel the solicitor acting for the appellant might have some objection on this head. In His Honour's experience

extending over more than a quarter of a century he had never known that fact to have the slightest weight in obtaining the services of most eminent counsel to conduct appeals in all cases where the Court had granted leave to appeal *in forma pauperis*.

Seeing that the solicitor for the contemplating appellant had advisedly not asked for leave to appeal as a pauper, but had invoked the general discretionary jurisdiction given to the Supreme Court under Rule 22 of the Court of Appeal Rules, it was not unseemly to remark that where an obvious remedy was open it should at the outset be clearly shown why that remedy was not adopted in the present case. No attempt had been made in the affidavits filed to show why there was any objection to appealing *in forma pauperis* in the present case. The affidavits clearly showed that plaintiff was qualified as a pauper—in fact the affidavit on that point adopted the wording of the pauper rules. The only suggestion His Honour could find for not taking advantage of the pauper rules was that plaintiff refers to a remark by Stout, C.J., in **Official Assignee v. Harding,** 16 G.L.R., 597, where he said that appealing *in forma pauperis* was subject to many disabilities and that "it may be difficult for her to obtain solicitors and counsel to act for her if they are to receive no remuneration or no promise of any remuneration." It was true that appealing *in forma pauperis* was subject to certain disabilities, but as His Honour had before indicated his view was that the disabilities were eminently necessary and did not in proper cases amount to any disability at all. His Honour's experience also was that there was no difficulty whatsoever in proper cases in obtaining gratuitously the services of eminent professional assistance, and even if there were such a difficulty the Court had the right to assign counsel, and he could not refuse to act without good cause shown. It seemed to His Honour, therefore, that with the greatest respect to Stout, C.J., His Honour was unable to appreciate the difficulties that he attributed to appeals *in forma pauperis*.

It next became necessary to discuss the question whether the plaintiff in the present case had made out a case for the exercise of the Court's discretion under Rule 22 of the Court of Appeal Rules. There was nothing in the Rule to indicate the principles upon which such discretion should be exercised. And the reported cases in which the power had been exercised were useful only in affording instances in which the Court had deemed it proper to exercise such discretion. In none of the cases except **Official Assignee v. Harding** (*sup.*) had His Honour been able to find the Court dispensing with security under Rule 22 in cases where the appellant was qualified to take advantage of the Pauper Rules. It seemed clear to His Honour that Rule 22 was never intended to operate as an extension of the Rules. On the contrary His Honour thought it would be correct to say that where any case could properly be dealt with by an application under the Pauper Rules such Rules should be resorted to, and that the cases intended to be met by Rule 22 were cases that were not covered by the Pauper Rules. That, to His Honour's mind, was the answer which disposed of the plaintiff's application in the present case. His Honour had already discussed **Official Assignee v. Harding,** and felt unable to follow it for the reasons already given. If the reasons which the report said were those which constrained the Court in that case in dispensing with security, it seemed to His Honour that where the matter was very vital to the unsuccessful party who was a pauper and the case was one of some trouble to decide, the Court would be compelled to dispense with security in every case. That would open the door to the gravest abuses and would displace all the rules regarding pauper appeals.

His Honour next proceeded to refer shortly to all the reported cases where the discretion under the Rules had been exercised. **Robertson v. Howden,** 10 N.Z.L.R. 471, was an application for leave to appeal *in forma pauperis*. There were two plaintiffs and one only was claimed to be a pauper and he had an interest in some trust property in Scotland. The Court held that he was not a pauper and referred also to the fact that the other appellant did not claim to be a pauper and dismissed the application. The plaintiffs subsequently applied for leave to appeal without security or reduction in the amount of security. The Court in that case moderated the security to the sum of £100. The reasons weighing with the Court were not stated but the circumstances were that the parties were interested in a trust of which the defendants were trustees. The plaintiffs claimed that certain unauthorised investments had been made. No doubt the fact that defendants as trustees would have a right of indemnity for costs out of the trust funds weighed with the Court in reducing the amount of security required for appeal. In **Orford v. Moore,** 10 G.L.R. 387, judgment had been given against the appellant for £300, the amount of liquidated damages in a bond, Cooper, J., holding that if he had been able to interpret it as a penalty he would have fixed damages at £50. The appellant could not find security for the £300 in addition to costs and on application under the equivalent of Rule 22, Cooper, J., made an order fixing security at the amount of the costs in the Supreme Court, plus costs on the middle scale in the Court of Appeal and plus the £50 which would have been awarded as damages, in all the sum of £165/3/5. The learned Judge in making the order expressed the view that a very arguable question of law was involved. It would be seen that in that case there was no abatement of security for costs. In **Taitumu Marangatana v. Patena Kerehi,** 14 G.L.R. 174, the Registrar fixed the costs as at the amount on the judgment, viz., £29/17/–, plus £90 for the costs on appeal on the highest scale as from a distance. The case indicated that the Registrar was wrong in treating the case as one from a distance. The Court fixed £75 as the amount for which security was required, and allowed only one day to find it. The sum of £79/17/– was the utmost security that could have been fixed, so that virtually no concession was made. In **Hamilton v. Bank of New Zealand,** 7 G.L.R. 276, Stout, C.J., granted leave to appeal without security, the ground being that the case involved a point of law of far-reaching importance to property in New Zealand. The question was as to the right of a mortgagee to sell the mortgaged property at a gross under-value. The appellant was the mortgagor. In **Russell v. Stainton** (1922) G.L.R. 422, Reed, J., refused to dispense with security in an application based on the grounds that appellant was virtually insolvent and that he had good grounds for appeal. He said that the appellant still had the right to apply to have the security reduced or to move the Court of Appeal for leave to appeal *in forma pauperis*. As already indicated His Honour's view was that Rule 22 was not intended as a substitution for the Pauper Rules. In only two cases was security entirely dispensed with, these cases being **Hamilton's** case and **Official Assignee v. Harding,** both decided by Stout, C.J. With the greatest respect His Honour was unable to follow his decision in **Official Assignee v. Harding.** He based his decision in **Hamilton's** case on the necessity for deciding a novel and important point of law, and left the respondent in such case entirely without security. The respondent was a mortgagee who had bought in appellant's property at a gross undervalue and that fact although not stated as a ground might have weighed with the Court because the successful party had been guilty of unconscionable conduct. His Honour had some doubt whether in all cases where the appellant wished to raise novel points of law, the Court would not have to consider whether the settlement of such points would be of such value to the respondent as to constrain the Court to deprive him of any security. **Robertson v. Howden** looked like a case where the want of security imposed no burden on the respondents. In **Orford v. Moore** no abatement was made in security for costs, but only in the security for the amount of the judgment. The respondent was therefore protected for his costs in the Court of Appeal. If His Honour excluded **Hamilton's** case it would seem that the Court except in Pauper applications had reduced security only where the risks to the respondent of not receiving his costs of the appeal had been negligible. So far, therefore, as it was possible to deduce a principle from the decided cases it would seem that security for costs was dispensed with or reduced under Rule 22 in only very exceptional circumstances and that the Court must not overlook the question of costs of the party who was successful in the Court of first instance in the event of the appeal being unsuccessful.

Motion dismissed.

Solicitors for plaintiff: **R. A. Howie,** Wanganui, agent for **Moss and Spence,** New Plymouth.

Solicitors for defendant: **Brodie and Keesing,** Wanganui.

Herdman, J. September 18; 24, 1931.
Auckland.

LLOYD v. MILLER AND OTHERS.

Practice—Judgment on Counterclaim—Motion for Judgment on Counterclaim for Liquidated Amount Adjourned Pending Hearing of Claim for Damages—Inconvenience of Allowing Execution on Counterclaim Where Large Claim Pending—Special Practice Rule Discussed—Code of Civil Procedure, Rule 135.

Motion by defendants for order to strike out statement of defence to counterclaim and to enter judgment on counterclaim. By an agreement dated November 14, 1929, the plaintiffs agreed to purchase a property situated at Te Kauwhata, and, the necessary assurances being completed, the plaintiffs went into pos-

session. Affirming that contract the plaintiffs claimed to recover from the defendants the sum of £5,400 alleging fraudulent misrepresentation. To that claim the defendants pleaded a denial of misrepresentation. They also counter-claimed for £8,650 and interest being moneys secured by a mortgage given by the plaintiffs to the defendants to secure unpaid purchase money. It was alleged that the plaintiffs had defaulted under their mortgage and that under its terms all moneys secured thereunder were due. In answer to the counterclaim the plaintiffs said that they did not owe the defendants any money and then made the allegation: "That by virtue of the fraud mentioned in the statement of claim the plaintiffs were at all times entitled to recover back the damages in respect of such fraud and interest thereon, and that such interest, coupled with all payments made by the plaintiffs to the defendants was much in excess of the total amount of interest accruing due from time to time from the plaintiffs to the defendants under the said memorandum of mortgage," and "That on the proper state of accounts between the plaintiffs and the defendants on the 1st May 1931 and ever since the plaintiffs have owed the defendants nothing." The defendants moved for judgment on the counterclaim as if it were undefended.

