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

"How necessary it is to know the significance of words!"

—*Co. Litt. 325a.*

Vol. VIII. Tuesday, March 15, 1932. No. 4

"Forthwith."

In *Australian Provincial Assurance Association Ltd. v. Harman*, 7 N.Z.L.J. 240, the Rt. Honourable Sir Michael Myers, C.J., in an oral judgment, considered s. 11 of the Motor Vehicles Insurance (Third-party Risks) Act, 1928, which is as follows:

> "On the happening of any accident affecting a motor-vehicle and resulting in the death of or of personal injury to any person, it shall be the duty of the owner forthwith after such accident, or if the owner was not in charge of the motor-vehicle at the time of the accident forthwith after he becomes aware of the accident, to notify the Insurance Company of the fact of such accident, with particulars as to the date, nature, and circumstances thereof, ..."

This section, he said, "makes it plain that it was the duty of the defendant to see that prompt notice of the accident was given to the insurer, that is the plaintiff company. Section 11 does not use the words 'prompt notice.' It requires that notice shall be given forthwith after the accident or after the owner of the car which does the damage first becomes aware of the accident, but no doubt the word 'forthwith' means within a reasonable time, which is very much the same thing as 'prompt.'"

In that action, it was proved that the accident happened on March 19; but the insurance company knew nothing of it until the following October 7, the defendant not having given any notice at all. In those circumstances, for the very good reasons given in the judgment, the Company recovered the amount of £478 12s. 0d., (this being the Court's judgment at the suit of the injured party against the insured defendant) and also the costs paid by the Company in respect of the claim.

The judgment, in defining "forthwith" as "promptly or within a reasonable time," follows considerable authority. It is applicable also to s. 31 of the Motor Vehicles Act, 1924, in regard to the notification "forthwith" of Motor Accidents where injury to any person is caused. (The word "on" used in s. 31 of the 1928 Act, quoted *supra*, has been similarly interpreted by Lord Sterndale, M.R. in *Scott v. Scott* [1921] P. 107, 37 T.L.R. 158, C.A.)

The word "forthwith" constantly confronts one in the statutes. Thus in *Measures v. McFadyen*, 11 C.L.R., 723, Mr. Justice Isaacs (as he then was) said:

> "'Forthwith' has been defined in several cases, and they are not altogether uniform; but the greater number and the most authoritative afford a clear idea of the meaning. In *Ex parte Lamb, In re Southam*, (1881) 19 Ch. D. 169, at 172—3, *Jessel*, M.R. and *Lush*, L.J., pointed out that its meaning depends to a great degree upon the circumstances in which it is used. It is evident that a contract to forthwith deliver a ton of flour demands much more prompt performance than to forthwith construct an ironclad, and so the word cannot be said to have an invariable meaning, irrespective of the subject-matter in connection in which it is used."

"'Forthwith,' of course, means," says Bowen, L.J., 'at once,' having regard to the circumstances of the case": *Lowe v. Fox* (1885) 18 Q.B.D., 494 at p. 504. Similarly, in *Roberts v. Brett* (1865) 11 H.L.C., 337, Lord Chelmsford considered it meant "without delay or loss of time" (at p. 504). In *The Queen v. Berkshire Justices* (1878) 4 Q.B.D. 469, Cockburn, L.C.J., said:

> "The words 'forthwith' and 'immediately' have the same meaning. They are stronger than the expression 'within a reasonable time,' and imply prompt, vigorous action, without any delay, and whether there has been such action is a question of fact, having regard to the circumstances of the particular case."

And, in circumstances different from those then under consideration, "forthwith" was said to be less strict than "immediately": *ex parte Lowe* (1846) 3 Dow. and L. 737.

"A provision to the effect that a thing must be done 'forthwith' or 'immediately,' means that it must be done as soon as possible in the circumstances, the nature of the act to be done being taken into account": 27 *Halsbury*, pp. 456-7, where have been collected a large number of cases in which the word has been interpreted in the light of the facts in issue.

Under s. 22 of the English Road Traffic Act, 1930, if for any reason the driver of the motor vehicle involved in any accident causing injury to any person, vehicle or animal, does not give his name and address, etc., at the place of the accident:

> "He shall report the accident at a police-station or to a police constable as soon as reasonably practicable, and in any case within twenty-four hours of the occurrence thereof."

It is submitted, therefore, that in view of the interpretation of "forthwith" as used in s. 11 of the Motor Vehicles (Third-party Risks) Act, 1928, in which the Right Honourable the Chief Justice defined it as meaning "within a reasonable time, which is very much the same thing as 'prompt,'" and of the various cited *dicta*, the obligation on motorists to report "forthwith" both to the police and to the insurer, under the sections of the Acts quoted or referred to *supra*, depends on the facts of the particular circumstances, as, for instance, on the physical or mental condition of the motorist after the accident. "In the ordinary circumstances of life, 'forthwith' does not mean 'immediately'": *Roberts v. Brett* (*cit. supra*); but means "with all reasonable celerity" (per *Tindal*, C.J., in *Burgess v. Boetefeur* (1844) 7 M. and G. 494); or, in other words, "as soon as reasonably possible" (*Kenny v. Hutchison*, 6 M. and W. 134; *in re Sullivan*, 15 L.T.434); "having regard to the object of the provision and the circumstances of the case" (*Ex parte Lamb* (1881) 19 Ch. D. 169; 2 Chit. Arch. Prac. 14th Ed. 1435; and the other cases cited in *English and Empire Digest*, Volume 42, p. 952-3; *ibid*, Vol. 48, p. 1917).

In fine, "when a statute requires that something shall be done 'forthwith,' it would probably, be understood as allowing a reasonable time for doing it" (*Maxwell on Statutes*, 7th Ed. p. 296). That both notifications should be made "promptly" by the motorist, goes without saying; and the twenty-four hours' limit (imposed *in pari materia* in the English statute) is a safe standard of such promptitude, physical and other incidental circumstances permitting.

Supreme Court

Reed, J. September 15, 16, 17; December 19, 1931. Wellington.

STRAND v. DOMINION AIRLINES LTD. (IN LIQDN.)

Deaths by Accidents Compensation—Aeroplane Fatality—Passenger Carried under Contract for Hire and Killed—Contract Endorsed on Ticket and Signed by Passenger Exonerating Aeroplane's Owners from "Any loss or accident or delay arising from any cause or negligence whatsoever"—Pilot not holding Certificate entitling him to fly with Passengers—Whether Exonerating Contract Prevailed when Breach of Statutory Duty a Contributing Factor in Causing Passenger's Death—Aviation Act, 1918: Regulations, 1931, Gazette, I., p. 731—Deaths by Accident Compensation Act, 1908, S. 30.

Action brought under Deaths by Accident Compensation Act, 1908. Whilst being piloted by one Ivan Louis Kight, the managing director of the defendant company, an aeroplane, belonging to that company, crashed. It was carrying two passengers for hire, and all three occupants were killed instantaneously. This action was brought under the Act on behalf of the widow and child of one of those passengers.

The defendant company pleaded, *inter alia*, that the plaintiff was travelling upon a ticket which was subject to the following conditions, which, it was claimed, exonerated the company. "All flights are made at the discretion of the Pilot, whose decision as to conditions is final, and this Ticket is issued subject to weather and other conditions permitting Flight, and in the event of conditions preventing Flight, the Passenger at his option may:—

(a) Be Flown through at the first opportunity.

(b) Have his Fare refunded.

"It is also a condition that the company has no liability hereunder save as aforesaid and that the passenger *travels entirely at his own risk*, and the Company or its Servants shall not be liable to any person for any *loss or accident* or delay (*arising from any cause or negligence whatsoever*) suffered by the passenger or his luggage."

No question was raised as to the knowledge of this condition by the deceased, it being common ground that he accepted it by signing the face of the ticket. The plaintiff, however, met this defence by contending: (1) that the company, in breach of a statutory duty, permitted Kight to fly with passengers, he not holding a "B" certificate which alone entitles that to be done; (2) that exoneration, by the terms of the contract, of any liability for negligence by the company or its servants, was no answer when a breach of a statutory duty has contributed to the injury.

Held: Accident, to which the breach of a statutory duty had contributed, was due to negligence of pilot. The deceased passenger was within a class for whose benefit the Legislature had imposed a duty on the pilot. The terms of the contract could not be construed as including exoneration in respect of a claim for a breach of a statutory duty of which the deceased knew nothing.

Cleary for plaintiff.

Watson and **James** for defendant.

REED, J., said that in order to succeed the plaintiff must show a nexus between the breach of duty and the accident. To show this, he had led evidence to prove that the accident was due to the negligence of the pilot. The first point, therefore, for consideration was as to whether or not negligence has been proved. In England there were statutory provisions which negative the necessity of proving negligence—no proof of negligence is required beyond the accident itself—**Wingfield and Sparkes Law in Relation to Aircraft**, 14; **Salmond on Torts** (7th Ed.) 239. It was probably due to this legislation that there was no reported case in England dealing with actions for negligence in relation to aircraft. In America, it had been held that in an action for personal injuries received in an aeroplane accident the burden of proof that the pilot was negligent in the operation of the aeroplane rested upon the plaintiff, and that whether the particular accident had been caused by the negligent act of the pilot or by some outside force over which he had no control, such as the act of God or atmospheric conditions or any other unavoidable accident was a question for the jury: **Seaman v. Curtis Flying Service,** 69 American Law Reports (Annotated) 338, 339.

In the absence of any body of law upon the special subject of aeroplanes, recourse must be had to the common law and the matter decided upon long-established legal principles. In alleging negligence the burden of proof rested on the plaintiff. In the handling of an aeroplane special skill was required, and the failure of a pilot to act with such skill as should be possessed by one reasonably competent to handle such a machine was negligence. The defendant company elected not to call any evidence. The evidence for the plaintiff consisted of observers of the accident, and expert evidence. Neither class of witnesses could be said to have any interest in the matter, and gave, His Honour believed, entirely unprejudiced evidence. The eye-witnesses were not skilled observers, and discrepancies in their evidence were easily accounted for by the different positions they occupied on the ground, more particularly as regards the question of the engine ceasing to function, the strong wind blowing affecting the hearing of the witnesses according to the relative positions on the ground that they occupied.

His Honour found upon the evidence that the accident was due to the negligence of Ivan Louis Kight in attempting to turn into the wind at too low an altitude at a low rate of speed thereby causing the machine to lose flying speed and nose dive.

Now, it was proved that Kight had an "A" certificate only. To entitle him to apply for a license to carry passengers for hire, he would require to hold a "B" certificate. He was committing a breach of the law in carrying the deceased for hire. Although Kight had had considerable flying experience—more than was technically requisite for a "B" certificate—there was a medical history of neurasthenia in his case. After the accident, an official letter was found upon his body from General Headquarters of the N.Z. Military Forces, dated four days before the accident, in the following terms: "In view of the possible effects of neurasthenia as disclosed in the medical board held in Palmerston North, the Director of Medical Services is unable to assess you as 'fit' for a 'b' license unless you submit to another examination. For this purpose the D.M.S. has nominated Lieut-Colonel Bowerbank, Kelvin Chambers, Wellington. Please advise this office of the date arranged as Dr. Bowerbank must be in possession of the relative papers before the examination."

Colonel Dalton, Director of Air Services, gave evidence before His Honour. He did not volunteer the evidence, His Honour now proposed to refer to; it came out in cross-examination on behalf of the defendant company. Referring to the above letter which the witness had caused to be sent, he said: "Had Lieutenant-Colonel Bowerbank passed him as fit—I would not have passed him as fit for the certificate because I would not go up with him myself. It is my duty to give a 'B' certificate to anyone whom I feel absolutely safe with. He was quite as good as any 'A' pilot but not as good as a 'B' pilot. An 'A' certificate entitles a man to take a passenger. If I endorsed his 'A' license to carry passengers it was because every 'A' pilot is entitled to carry passengers after he has done 40 hours.

"To His Honour: Kight and I were great friends and I told him many times that he would not be given a license by me. I did not consider that he was the right type for a commercial pilot."

"To Mr. Watson: I would not personally give him a certificate though he had qualified at Wigram and Hobsonville . . . I wrote to him to present himself for a medical examination as I thought that if he had failed to pass the examination I would not then give him a license—I hoped to do it through the medical board. . . . I draw a distinction between a pilot carrying passengers for hire and one not for hire. I have no objection to A pilots carrying passengers if they do not pay—he is not a professional. A 'B' licensed pilot is guaranteed to be safe. If he had carried these passengers without charge I would have had no objection to his carrying them. . . . Kight had had neurasthenia three years previously. He had passed the medical examination with certain doctors—I think that he would not have passed on his final examination."