Held: Adjourning Motion pending hearing of plaintiff's action, that defendant should not be put in position to issue execution while large claim for damages pending against them. *Quaere*—Whether claim for unliquidated amount effective answer to claim for liquidated amount payable under contract.

Finlay in support.

Leary to oppose.

HERDMAN, J., said that the question was whether the defence to the counterclaim should be struck out. In substance the plaintiffs claimed to be entitled to set off against the defendant's claim for a loan and interest, damages, which they, the plaintiffs, might or might not recover for fraud. His Honour doubted whether the matter relied upon in the plaintiffs' defence to the counterclaim could, in any sense, be considered an effective answer to a claim for a liquidated amount payable under a contract; but the matter did not end there. The defendant sought to enter up judgment on the counterclaim as if it were undefended. If they were permitted to do that they could proceed to issue execution. On the other hand, Rule 135 provided that: "The Court may adjourn the hearing of the counterclaim if it appears that the plaintiff will be prejudiced by the trial taking place as hereinbefore provided." Again, if His Honour dealt with the situation as if no defence to the counterclaim had been filed, he was bound to bear in mind that a special practice was observed in such circumstances. The defendants could not sign judgment by default. They must move for judgment: **Higgins v. Scott,** 21 Q.B.D. p. 10. In the present case, they were moving for judgment. They were following the prescribed practice. But why was that special practice prescribed when a defence to a counterclaim had not been filed? The answer was, His Honour thought, given by Lopes, L.J., in **Jones v. Macaulay,** (1891) 1 Q.B. 223. In that case it was laid down: "Where the plaintiff fails to deliver a defence to a counterclaim, the defendant cannot sign judgment on the counterclaim for default of pleading, but must move for judgment under Order xxvii., r. 11." Referring to that practice His Lordship said: "I agree that the decision in **Higgins v. Scott** was correct and in accordance with the rules. There is a good reason why the practice should do so. Suppose a plaintiff claimed £500, and there was a counterclaim for £100 to which the plaintiff did not plead. If the defendant were entitled to sign judgment on the counterclaim, he could issue execution for the £100 while the action against him for £500 was still pending. I think that it was intended by the rules to prevent this and to reserve to the Court control over the matter; and with this object it was provided, not that the defendant should be able to sign judgment in a case of this sort, but that he must come to the Court, which should make such order as might be just under the circumstances." In the same case Kay, L.J. said: "I agree with Lopes, L.J., as to the inconvenience of adopting a practice which would enable the defendant to sign judgment on the counterclaim, and issue execution on such judgment while the action was pending, without applying to the Court." With a claim for £5,400 founded on misrepresentation hanging over their heads His Honour did not think that it would be right to allow the defendants to enter up judgment for £8,650 and interest now. In His Honour's opinion the Court should not, at the present stage lose control over the litigation. The case was set down for trial at the present sittings so that no great harm could come by a postponement.

Motion adjourned pending the hearing of the plaintiff's action.

Solicitors for plaintiffs: **Bamford, Brown and Leary,** Auckland.
Solicitors for defendants: **Stanton, Johnstone and Spence,** Auckland.

Adams, J. June 29; August 28, 1931.
Christchurch.

IN RE McALISTER (DECEASED), ELCOCK v. CAMPBELL AND OTHERS.

Will—Construction—Condition Precedent—Will Providing for Distribution of Residue at Expiration of One Year from Testator's Death Among Children or Grandchildren of Whom Trustee Had Trace—Declaration that No Child or Grandchild Entitled to Share of Residue Unless Trustee Received at Least One Week Before Expiry of Such Year a Claim to be Included in the Distribution Accompanied by Proof of Relationship—Formal Claim Made on Behalf of Certain Persons Within Period Prescribed by Will Stating That Detailed Proof on Way—Detailed Proof Not Received by Trustees Until After Period Prescribed by Will Owing to Circumstances Beyond Control of Claimants—Whether literal Compliance with Condition as to Proof Necessary Where Such Compliance Made Impossible From Unavoidable Circumstances.

Originating summons under R. 538 for an order determining who were the legatees entitled to participate in the distribution of the estate of D. McAlister, deceased. The testator made his will on December 27, 1929. He died on March 3, 1930, and probate of his will was granted to A. R. Elcock, the executor therein named, on April 8, 1930. By his will he gave the residue of his estate to such of the children of his two uncles, D. Lamont and J. Lamont, both of Kiels in Argyleshire, Scotland, as should be living at his death in equal shares, with a proviso that if any such child should have predeceased him leaving issue surviving the testator and, if male, attain 21, or if female, attain that age or marry, such issue should take, and if more than one, equally between them the share which his, her or their parent would have taken if he had survived. He directed that his trustee should take such steps as he in his uncontrolled discretion thought fit to ascertain the children or grandchildren of his two uncles, living at his death, and that at the expiration of one year from the testator's death his trustee should divide the residue as if the children or grandchildren of whom he then had trace were the only surviving children or grandchildren. He expressly declared that no child or grandchild should be entitled to any part of his residuary estate unless his trustee should have received from him or her, at least one week before the expiry of one year immediately succeeding his death, a claim to be included in the distribution, accompanied by a proof of his or her relationship, and that if at the expiration of the year the trustee had not received a valid claim he should stand possessed of the residuary estate upon trust for G. M. Elcock absolutely.

In answer to the inquiries made, claims were received from Mary Ann Campbell, Archibald Campbell, Catherine McGregor, John Lamont, Janet Haslett, John Lamont of Jura and Dugald Lamont.

In determining whether the claimants were entitled to share in the distribution of the estate, questions arose as to whether the relationship of certain claimants was established, whether the claims were received within the time prescribed by the will, and whether the claims were proved in accordance with the will. The facts relevant to those questions sufficiently appear in the report of the judgment.

Held: Gift over took effect only in event of no valid claim being received from any child or grandchild. Conditions in Will were conditions precedent; but strict performance in present case due to circumstances beyond the claimants' control. Literal compliance not essential if conditions complied with *cy-pres*. Claimants producing valid proofs entitled to share in distribution. **In re Packard** (1920) 1 Ch. 596, and **In re Goodwin: Ainslie v. Goodwin** (1924) 2 Ch. 26, followed.

Dr. Haslam for executor and trustee.
M. J. Gresson for J. Lamont and Mrs. Haslett.
Abernethy for A. Campbell and M. A. Campbell.
Archer for Mrs. McGregor.
Lockwood for J. Lamont and others.
Howie for Mrs. Elcock.

ADAMS, J., said that it was admitted that the claim of Catherine McGregor was within the time and otherwise satisfactorily established. The relationship of John Lamont and Janet Haslett, who claimed as two of the children of the testator's uncle, John Lamont, was established but their claims were disputed on the ground that they were not received within the year. An affidavit by Mr. Archer, however, showed that he wrote to Mr. Elcock, the trustee, on 26th January, 1931, making a formal claim on behalf of those two persons and stating that more detailed proofs of their relationship were on the way. On 2nd February, 1931, he again wrote to Mr. Elcock informing him that affidavits by the two claimants had been posted by air mail and enclosing a copy of a cable received by him from his law agents in Glasgow of which the following is a copy:—"Archer Solicitor Christchurch Have to-day posted by air mail affidavits by John Lamont 40 Penman Street North Shields England and Janet otherwise Jessie Lamont or Haslett 51 Cultra Street Belfast Ireland who claim to be children of John Lamont Blacksmith Kiels Port Asking Islay and entitled to the share of estate bequeathed to their father under will of Duncan McAlister they depone that their grandfather was Archibald Lamont their grandmother Margaret Buie their father was John Lamont and their mother Catherine Rollo or Lamont that father born at Kiels twentyeighth February 1818 and married to Catherine Rollo or Lamont in 1854 their father died twentysixth October 1888 their mother died eighteenth December 1874 that father and mother had three children namely John Lamont born nineteenth July 1858 and still alive Janet otherwise Jessie Lamont or Haslett born fifth January 1862 and still alive and Catherine who has not been heard of since 1906 extracts of birth marriage and death certificates verifying facts produced and accompany affidavits Lex Glasgow." The expedition by the air mail had the unfortunate result that the documents arrived in New Zealand later than they would have arrived if posted in the usual way. The affidavits were received by Mr. Elcock on 14th March. In these circumstances, counsel for the claimants interested in defeating those claims submitted that the trustee was bound by the terms of the will to disregard the claims of John Lamont and Janet Haslett. But there was no doubt that the trustee had "trace" of those claimants before the expiration of the period of one year less one week after the death of the testator, and the proof submitted was admittedly sufficient to establish their claim as children of the testator's uncle, John Lamont. It was also shown that a claim the validity of which was indisputable was received by the trustee within the time fixed by the will. In His Honour's opinion, therefore, the trustee was bound by the express terms of the will to have regard to their claims in the distribution of the residuary estate. The words "And I expressly declare that no child or grandchild of either the said Donald Lamont or John Lamont shall be entitled to any part of my residuary estate unless my trustee shall have received from such child or grandchild at least one week before the expiration of one year . . . . a claim to be included in the distribution accompanied by a proof of his or her relationship," referred, in His Honour's view, only to claims of which the trustee had no trace. The gift over of the residue took effect only in the event of there being no valid claim from any child or grandchild.