It was contended by Mr. *Watson* for the defendant company that there was no discretionary power in the Director of Air Services, nor in the Air Board, and that Kight, having com-

plied with the technical requirements, could compel the grant of a "B" certificate, and consequently a license to carry passengers for hire. Under the Regulations, 1921 *Gazette*, Vol. 1, p. 731, full discretionary power was given to the Air Board over Licenses to pilots. It was provided that no aircraft shall fly within the limits of New Zealand unless the personnel were licensed in the prescribed manner; that Licenses shall be granted by the Air Board; that a Pilot's License should be only valid for six months and should not be valid unless endorsed by the Board at those intervals. There did not appear to be any provision giving discretionary power to the Director of Air Services; but it was inconceivable that the Board would act against his opinion as to the fitness of a person to hold a license as a pilot of aircraft engaged in public transport. But that was immaterial, the important fact was that Kight carried passengers for hire without possessing the necessary statutory qualifications, and, according to the evidence of Colonel Dalton, unfit to acquire such statutory qualification.

It was contended that the defendant company, in permitting him to do so, had committed a breach of a statutory duty, and that the exoneration, by the terms of the contract, of any liability for negligence by the company or its servants, was no answer when a breach of a statutory duty had contributed to the injury. It had to be first determined whether any causal connection has been proved between the breach of the statutory duty and the accident. The actual facts proved were: (1) that Kight had no license to carry passengers for hire; (2) that the accident was due to the negligence of Kight; (3) that he was considered by the Director of Air Services to be unfit to hold a license entitling him to carry passengers for hire but was authorised under the hand of the same Director to carry passengers who did not pay for their passages. There did appear on these facts to be a causal connection for, if the statutory provisions had been complied with, Kight would not have been the pilot of the machine, and as the accident was due to the negligence of Kight, the accident would not have occurred but for his being in the pilot's place, in breach of the statute; *cf.* **Jones v. Canadian Pacific Railway Co.,** 110 L.T. 83, 87, 88.

The accident, therefore, having been contributed to by a breach of a statutory duty, did the special contract exonerate to defendant from liability? The defendant emphasised the conditions in the contract "that the passenger travels entirely at his own risk," "the company shall not be liable for any . . . accident . . . arising from any cause or negligence whatsoever," and claimed that these terms were wide enough to cover the present case. But, it was contended for the plaintiff, the maxim *volenti non fit injuria* does not apply when the injury was due to a breach of a statutory duty. Under the law in England where a person entered upon a service he did so on the implied condition that he voluntarily accepted contemplated dangers arising within the scope of his employment, including the negligence of his fellow-servant; and, to a claim based on injuries received during the course of that employment, the employer would usually have the defence that damage suffered by consent was not a cause of action, but it was well established that where the injury arises from a direct breach by the employer of a statutory obligation the maxim *Volenti non fit injuria* is not to be presumed to avail: **Baddeley v. Earl Grenville,** 19 Q.B.D. 423; **Groves v. Winborne** (1898) 2 Q.B. 402; **Kaye v. Westport Harbour Board** (1916) N.Z.L.R. 1082; **Jones v. Canadian Pacific Railway Company,** 110 L.T. 83. It was true that these were master and servant cases, and it was contended that the principles there laid down had no general application. His Honour could not agree with the contention: the relationship between master and servant was based on contract. The interpretation placed on such contracts by the cases was that the risk incidental to a breach of a statutory duty, by the employer, was not a risk that was voluntarily undertaken by the servant as being part of the terms of his contract; he was entitled to rely, as a basis of the contract, that statutory duties cast upon his employer for his (the servant's) protection would be lawfully complied with: **David v. Britannic Merthyr Coal Company** (1909) 2 K.B. 146, 157. His Honour thought that those principles applied in the present case; that was to say that the exoneration from liability by the company for accident was made upon the implied condition that all statutory duties cast upon the defendant company for the protection of persons travelling by aeroplane had been duly complied with.

The breach of a statutory duty did not, however, necessarily confer a right of action on every member of the public, but only upon individuals for whose protection and benefit the duty had been imposed; *Vaughan Williams*, L.J., in **Groves v. Wimborne** (1898) 2 Q.B. 402, 415: "It cannot be doubted that, where a statute provides for the performance by certain persons of a particular duty, and some one belonging to a class of persons for whose benefit and protection the statute imposes the duty is injured by failure to perform it, *prima facie*, and, if there be nothing to the contrary, an action by the person so injured will lie against the person who has so failed to perform the duty."

It was a question of construction as to whether, in respect of a statutory duty imposed, the intention of the legislature was that the duty should be towards the public at large or towards a class of individuals. In the former case, no action would lie at the suit of the individual even though he might suffer special damage, unless indeed he could bring himself within the principle of the Railway cases to which later reference would be made; in the latter, an action would lie if the individual could bring himself within the class for whose benefit and protection the statute imposed the duty. One test as to the intention of the legislature was as to whether the statute provided a special remedy for a breach, in which case it might be held to be exclusive and to deprive an individual of any other remedy. The fact that, as in the present case, a penalty imposed for a breach of the statutory provisions had little significance in determining whether the legislature intended that there should be no other remedy. The effect of the cases, there cited in support, stated in **Salmond on Torts** (7th Ed.) 639, to be: "A pecuniary penalty payable wholly to the Crown has comparatively little significance in excluding an action for damages, but if the penalty goes or may go in whole or in part to the injured persons, much greater weight may rightly be attached to its existence. In neither case, however, is this consideration conclusive."

The important questions then were: (1) Do the Aviation Act, 1918, and Regulations impose a duty? (2) Is that duty towards the public at large or for the benefit and protection of a class of individuals? (3) If the latter, did the deceased come within that class? A number of cases were cited, all of which His Honour had considered, but he thought it unnecessary to refer to more than two. In **Grand Trunk Railway v. McAlpine** (1913) A.C. 838, a Canadian Railway Act provided *inter alia* for sounding a whistle at certain points and for certain other precautions when passing over a highway in a city, town, or village. His Honour quoted Lord *Atkinson* who delivered the opinion of the Judicial Committee at p. 846. The other case was one which was much referred to and discussed: **Phillips v. Britannia Hygenic Laundry Coy. Ltd.** (1923) 1 K.B. 539, and in the Court of Appeal (1923) 2 K.B. 832. The facts in that case were that under regulations which had the effect of a statute it was provided *inter alia* that "the motor car and all the fittings thereof shall be in such a condition as not to cause, or be likely to cause, danger to any person on the motor car or on any highway." Owing to a defect in the axle of the defendant's motor lorry a wheel came off while the lorry was being driven in a public highway and damaged the plaintiff's van. No negligence was imputed to the defendant, and it became a vital question whether the plaintiff could recover damages for the bare breach of the statutory obligation. It was held that he could not. In the Divisional Court the principal judgment was delivered by Mr. Justice *McCardie*—(*see* his judgment, p. 544), in which he concludes as follows: "The governing principle, in my view, is still as it used to be, in spite of recent decisions. It is this: If a statute creates a new duty or imposes a new liability, and prescribes a specific remedy in case of neglect to perform the duty or discharge the liability, the general rule is that no remedy can be taken but the particular remedy prescribed by the statute." His Lordship did not, however, go further, and say that the fact that the Regulations prescribed a penalty was a bar to an action for damages for injuries suffered based on the statutory breach, but proceeded to show, by reference to the authorities, that the law was that to recover damages it must be shown that the regulation was for the benefit of a particular class, and adopted as the dominant test that stated by Lord *Kinnear* in **Butler v. Fife Coal Co.** (1912) A.C. 149, at p. 165. To that observation, Lord Justice *Atkin* in the Court of Appeal, at p. 841 took exception, although agreeing that the appeal should be dismissed. His Lordship's judgment was important (*q.v.*) And for reasons there stated, His Lordship held that it was not likely that the Legislature intended, by means of the regulations referred to, to impose on the owners of vehicles an absolute obligation to have them roadworthy in all events even in the absence of negligence. The judgments of the two other Judges in the Court of Appeal, *Bankes*, L.J., and *Younger*, L.J., did not throw any further general light upon the question, nor did the judgment of *Bailhache*, J., in the Divisional Court.

His Honour next considered the Act and Regulations in the present case. The Aviation Act, 1918, authorised the making of regulations for various purposes incuding *inter alia* conditions on which flying certificates might be granted or cancelled

and the issue and cancellation of licenses authorising the use of aircraft, and prescribing fines for offences against such regulations not exceeding £100 for any such offence. The Act provided (s. 5) for a fine of £100 for every person who not being the holder of a flying certificate had control of an aircraft in flight. The several regulations were comparatively short, but referred to lengthy schedules which had effect as part of the regulations (cl. 7). The regulations were divided by sub-headings. The first was "General Conditions of Flying." Under this heading were included provisions prohibiting flying unless certain conditions were complied with, including a requirement that the personnel should be licensed in the prescribed manner. The second was "General Safety Provisions." These regulations dealt with and prohibited flying over cities and towns except at an altitude that would enable the aircraft to land outside the city or town in case of engine failure, and prohibited trick flying over towns or cities or closely-populated districts or dropping things from the aeroplane. His Honour here observed that those provisions clearly were made for the safety of the public. A penalty attached to a breach of those regulations, but could it be successfully contended, either on the ground that the penalty was the sole remedy, or that no particular class but only the general public was intended to be protected, that people injured by the fall of an aeroplane from engine failure when travelling at a low altitude in breach of the regulations, could not recover damages? It was clear upon the principle of the Railway cases referred to by Lord *Atkin*, that an action for damages would lie based on the breach. That too without calling in aid cl. 8 to which His Honour later referred. The next cross-heading was "Penalties" which provided for a penalty of £100 for breach of any of the Regulations. Then followed: "Power to suspend Licenses and Certificates." The other cross-headings His Honour said he did not need to refer to, but he came to the important cl. 8 which provided that "Nothing in these regulations" (which included the schedules) "shall be construed . . . as prejudicing the rights or remedies of any persons in respect of any injury to persons or property caused by any aircraft." This clause, he thought, conserved to any person injured whether one of a particular class or not the right to damages for injury caused by an aeroplane improperly handled. The regulations prescribed conditions which were deemed essential for the safety of the public; if the pilot of an aeroplane rashly transgressed those precautionary conditions and injury was proved to be caused thereby, His Honour thought it was clear that damages might be recovered.

His Honour now came to the schedules. The first provided for the certificates of Pilots of flying machines which were denominated "A" and "B." "A" is described as "Flying certificate for private pilots (*not valid for flying passenger or goods aircraft*)"; and "B," "Pilots' flying certificate for flying passenger or goods aircraft." The qualifications required to obtain those certificates were set out, and it would be at once seen that a very much higher degree of skill and of physical and mental health was required for a Pilot desirous of obtaining a "B" certificate then for an "A." Further, the regulations provided for a very strict oversight of passenger aircraft: requiring (schedule 3 (3)) that they be inspected, overhauled, and certified as airworthy at such times as the Air Board might direct. Engines were to be taken down, inspected, and completely overhauled after a certain number of hours of flying time specified according to the type of machine, and in addition a complete overhaul every six months irrespective of the number of hours run. It was further provided "No passenger aircraft *carrying passengers* shall on any day proceed on any journey unless it has been previously inspected at least once that day by a competent person licensed for that purpose under the regulations, who shall not be the pilot of that particular machine." Certificates signed and countersigned must be given of this being done, and a further certificate of the pilot that in his opinion the aircraft was in a satisfactory condition and did not carry more than the load specified in the certificate of airworthiness. Now, none of these conditions attached to a private aircraft, and, when coupled with the high qualifications required for the pilot of a passenger-carrying aircraft, pointed irresistibly to the conclusion that those requirements were for the benefit and protection of passengers travelling by aircraft licensed for flying passengers. Therefore, even if it were necessary to bring the deceased within a special class to enable damages to be recovered, this had been done.

His Honour was, therefore, of opinion that the present action was well founded on the breach of statutory duty by the defendant company, and that the plaintiff is entitled to damages unless the defendant was exonerated from any claim in respect of the breach of statutory duty by the terms of the contract endorsed on the ticket. If it were proved that the deceased was aware of the breach, and contracted to exonerate the defendant company notwithstanding such breach, it might be a question whether on the ground of public policy such a contract would stand: **Baddeley v. Granville,** 19 Q.B.D. 423, 426. It was unnecessary to decide that, for there was no evidence that he knew anything about it; and it could not be presumed that he acquiesced in a breach of the law.

The legal position, His Honour thought, was that although the terms of the contract were wide they could not be construed as including exoneration in respect of a claim for a breach of a statutory duty of which the deceased knew nothing. The question might be considered from another aspect, that was to say that the contract must be presumed to have been entered into on the implied condition that all statutory duties prescribed for the protection of persons travelling by aircraft licensed for that purpose had been duly complied with. The test as to whether a condition should be implied into a contract appeared to be as stated by *Vaughan Williams*, L.J., in **Krell v. Henry** (1903) 2 K.B. 740, at 749; and later (p. 752) he referred to **The Moorcock,** 14 P.D. 64, as showing that whatever was the suggested application—be it condition or warranty or representation, "One must, in judging whether the implication ought to be made, look not only at the words of the contract, but also at the surrounding facts and the knowledge of the parties of those facts. There seems to me to be ample authority for this proposition."

Now, what were the surrounding circumstances in the present case, His Honour asked. The defendant company invited passengers to travel by their aircraft and tendered them a ticket which they were required to sign and which had endorsed upon it a printed set of conditions. There was no bargaining as to the conditions—the prospective passenger could take it or leave it—those are the terms upon which they would be carried. Surely it must be a necessary implication in such a contract that the aircraft in which they were to be carried was airworthy, and that the pilot was possessed of the necessary certificate evidencing his qualifications as in each case provided by law. The present case was stronger than the shipping cases in which it had repeatedly been held that in a contract exculpating the shipowner from liability for negligence there was an implied warranty of seaworthiness. An express provision in the contract might exclude such implied warranty, but it must be in the most explicit terms. If it did not so exclude it, the contract was construed as referring to negligence during the voyage and not to a breach of the antecedent obligation to provide a seaworthy vessel: **Steel v. State Line Insurance Coy.,** 3 A.C. 72; **The West Cock** (1911) P.D. 23, and in the Court of Appeal, 208.

Counsel for the defendant had submitted that there should be taken into consideration the fact that there was a condition of emergency following the earthquake and the desire of the deceased to leave Gisborne. Unless it could be shown that this condition of affairs induced the deceased to waive the statutory requirements, His Honour could not see how this affected the position. The defendant company actually increased its fares during this time of stress, so it could not be claimed that any philanthropic motive induced the breach of the law.

His Honour thought, therefore, that the plaintiff was entitled to succeed and it became a question of the amount of damages. The widow had one child aged five. The deceased was a comparatively young man and in perfect health. At the actual date of his death, and allowing for reductions in commission and a five per cent. "cut," both due to the present financial stringency, he was in receipt of a salary of about £470 a year. His employer stated that "he was a man of considerable promise and had every prospect of promotion." His life insurance policy produced £570 odd. He had built a house and there was a mortgage upon it of £1,250. Owing to the bad times his administrator considered there is no equity in it. It has been in the hands of agents at £1,500 without being able to effect a sale. It had been let furnished at £2 2s. 6d. per week. His Honour thought that, making all due allowances, a sum of £3,000 would be fair damages.

Judgment for the plaintiff accordingly for the sum of £3,000.

Solicitor for the plaintiff: **M. O. Barnett,** Wellington.

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

Kennedy, J. September 23, 24; October 7, 1931. Christchurch.

In re GALLAGHER (DECEASED): WALES v. PUBLIC TRUSTEE AND ANOR.

Will—Interpretation—Bequest of Residue for "Thomas Wales of Lyttelton Tobacconist"—No One answering both Name and Description—William Wales formerly a Tobacconist at Lyttelton—Thomas Wales of Lyttelton a Mercer, but a Tobacconist's Assistant some Years before Date when Will was made—Which Person, if either, designated by the Testator—Principle to be Applied.

Summons for interpretation of will, dated July 2, 1925, of Frank Gallagher of Waipu, Farmer, in which, after a bequest to "my friend Laurie Lambert of Gisborne Station Manager" of £200, he bequeathed the residue of his estate to the Public Trustee for "Thomas Wales of Lyttelton in the said Dominion Tobacconist." Deceased was about sixty-seven years of age at his death in 1930. He had been born in the Lyttelton District and up to the year 1910, and except for a period of about 8 years when he lived in Addington, had made his home in that district to which, when not working elsewhere, he would return. In 1910, he was committed to Pakatoa for a year and on his release he paid a visit to Lyttelton leaving about 1913 for the North Island, where he remained until his death seventeen years later. At the date the will was made, there was in Lyttelton a William Wales properly described as of that town who had all his life been a tobacconist but who, because of a serious illness, had passed over his business to his son, S. W. Wales. There was also resident in Lyttelton a half-brother, Thomas Wales, who at the date of the will was a mercer carrying on a business which he had commenced after the deceased finally left Lyttelton. He had, however, to the testator's knowledge, worked when a young man in his brother's tobacconist shop to which he returned for a time after a short period of service elsewhere. The present proceedings were brought to determine which person, if either, was designated by the testator as the object of his bounty—William Wales or Thomas Wales.

Held: Extrinsic evidence admissible to show testator's knowledge and relationship to persons claiming to be object of his bounty, and the existing circumstances at date of making his will. Duty of Court to adopt description of beneficiary appearing to be least open to error, and such portion of such description to which the greatest intensity of force or meaning applies. On application of such principle to proved facts of circumstances herein, the name prevailed over the description, and Thomas Wales entitled to residue of testator's estate.

Sim for plaintiff.
Cuthbert for Public Trustee.
Upham, White with him, for Thomas Wales.

KENNEDY, J., said that on the face of the will there was no difficulty, but difficulty arose when the will was to be applied because it then appeared that Thomas Wales of Lyttelton might once have been described as a tobacconist but had not been engaged in that business at the date of the will nor for a considerable time before, whereas William Wales may properly be described as a tobacconist but the testator described the beneficiary as Thomas, and not as William, Wales. There was no one who answered both name and description. There was some one who answered the name and some one who answered the description. The will itself afforded no assistance such as was the case in **In re Lord Blayney,** Ir. R. 9 Eq. 413, and **In re Nunn's Trusts,** L.R. 19 Eq. 331.

Extrinsic evidence was admissible to show the circumstances existing at the time the testator made his will and his knowledge of and relationship to the various persons claimed to be the object of his bounty. As the Lord Chancellor (Lord *Cairns*) said in **Charter v. Charter,** L.R. 7 H.L. 364 at p. 377, ". . . there is a class of evidence which in this case, as in all cases of testamentary disposition, is clearly receivable. The Court has a right to ascertain all the facts which were known to the testator at the time he made his will, and thus to place itself in the testator's position, in order to ascertain the bearing and application of the language which he uses, and in order to ascertain whether there exists any person or thing to which the whole description given in the will can be, reasonably and with sufficient certainty, applied." There was no presumption that the name was to prevail over description: see **Drake v. Drake,** 8 H.L. Cas. 172 per Lord *Campbell* at p. 179; or the description over the name; and although it has been said by some text writers that the description has generally prevailed over the name—see for example **Jarman on Wills,** 7th edn., p. 1228, the books contained, as that learned author pointed out, many instances on both sides. The principle of the cases was stated in **Bernasconi v. Atkinson,** 10 Hare. 345, at p. 352, to be that "where there are two descriptions—where the testator specifies in two different ways the object of his bounty, the Court adopts that which, in each instance, appears to be the least open to error." In **Garland v. Beverley,** 9 Ch. D. 213 at p. 216, *Fry*, J., after noting that there was before him "the case of a devise in which the object of the devise is described in language which in its entirety fits no existing person," said: "In that state of circumstances, the question which I have to answer is this, in which portion of the language by which the object of the testator's bounty is described must I assume the greatest intensity of force or meaning to reside? In which is it most likely that the testator was careful and exact? In which is it most likely that he was careless or inexact? In which part of the entire description is there the greater, and in which is there the lesser, probability of error?" That learned Judge repeated the same question in the Court of Appeal in **In re Taylor, Cloak v. Hammond,** 34 Ch.D. 255 at p. 260, where he said: "The testatrix gave one moiety of her property to her cousin Harriet Cloak. There is no person who strictly fulfils this description. One of the claimants is not a cousin of the testatrix, and the other's name is not Harriet Cloak. Which of them is to succeed? It appears to me plain that there is such an ambiguity that evidence may be admitted as to the state of circumstances known to the testatrix. . . . Is it in the name or in the description as 'cousin' that the greatest force or intensity of meaning is to be found? In my opinion the name is that part of the description which is most emphatic. It is more likely that a man, in speaking of another by his name and relationship, would be right in the name than in the relationship. Although Harriet Cloak was not a cousin of the testatrix, she was the wife of a cousin, and such a person might be popularly called a cousin."

It became necessary then to refer to the circumstances known to the testator, His Honour continued, but, before considering that evidence, he might say that evidence of declarations by the testator as to whom he had benefited by his will, was admissible when the description of the legatee was equally applicable to two persons: see **Charter v. Charter** (*supra*) but in the present case, as there was no equivocation, it was necessary to divest the mind of evidence inadmissible, in the circumstances, to prove intention.

The deceased had had a wild youth, and was intemperate in his habits. He worked as a drover and musterer, rarely coming to Lyttelton but going, on his return, to his father's or brother's farm. From about 1901 until 1905, he was living at Addington. He was on friendly terms with all the members of the Wales family without any special association with William Wales until the deceased took over the farm from which a milk run was carried on at first by his father and then later by his brother. This he carried on from 1906 until about 1910. During this time the deceased frequently called at the saloon of William Wales partly on business and partly for gossip. His Honour accepted the view that deceased and William Wales were on friendly terms. Deceased was slightly older than William Wales.

Thomas Wales was some twelve years younger than William Wales and about eighteen years younger than the testator. There was evidence by those familiar with the home of a friendly attachment of the deceased to Thomas Wales whom he called "young Tom" or "my boy," which continued when Thomas Wales grew older and went shooting on the Gallagher farm where he was welcomed. His Honour was disposed to think that this went beyond the attention which any grown up man might show for a young person by reason of the evidence showing, so far as the deceased was concerned, a special interest in Thomas Wales in later years. The deceased was doubtless familiar with the names of all the Wales family before they had occupations. There was a dispute as to the length of time during which Thomas Wales worked for his brother and as to whether he was merely a soap boy, or whether he performed ordinary work in a tobacconist's shop. His Honour was satisfied that a mistake has been made by William Wales and that his brother had a longer period of service with him and was known to Gallagher as working in the tobacconist's shop of William Wales. Thomas Wales also worked for a mercer named Maher, being first merely a runner for the boats, and, later, he was engaged in travelling on the Banks Peninsula for orders. While Thomas Wales worked for Maher, the deceased was committed to Pakatoa. No communication was received from the deceased; but it is clear from the evidence of Laurie Lambert that the deceased after his removal to the North Island continued an

interest in a person whom he referred to as "young Tom Wales" rather than in William Wales. There was no very special reason, apart from friendship, why the deceased should have singled out either William Wales or Thomas Wales as the object of his bounty. His Honour found it proved that he did have a continued interest in Thomas Wales rather than in William Wales and he thought, from a state of mind, disclosed by frequent reference to "young Tom" or "Tom Wales," that, in the language of Lord Justice *Fry*, it might be said that there was the greatest intensity of meaning in the name and in the language of the Vice-Chancellor in **Bernasconi v. Atkinson** (*supra*) it is probable that of two descriptions, namely, the name and occupation, there is the least probability of error in the name. The description of the occupation of the other beneficiary with whom the testator kept up a correspondence and whose occupation he almost certainly knew was a magnification of an earlier occupation. Lambert, who was a shearing-machine expert and had worked many years before as a station hand for a year, had been described by the testator as a "Station Manager." Although there was no overwhelming weight, there was sufficient in the circumstances to preponderate in favour of the name. There would, therefore, be a declaration that Thomas Wales formerly of Lyttelton, but now of Colydon, was entitled to the residue of the testator's estate.

Solicitors for plaintiff: **Duncan, Cotterill and Co.**, Christchurch.

Solicitors for defendant, Thomas Wales: **Harper, Pascoe, Buchanan and Upham**: Christchurch.

Kennedy, J. September 1; 23, 1931. Oamaru.

HOLLOWAY v. R. C. AND J. J. COOK.

Mining—Water-Race License—Application for Restoration of License to Register—Principles upon which Court will give Relief—Form of Order to be made—Mining Act, 1926, ss. 188, 189, 204, 207; Regulation 3.