The only remaining question as to those two claims was whether the proof of their claims was in time. What His Honour had to do was to ascertain as best he could from the will the intention of the testator as expressed in the sentences following the gift over. In the first place His Honour observed that the gift to the children and grandchildren of the testator's uncle purported to be immediate and absolute and was vested on his death. Then the gift over to Mrs. Elcock, the wife of the trustee, was to take effect only if, at the expiration of one year from the testator's death, the trustee should not have received a valid claim from any child or grandchild of his two uncles. Nothing was there said about the proof of any claim. In the event, therefore, of a valid claim being made within the year the gift over was defeated, and in that case unless the claimant or claimants also complied strictly with the later declaration and placed a proof of his or their claim in the hands of the trustee at least one week before the expiration of one year, the testator would have died intestate as to the bulk of his estate, which could not have been his intention. His Honour was of opinion that the conditions in the will were conditions precedent. That, however, did not end the matter. Since the argument His Honour had looked into the authorities and the following cases appeared to His Honour to be directly in point. In **In re Packard,** (1920) 1 Ch. 596, the testator gave his daughter, Mrs. Roberts, a pecuniary legacy on the express condition that she should within a year of his death settle upon certain trusts of the will a sum to which she was entitled under a deed of settlement. There was no gift over in case of failure to perform the condition, and no direction that in that case the legacy should fall into residue, but the residue was given in trust for the daughter and three other persons. The daughter did not fully comply with the condition. Sargant, J., said (p. 601): "Mrs. Waters is now perfectly willing to execute a proper supplementary document for the purpose of giving effect to the conditions prescribed by the will, and therefore the question arises whether the term of one year mentioned in the will is really to be treated by the Court as being of the substance of the conditions." Counsel not arguing the question, the learned Judge dealt with the matter on the footing that the condition was a condition precedent. He observed that there was no gift over to any other person in the event of the condition not being complied with, and that a mere residuary gift without a direction that the legacy or fund in question should fall into residue on non-compliance with the condition, is not in itself a gift over to some other person. On p. 603 he referred to **Taylor v. Popham,** (1782) 1 Bro. C.C. 168 and said that the really important thing was that the language of the Lord Chancellor—Lord Thurlow—was clearly not limited to cases as to releases from debts or payment of money, but applied generally to the performance of a condition precedent outside the time mentioned in the will but under such circumstances that the parties could be placed in substantially the same position as if the terms of the will had been strictly complied with. . . . "It is not," he said, "of the essence or the substance of the condition." That case was followed by Romer, J., in **In re Goodwin: Ainslie v. Goodwin,** (1924) 2 Ch. 26. Romer, J., there said (p. 30): "It is well settled by authority that where a gift in a will is made subject to a condition, even a condition precedent, to be performed within a specified time, but the condition is not in fact performed within that time, then, at any rate in the absence of an express gift over, it is always a question for the Court to determine whether the time so specified was of the essence of the matter. In determining that question the Court must have regard to what was presumably the intention of the testator in inserting the condition, what it was that he desired to bring about or to guard against; and if the Court finds that a performance of the condition at a time subsequent to the expiration of the period fixed by the testator in substance provides for the very thing that the testator intended to provide for, so that all parties can be put in substantially the same position as they would have been in had the condition been performed within the proper time, time is not regarded as of the essence, and such performance is treated as a sufficient compliance with the condition." The doctrine applied in **In re Packard** (*sup.*) and **In re Goodwin** (*sup.*) was of ancient origin and appeared to have been adopted by Courts of Equity from civil law: **Williams on Executors,** 12th Edn., vol. II p. 819. The learned author appended the following note (g) "Swinburne Pt. 4 s. 7 pl. 4. Where a literal compliance with the condition becomes impossible from unavoidable circumstances, and without any fault of the party, it is sufficient that it is complied with, as nearly as it practically can be, or as it is technically called '*cy-pres*' Story Eq. Jur. s. 291."

The intention of the testator without a doubt was to make a distribution of his residuary estate between all the children of his two uncles as should survive him in equal shares, and his object in imposing the conditions was to provide for such distribution within a reasonable time after his death, and to relieve his trustee from trouble or responsibility in the event of a claimant coming to light after the distribution had been made. The failure in strict performance of the condition was in the present case due to circumstances beyond the control of the claimants, and the parties remained in the same position as they would have been in had the conditions been strictly performed. His Honour held, therefore, that the two claimants were entitled to participate in the distribution.

The claimants Archibald Campbell and Mary Ann Campbell or Lamont were represented by Mr. Abernethy and claimed as grandchildren of Donald Lamont. The question of legitimacy was raised in each case. On a careful consideration of the evidence His Honour was not satisfied that Donald Lamont was married to Elizabeth McIntyre or that Mary Lamont was ever legitimated. The claims of Archibald Campbell and Mary Ann Lamont therefore failed.

The claims of John Lamont of Jura and Dugald Lamont failed for want of evidence.

The answers to the questions in the originating summons were answered accordingly.

Solicitors for the trustee: **C. J. P. Sellers,** Hokitika.

Solicitors for the children of Donald Lamont and John Lamont: **K. G. Archer,** Christchurch.

Judgments against Married Women.

A Needed Amendment of the Law.

By L. A. Taylor, LL.B.

The law relating to Judgments against married women has got into such a state that rescue, either at the hands of Parliament or of the House of Lords, is due,—nay, over-due.

The question is, what was intended by the House of Commons when it enacted that a married woman was thereafter to be capable of entering into and rendering herself liable in respect of and to the extent of her separate property ?

The precise words of the relevant section of the Married Women's Property Act, 1908 (N.Z.), are as follows :

> " A married woman is capable of entering into and rendering herself liable in respect of and to the extent of her separate property on any contract, and of suing and being sued, either in contract or in tort, or otherwise, in all respects as if she were a *feme sole* ; and her husband need not be joined with her as plaintiff or defendant, or be made a party to any action or other legal proceeding brought by or taken against her ; and any damages or costs recovered by her in any such action or proceeding shall be her separate property ; and any damages or costs recovered against her in any such action or proceeding shall be payable out of her separate property and not otherwise."

Change the first " is " into " shall be " and the result will be Section 1 (2) of The Married Women's Property Act, 1882, of England. The cases on the English section are, therefore, exactly in point.

Lord Justice Bowen in *Scott v. Morley* says that a married woman is by the Act subjected to proprietary liability ; in effect, that not her person but her estate only is liable, and *Scott's case* and other cases decided under the Statute have gone to show that the view of the Judges has been, and is, that, unless the married woman be sued and judgment be entered against her separate estate, the judgment is a nullity and works no estoppel. What appears to have been in the minds of the Judges is that when a claim either in contract or tort can be preferred against a married woman, then in law it lies against her estate only.

One wonders whether the Registrar would seal a summons, the defendant being named as the " separate property of A B, wife of C D," etc. ? It is here that I part company from the jurists who have considered the legal situation.

Put it this way : a female borrows money from me or knocks me down—who, but that female should stand and take my attack ? Her separate property had nothing to do with her borrowing my money, or causing me damage.

It is submitted that the question is one of capacity or privilege only, and that as in cases of drunkenness, insanity, infancy and others, the onus should be on the female defendant to prove what her capacity is. If in the supposititious case stated the defendant were a single woman or a widow, there would be no trouble, but the decided cases go to show that the law is that if a woman who is a married woman be sued, and judgment be not entered against her property only, the judgment is a nullity : it works no estoppel and the Statutes of Limitation run and bar the debt. It should, I submit, be upon the woman defendant if proceedings against her person be threatened or taken to take advantage of the law in her favour, by showing that she comes within the class against whom personal remedies for breaches of contract or duties cannot be exercised. Why should a plaintiff lose his remedy wholly because he has sued a woman debtor as a single woman in ignorance that she was married, and then find after six years that she belonged to a protected class and that his judgment was a nullity ? I am aware that this argument was the argument placed before the Court on behalf of the judgment creditor in *Scott's case* and was repelled by the Judges ; but I persist in it.

But the matter has still a wider aspect. During my twenty years' experience in the law, I have never known maid, wife or widow to be committed on a judgment summons. It is plain from the judgments in Scott's case that the Legislature, advised no doubt by its lawyers,—that sometimes a married woman could and sometimes could not be apprehended for non-payment of a judgment debt ; and that sometimes her property was, and sometimes was not, liable to be attacked,—decided to relieve her from personal liability in regard to contracts or torts and to enact that she should, as a consequence of her wrong-doing, suffer only if and to the extent that she owned property.

I suggest to our lawyer Members of Parliament that here is a broad basis for treatment of women, be they maids, wives, or widows. Let them all be treated alike and liable to *fi-fa* and not *ca-sa* proceedings ; but let the onus be upon them to prove their status. Such an amendment of the law would give a just interpretation to the section that I have quoted, and would be in keeping with the law's consideration for those who are known as " the darlings of the law."

The Nature of Misconduct.

A case which aroused much interest was the action brought by a lady doctor, Dr. E. M. O'Mahony, before Judge Sheehy at Monaghan District Court, against the authorities of the Cavan-Monaghan Mental Hospital for salary and the value of board and lodgings in respect of a period when she was suspended for alleged misconduct. The judge found, on the evidence, that there was no misconduct and gave judgment for part of the amount claimed, and 1*l.* costs.

It appeared that she had been suspended or discharged because she had " refused to obey orders." The order was " to try and work amicably with the head nurse." The resident medical superintendent stated that she " would not give an undertaking to do so, and he regarded that as misconduct."

Apart from the terms of any written agreement between the parties, it is clear law that dismissal or suspension for misconduct is justified. But what is misconduct ? That is the difficult question which is usually left to a jury to decide. The Judge is reported to have said : " Misconduct is much more than a failure to carry out orders." One would say that depended on the nature of the order and the intention which lay behind the disobedience. The Judge's *dictum* as applied to the parties in Dr. O'Mahony's case was right ; but it was not intended as a general proposition of law. Many and many a time it has been held that wilful disobedience or failure to carry out instructions is misconduct.

Contributory Mortgages.

Severance of Covenants to Pay.

By S. D. E. Weir, LL.M.

It is a common conveyancing practice in drafting a contributory mortgage to define the respective interests of the mortgagees in a concluding proviso or declaration in which it is set out that the principal sum is contributed or advanced by the mortgagees in certain proportions. Throughout the remainder of the document the covenants and agreements are made with "the mortgagees" simply without any express severance of the latters' interest therein and questions may well arise in practice as to whether such covenants are made with the mortgagees jointly or whether they each have a several interest that can be independently enforced—for example, can one mortgagee maintain an independent action to recover his proportion of the mortgage debt ?

In Section 57 of The Land Transfer Act 1915, it is provided that :

> ". . . . any two or more persons named in any . . . . instrument executed under this Act as . . . . mortgagees . . . . shall unless the contrary is expressed be deemed to be entitled as joint tenants with right of survivorship and such instrument when registered shall take effect accordingly."

and, although a proviso or agreement of the kind referred to in the opening paragraph of this article may have the effect of preventing the survivor or survivors alone from releasing or transferring the security, and may also declare the rights of the mortgagees *inter se*, does it further serve to effect a severance of the mortgagor's covenant to pay and confer as against him separate rights on each mortgagee in proportion to the amount of principal moneys contributed by him ?

The rule of construction is thus stated in 7 *Halsbury*, page 339 (para. 694) :

> "In the case of a promise which is made to several persons the covenant will be moulded according to the interests of the covenantees; if their interests are joint the covenant will be construed as joint; and if their interests are several it will be construed as several. This rule of construction holds even where there is no ambiguity and will be applied without regard to the language of the covenant unless the terms of the covenant unequivocally show a contrary intention."

Statements to a like effect are found in a number of cases. Thus, in *Sorsbie v. Park* (1843) 12 M. & W. at page 158, Parke, B., said :

> ". . . . rule is that a covenant will be construed to be joint or several according to the interest of the parties *appearing upon the face of the deed* if the words are capable of that construction; not that it will be construed to be several by reason of several interests if it be expressly joint. Suppose there were a covenant with A. and B. jointly that a certain thing should be done by the covenantor; both of these persons must sue. But where it appears upon the face of the deed that A. and B. have several interests they must sue separately; for though the words be *prima facie* joint, they will be construed to be several if the interest of either party appearing upon the face of the deed shall require that construction. . . . ."

To a like effect are statements in *Foley v. Addenbrooke* (1843) 4 Q.B. 197, at page 207 (per Lord Denman, C.J.); *White v. Tynkall*, 13 App. Cas. 263 at page 274 (per Lord Fitzgerald); and *Roberts v. Holland* (1893) 1 Q.B. 665 at page 667 (per Wills, J.). *Vide* also *Norton on Deeds*, page 569; *Chitty on Contracts*, 18th Ed. (1930) page 120.

It might, therefore, be contended that though the covenant to pay is on its face joint, the later proviso or agreement is sufficient on the authority of the rules stated to effect a severance. On the other hand in *Addison on "Contracts,"* 11th Edition page 316, it is said :

> "A covenant with several persons for the payment to them of a sum of money is a joint covenant with all in the performance of which they have a joint interest; and the pointing out of the share which each is to take of the entire amount will not create a separation of interests."

The authorities cited in support of this statement include *Lane v. Drinkwater*, 1 C.M. & R. 599 and *Byrne v. Fitzhugh*, 1 C.M. & R. 613 n (a). It is submitted, however, that the facts of these cases went further than those now under consideration.

In the former case, in return for the sum of £300 T.D. and R.D. by deed severally and respectively and for their several and respective heirs executors and administrators covenanted with L. and B. their heirs executors administrators and assigns to pay to L. and B. etc. one annuity or clear yearly sum of £30 in shares and proportions, viz., the sum of £15 being one moiety of the annuity unto L. etc. and the sum of £15 the remaining moiety unto B. etc. The powers for better securing the payment of the annuity were all given to L. and B. jointly, and the Deed also contained a joint Power of Attorney to enter up a joint judgment and a joint power was given to dispose of a certain reversion and to sell certain stock, etc. It was held that the covenant was a joint covenant and one of the covenantees could not sue alone. The facts in the other case which is meagrely reported were similar. The original consideration for the annuity which is not stated to be contributed in any particular proportions and the joint powers are only two distinguishing features that occur to one in comparing the document in *Lane's* case that the type of instrument at present under discussion. Indeed, in *Lane's* case, Parke, B., was careful to say (page 612) :

> "We do not mean to say that if the deed had contained two distinct grants of two several annuities to the plaintiff (L.) and to B. the circumstances of these annuities being collaterally secured by joint grants and authorities or even redeemable by one joint payment would have made the covenant with both to pay these annuities a joint covenant; but where we find express words describing it as one annuity coupled with these provisions we cannot doubt as to the effect of the deed."

In *Drake v. Templeton* (1913) 16 C.L.R., 153, the Australian High Court had to consider a mortgage of the kind now under consideration. There, the proviso read : "And it is hereby agreed that the said sum of £700 belongs to the said M.J.M. and E.A. in the proportions of £475 to the said M.J.M. and £225 to the said E.A." It was objected in argument that :

> "the effect in equity would appear to be to convert it *qua* the mortgagor into two mortgages ranking *pari passu* one to secure to one mortgagee the payment of £475 and the other to secure to the other mortgagee £225 notwithstanding the covenants to pay £700 and interest are entered into with both the mortgagees jointly and the powers and remedies of the mortgagees are in the form of joint powers and remedies,"

and that this was so anomalous as to make the document unregisterable. The Court held that it was registerable, Griffith, C.J., stating at page 158 :

> "The effect . . . . is that it is a mortgage to two mortgagees as several owners not as joint owners either at law or in equity,"

and Isaacs, J., (as he then was) at page 160, referring to it as "a mortgage in which there are several interests of mortgagees." The point at issue, however, was

whether or not the instrument was registerable, and it must be admitted that the language of the learned judges was possibly not intended to go beyond referring to the interests of the mortgagees *inter se*.

The foregoing is not intended to do more than indicate the possibility of difficulties arising from the form of contributory mortgage commonly used. It is possible that in some cases the covenant may be held to be severed, in others it may not,—the authorities are definite in stating that it is a question of construction in each case. At the same time, it may be useful to refer to the forms set out in such works as *Butterworth's "Encyclopaedia of Forms and Precedents,"* 2nd Ed. Vol. 10, page 135; *Key and Elphinstone*, 12th Ed. Vol. 2, page 103; and *The Conveyancer*, Vol. 2, page 305 *et seq.*, where forms are reproduced which endeavour in alternative ways to overcome such difficulties as are herein suggested.

London Letter.

Temple, London,
16th September, 1931.