Appeal from the decision of a Warden ordering restoration of a license for a water-race which had been struck off the register. The license was originally granted in accordance with the Gold Fields Act, 1866, and was renewed from time to time with alternations and extensions. It was admitted that it was validly subsisting on February 1, 1899, and that by virtue of s. 2 of the Mining Act Amendment Act, 1900, it was deemed to have been lawfully granted under the Mining Act, 1898 and the provisions of that Act applied subject to the following special modification, namely, that (a) the licensee's priorities and other rights in respect of the race and the water (including his right to sell or otherwise to dispose of the water) should continue as they were immediately prior to the commencement of the Mining Act, 1898, and that (b) the license should be deemed to have been granted for a term of years commencing on the date of the original grant and expiring on February 1, 1941. The license was in the name of the Maerewhenua Water Race Company Registered; but from the year 1886 it appears in the name of Richard Cook. Richard Cook died in 1918 leaving a will in which he bequeathed "my water race" to John James Cook. Probate of the will of Richard Cook was granted on December 17, 1918, to Richard Clark Cook but no transmission of the water license was registered. In 1923, the license was struck off the register by the Registrar.

Held: Restoring License to Register subject to the conditions set out in the judgment, that the evidence had not established a wilful or intentional abandonment in fact of the whole water-race as distinct from a statutory or constructive abandonment in law.

Farrell for Applicants.

Pollock for Holloway (objector).

KENNEDY, J., said that the provision in force in 1923 empowering the Registrar to strike the license off the Register was s. 30 of the Mining Amendment Act, 1914, as amended in 1922. That section and s. 5 of the Mining Amendment Act, 1924 appeared as ss. 188 and 189 of the Mining Act, 1926. By s. 5 of the Mining Amendment Act, 1924, which had retrospective force, the mining privilege, if not restored to the register, was deemed to have been determined as from the date of the *Gazette* containing the notice of removal. It was immaterial whether s. 5 of the Mining Amendment Act, 1924 applied, or whether s. 189 of the Mining Act, 1926 applied by virtue of s. 128 of that Act, for in effect those provisions were identical.

The restoration was to be ordered, if it were just so to do. The Registrar might act only if he had reasonable cause to believe that a registered mining privilege is not in operation. At the time the Registrar had commenced the procedure to strike off and at the time the registered privilege had been struck off the register, it was clear that, in fact, the mining privilege was in operation and being fully used not by the registered holder but by a person entitled to be registered in terms of the registered holder's will. Application for restoration may be made not only by a registered holder but by any other person who feels aggrieved by the mining privilege being struck off the register. The qualification of a miner's right was not required to acquire a mining privilege by transmission: see Reg. 3 of the Regulations made under the Mining Act, 1898 or under the Mining Act, 1926. The race had about two years before been cleaned out and repaired, and His Honour was satisfied by the evidence of John James Cook that it was in operation and use in 1923 throughout the whole of its length. The executor of Richard Cook and John James Cook deposed to having received no notice from the Registrar; but, as neither was registered as a holder of the mining privilege the statute did not require that they should have notice. About two years after the license for a water-race was struck off the register, water ceased to be lifted from the Maerewhenua Stream and four or five miles of the head of the race fell into disrepair and was not used; but the race continued to be used to carry water from about Spring Creek downwards. Richard Cook decd. had a right to lift water from Spring Creek and also from Stony Creek and water was lifted from these creeks, and, for a time, after the disrepair of the head works, out of the Mosquito Race. The water coming down the race was conveyed to the place of opeations by a branch race which was not the subject of any grant by the Warden.

His Honour continued that it was impossible to disregard altogether some circumstances existing either when the license was struck off the register or subsequently to that date. If at the earlier date or subsequently, there had been an actual and intentional abandonment in fact of the whole mining privilege, then justice did not require that the privilege so abandoned should be restored to the register. The executor of the will of Richard Cook and John James Cook neglected to put their title in order, but the whole race was not so abandoned as part had more or less continuously been used to carry water from other sources. Intentional abandonment in fact, was only to be inferred by cogent evidence of express declarations or of unambiguous acts or conduct; and the smallest act *animo possidendi* is sufficient to negative such intention: **Walhalla Gold Mining Co. v. Mulcany,** 40 L.J.P.C. 41, at p. 44. His Honour thought, although there was neglect for a long period under a misapprehension as to what was required or as to what had been done to register transmission and a transfer, that it was just that restoration should be ordered. While the license was off the register other rights inconsistent with it may have been granted and restoration ordered should, he thought, in the circumstances of the present case, be subject to those rights. Restoration was therefore properly ordered but subject, as the Warden provided, to the condition that the licensee should assert under his license no right in priority to rights granted in derogation of the license while it was off the register. Where an application had been made by another for a grant, but, before that application was finally dealt with, restoration was ordered, any consideration which was due to the applicant because of his reliance on the register might be met, as the Warden in fact ordered, by an allowance of costs. An application for restoration to the register was not an application to the Warden for the grant, surrender, exchange, amalgamation, or protection of mining privileges within the meaning of s. 136 of the Mining Act, 1898, or of s. 169 of the Mining Act, 1926, and the Warden was not bound, as contended, by s. 136 (3) of the former Act or by s. 169 (c) of the later Act to refuse the order for restoration, because of the objector's earlier application for a grant.

It had been finally objected that the Court should refuse restoration when there was evidence before it of a liability to forfeiture or evidence of abandonment by operation of law. His Honour said he had indicated that, in the evidence before him there was not established a wilful or intentional abandonment in fact of the whole race as distinct from a statutory or constructive abandonment in law. The relevant Mining Acts furnished a special procedure for dealing with forfeiture or with abandonment by operation of law with, in appropriate cases, power to fine, or, where there was liability to forfeiture as to the whole or a portion of a mining privilege or abandonment, to grant a license for a corresponding mining privilege for the unforfeited or the unabandoned portion: see the Mining Act, 1908, ss. 160 and 163, and the Mining Act, 1926, ss. 204 and 207. The presence of the provisions mentioned, gave power effectively to work out the rights of the licensee and of others who might be concerned to allege a liability to forfeiture or an abandon-

ment by operation of law. His Honour thought then that it was in the present appeal not necessary to express an opinion on some matters argued before him and undesirable as such matters might come before the Warden on fuller evidence. The convenient as well as just course was to restore the license to the register without determining any question as to the liability of the mining privilege to forfeiture in whole or in part or as to its abandonment by operation of law leaving unaffected the rights of all persons concerned to apply for a decree of forfeiture or for a certificate of abandonment as to the whole or as to a portion of the mining privilege. This was what, in fact, the learned Warden did. The appeal was therefore dismissed and the license ordered to be restored to the register subject to the following conditions, firstly that the licensee claiming under the license submit, as prior thereto, to all rights granted by the Warden from the date that the license was struck off the register until the time of its restoration and in particular as regards the south branch of the Maerewhenua to the prior rights of Robert John Smith, Hamilton Corbett Smith and John Gerald Cole under License for a Water-race registered in the Warden's Court, Oamaru as No. 13 M.P. folio 39 on September 26, 1930; and, secondly, that the restoration was without prejudice to the rights of all persons concerned to apply for a decree of forfeiture or a certificate of abandonment as to a whole or as to a portion of the mining privilege so restored to the register. The order made by the Warden, as varied by the above addition, affirmed.

Solicitors for applicant: **Hjorring, Tait and Farrell,** Oamaru.
Solicitors for objectors: **Lee, Grave and Grave,** Oamaru.

Kennedy, J. October 20, 1931.
Timaru.

DRYDEN v. RAYMOND AND CAMPBELL.

Practice—Joinder of Further Defendants—Opposed by Plaintiff—Onus on Applicants to Show that Parties Should be Added—Code of Civil Procedure, R. 90.

Summons by Defendants as executors of the will of the late Jeanette Priscilla Dryden to add further defendants. The order asked for was (*inter alia*) that the personal representative of a deceased testator should be joined as a defendant.

Held: Dismissing Summons, as Order had been opposed by Plaintiff, who, by the general rule, would not be compelled against his will to add a defendant, it lay upon the applicants to show that parties should be added. Insufficient material before the Court to show that they were entitled to the Order sought.

KENNEDY, J., said that the plaintiff opposed the order, and, as the general rule was that a plaintiff would not be compelled against his will to add a defendant, (see **McCheane v. Gyles** (1902) 1 Ch. 911), it lay upon the applicants to show, at this stage, that parties should be added in accordance with Rule 90 of the Code of Civil Procedure. The plaintiff contended that his claim was against the present defendants, and that others should not be brought in as defendants to determine claims, not by the plaintiff, but by others who might have similar claims against the present defendants. The order asked for was that the personal representative of a deceased testator should be joined, but no more had been suggested and it did not appear who the personal representative was, and there seemed some probability that the present plaintiff was next of kin. Such being the position as far as disclosed, His Honour was unable to say that the defendants had established their right to the order asked for. It might upon further material, appear that they are entitled to an order, and that the plaintiff's own action might fail as to part without such joinder. He was able to deal with the matter, however, only upon the pleadings as they stand and upon the material then before him.

There was no reason shown why Edith Muriel Kennedy Martin should be joined as a party. There were no special circumstances disclosed why the present defendants could not adequately represent persons other than the plaintiff beneficially interested under the will of the late Janette Priscilla Dryden: see **In re Cooper, Cooper v. Vesey** (1882) 20 Ch. Div. 611, 635, and **In re Bowden, Andrew v. Cooper** (1890) 45 Ch. Div. 444 447

Summons dismissed.

Solicitors for plaintiff: **Tripp and Rolleston,** Timaru.
Solicitors for defendants: **Raymond, Raymond and Campbell,** Timaru.

Ostler, J. November 19, December 11, 1931.
Napier.

IN RE WITHEROW (DECEASED): SCHEELE v. HOWARD AND OTHERS.

Will—Interpretation—Half Income to Wife for Life, Other Half Equally to Daughter and Sister-in-law Jointly; on Wife's Death Whole Income to them Jointly in Equal Shares—Contradictory Direction to hold Corpus of Estate after Wife's Death In Trust for Daughter Subject to Charge of One-quarter of Income in Favour of Sister-in-law—Further Inconsistency to effect that if Sister-in-law Survived Testator's Wife and Daughter, Latter Leaving no Surviving Issue, Corpus to Sister-in-law.

Originating summons for the interpretation of the will of Joseph William Witherow of Patangata, who died on November 12, 1904. The plaintiff is a daughter and the only child of the testator. The first defendants are the executors and trustees under the will, and the second defendant is a sister-in-law of the testator and a beneficiary under his will. The testator's wife survived him and died on August 8, 1923. The trustees have ever since the testator's death carried on his business as a sheepfarmer on his estate. The affidavits filed by plaintiff in support of the originating summons and the affidavits filed by the trustees in reply raised several controversial subjects which could not be determined on originating summons; but counsel for the parties agreed that in these proceedings all they sought was an interpretation of the will.

The will, after making certain bequests, devised the residue to the trustees upon trust for sale, conversion, and investment, and upon trust as to half of the income for his wife for her life and as to the other half for his daughter and sister-in-law in equal shares during their joint lives. Upon the death of the sister-in-law, her share of the income was to go to his daughter; and, upon the death of his daughter without leaving issue, her share was to go to the sister-in-law, and after her death to his wife. If the daughter died leaving a child who being a male should attain the age of 21 years, or being a female should attain that age or marry, such child or children were to take the daughter's share of income. The trustees were given wide powers to postpone conversion and to carry on the testator's business of sheepfarming, and the income from such business was to be applied as though from investments. The will then proceeded in the following words: "I declare that after the death of my said wife the half income reserved for her shall be paid to my daughter and my sister-in-law hereinbefore named equally so long as they shall both live and after the death of my sister-in-law the whole shall go to my daughter or if my daughter die leaving issue then to such issue I declare that after the death of my wife my Trustees shall hold my trust estate upon trust for my daughter or her issue if any subject during the life of my sister-in-law to a charge in my sister-in-law's favour of one-fourth of the income I empower my Trustees to settle and adjust the said one-fourth or an estimated equivalent per annum and to see same secured in such manner as they think proper and in the event of my wife surviving my daughter and my daughter leaving no child her surviving then I declare that my said trust estate shall devolve on my wife absolutely but subject during the life of my sister-in-law to the same charge in favour of my sister-in-law and with the same incidents as hereinbefore lastly mentioned and in the event of my said sister-in-law surviving my wife and my daughter and of the latter leaving no issue then my said Trustees shall hold my said trust estate for my sister-in-law absolutely. . . ."

Held: Sister-in-law, after wife's death, entitled to half income of corpus for life, but to charge of only one-fourth of total income. Once estate vests in daughter or wife, it should not be divested if sister-in-law survives them.

Grant for plaintiff.
J. Humphreys for defendants.

OSTLER, J., after reciting the above-stated terms of the will, said it would be noticed that there was an apparent contradiction in the will. After clearly providing that after the death of his wife her half share of the income was to be paid to his daughter and his sister-in-law equally, so that daughter and sister-in-law after the death of his wife were in effect to receive half of the income each, it went on to provide that after the death of his wife the trustees should hold the estate upon trust for his daughter or her issue subject to a charge in favour of his sister-in-law of only *one quarter* of the income. There was a further contradiction in that having on the death of his wife clearly given the corpus of the trust estate to his daughter subject only to a charge in favour of his sister-in-law of one

fourth of the income for her life, he went on to provide that in the event of the sister-in-law surviving his wife and his daughter and his daughter leaving no issue then the corpus of the estate is to go to her. These inconsistencies had made the present proceedings necessary.

With regard to the first inconsistency there was a rule that where in a will there were two irreconcilable gifts, if the Court can find nothing else to assist in determining the question, the latter clause was to prevail, as being the last expression of the testator's wish. But that rule was only used as a last resort, and if there were no other way of reconciling the conflicting provisions. It was the duty of the Court to read the will as a whole, and where there were inconsistent provisions to attempt to reconcile them without straining the meaning of the language used, so as to make the whole consistent with the apparent intention of the testator. It seemed to His Honour that by adopting that principle those apparently conflicting provisions could be reconciled. It was clearly provided that the sister-in-law, after the death of the wife, was to have half the income of the estate for her life. It was also clearly provided that she was entitled to a charge on the estate only for a quarter share of the income. He saw no reason why he should hold that that was not the intention of the testator, and in this way the two provisions were reconcilable. He interpreted the will accordingly: the wife having died, the sister-in-law was entitled to half the income for her life; but she was entitled to a charge on the estate for only one fourth of the total income, or for half of the income to which she was entitled.

With regard to the second inconsistency, there was a clear gift to the daughter, if she survived his wife, of the corpus of the estate. It was intended that as soon as the wife's life interest in the income ceased, if the daughter survived, the whole estate was to vest in her. If that were not intended, there was no necessity to provide for a charge on the estate in favour of the sister-in-law. It was equally clearly intended that if the daughter died before the wife but left issue, the corpus should vest in the issue; but that if the daughter died before the wife without leaving issue, the corpus was to vest in the wife. What then did the testator mean by the use of the words "and in the event of my sister-in-law surviving my wife and my daughter and of the latter leaving no issue then my said Trustees shall hold my said trust estate for my sister-in-law absolutely"? In His Honour's opinion, no more was intended than to provide against a possible intestacy in the event of the daughter and the wife dying before the estate became vested in either of them or in the daughter's issue. That could only happen if the wife and the daughter died in the testator's lifetime, and the daughter left no issue alive at the time of the testator's death. The testator could not have contemplated after providing for the vesting of the estate in the daughter that it might be subsequently divested if the sister-in-law survived her. The rule was that if property were given to a person absolutely in a will, and were then given to another person in the event of the first one's death, the gift was construed as a gift over in the event of the death of the first donee before the period of distribution or vesting, unless some other period is indicated by the context: **Penny v. Commissioner of Railways** (1900) A.C. 628, at 634; **Elliott v. Smith,** 22 Ch. D. 236; **O'Mahoney v. Burdett,** L.R. 7 R.L. 388, at 400. There was also a rule that a gift in a will in terms absolute cannot be cut down unless there is a clear indication in a subsequent clause that it was the testator's intention. The leading case for this rule is **Randfield v. Randfield,** 8 H.C.C. 225. His Honour could not find in the clause cited, any intention that if the estate had once vested in the daughter or in the wife it should be divested if the sister-in-law survived.

The questions in the originating summons were accordingly, answered as follows:

(a) What interest does the plaintiff take in the corpus of the estate? *Answer*: The plaintiff takes the whole of the corpus of the estate and can call on the trustees to transfer the estate to her subject to a charge in favour of the second defendant for one-fourth of the income, the trustees having the power to settle and adjust the one-fourth share or an estimated equivalent sum per annum and to see that it is secured in such manner as they think proper.

(b) What interest does the plaintiff take in the income of the estate? *Answer*: One half.

(c) What interest does the second defendant take in the income of the estate? *Answer*: One half.

Question (d) was answered in the answer to question (a).

Solicitors for plaintiff: **Sainsbury, Logan and Williams,** Napier.

Solicitors for defendants: **Humphries and Humphries,** Napier.

Court of Arbitration.

Frazer, J. December 21, 1931.
Christchurch.

NORTH CANTERBURY SHEEP-FARMERS' CO-OP. FREEZING EXPORT AND AGENCY CO. LTD. v. GRAHAM.

Industrial Award — Breach — Pie-pickers Engaged under Agreement Equivocal in Terms—Hours not Regulated by Award—Men Not Under Effective Control by Management—Whether Independent Contractors or Workers Subject to Award.

Appeal from a determination of the Magistrate's Court at Christchurch, whereby the appellant company was adjudged to pay a sum of £2 by way of penalty to the respondent, as Inspector of Awards, in respect of a breach of Northern, Taranaki, Wellington, Marlborough, Canterbury and Otago and Southland Freezing Works and Related Trades Employees' Award, dated the nineteenth day of December, 1929. The plaintiff (respondent) an Inspector of Awards, had claimed the recovery of a penalty for alternative breaches of Award: (a)"The defendant being a party bound by the provisions of the said Award did during the period between the 20th December, 1930, and the 12th August, 1931, employ Messrs. S. W. Anderson and W. J. S. Ryan on pie-picking from the sweated heap and did fail to pay the said workers not less than the minimum rate of wages as prescribed by clause 4 of the said award," or alternatively (b) "That the said defendant did between the 20th December, 1930 and the 12th August, 1931, employ Messrs. S. W. Anderson and W. J. S. Ryan on pie-picking from the sweated heap at piecework rates without obtaining the agreement of the Freezing Workers' Industrial Union of Workers as provided by clause 20 of the said award."

The case was heard at Christchurch on October 8, 1931, and a copy of the notes taken by the Stipendiary Magistrate at such hearing, and also of the exhibits therein referred to, were set out in the Case on Appeal.

The contract referred to in the judgment was in the following terms: "Season 1930-31. We the undersigned agreed to handle the whole output of pie wool at the N. C. F. Coy.'s Works at Kaiapoi by contract or piecework at the rate of One Shilling and five pence (1s. 5d.) per Ten lbs. (10 lbs.)." It was signed by W. J. S. Ryan and S. W. Anderson, and by the Company's Works Manager.

The Magistrate held that there had been a breach of the award as far as the first part of the claim was concerned, and gave judgment for the plaintiff for the sum of £2 and witnesses' expenses. From this judgment, the present appeal lay.

Held: Disallowing appeal, that on the facts of the services performed by the men they were in same position as piece-workers. Contract was contract for labour at less than wage payable to pieceworkers under Award. Pie-pickers were left free by Award and employers to regulate their own hours, and to be without effective supervision by management. Workers in question were accordingly not independent contractors but subject to the Award as piece-workers.

Lascelles for appellant company.

W. J. Hunter for respondent.

FRAZER, J., in delivering the judgment of the Court, said that the breach in respect of which judgment had been given against the appellant company was the first of the two alternatives alleged in the statement of claim. The appellant company's case was that the relation between it and the workers concerned had not been that of master and servant, but that of principal and contractor. Admittedly, the distinction between a contract of service and a contract made with an independent contractor was often a very fine one, and it was necessary for a Court to scrutinise all the factors of a case, and not to rely too much on any one factor.

The written agreement put in at the hearing in the Magistrate's Court was equivocal in its terms. Certainly it amounted to an agreement, by the two workers named to handle the whole season's output of pie wool, which by itself would lead to the

conclusion that the contract was not one of service, but the document went on to say "by contract or piecework," which left the issue open.

It was clear that for some years past two men were able to handle all the pie wool at the appellant company's works, and accordingly the fact that the company undertook to give them all that work for the 1930-31 season did not carry as much weight as it otherwise might. The two men were not under any effective control by the management, and there was no regulation of their hours. These circumstances are generally regarded as being less consistent with a contract of service than with an independent contract; but it must be remembered that the work of pie-picking was most unsavoury, and it was not usually done under supervision, especially when it was being performed by experienced men; and, further, the award itself did not in any way regulate the hours of pie-pickers. Again, it was admitted that the two workers themselves employed labourers to assist them on one or two occasions; but there was no evidence as to what work these labourers performed: it was probably incidental work, for they were generally paid "by the job."

On the other hand, the award did not fix a time-wages rate for pie-picking. It fixed only a piecework rate per 10 lbs., and the men concerned were paid at a rate per 10 lbs. The work was done by hand at the appellant company's works, and practically no incidental work was involved, except possibly carrying the material from place to place and the performance of similar minor operations. The payment in such a case of a smaller rate than the minimum piecework rate fixed by the award meant that, as the so-called contractors could not possibly make anything out of the contract except the bare rate paid for their labour, they would receive less than ordinary piece-workers. They were in exactly the same position as piece-workers, in so far as the rate at which they were paid was the measure of their earnings. The contract was really a contract for labour only, and at a less rate than that payable to piece-workers under the award, who in practice would be equally free from control and from regulation of hours. The fact that the appellant company at one stage of the work reduced the rate of remuneration by 10 per cent. as in the case of workers under the award, might be taken into account as indicating that the company's officers regarded these men as ordinary piece-workers, subject to variation in award rates of wages. In former years the rate paid for pie-picking was that fixed by the award, and this circumstance, though not conclusive in itself, at least pointed to the recognition of the pie-pickers as piece-workers rather than as contractors.

Looking at all the circumstances of the work, and bearing in mind the fact that pie-pickers on piecework are left by the award and by most employers free to regulate their hours and perform their work as they please, the Court could not hold that the learned Magistrate arrived at an erroneous conclusion when he decided that the workers in question in this case were not independent contractors, but piece-workers.

Appeal disallowed.

Solicitors for appellant: **Weston, Ward and Lascelles,** Christchurch.

Solicitors for respondent: **Hunter and Ronaldson,** Christchurch.

Frazer, J. December 8, 1931.
Greymouth.

DOBBIN v. INSPECTOR OF AWARDS.

Trade Union—"Unlawful Strike"—Agreement Expired—Cessation of Work Allegedly as Protest—Without Notice and Not Relative to Conditions of Employment—Presumption of Intention to Bring Pressure to Bear on Company—Whether Stoppage of Work an "Unlawful Strike"—Labour Disputes Investigation Act, 1913, S. 9.

Appeal on point of law from a decision of the Magistrate's Court at Greymouth, whereby the appellant was adjudged to pay a penalty of 10s. for taking part in an unlawful strike within the meaning of s. 9 of the Labour Disputes Investigation Act, 1913.

The defendant (appellant) is a member of a coalminers' union, which is not registered as an industrial union under the provisions of the Industrial Conciliation and Arbitration Act, 1925, but which is a society of workers within the meaning of s. 9 of the Labour Disputes Investigation Act, 1913. An agreement made under the latter Act, regulating the conditions of employment of the miners employed at the coal mine of the Brunnerton Collieries Company Limited, Wallsend, expired on May 31, 1930. Since that date, the miners have been employed on conditions similar to those provided for by the expired agreement, but a new agreement has not been entered into. An agreement made under the Labour Disputes Investigation Act, 1913, differs from an industrial agreement made under the Industrial Conciliation and Arbitration Act, inasmuch as it does not continue in force after the expiry of the term for which it is made. Accordingly there had been no legally binding agreement in existence between the miners' union and the mine owners since May 31, 1930.

About the month of May, 1931, industrial conflict arose in the West Coast coal mines over the engagement of "tribute workers," and stoppages of work resulted. The miners' unions resented the engagement of "tribute workers," who were in fact contractors. A mining engineer named Walker was engaged as a tribute worker by the Briandale Colliery Co. Ltd., and the Brunnerton Collieries Company Ltd. subsequently employed him as a mine surveyor. It was stated that the object of employing him was to enable him to qualify for a mine manager's certificate. He was not regularly employed as a surveyor by the company, and when not so employed he worked as a tribute worker in the Briandale mine. Towards the end of May, 1931, the miners' union carried a resolution objecting to the employment of tribute workers in any capacity, and this resolution was communicated to the management of the company. Officers of the union later warned the management that trouble would follow if Walker were given further employment as a surveyor. On June 16, 1931, which was an idle day for the miners, Walker was again employed as a surveyor. On June 17, two officers of the union enquired of the management if it were true that Walker had been so employed. On being informed that he had been employed, they called a meeting of the miners after the morning shift had come up, and before the afternoon shift was due to go down. As a result of that meeting, the afternoon shift refused to work, and no work was done on the following day.