My Dear N.Z.,

Rent Restrictions Report. I am afraid I simply cannot bring myself to be discursive on the Rent Restrictions' Report, the whole subject having been tedious to me, amongst a thousand others of the Profession, ever since its first inception. Somehow, or other, most of us manage to avoid it, shifting on to broader, or narrower, shoulders the cases which inevitably involve it, or, when suddenly confronted with it in the middle of a case about something else, putting ourselves upon the discretion of the Court, as if to say: "Well, you know best, no doubt." It may be an excellent piece of legislation, from a utilitarian point of view; though the controlling of mortgages seems to require some justification, nowadays; but from the artistic point of view, of the academic lawyer, the whole conceit is an abomination, and the only good thing about it is the discussion to which it from time to time gives rise as to the characteristics to be implied in the new Phenomenon which it creates: the Statutory tenancy. You may read of the recommendations of the Report, main and incidental, elsewhere; I like best the *Law Journal's* phrase: "The Court of Appeal is still trying to discover the principle, *if any*, on which the Rent Restriction Acts are based."..The *italics* are the creation of the NEW ZEALAND LAW JOURNAL.

The Trial Judge in the Kylsant Case. We may most suitably conclude this letter by mention of the Judge who tried Lord Kylsant, Wright, J. I have not a *Who's Who* available and the libraries are most unconscionably unavailable during the larger part of the Long Vacation days, so that I cannot tell you his age. He was, however, pupil of Rowlatt, J., in the earlier days of that Judge's Junior greatness. He was Rowlatt's first pupil, I believe; at any rate, the Judge has told me, also an ex-pupil, that Wright was his best ever. On leaving pupillage, he for years made no progress at all; and Rowlatt, J., again speaking himself, has disclosed that after his coming to the Bench, his pupil Wright had still failed to emerge. The Judge says: "I remember, when he at last appeared in my Court on some insignificant affair, I said to my Clerk, 'Thank Goodness, that one solicitor at any rate has had the sense to see and employ Wright, before he goes under and is to be no more seen and employed.'" Within four years of that utterance, Wright, K.C., had become such a giant as has rarely been at the Commercial Court Bar, making an incomparable fortune, achieving an immeasurable height. As a Judge he is small of stature; fairly human, and (to the Bar) humane; more often right than he is wrong; and as alive to a point as he is inclined to talk too much about it.

With that history and those present facts before you, you should be able to come to an exact appreciation upon reading the reports, which have been almost *verbatim* of the Kylsant case. Of the result of that case, so far as Lord Kylsant is concerned, it is not possible to speak while the appeal pends. As to the Accountant, his acquittal was a foregone conclusion, and the individual must be given the full credit which the acquittal implies. But the profession of Accountancy still stands arraigned, in the opinion of most of us in England.

The Attorney-General, who once more convinced us of his forensic ability and once more left us regretting his military omissions, well observed that his was a task of sanitation. However, and whatever the legislature may do about it (after hints of a move in the right direction, in the new Companies legislation, *a propos* of auditors) we feel that the Law, or that part of it which is yours and mine has made a fine beginning in this case, and that Judge and Mister Attorney-General are warmly to be commended.

The Present Discontents.—Only one legal matter occupies our attention at the moment, and that is the Finance Act! Or, we might better say, the Finance Acts, since it is our privilege to deal in pluralities this year, each enactment promising to be worse than the one before. Last month, a contributor to our London *Justice of the Peace and Local Government Review* took us to task, for complaining against the expediting of the date at which the tax, or a large portion of it, becomes payable; he pointed out that the provision whereby the tax is payable in two instalments is of modern creation, so that we must not consider ourselves as being deprived of any ancient right, as to the postponement of payment of part; and he makes the logically sound point that the tax payable, now, is in respect of an income received, then; so that if a man has now to resort to an overdraft to produce the tax he must then have been spending more than his net income.

Ah well! This may all be very true; but the practical point is that there is something else than logic which predominates in this matter, and that is the inordinate amount of the tax we are charged, upon an income far harder to earn in these days than in the spacious past when there was work to be had in abundance for all who wanted it. What the contributor will say to us now that the amount has been increased and the reliefs reduced, I do not know. And, what is more, I do not propose to find out; and I do propose, while paying, to go on protesting.

Whatever may be said of our present, grievous situation, the truth is this: that we indulge, since the War, in an infinity of luxurious altruism which we cannot begin to afford. We employ a Civil Service something like three times as large as the service requires: we have multiplied the salaries of our financial business managers by anything from a hundred to five

hundred per cent., the lower the profits, the greater the generosity of the Chairman's fee: and we have taken on to our employed list a few million of females, with no responsibilities and no sense of responsibility, so that of the bulk of available wage-money a quite considerable fraction is handed to pretty little flappers to be spent in the Picture Theatres! Having incurred this useless expenditure on a lavish scale, we have next seen to it to make our useful expenditure as extravagant and as thriftless as possible, so that the so-called 'Dole,' a provision for the unemployed of which every decent-minded man and woman must approve, is handed out to all, indiscriminately, and you may witness, say, an ex-policeman drawing his weekly unemployment pay (if he has had the luck to get subsequent employment, of the insured kind, and to lose it) at the same time as he draws his pension. In fact, there is no extravagance which it has been possible to indulge in, and in which we have not indulged: our statesmen and politicians, one and all over the last ten years, have never hinted that we could not afford it all, and a good deal more: and our remarkable financiers bitterly blame the mass of beneficiaries, as if, being offered good money for jam by the Government, a man should say: "No, I am not satisfied as to the finance of this, and I will not accept it!"

"**Experts.**"—The word is out: EXPERT. You may hear of Bolshevists or Communists, but our work-people are in as good form as ever, and if they are a little less industrious, it is through no fault of their own. Do not believe too much of anything else you hear to our detriment. Only know this: that the EXPERT has proved himself to be worse, as knave or fool, fool or knave, than ever the most outspoken of us lawyers submitted. Every EXPERT in this country is thriving, provided you include in that term no one who really is an expert and no one to whom might be applied the maxim *Experto Crede*. And the damning indictment of the lot of them is that, with the hideous increase of the cost to us of their parasitism upon us, there has been on their part an always increasing margin of error or deception.

Therein is the answer to the measure of reduction of our Judge's salaries. Never was a more monstrous gesture! Unless and until I am satisfied that it had nothing to do with our esteemed leader, Mr. Stanley Baldwin (whose reference to lawyers are rarely agreeable, but whose reliance upon them, in private, is known) I shall withhold my Tory vote. We had a Judge amongst us when the news happened; he bore it philosophically, and indeed made no sort of complaint or criticism; but we, of the profession, who were about him at the time, felt otherwise; and I shall be most grateful if you will read my diatribe, against the above-named President, as an Apology for our Judges: "Apology" in the more proper and less usual sense.

The Basis of England's Financial Dependability.—That the Judges of our High Court should be docked of their £5,000 a year, and that this Expert should be left with his tens of thousands, and apparent freedom to double them elsewhere moves me to a purple fury. The Expert and his kind very nearly ruined us; and the fact that we have so long been, to our vast profit, and may again be, the World's Bankers, depends, as every perspicacious observer knows, not upon any English financier's skill in finance, but upon the English Judge's genius and known incorruptibility. Needs this any explanation? Is it not obvious that we are the World's Bankers, or clearing house, for the main reason that foreigners depend upon us, and can depend upon no one else, for a square and straight deal? Is it to be supposed that the reason of this is that every Englishman is necessarily more reliable than every foreigner? Of course not. The truth is that Englishmen, alone, are held down to their bargains and the holding-down is done by our Courts. Paris or New York, or both, may acquire and accumulate all the gold, all the stock-in-trade of the business of international banking and acceptance marketing; but neither in New York nor in Paris is there a Judiciary to be depended upon for impartiality, complete and undiscriminating. That, my dear N.Z., is an attribute peculiar to our two selves, as between ourselves and foreigners; and nowhere, when you come to think of it, is there such relaible civil justice (which must surely be of the very essence of international banking or of any other international contractual business) as maintains always and inevitably where is the *Pax Britannica*. In these circumstances it seems to us that, however willing and patriotic our British Judges may be, it is a grave mistake in principle to touch their salaries or to let their remuneration in any manner come into discussion now.

The National Cabinet.—You will have observed what you may consider an unwarranted thrust at Mr. Stanley Baldwin. Of his merits I say nothing; no doubt they are multitudinous and deserve the infinite advertisement they get. But we are all asking ourselves this question: why is not Lord Hailsham in this National Government? Of a profession, for which you will gather that I have some admiration, Douglas Hogg was, in the way of strength and outspokenness, the greatest of the day. Moreover, he has and had all the makings of a very great leader; extremist he may be, but leaders of a cause must be extreme. Why was he ever allowed to go (reluctantly, as we all know) from the House of Commons; and this in days of the great Conservative majority, when there was much discontent at the existent leadership and an openly whispered demand for Douglas Hogg? And why was he never asked to take part in the emergency administration?

I do not think I am misinformed, in entertaining and hinting suspicions of personal jealousies, as a result of which our great lawyer is always being called upon to make practical gestures of self-abnegating loyalty, and a great party and a deserving people are deprived of the influence of just the strong Mussolini-type now required. I do not say the jealousy, commonly suspected, is that of individual as regards individual: the lawyer and the layman seem to be opposed: and, in my duty to represent to you what is going forward as I write, I have ventured to remember this under-current of present politics, and to put the lawyer's side of the case. The laymen of course have this advantage, that the lawyers are always something *pour rire*. But the lawyers now have also their advantage: they can point to the dreadful confusion by the lay giants (political—commercial—financial—as you will) and they can say, in the matter of personnel, where is the lay equal of Simon or of Hogg, of Sir John or of Lord Hailsham?

The retention of office by Lord Sankey on the one hand and by Sir William Jowitt on the other hand, are matters upon which comment is studiously withheld by the lawyers. The laymen can have no criticism to make as to the performances and achievements of either.

Yours ever, INNER TEMPLAR.

The Prince of Wales.

His Position in Law.

"The heir apparent to the Crown," wrote Blackstone, J., in his *Commentaries*, is usually made Prince of Wales and Earl of Chester by special creation and investiture; but being the King's eldest son, he is by inheritance Duke of Cornwall, without any new creation." Strangely enough, the first Prince of Wales, presented as a babe by Edward Longshanks to the unfortunate Welsh, was a third son with two elder brothers, Prince Henry and Prince Alphonso, alive at the time. After their death he became heir apparent, and ever since it is to heirs apparent that the title has been confined, with two exceptions: Princess Mary and Princess Elizabeth were successively made Princesses of Wales, as heiresses presumptive, by King Henry VIII. But no prince can be Duke of Cornwall who is not the King's eldest son. When Prince Henry, the eldest son of King James I., died, it was decided that the future King Charles I. become Duke of Cornwall by succession. But were the King's eldest son to die leaving male issue, the King's grandson would not be Duke of Cornwall. The title, in such circumstances, would revert to the Crown.

The present Prince of Wales became Duke of Cornwall from the moment his father ascended the Thorne.

We know that His Royal Highness, whether a minor or of man's estate, is under the special protection of the law, and that, by 25 Edward 3, St 5, c. 2, it is treason to compass or imagine the death of our lord the King or of our lady the Queen, or of their eldest son and heir. And so soon as he has been granted an "establishment," he comes within the terms of 35 Geo. 3, c. 125, otherwise known as "an Act for preventing the accumulation of debts by any any future heir apparent of the Crown, and for regulating the mode of expenditure from the time when a separate establishment shall be made for such future heir apparent."

This Act gives him the advantage of a special statute of limitations. While ordinary debtors only escape from liability after the lapse of six years, the principal officer of the Prince of Wales might snap his fingers at the tradesman who sends in his little account more than ten days after the expiration of the quarter in which the debt was incurred. Such debts are barred absolutely "both at law and in equity." And after the "establishment" has been furnished, no creditor is allowed to sue the Prince in his own name; any proceedings of a legal kind must be started against his principal officer of Treasury. Compare now his position with that of the ex-Kaiser of Germany, who was recently sued as W. Hohenzollern by one Voss in a small Court in Berlin for damages amounting to 7*l.* odd for wrongful dismissal. It is needless to say that the Prince does not rely upon his special statute of limitations.

As he was but a lad of thirteen when His Majesty ascended the throne, it is perhaps, not surprising that the Act of 1910 did not, in future, make any express provision for his separate establishment. But it did enact that in the event of his marriage, "there shall be paid to Her Royal Highness the Princess of Wales for her sole and separate use, but without any power of anticipation an annuity of 10,000*l.*; and further that if she should survive the Prince, the annuity should be increased to 30,000*l.*"

Australian Notes.

WILFRED BLACKET, K.C.

Aeroplane Collision Actions.—In the cross actions of *Bardsley v. Kent* and *Kent v. Bardsley*, Sydney has the honour of staging the first cases in the Southern Hemisphere arising out of collision of aeroplanes. The case is wonderfully like the familiar motor car case, the same allegations of excessive speed and wrong course taken, with the added charge of landing across the wind instead of against the wind, and of course the same questions of contributory negligence. However the case is cheering in this respect, that as motor car collisions have become fewer lately because of the decreasing number of motor cars, there may be some hope for the legal profession that aeroplane collision cases will do something to make up for the deficiency.

Some Queensland Legislation.—Queensland has displayed some originality in a Bill now before its Assembly, prohibiting publication in newspapers of photographs or drawings of parties in divorce actions, or witnesses or complainants in sexual cases, penalty not exceeding £100. Heavy penalties are provided against printers and publishers of obscene matter, and a newspaper convicted under the section is to have its registration cancelled. Taking or using a motor car without authority involves a penalty of from six to twelve months hard labour without the option of a fine, and the Court can also order payment for any damage done, with further imprisonment in default. Wilful disturbers of public meetings may be fined £10 or imprisoned for three months. Arrest of such an offender may be by a policeman at his own discretion, or upon the order of the Chairman of any meeting. A police officer also is empowered to detain and search any trainer or jockey on any racecourse who may reasonably be suspected of having in his possession any galvanic or electric battery or hypodermic needle containing any narcotic or poisonous substance. If a person found in possession of such an article cannot give a satisfactory explanation as to its possession he is liable to a fine of £25 or six months imprisonment. The definition of vagrant has also been greatly extended, and action to close disorderly house has been simplified. The measure containing these various provisions is entitled "The Vagrants, Gaming and Other Offences Bill."

Abuses of Ministerial Power.—History has a great respect for its own precedents and so it is that the events happening in Australia now very closely resemble those that culminated in the decapitation of Charles the First. There is just the same desire to defeat the will of the people as expressed by their Parliamentary representatives, and the same effort to override legislative actions and judicial decisions by arrogant and illegal exercise of Executive authority. My last preceding letter referred to Mr. Scullin's remarkable actions in this behalf in the matter of the deregistered Waterside Workers, and in New South Wales other still more flagrant abuses of Ministerial power happen constantly. For instance, Parliament rejected a Bill to restore to the railway strikers of 1917 their forfeited seniority; but as soon as the House adjourned for a month's recess, Mr. Lang peremptorily ordered the Railway Commissioners to act in accordance with the provisions of the rejected Bill. Whether they will do so or not is not yet known, and the question is not

of great importance for only 200 men are affected, and the amount to be gained or lost in salary by these men and those who may have to stand down is not very substantial; but the matter of Constitutional principle is obviously of very great consequence. Another Minister, Mr. Baddeley, in the House promoted a Boiler Inspection Bill but it was rejected by the Legislative Council. Thereupon he dismissed the inspectors appointed under the existing Act, some of whom had acted for sixteen years, and left the matter of the appointment of new inspectors to the Trades Hall Caucus, it being of course understood that the new officials will act under the provisions of the rejected Bill.

Further, as the Ministry cannot get all the money they want by means of the taxation imposed by Parliament, Mr. Baddeley states that they will get it from employers under regulations now being considered by Caucus. It may be recalled that the "ship money" extorted by Charles the First was on a similar footing of illegality, and yet it may be that this new means of bringing money to the Treasury may succeed for apparently the only Hampdens in New South Wales must be as mute and inglorious as the Milton that Gray wrote about.

Even more serious is the interference with the course of Justice. As already mentioned, the first act of Mr. Lamaro, Minister of Justice, on acceding to office was to release all the Communists who were "doing time." What a happy release that must have been, and how glad the friends of Ministers must have felt to see their dear old pals once more: and, now, as there are no more Communists in gaol, efforts are made to prevent any from going there. At Wollongong there was a riot, and, some of the police having been subjected to serious injuries, a number of Communists were arrested and brought before the local Court charged with inflicting grievous bodily harm, but orders came from headquarters directing that the Police Prosecutor should reduce the charges to common assault so that they could be dealt with by the magistrate. At the present time the judiciary and magistracy of the State are free from reproach or suspicion, but when the Caucus gets an opportunity of filling vacancies one cannot tell what may happen,—which indeed is not quite an accurate statement for everyone knows what will happen although the nature of that happening may not be stated here.

Newspaper Reports.—Mr. Justice Brennan of Queensland very strongly resented the report of a case tried before him, appearing in the Rockhampton *Morning Bulletin*, and ordered that no reporters of that paper or the *Evening News* published by the same proprietary should be allowed to sit at the reporters' table or to take notes in his Court. The reporter held to have offended, apologised for his "inaccurate misleading and malicious report" of the Supreme Court proceedings; but as the ban was not then lifted the owners of the newspapers named appealed against it to the Full Court. The Court's unanimous judgment was delivered by Justice H. A. Douglas who said, "I can only say that I personally would not have made such an order, and that this Court cannot interfere with it." And so the reporters are still, so to speak, *non coram judice* at Rockhampton, Q.