The appellant, as a member of the society of workers concerned, was proceeded against by the Inspector of Awards for the recovery of a penalty for having taken part in an unlawful strike within the meaning of section 9 of The Labour Disputes Investigation Act, 1913. Judgment was given for the Inspector in the Magistrate's Court, and the present proceedings were by way of appeal from that decision.

Held: Allowing appeal: The circumstances constituted a strike, but it had nothing to do with the miners' conditions of employment, and it did not take place during currency of a legally binding agreement. Consequently, it did not come within definition of "unlawful strike."

T. F. Brosnan for appellant.
Inspector of Awards (F. G. Davies) in person.

FRAZER, J., in delivering orally the judgment of the Court, said the second question for determination was whether the strike was an unlawful strike. S. 9 of the Labour Disputes Investigation Act defined an unlawful strike as a strike, whether arising out of a dispute relating to the conditions of the strikers' employment or not, which had been entered upon: (a) without the notice required by s. 4 having been given, or (b) during the currency of an agreement duly made in accordance with s. 8. It was obvious that the use of the words "or not," after "conditions of their employment," made any strike, for any reason whatever, unlawful during the currency of a duly registered agreement. The notice required by s. 4, however, referred only to a dispute relating to conditions of employment. It appeared, therefore, that a strike entered upon when no legally binding agreement was in existence was not an unlawful strike, unless it arose out of a dispute relating to the conditions of employment of the workers concerned. It might be that this was a *casus omissus*, but the Court cannot read words into a penal action in order to constitute an offence that was not apparent from the plain meaning of the section. The strike in question had nothing to do with the miners' conditions of employment. It arose out of the employment of an official of the mining company, who could not be provided for in any agreement made for the purpose of regulating the conditions of employment between the company and the miners. Whatever the intention of the legislature may have been, it had not provided against a strike arising in such circumstances as these.

Appeal allowed accordingly.

Solicitor for appellant: **T. F. Brosnan,** Greymouth.

Chief Justices of the Empire.

II.—The Chief Justice of New Zealand.

THE RIGHT HONOURABLE SIR MICHAEL MYERS, P.C., K.C.M.G., was sworn in as Chief Justice of New Zealand on May 10, 1929. To the familiar proverb "*de mortuis nil nisi bonum*," there might be put forward as a set-off or variant "*de vivis nil nisi verum*," and the *verum*, when carefully considered in the light of the attainments, the career, and the qualifications of Sir Michael Myers, is of great and notable interest. The day of the imported Chief Justice of this Dominion is long over; and New Zealand can never again, in this regard, be treated as a Crown Colony.

New Zealand lawyers, and indeed all its citizens, were gratified at and unanimously applauded the appointment of the outstanding lawyer and advocate of his time to the highest judicial office. There was no period of probation, there was no professional or lay anxiety. Sir Michael Myers made his mark upon the Bench immediately; and, immediately, he showed that his profound legal and worldly knowledge were to be of outstanding public use. With the added virtues of humanity and of humour, and of a determination to see to the advancement, not only of the public benefit, but also of the profession which he had adorned,—as exemplified in his admirable address at the last New Zealand Legal Conference in 1930,—it became abundantly plain that the Dominion's Chief Justice was certainly fulfilled of the desired qualities.

RT. HON. SIR MICHAEL MYERS, P.C., K.C.M.G.
CHIEF JUSTICE OF NEW ZEALAND.

Sir Michael Myers' career has only recently been detailed. Born in Motueka, educated at Thorndon School and Wellington College, and the capturer of scholarships and other scholastic prizes in his youth, he took the LL.B. degree in 1926. For many years, he was attached to the Wellington legal firm of Bell, Gully and Izard, its first two members being, of course, probably the most famous advocates of their day; and he was admitted as a Barrister and Solicitor in 1897. He later became a member of the firm of Bell, Gully, Bell and Myers, remaining until 1922, when he became a King's Counsel.

It is to be noted that Sir Michael was the first of our actively practising lawyers to take silk since the passing of the somewhat oppressive restrictions, not obtaining in some of the Dominions, preventing New Zealand King's Counsel from practising as Solicitors or having partnership interest in legal firms. But this step at once added considerably to his forensic activities, and it was after his taking it that some of the most notable achievements of New Zealand Counsel have been recorded, such as the historic series of successes before the Privy Council in 1926.

On this series of remarkable victories, the recent comments of the leading English legal periodical, *The Law Journal* are worth quoting:

"As recorded in past pages of this *Journal*, Sir Michael Myers came over to England in 1926—five years after he had taken silk, and in a series of Appeals in the Privy Council, gave a fine and typical display of his fighting quality. The cases in which he appeared included *The Crown Milling Co. Ltd. v. The King*, a case wherein Sir Michael defended, against the prosecuting authorities of the Crown, the scheme he had himself drafted for the Millers' Combine by means of one sole agent for their sales; *Bissett v. Wilkinson*, a case turning upon the sale to an ex-Serviceman of a sheep farm, wherein the fighting Myers was supported by Errington as junior, and, may we say, ballast; *Gardener v. Te Porou Hirwanu and Others*, the question for decision being whether, under a lease under the Native Land Act, 1909, of unimproved virgin land covered by bush and scrub, the defendant (appellant) was entitled to remove and sell millable trees forming part of the bush; *Doughty v. The Commissioner of Taxes*, an income tax case in which he was led by Latter, K.C. In all these, and for the most part of another appeal, Myers' side won; and in the first of them, in which Maugham (now Mr. Justice Maugham) was to have led but was prevented, Myers proved his ability to tackle and defeat Sir John Simon on his own ground.

"The encounter was one of unusual interest by reason of the contrast in styles. Simon, the suave, the subtle, and of vast experience and knowledge of the English Courts and Judges. Myers, forthright, downright, hammer-like in his methods, tremendously and obviously sincere; the weapon of the one a rapier, of the other a broadsword.

"It was upon this occasion that Englishmen fully realised the fine qualities of New Zealand lawyers; and their Lordships of the Judicial Committee extended a warm and genuine welcome to the advocates. This welcome having been duly given and acknowledged, business commenced. The first of the New Zealand counsel had by his rare and persuasive charm almost persuaded the Board into a departure from their better judgment; but Myers followed, and in a quick series of submissions and exchanges with the Law Lords, won every point. It has been said without disrespect that their Lordships seemed to fall to (or for) his arguments 'like ninepins.' It was a remarkable occasion; it gave England a true picture of New Zealand and a fine exhibition of Sir Michael's gifts and accomplishments as a lawyer and an advocate."

These remarks were evoked on the occasion of the appointment, in December of last year, of Sir Michael Myers, by approval of the King, a member of His Majesty's Most Honourable Privy Council; and they are some indication of overseas' appreciation of the qualities of our Chief Justice.

Politically, Sir Michael has always, at any rate to the ordinary listening citizen, been silent. In the humanities, in the old sense, he may not have been obviously a participant or executant; but his interest in culture and education, particularly legal education, is wide and deep.

As President of the Hawke's Bay Adjustment Court, which deals with claims arising out of the earthquake of last year, Sir Michael Myers has gained the complete confidence of the sufferers in the stricken district. He insisted from the outset that the Special Court's procedure should be of the simplest kind, and that its practice rules should be stripped of all technicalities and formalities. His Honour has made the applicants for relief feel that he is in sympathy with their position, even when the Court is unable to rant them the assistance they seek. His courtesy and consideration for witnesses and counsel, always in evidence wherever he presides, has made the atmosphere of the Adjustment Court a very friendly one. In conjunction with his colleagues, Sir Michael's policy has been, not to use the almost unlimited and unprecedented powers of this special tribunal to bring about any revolutionary changes in contracts or in the law, but to do substantial equity between all persons affected so variously by an extraordinary happening of nature. Considerable apprehension might have been felt at the very wide powers given to the President and his colleagues, but the qualities which have distinguished the Chief Justice both as counsel and as judge, exercised in complete harmony with those appointed to sit with him, have quite disarmed any criticism of the exercise of the very special jurisdiction with which the Adjustment Court is vested.

Another of Sir Michael's present offices is that of Chairman of the Editorial Board appointed by Parliament to supervise the Reprint of the New Zealand Statutes now in course of compilation. His well-known attention to detail and his wide experience of our statute law are in themselves sufficient guarantee that the work will be accomplished in the best possible manner. His helpfulness and that of his fellow-members, the Attorney-General (the Hon. W. Downie Stewart) and Mr. James Christie, LL.M., Parliamentary Law Draftsman, have been of considerable encouragement to the Managing Editor, Mr. H. Alleyn Palmer, who, as a member of the English and New Zealand Bar, has been entrusted with the preparation of the manuscript.

At the age of fifty-eight years, Sir Michael Myers is still a comparatively youthful Chief Justice. In spirit and in mental and physical activity, he is younger still. Consequently, New Zealand lawyers who appreciate his worth and his work in the forensic and judicial spheres, feel that he has not yet attained the full stature or recognition for which his capabilities fit him. They hope that the day is not far distant when he will take his seat at the Board of the Judicial Committee of the Privy Council. Then, they feel, he will impress the wider audience of the whole British Commonwealth of Nations with the eminence of his legal and judicial attainments. The work of the late Sir Joshua Williams and the late Sir Robert Stout on that august Committee have become part of New Zealand's legal history. Sir Michael's presence among the most learned in our law will, it is certain, not only add a further page to that history, but will shed a reflected glory upon the Bench and Bar of which he has been a member, and will honour in no small degree the land which gave him birth.

The Audit Regulations.

Answers to Questions.

The following questions have been submitted by Practitioners for decision by Audit Committee, and the answers are published for general information:

(1) Can a firm use its own numbers for identification purposes on receipts?

Yes, provided it does not interfere with the N.Z. Law Society numbers.

(2) Can a rubber stamp be used to endorse the name and address of the practitioner?

Yes, but signature or initials of person receiving money should be attached.

(3) Can a rubber stamp be used to endorse additions other than the name and address of practitioner?

Yes, provided the additional matter is first submitted to the Audit Committee and approved.

Several other questions have been asked, but owing to their importance they have been deferred for consideration by a full meeting of the Audit Committee, which, it is hoped, will meet to deal with them immediately after Easter.

H. E. ANDERSON,

March 11, 1932. Chairman, Audit Committee.

Landlord's Distress.

Against Companies in Liquidation.

By K. M. Gresson, LL.B.

Two recent judgments bearing on landlord's distress in relation to company liquidations are of rather special interest, *In re A.B.C. Garages Ltd.* (1932) 7 N.Z.L.J. 333—the first reported adoption in New Zealand of the universally criticised and sometimes deplored decision of *In re Exhall Coal Mining Company Ltd.* (1864) 4 De G.J. & Sm. 377; 46 E.R. 964—and *Re George Castle Ltd.* (p. 38, *ante*),—the first reported application under our Companies Act of the principle laid down in *Re Roundwood Colliery Co.* [1897] 1 Ch. 373, regarding a landlord's right to proceed after liquidation with a distress earlier put in force against the Company. Both are welcome as adding to the small amount of New Zealand authority bearing upon a section of The Companies Act, 1908 of frequent application, and never more so than at the present time when Company liquidations are almost an everyday occurrence. It is no uncommon thing for liquidation to supervene with the landlord in possession under a distraint for rent, and, in such cases, both landlord and Liquidator look anxiously to their respective solicitors for an interpretation of s. 244 of the Companies Act, often demanding so prompt an opinion as to allow little time for consideration.

The section is well-known:

> 244 (a) Where an order has been made, or an effective resolution has been passed, for winding up a company, no action or other proceeding shall be commenced or proceeded with against the company except with the leave of the Court and subject to such terms as the Court imposes.
>
> (b) Any attachment, distress, or execution thereafter put into force against the assets of the company shall be void.

It is convenient to deal first with subs. (b), now judicially interpreted by *In re A.B.C. Garages Ltd.* to mean that the apparent prohibition on any distress put in force after the commencement of a winding-up applies only to one so put in force without the leave of the Court. This is of course contrary to the plain sense of the section; but no doubt the learned Judge felt himself powerless to stem the current of judicial decisions which have established this strained and unnatural construction, and could only join the ranks of those who in the last half century have disapprovingly, but still authoritatively, followed and applied *In re Exhall Mining Company.* Bowen, L. J., in *In re Lancashire Cotton Spinning Company* (1887) 35 Ch. D. 656, thought it wrong "to try to be wiser than the Courts have been for twenty-three years" and nine years later the Court of Appeal in *In re Higginshaw Mills* [1896] 2 Ch. 544, protestingly concurred. So the unfortunate decision handed reluctantly from judge to judge down the years, is at last borne out to the Dominions to be enshrined in our law and to nullify the plain words of our Statute. But subs. (b) has reference only to a distress put in force after liquidation, and this case is not the one so frequently arising to-day or proposed to be dealt with herein; sub-s. (a) is of much wider and more general application, and, in the writer's opinion, is in some danger of being rendered ineffective.