A Question of Extradition.—Francis Williams, it is alleged was guilty of an act of fraud at Perak in the Federated Malay States, and after he had departed to Sydney a warrant was issued and an extradition order made against him by a Sydney magistrate. He, desiring to appeal to the High Court against this order, applied to the Supreme Court for bail but this was refused, Justice Halse Rogers stating that the applicant could of course make any application he chose to the High Court, but as his steamer leaves a fortnight before the next sitting of that Court it seems likely that he will presently again look upon Perak. Which reminds me that one evening at a club, two very learned lawyers, argued very strenuously, Sir Herbert Murray, Governor of Papua being present, on the question whether there was an appeal to the High Court against Papuan convictions in capital cases. His Excellency refused to be interested in the point. "Oh well really you know old chap," he said, "the point is of no practical importance for we always hang the poor fellow at 8 o'clock next morning."

A New Test of Sobriety.—To the many practical tests for drunkenness a Goulburn (N.S.W.) doctor has just added a new one. He tried whether a suspect could say, "The Irish constabulary succeeded in extinguishing the conflagration." A fairly stiff test certainly, but after all in these cases the main trouble always is in the definition. "When a man's drunk and knows he's drunk then he ain't drunk," might be accepted as a definition by many others besides the original author of the paradox.

Carbon Copy Admitted to Probate.—In the Probate Court, Melbourne, before Mr. Justice McArthur, the carbon copy of the will of Jeremiah McNamara was admitted to Probate. He had called at a Solicitor's office on March, 1930, and had then made his will, a carbon copy being kept in the ordinary course. Later, and just before departing for Ireland by the *Barradine*, he called for the will, said he was satisfied with it, had no intention of altering it, and that he was going to carry it in a money belt which he always wore. During the voyage through the tropics, he died suddenly and his body was buried at sea, as the Captain of the vessel stated, "In my presence and at my command." His clothes and pockets were carefully searched by two sailors and certain articles obtained, but they did not search for his money belt. His Honour adopted as a fact the inference that the money belt must have been buried with him, and as stated, granted probate of the carbon copy.

Curious Items from Melbourne.—At St. Kilda, a resident, very much annoyed by his neighbour's cockatoo, arose at two o'clock in the morning, and shot it with a pea-rifle. He wounded it and was thereafter prosecuted for having "discharged a pea-rifle without the permission of the St. Kilda Council." Obviously, he was guilty of an oversight in not having gone down to the Council at that time in the morning in order to get the necessary permission, but he probably was oppressed by a quite reasonable doubt that the bird would not agree to wait until his return.

Also at South Melbourne, the local Justices rebuked an over-voluble witness, who persisted in giving very lengthy replies to questions, by saying: "Don't talk so much. Answer the questions yes or no." The prosecuting constable then asked: "Tell me, witness, when did you arrange with this man to repair your motor car?" And the witness replied: "No." A very similar thing happened at Wagga Wagga, New South Wales, several years ago, when Arthur Rae was addressing the electors. The Labour Party, of which he was a member, refused to declare whether they

were in favour of free trade or protection, and he accordingly refused to touch upon this phase of politics. Greatly annoyed, a heckler towards the conclusion of the meeting arose and called out very loudly: "Mr. Rae, I want a straight-out answer, yes or no, to this question; are you a free-trader or are you a protectionist?" and Rae answered: "No." Still more annoyed, the interjector said: "That answer won't suit me, I must have a straight-out answer to this question, yes or no; are you a free-trader or are you a protectionist?" and promptly and firmly Mr. Rae answered: "Yes."

Another Melbourne item. Mrs. Oliver Dunkley, of Clayton, was charged with having stolen a heifer. The case is worth mentioning because it is a new precedent in the ever-extending region of feminine activities. She was acquitted, the Jury apparently accepting the defence stated by her that she had bought it. The case reminds me of an experience that I had many years ago as an examiner in the criminal section of the final exam. of barristers. I had set the question: "State the circumstances under which a wife will be excused from crime on the ground of duress?" A candidate answered: "She will be excused when the crime is a felony committed in the presence of her husband, but will not be excused if the crime is one in the ordinary course of a wife's duties, e.g., keeping a disorderly house." I gave him full marks, for he was evidently very young and quite inexperienced.

An Effect of the Moratorium Act.—Mr. Justice Halse Rogers, of Sydney, quite recently was greatly startled at a provision of the Moratorium Act, passed in October last. An application was made to him to set aside a judgment duly and regularly signed on September 16, last, more than a fortnight before the passing of the Moratorium Act, which in Section 25 provides that: "After the commencement of this Act no action, suit or proceeding shall be commenced, or having been commenced, be continued, for any breach of covenant or agreement in any mortgage over real property," and further provided that "the Act shall be deemed to have commenced on 1st September, 1931." His Honour said: "I cannot imagine a more iniquitous result. I do not think that that position was intended," and adjourned the hearing, saying that he would not find in favour of the application on his own opinion, but that if he felt bound to hold that the effect of the section was as contended he would fortify his conclusion by referring to the matter in Full Court. I mention this in case any Moratorium legislation in the Dominion may follow the model from which our Act was drawn, and that the point may possibly be raised and call for decision in one of your Courts.

Piling up the Fines.—At Melbourne, Rupert Frederick Millane owned a motor bus and was guilty of various offences in connection therewith, including the running of the bus without licence. These offences were deliberate and repeated, and being prosecuted he was ordered to pay fines amounting to £956, and conductors who acted for him were also fined £200 each. The fines imposed upon Millane were not paid and nothing was realised under levy and distress, and he was then summoned to show cause why he should not be imprisoned, and on nineteen charges was sentenced to imprisonment for three years and three weeks.

Whenever you feel down in the mouth in these hard times, think of the Prophet Jonah. *He* came out all right.

Bills Before Parliament.

Chattels Transfer Amendment. (Hon. Mr. Masters). By section 57 of the Chattels Transfer Act, 1924, provision is made for what are there referred to as "customary hire-purchase agreements," in relation to chattels of the several descriptions mentioned in the Seventh Schedule thereto. The chattels referred to are all of kinds that are commonly bought on the hire-purchase system. For the purpose of financing hire-purchase transactions, a usage of trade has developed, by which the price of the chattel is paid to the manufacturer or dealer by a finance corporation established for that purpose, and the hire-purchase agreement is then made between the conditional purchaser and the finance corporation. It has recently been decided by the Court of Appeal (**General Motors Acceptance Corporation v. Traders Finance Corporation, Ltd.**, p. 207 *ante*) that such corporations are not "dealers" within the meaning of section 57 of the Chattels Transfer Act, and that their agreements, although of precisely the same character as ordinary hire-purchase agreements, are not entitled to the benefits conferred by that section. The chief such benefit is that the agreements in question do not require to be registered as bills of sale or other instruments. The purpose of Clause 2 of this Bill is to establish as law what, prior to the decision of the Court of Appeal above referred to, was understood to be the legal position. The Bill, if passed, will be retrospective (for the purpose of protecting existing agreements), though existing rights under any judicial decision are expressly saved, and any pending judicial proceedings are not interfered with. Clauses 3 and 4 of the Bill effect minor amendments of the principal Act, principally for the purpose of facilitating the provision of financial assistance to farmers on the security of farm implements.

Counties Amendment. (Hon. Mr. Hamilton). Cl. 2. County Council by special order may declare Ss. 121 and 131 of principal Act (as to levy of general rates separately in ridings and as to apportionment of income, &c.) not to apply to it.

Native Purposes. (Hon. Sir Apirana Ngata). A Bill of 108 clauses consolidating provisions contained in thirty-two Native Reserves and Native "Washing-up" Bills, which it repeals, and omitting this part or obsolete provisions thereof.

Mountain Guides. (Hon. Mr. Hamilton). Cl. 2. This Act to be administered by the Minister in charge of Tourist and Health Resorts.—Cl. 3. Power to make regulations for licensing of guides for expeditions into mountainous or unfrequented parts of New Zealand; prescribing classes and forms of licenses, qualifications of applicants therefor, and the conditions of issue; classifying such expeditions; and prescribing minimum number and classification of any expedition; prohibiting any unlicensed persons as guides; establishing a Board with power to issue, renew, and revoke licenses, and with other prescribed powers and functions; and prescribing fines, not exceeding twenty pounds, for failure to comply with provisions of regulations under this Act.

Mining Amendment. (Hon. Mr. Jones). Cl. 3. County Councils holding in Otago Mining District mining privileges in respect of water may constitute water-supply areas.—Cl. 4. County Councils may make by-laws in respect of water-supply areas.—Cl. 5. Power to stop, reduce, alternate, &c., flow of water in races.—Cl. 6. Failure or pollution of supply not to relieve from payment of charges or to give claim to compensation.—Cl. 7. Water may be cut off in default of payment, &c.—Cl. 8. Exclusion of certain provisions of S. 129 of principal Act.

British Nationality and Status of Aliens (in New Zealand) Amendment. (Mr. Fraser). Cl. 2 (1) A woman British subject not to lose British nationality by marriage with alien.—(2) A woman at the time of her marriage natural-born British subject or naturalised in New Zealand, and by reason of her having at any time had alien husband, to be deemed a natural-born or a naturalised British subject, unless she makes a declaration of alienage within one year after Act comes into force, or within one year after return to New Zealand.—(3) Alien woman on her marriage to Britisn subject to be deemed to be an alien.—Cl. 3. A woman, notwithstanding marriage, to be competent to apply for and receive certificate of naturalisation under same conditions as a man.—Cl. 4. A woman British subject shall, notwithstanding marriage, cease to be British subject under same conditions as a man and under no others, and naturalisation by marriage under law of another State not to be deemed naturalisation by a

voluntary and formal act within S. 13 of British Nationality and Status of Aliens Acts, 1914 to 1922 (Imperial), as embodied in principal Act.—Cl. 5. (1) Ss. 10 and 11 of above-mentioned Acts to be omitted from First Schedule to principal Act.—(2) Married woman not to be deemed under a disability, and the definition of the term "disability" in First Schedule to principal Act modified accordingly.

New Zealand Institute of Clerks of Works. (MR. FRASER). Cl. 3. Establishment and purpose of the New Zealand Institute of Clerks of Works.—Cl. 4. Business of the Institute to be carried on temporarily by officers of the registered association.—Cl. 5. Members of the Institute.—Cl. 6. Registration and expulsion of members.—Cl. 7. Constitution and meeting of Registration Board.—Cl. 8. Persons entitled to be registered as members of the Institute.—Cl. 9. Definition of "Clerks of Works"—Cl. 10. Recognised certificate.—Cl. 11. Age-limit.—Cl. 12. Application for registration.—Cl. 13. Board or Council to determine all applications. Appeal.—Cl. 14. Method of effecting registration.—Cl. 15. Council of the Institute.—Cl. 16. Acts of the Council not invalidated because of informality.—Cl. 17. Election of Council.—Cl. 18. First meeting of Council.—Cl. 19. First general meeting.—Cl. 20. Appointment of officers.—Cl. 21. Officers to remain in office until election or appointment of successors.—Cl. 22. Quorum at meeting of Council and Institute.—Cl. 23. Regulations.—Cl. 24. Powers of Council.—Cl. 25. Copy under seal to be proof of regulations.—Cl. 26. Examinations.—Cl. 27. Committee of education.—Cl. 28. Offences by persons not members of the Institute.—Cl. 29. Register of students.—Cl. 30. Execution of documents under seal.—Cl. 31. Mode of entering into contracts by the Institute.—Cl. 32. Notice of Board to be sent to Registrar-General.—Cl. 33. Fees.—Cl. 34. Registered office of Institute.—Cl. 35. Returns to be made to Registrar-General.—Cl. 36. Offences to be dealt with summarily.—Cl. 37. Effect of registration.—Cl. 38. Compulsory employment of registered Clerk of Works.—Cl. 39. Penalty.—Cl. 40. Exemption from service on jury.

Inspection of Machinery Amendment. (HON. MR. COBBE). Cl. 2 amends S. 16 of principal Act substituting for subs. 2 new subs. prescribing fine not exceeding £20 for permitting any moving part in machinery to be used without being guarded.—Cl. 3 extending "owner" in S. 17 to include every person in possession of machinery; and that notice may require owner to refrain from selling, hiring, or otherwise disposing of, or parting with possession of dangerous machinery until compliance with Inspector's requirements.—Cl. 4. Principal Act (excepting Ss. 16 and 17) not to apply to farm machinery not exceeding 6 h.p.

Customs Acts Amendment. (HON. MR. DOWNIE STEWART).

Local Legislation. (HON. MR. HAMILTON).

Transport Licensing (No. 2). (RT. HON. MR. COATES). *See* page 220 *ante*, extended as follows: Cl. 2, "Metropolitan Authority" means the Auckland Transport Board, the Wellington City Council, the Christchurch City Council or the Dunedin City Council as a Licensing Authority under this Act.—Cl. 3 adds: Areas comprised in Auckland Transport District, and the Cities of Wellington, Christchurch, and Dunedin respectively declared transport districts.—Ss. 8-13 or S. 14 (1) (2) not to apply to Metropolitan Authorities.—Cl. 23. Special provision as to granting of licenses for services between Auckland Transport District and contiguous districts.—Cl. 24 (4) Application for any license to be granted by a Metropolitan Authority shall be made direct to it.—Cl. 26 Licensing Authority in considering application to have regard to extent to which proposed service necessary or desirable in public interest and needs of district as a whole in relation to passenger-transport.—Cl. 44. No appeal against decisions of Auckland Metropolitan Authority except by Government Railways Board. (Part IV. relating to Commercial Aircraft Services has been dropped).—Cl. 64. S. 9 of Motor Vehicles Insurance (Third Party Risks) Act 1928, applied to such classes of passenger-service vehicles as prescribed by Order in Council in that behalf. (In all other material matters, Clauses in Transport Licensing, p. 220 *ante* are re-included.)

Law Practitioners. (HON. MR. SIDEY). Consolidates the principal Act, 1908, and the Amendments of 1913, 1915, 1920, 1921 (Guarantee Fund), and 1930. S. 10 of the principal Act, S. 12 of 1913 Amendment, S. 2 of 1930 Amendment, and S. 5 (1) of 1930 Amendment have been omitted as spent, and S. 10 (1913), S. 3 (1920) Repeals, also omitted as spent. The Bill will be discussed in a later issue.

Bills Passed.

The following Bills had passed both Houses of the Legislature at the time of our going to press.

Trading-Coupons Bill. (HON. MR. HAMILTON). This Bill deals only with the issue and redemption of trading-coupons in connection with the sale and purchase of goods, and, in particular, does not deal with the practice adopted by some traders of making so-called "gifts" of other articles to purchasers of their goods. With respect to trading-coupons, the Bill provides as follows: Cl. 3 prohibits their issue after the passing of the Act by any persons other than the manufacturers, packers, importers, distributors, and sellers of goods.—Cl. 4 provides that after April 30, 1932, trading-coupons shall be redeemable only for money. Up to that date (unless their issue was in contravention of the Trading-stamps Prohibition and Discount-stamps Issue Act, 1908) trading-coupons may be redeemed in accordance with the terms of their issue. It restricts their redemption after that date to the issuer of the coupons and to the seller of the goods.—Cls. 5 and 6 define offences and provide penalty of £200 on summary conviction.—Cl. 7 provides consent of Minister of Industries and Commerce required before any prosecution may be commenced.—Cl. 8 repeals the Trading-stamps Prohibition and Discount-stamps Issue Act, 1908. So far as trading-stamps and trading-stamp companies are concerned, the restrictions imposed by the Bill cover the restrictions imposed by the Act now proposed to be repealed; the provisions of that Act authorising the issue of discount-stamps have not been availed of to any considerable extent, and it is considered that no good purpose is served by their retention on the statute-book.

Stamp Duties Amendment. (HON. MR. DOWNIE STEWART). Cl. 2 Lottery Duty on proceeds of lotteries promoted under section 42 of Gaming Act, 1908, in respect of mineral specimens to be computed at ten per centum of the nominal value of tickets in drawing.—Cl. 3. Owner or agent of every passenger-carrying ship that leaves New Zealand to pay duty to be known as overseas-passenger duty, to be computed at the rate of five per centum of the amount paid or payable in respect of amount of passage-money paid or payable to the owner or his agent by any passenger in respect of a voyage from New Zealand to his ultimate destination, notwithstanding that the completion of the voyage may involve transhipment to another ship (whether belonging to the same owner or not), and whether or not an intervening overland journey is involved. Where return passage from and to New Zealand is booked in New Zealand, one-half of amount paid or payable therefor to be deemed to be in respect of passage from New Zealand, and overseas-passenger duty payable thereon.—Cl. 4. S. 182 of principal Act amended by omitting from subsection 1 "steamship" and substituting "ship"; and by omitting from subs. 2 "steamships" and substituting "ships."

New Books and Publications.

Elements of the Law of Contracts. By W. G. H. Cook, LL.D., assisted by John W. Baggally. (Butterworth & Co. (Pub.) Ltd.). Price 6/6.

English for Advertising and Commerce. By B. L. K. Henderson, M.A. (No. 4 of Library of Advertising). (Butterworth & Co. (Pub.) Ltd.). 9/6.

Direct Mail and Mail Order. By Max Rittenberg. (No. 9 of Library of Advertising). (Butterworth & Co. (Pub.) Ltd.). Price 9/6.

Roman Law in a Nutshell. By M. Garsia. Second Edition. (Sweet & Maxwell Ltd.). Price 5/-.

Russell's Arbitration and Awards. Twelfth Edition. By V. R. Aronson. (Stevens & Sons Ltd.). Price 49/-.

The Land Value Tax. By H. Samuels and Phillip Fores, M.A., LL.B. (Eyre & Spottiswoode). Price 21/-.

Road Traffic Rules and Orders. By R. P. Mahaffy, B.A., and G. Dodson, B.A., LL.M. (Butterworth & Co. (Pub.) Ltd.). Price 19/-.