It should be noted first that the application of *In re Exhall Mining Company* by implication decides also that a landlord's distress is "a proceeding" within the meaning of sub-s. (a). It is true that in *Hickey and Company Limited v. Sweetapple* [1926] G.L.R. 30, it had already been held by Alpers, J., that a bailiff who, under a distress warrant, had taken possession of goods shortly before the resolution for liquidation and was in pursuance of s. 125 of the Magistrates' Court Act, 1908, levying also rent due to the landlord was, by subsequently selling the chattels, "proceeding with the proceedings" (a misquotation, but immaterial) and contravening the section in so doing without leave; this however was an execution rather than a distraint. *In re A.B.C. Garages Limited* and *Re George Castle Ltd.* resolve any doubt there may have been as to a landlord's distraint being within subs. (a) requiring the leave of the Court to sanction its continuance.

Since the landlord, if desirous of "proceeding with his proceeding," is bound to seek and obtain the leave of the Court, the most important matter in regard to the sub-section is upon what principle the Court's discretion will (or should) be exercised. Though there are not wanting English decisions upon this point, they should be read in the light of the statutory provisions under which they were decided and which materially differ from the provisions of our Companies Act, 1908. The relevant sections in England are contained now in The Companies Act, 1929, substantially reproducing sections which were in force at the time there were given the decisions to which reference will hereinafter be made. These are ss. 172, 174 and 177.

> 172. At any time after the presentation of a winding-up petition and before a winding-up order has been made, the Company, or any creditor or contributory may,—
>
> (a) Where any action or proceeding against the Company is pending in the High Court or Court of Appeal in England or Northern Ireland, apply to the Court in which the action or proceeding is pending for a stay of proceedings therein; and
>
> (b) Where any other action or proceeding is pending against the Company, apply to the Court having jurisdiction to wind up the Company to restrain further proceedings in the action or proceedings; and the Court to which application is so made may, as the case may be stay or restrain the proceedings accordingly on such terms as it thinks fit.
>
> 174. Where any Company registered in England is being wound up by the Court, any attachment, sequestration, distress, or execution put in force against the Estate or effects of the Company after the commencement of the winding-up shall be void to all intents.
>
> 177. When a winding-up order has been made, or a provisional liquidator has been appointed, no action or proceeding shall be proceeded with or commenced against the Company except by leave of the Court, and subject to such terms as the Court may impose.

It will be noticed that the sections of the English Act quoted above are applicable only to a winding-up by the Court, as was the case with the corresponding sections of the earlier Acts. In the case of a voluntary winding-up, they were only made applicable by the somewhat indirect method of invoking the section corresponding to our s. 252, enabling the Liquidator in the winding-up to apply to the Court to exercise all or any of the powers which the Court might exercise if the Company were being wound up by the Court. It was a matter of doubt whether in a voluntary liquidation the English statutory provisions had any application; and certainly, where the winding-up was voluntary, it was the Liquidator who had to apply for a stay. This was the nature of the application in *Re Roundwood Colliery Company* (*supra*) where the

Liquidator moved to restrain a sale by a Landlord under a distress levied before the commencement of the winding-up but not then completed by sale. The Court declined to stay the landlord in the absence of special reasons rendering it inequitable to allow the Distress to go on; but Stirling, J., recognised that there was some doubt as to the Court having jurisdiction on account of the winding-up being a voluntary one, and concluded that the jurisdiction if it existed ought not to be exercised in that case. And the broad general principle was enunciated:

> "The Creditor who has issued execution or a landlord who has levied a distress before the commencement of the winding-up will be allowed to proceed to sell unless there is established the existence of special reasons rendering it inequitable that he should be permitted to do so. On the other hand the case of *Re Lancashire Cotton Spinning Company*, 35 Ch. D. 656, shows that a Creditor who does not issue execution or a Landlord who does not levy a distress until after the commencement of the winding-up will not be allowed to proceed unless there are special reasons which render such a course inequitable."

This view was approved in *Venner's Electrical &c. Appliances v. Thorpe* [1915] 2 Ch. 404, where the Liquidator in a voluntary liquidation sought to restrain a landlord, who, before the commencement of the winding-up, had put in a distress for rent payable in advance from completing the levy. The Master of the Rolls said:

> "It is indisputable that no equitable ground has ever been made out for restraining the Landlord from levying the distress unless there have been circumstances outside the levying such as fraud or unfair dealing which would entitle the tenant to an injunction."

The principle so stated has reference however to a statute, which, as has been shown, leaves a landlord who has begun his distress prior to liquidation quite free to pursue his remedy and under no restraint at all, unless and until the Court on an application by the Liquidator intervenes, which, apparently, the Court is not disposed to do unless the Liquidator can show some grounds. Here, it is otherwise; it is for the landlord once liquidation has begun (and whether the winding-up be voluntary or by the Court) to make an application for leave "to proceed"; and there must be on the party moving the onus of justifying an order in his favour. Must he show "the existence of special reasons" why he should have leave as has the Liquidator to do in England to have him restrained? In England, where the landlord seeks to put in force a distress after winding-up and has on that account to apply for leave (which on the authority of *In re Exhall Mining Co. Limited* the Court has jurisdiction to grant) there is a heavy onus on him to justify such an order:

> "Upon the Landlord coming to ask the Court to exercise the power given by Section 177 lies the onus of showing one of two things, viz., either that it is inequitable for the Company or its Liquidator to insist on Section 174, that there is some special equity which entitles him to ask the Court to relieve him of the burden of Section 174—or that the rent ought to be paid as one of the expenses of winding-up."—*Buckley on Companies* (11th Edition, pp. 386-387).

If there is such an onus on a landlord applying for leave to distrain subsequent to a winding-up, what is the onus on him where his application is under s. 244 (a) for leave to continue a distress commenced prior to winding-up? The claim of a landlord who has taken possession prior to liquidation is often recognised without question by the Liquidator, and a bargain made that if the distraint be withdrawn the rent will be paid in full. It is certainly sometimes assumed that leave to complete the distress is available to the Landlord from the Court for the asking, as to which quaere. In *Re Poverty Bay Farmers' Co-operative Association Ltd.*, 16 N.Z.L.R. 695, a Creditor issued a distress warrant under a judgment of the Magistrate's Court on the same day as a petition for winding-up (on which an Order was subsequently made) was filed. Possession was taken a few days afterwards. Connolly, J., held that, in the absence of special circumstances sufficient to justify the Court in exercising its discretionary power, the Creditor was not entitled to the leave asked for. In this case, the execution creditors' issue of the Warrant was as far as can be seen from the report almost contemporaneous with the filing of the winding-up petition, and the taking of possession was some days later. In *Hickey and Co. Ltd. v. Sweetapple* (*supra*), no application seems to have been made for leave to proceed. This case is adversely criticised in *Re George Castle Ltd.*; but, apparently, only for its finding that the continuance of the distress constituted an "illegal distress": the invalidity of proceeding to a sale without leave does not seem to be questioned and would constitute at least an "irregular distress." *In Caisley v. New Welcome Gold-Mining Company Ltd.*, 31 N.Z.L.R. 820, where leave was granted pursuant to S. 244 to proceed with an existing suit for forfeiture of a mining claim, Denniston, J.,—after pointing out that the granting of leave was discretionary and the onus of establishing a claim for its exercise on the party moving,—held that the discretion was to be exercised or stated in respect of a similar discretion provided in the English Companies Act where power was given to stay proceedings. He states the principle applicable: "Regard must be had to the primary object of winding-up, namely, the collection and distribution of the assets *pari passu* amongst unsecured creditors after payment of preferential debts." In the case before him the winding-up was for the purpose of re-construction, and had nothing to do with the collection and distribution of assets.

(To be Concluded.)

Stealing Mr. Butterworth's Paper.

A Trial of 1831.

The newspapers of September 16, 1831, contain the following report, which will be of interest particularly as showing how long the firm of Butterworth has been established, and also as shedding a light on Sessions sentences in King William IV's days:—

Thomas Wakeman and his wife, Elizabeth, with one Joseph Lill, were indicted for stealing 16 cwts. of printed paper to the value of 1,000*l.* and upwards, the property of Mr. Butterworth, a law bookseller, of Fleet Street. Some of the paper was traced to the then notorious Leather Lane and other places.

Wakeman confessed to having disposed of the property, but said he had no felonious intent, and called "nearly twenty respectable tradesmen" to give him an excellent character! Lill denied he had ever been in Bell Yard on the day of the theft. In the result wife Elizabeth had a verdict of "Not Guilty," but her husband went to seven years at Botany Bay, and Lill to two years' hard labour in the House of Correction.

London Letter.

Temple, London,
15th January, 1932.

My dear N.Z.,

They say that we lawyers make trouble for the laymen; but the older I grow, the more I marvel at the inordinate troubles the laymen, with their businesses and arbitrary sciences, make for themselves. And so we resume upon a more comfortable note: a humanity, which is so foolish as to suffer its present artificial ills, cannot possibly keep out of the difficulties, bothers, squabbles and complexities which are the making of our occupation; and so we may accept their view of the matter, which is now prevalent, that when everything else does stop, the Law will still continue and we lawyers thrive.

A Judge of Sustained Brilliance: I suppose that one of these days I shall still be warning you not to attach any importance to the rumour of Rowlatt, J.'s, retiring, and Rowlatt, J., will suddenly retire, while the warning is on the high seas. It is current again, but there is no mention, this time, of his fellow rumourees, Avory and Horridge, JJ. I should rather doubt if any of the three veterans can afford the luxury; it was hard enough going for them, even before their salaries were cut. Horridge, J., we could, some will say, spare; Avory, J., not quite so many but still a few will say, we could also manage to survive without; but even those, who are blinded to the former's substantiality as a *nisi prius* Judge, and those who have not the wit, or sense of perfection, to appreciate the less obvious merits of Avory, J., upon which I ventured to address you a little while ago,—even those critics are not ready to dispense with him who has been called the Peter Pan of our judiciary for the reason that, for all the whitening of his hair and the ever-increasing anxieties of life, positively he refuses to grow up. The Bench of the King's Bench Division can never be the same again, when Rowlatt, J. goes from it; and the loss which his removal would involve can be the only possible excuse for the omission hitherto to promote him to higher, even the highest, courts, so far ahead of any other brain on the Bench is his. If you leave Lord Sumner out of it, there is not in the whole hierarchy of the judicature a sustained brilliance to equal that of Rowlatt, J.; and it speaks volumes for the mediocrity, the passionate mediocrity, of our generation, that he should ever have been allowed to live out his working days as a Judge of first instance.

Lord Atkinson: 87: I have to record, in this letter, the eighty-seventh birthday of Lord Atkinson, to whom the congratulations of all will be offered for his marvellously vital longevity, though some (not excluding advocates, of the past and present, from New Zealand) may wish that he had not exercised quite so much of it in the Judicial Committee of the Privy Council; but I doubt if any frank and reliable critic would, in this matter, hesitate for a moment if you asked him to compare the legal intellects of this last-mentioned Law Lord and the fore-mentioned Rowlatt, J. It may be said, without the least reflection upon Lord Atkinson, that it is indeed an unfair and illogical, unpractical and irritating world in which it can be that the one man acted so long and the other man never acted at all as one of the Supreme Judges of the Imperial Courts.

The late Sir Arthur Denham: The death of Sir Arthur Denman, Clerk of Assize of the South Eastern Circuit, was a sad event in Common Law circles. Those of us of other (and better!) circuits, who never knew this Official of the Home Circuit, always from our youth up knew his name; the Clerk of Assize is the Dignity who sits beneath the Judge on Circuit, in criminal matters, and manages his life and the lives of all of us; Clerks of Assize are men of Infinite Importance; and it was known throughout the length and breadth of the land that Sir Arthur Denman was the most important of them all. There is a curious usage by which, when the post falls vacant, the Judge going the Assize has the appointing of the successor to it; and so it often happens that relatives of the Judges, or their intimates, get appointed. Of the half dozen to a dozen of them, in existence at one time, there are always a proportion who are eccentric; and we of the Oxford Circuit, who now have (by universal and even clamorous assent) the best and the nicest of Clerks of Assize, in Charles Lloyd, formerly had quite the most tiresome. I hear nothing but good of the late Sir Arthur.

Personalities of the "Home Circuit": The South Eastern Circuit, being the "Home Circuit" and covering the most part of the "Home Counties," for all practical purposes absorbs the Criminal Courts of London; and, though its circuiteers have no exclusive right to the Old Bailey (which has a Mess of its own), it is little that we, of the other circuits, know of Crime in London. Their luminaries thus burst as a surprise upon us: Travers Humphreys, J., Sir Percival Clarke and the like. I have little to tell you of St. John Hutchinson, appointed to be Prosecuting Counsel for the Post Office at the Central Criminal Court, except that his name becomes increasingly familiar, in criminal trials which catch the eye. Nor can I add much upon the subject of the Common Sergeant, Sir Charles Dickens, K.C., who will to-morrow celebrate his eighty-second birthday. It would be impossible to say of that great name that "it becomes increasingly familiar"? But it may interest you to know that his son, and grandson of the great man, is a very familiar figure at the Inner Temple Hall, and that upon his face is writ all the character and whimsical humour which would be expected in the hereditary circumstances. He has a fine practice, and is especially active in cases which touch upon the affairs of the medical profession, whose most frequent advocate he is. It is a happy matter that so famous and English stock should continue to enjoy and deserve so essentially an English popularity among us; and I always take a particular pleasure in pointing out the grandson to such of you of New Zealand as take food with me in that resort. You will have observed, probably, that a nephew of the former Common Sergeant was recently appointed Official Referee: Ronald Bosanquet, K.C., formerly (as was his uncle) member of the Oxford Circuit, and a strenuous, persistent fighter of causes, pugnacious and pernickety though many reported him to be.

The Times we live in: So much for the events of the period recently past and now under review. We start upon the New Year still with misgivings as to the authorities' failure to approach, effectively or at all, the pressing problem of the law's delay and hideous cost; no longer are the times nearly spacious enough to permit of litigation continuing to be regarded as a luxury and the infinite postponement of justice to be ignored as a thing of no importance. Where the pro-

fession has had opportunity to improve its own business, the opportunity has been taken ; a remarkable instance is the progress we have made in the provision of the means of justice for poor persons. All our young men, these days, spend a substantial part of their time pleading the cases of clients who do not pay ; and, in causes of a heavier nature, the older men more and more make themselves available. If the pressure of the universal stringency of finance compels an improvement of the workings of the Courts, there will be something to be said even for these never-ending Crises ! What is the insoluble element we are at a loss to know : other systems seem to have found the cure for the main evils we so persistently endure. But, when we create a new tribunal altogether, it is noticeable that it also develops mischiefs of its own even worse than ours ; the Traffic Commissioners, a recent expedient invented to adjudicate in the matter of licensing of utility vehicles upon the public roads, seem to have become already far more open to criticism than the most antiquated of our courts. I am afraid it may be that there has descended upon our English conservatism a new, and inept, complacency : it is to be observed that we refer, in our pompous newspaper " leaders," with increasing frequency to our national merits—we, who were once the nation most critical of itself in the world. My own view is that some of you should take the bit, or the pen, between your teeth : write some " New Zealand " letters to our English law journals : and from the point of view of your vigorous and imaginative youth (if you will allow that expression, nationally) point out to us forcibly some of the more glaring faults or our dotage and compel us, from mere shame, to get about the setting of our house in order ! My candid opinion is that, having regard to the material of our judicature, we could quite easily make our justice as expeditious and cheap as it should be, but that we are too lazy, or (if you insist) too conceited to try.

Yours ever,

INNER TEMPLAR.

Unsigned Correspondence.

Editorial Note.

We have recently received some letters, presumably for our Correspondence column, to which pen-names are appended. They do not, however, bear the writers' signatures. We are always prepared to publish letters on interesting current topics over pen-names, without in any way identifying ourselves with any views which may therein be expressed. But we must adhere to the invariable editorial practice of declining to publish any letter unless it is accompanied by the writer's name and address, which will not be published, if the letter's author so desires. It is hardly necessary to add that such confidence will be respected.

" To say truth, although it is not necessary for counsel to know what the history of a point is, but to know how it stands resolved, yet it is a wonderful accomplishment, and, without it, a lawyer cannot be accounted learned in the law."

—Roger North.

Changes in Company Law.

Made by the Companies Act, 1929 (England).

By T. H. Wood, LL.M. (N.Z.) LL.M. (Lond.)

(*Continued*).

Winding-up : *Commencement* : As to the commencement of a winding-up by the Court, S. 175 provides that, where before the presentation of a petition for winding-up by the Court a resolution has been passed by the Company for voluntary winding-up, the winding-up shall be deemed to have commenced at the time of the passing of the resolution and all proceedings taken in the voluntary winding-up shall be deemed to have been validly taken. In any other case, the winding-up commences at the time of the presentation of the petition.

This section overrules the decision in *re Taurine Co.* (1883) 25 Ch. D. 118, and *re Russell Hunting Record Co.* [1910] 2 Ch. 78. Prior to this enactment, the law was that the Court might make an order adopting any such proceedings.

S. 217 restrains directors and other officers of the Company, who in the opinion of the Court have been guilty of any fraud in the promotion or formation of the company, from taking any part in the winding-up or the management of the company for any period not exceeding five years.

Voluntary Winding-up : Certain changes are made in the proceedings in a voluntary winding-up. There are now two kinds : a members' voluntary winding-up, and a creditors' voluntary winding-up. A creditors' winding-up places the control of the realisation of the assets in the hands of the creditors, to the practical exclusion of the members. Generally speaking, a members' winding-up takes place where the company is solvent ; a creditors' winding-up when it is insolvent. The solvency or not of the company is to be tested by a statutory declaration provided for by S. 230 as follows :

> Where it is proposed to wind up a company voluntarily, and the directors of the company at a meeting of directors, held before the date on which the notices of the meeting at which the resolution for winding-up of the company is to be proposed are sent out, make a statutory declaration to the effect that they have made full enquiry into the affairs of the company, and that, having so done, they have formed the opinion that the company will be able to pay its debts in full within a period not exceeding twelve months from the commencement of the winding-up, and such declaration is delivered to the Registrar before the above-mentioned date, then such winding-up is " a members' voluntary winding-up." If no such declaration is made or it is not delivered to the Registrar within the time allowed, then it is " a creditors' voluntary winding-up."

In a members' winding-up, the proceedings are much the same as heretofore. An addition is made by S. 234, which extends the provisions of the 1908 Act, relating to the transfer by a liquidator of the whole of the assets of the company to another company, to foreign companies as transferees. This overrules the decision in *Thomas v. United Butter Companies*]1909] 2 Ch. 484.

The provisions relating to a creditors' winding-up are new. S. 238 provides for calling a meeting of creditors which must be called for the day of or the day after the resolution for winding-up is proposed, and notices must be sent to creditors simultaneously with notices to the company. The creditors' meeting must be advertised. A full statement of the company's affairs and a list of creditors must be laid before the creditors' meeting, and a director must be appointed to preside thereat.

The creditors and the company at their respective meetings may nominate liquidators; and if different persons are nominated, the creditors' nominee prevails. As a protection against unsuitable appointments, where there are different nominees, any director, member or creditor may within seven days of the creditors' nomination apply to the Court for a direction that the company' nominee be liquidator instead of or jointly with the creditors' nominee. Creditors may appoint a committee of inspection of not more than five persons. If this is done, the company may also appoint five members to act. The creditors may refuse such persons; but a right is given to apply to the Court which may direct that such persons are to be qualified to act. Power to accept shares in consideration of the sale of the company's property, may also be exercised by a liquidator in a creditors' winding-up; but only with the sanction of the Court or of the Committee of Inspection. Meetings must be summoned at the end of the first, and of each succeeding, year; and accounts of the winding-up laid before them.

S. 280 provides that where a company is being wound up, every invoice, order for goods and business letter issued by or on behalf of the company on which the company's name appears must state that it is being wound up.

(To be Concluded.)

Irresponsibilities.

Two yarns I heard in the Library recently are new to me, and, perhaps, to readers of the JOURNAL.

A certain kindly old Vicar was complaining to his vestrymen that the collections had fallen off considerably owing to the prevalent conditions of things. "I know it is very difficult for them," he said; "but how can I put it to them nicely?"

"Why not suggest that they have been guilty of contributory negligence?" was the reply of the local Solicitor who was at the conference.

* * * *

A New Zealand Barrister-Captain was walking down the Strand in company with an Australian Brigadier-General shortly after the Armistice. The latter was busily engaged in returning salutes. Each time a soldier passed and the Brigadier returned the courtesy, he muttered under his breath, "The same to you!" The constant iteration of the phrase rather got on the New Zealander's nerves. So he asked his friend why he passed the remark each time he was saluted.

"Well, you see," the Aussie replied, "I started in the War as a private myself, and I know exactly what each man is thinking!"

Bills Before Parliament.

Industrial Conciliation and Arbitration Amendment. (HON. MR. HAMILTON). Cl. 2. Governor-General may exclude any specified industries or persons from operation of principal Act. Cl. 3. Increasing maximum number of assessors on Councils of Conciliation. Cl. 4. Section 106 of principal Act amended by omitting the words "connected with that industry in the locality to which the proceeding relates." Cl. 5. Terms of settlement effected by Conciliation Council to be signed by assessors and to operate as industrial agreement thenceforth. Cl. 6. Objections to agreement filed under last preceding section, and conditions of application for total or partial exemption from agreement. Cl. 7. Provisions governing reference of disputes to Court, and the consequential amendments of the principal Act. Cl. 8. Provision for reference back to Conciliation Council of disputes in respect of which an award has not yet been made. Cl. 9. Provision for review of existing awards and industrial agreements in any case where an award or agreement has been in existence for not less than six months before passing of this Act, and has at the date of application an unexpired term of not less than three months. Cl. 10. Repeal of Section 90 of principal Act. Cl. 11. Provisions as to payment for piecework. Cl. 12. Provision for appointment of Industrial Committees by mutual arrangement of the parties. Cl. 13. Awards not applicable to relief works under Unemployment Act. Cl. 14. Special provisions as to certain existing awards affecting employment of musterers.

Rules and Regulations.

Public Works Act, 1928. Motor Vehicles Act, 1924. The Heavy Motor-vehicle Regulations, 1932.—*Gazette* No. 11, February 16, 1932.

Scientific and Industrial Research Act, 1926. Amendment to the Wheat Research Regulations, 1928.—*Gazette* No. 12, February 18, 1932.

Hawke's Bay Earthquake Act, 1931. Hawke's Bay Earthquake (Miscellaneous) Regulations.—*Gazette* No. 12, February 18, 1932.

Public Service Superannuation Act, 1927. Regulations *re* investment of Fund.—*Gazette* No. 12 February, 1932.

Public Service Superannuation Act, 1927. General Regulations. *Gazette* No. 12, February 18, 1932.

Plumbers Registration Act, 1913. The Plumbers Regulations, 1931.—*Gazette* No. 12, February 18, 1932.

Cook Islands Act, 1915. The Cook Islands Stamp Duties Regulations 1931.—*Gazette* No. 12, February 18, 1932.

Fruit Control Act, 1924. Amended regulation.—*Gazette* No. 12, February 18, 1932.

Mortgagors Relief Act, 1931. Mortgagors' Liabilities Adjustment Commissions appointed.—*Gazette* No. 12, February 18, 1932.

Orchard Tax Act, 1927. Special orchard-tax payable in the Marlborough Commercial Fruit-growing District.—*Gazette* No. 12, February 18, 1932.

Animals Protection and Game Act, 1921-22. Open Season for Deer, Moose, and Wapiti, Southland Acclimatization District (Fiordland National Park).—*Gazette* No. 12, February 18, 1932.

Births and Deaths Registration Act, 1924. Constitution of Registration Districts.—*Gazette* No. 14, February 25, 1932.

Marriage Act, 1908. Constitution of Districts.—*Gazette* No. 14, February 25, 1932.

Repatriation Act, 1918: Finance Act, 1919: Industrial Conciliation and Arbitration Act, 1925. Shops and Offices Act 1921-22: Factories Act, 1921-22.

Order in Council suspending the provisions of awards and industrial agreements in so far as they prevent or restrict the training and employment of discharged soldiers in certain industries.—*Gazette* No. 14, February 25, 1932.

Main Highways Act, 1922. By-laws regulating traffic on the Taupo—National Park Main Highway.—*Gazette* No. 14, February 25, 1932.