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

"It is difficult to know what judges are allowed to know, though they are ridiculed if they pretend not to know."
—Scrutton, L. J.

Vol. VIII. Tuesday, June 21, 1932. No. 10

Newspaper Publication of Photographs.

It has been said by a recent writer—*not* of this country, that if one cannot get one's name into the newspapers by means of one's brain-capacity, there is always the opportunity afforded by the defects of one's internal organs. And, we add, there is also the picture page to fall back upon. The question as to whether a newspaper or cinematograph film may publish the photograph of a person without his permission or authority, has not, so far as we are aware, come before any Court administering British law. But, owing to the increasing ubiquitousness of the Press photographer and the motion picture camera-man, it may not be without interest to consider whether the individual has any right of immunity from the publicity resultant from the use of his photograph by one of the means indicated.

In order to clear the ground, it should be said at once that it is settled law that, unless there is an agreement to the contrary, the copyright in a photographic plate belongs to the photographer, but the right to reproduce it remains in the subject if he has commissioned the photographer to take it and he has agreed to pay for the photographs ordered. Even though nothing is said about payment, there is an implied promise on the part of the customer to pay the photographer: *Boucas v. Cooke* [1903] 2 K.B. 227. In its judgment in that case, the Court of Appeal approved the decision of North, J., when the photographer who had taken a negative likeness of a lady to supply her with copies for money, was restrained from selling or exhibiting copies. The grounds for the judgment were: (a) that there was an implied contract not to use such negative for the purpose of striking off copies for the photographer's own use, or for selling or exhibiting them without the customer's authority, and (b) that such sale was a breach of confidence. The Court held "that the bargain between the customer and the photographer includes, by implication, an agreement that the prints taken from the negative are to be appropriated to the use of the customer only": *Pollard v. Photographic Co.* (1888) 40 Ch. D. 345. It is clear, therefore, that photographs taken in such circumstances may not be supplied to newspapers by the photographer without the customer's authority; this follows both on the ground of copyright and of implied contract and confidence.

On the other hand, mere permission to take a photograph has been held not to be a valuable consideration, and, when the photograph was taken at the invitation of the sitter, the photographer making no charge (and none being expected) but later multiplying copies which he sold, it was held that the photographer had a copyright in the photograph: *Ellis v. Marshall and Son* (1895) 11 T.L.R. 522. It seems, therefore, on principle, that when a photographer takes a photograph without any permission of the subject, and without any expectation of payment by the latter, he has a perfect right to sell it to a newspaper or otherwise reproduce it; no written assignment, in such circumstances, is needed to vest the copyright in the photographer.

In considering cases concerning the reproduction in the Press of personal photographs, both by way of news and of advertisement, where no authority or consent had been given by the subject in that behalf, the American courts have applied a doctrine strange to our law and of recent growth in the land of its origin. This is the so-called "right of privacy," defined by the well-known jurist, Bouvier, as "the right of the individual to withold himself and his property from public scrutiny, if he so chooses." It has been said that this doctrine is incapable of exact definition, but that in a proper case equity will intervene to prevent an injury threatened by the invasion, or infringement upon, this "right" from motives of gain, malice, or curiosity. In his work on *Torts*, Judge Cooley says: "The right to one's person may be said to be a right of complete immunity to be let alone" (p. 29). Austin has been quoted in support: "A right implies something with which the law invests one person, and in respect to which, for his benefit, another, or, perhaps, all others are required by law to do or perform acts, or to forbear or abstain from acts." (*Jurisprudence*, Lectures vi, xvi). It is claimed that no new principle is formulated, since the principle which protects personal writings and other productions is the right to privacy, which is merely extended to personal appearance or personal or domestic relations. And another writer goes so far as to say: "If a likeness, once lawfully taken, were, without permission, to be multiplied for gain, the photographer reckoning on the beauty or distinction of the original for an extensive sale, it might be considered whether there is not a violation of a sort of natural copyright, possessed by every person of his or her own features." Whatever we may think of this expression, the courts of the United States have on many recent occasions applied the doctrine of the "right of privacy" in deciding cases affecting the unauthorised publication of photographs. In that land, at least, to quote Brandeis, "The common law, in its eternal youth, grows to meet the demands of society."

It may be true that "the publicity of to-day, which in so many instances bares the privacies and intimacies of life to the prurient, is to some persons, when the victims of it, destructive of peace of mind, happiness, of the right 'to be let alone'" (*Peed v. Washington Times Co.* (1927) 55 Wash. L.R. 182). But, it is submitted, he who is unwittingly photographed with the result that, without any colour of libel, his features adorn the columns of the newspaper or the news-reel, has no redress in damages under our law. There is no privity of contract, express or implied, between him and the photographer, so the latter has copyright in his negative and the right of reproduction. As is stated in *Copinger on Copyright*, 6th Ed., p. 100n, "There seems to be no legal ground unless it be a 'breach of confidence' upon which a person who has been 'snapshotted' can object to publication of the 'snapshot.' It must be considered one of the risks of the highway."

Court of Appeal.

Myers, C.J.
Herdman, J.
Blair, J.
Kennedy, J.

March 18, 21; April 12, 1932.
Wellington.

NATIONAL INSURANCE CO. LTD. v. JOYES.

Insurance—Third Party Risk—Claim under Statutory Contract of Indemnity for (*inter alia*) **proved Damages suffered by Master of Injured Servant on Account of Loss of Services—Whether Indemnity extends to Master's loss in respect of Servant's services—Whether "Damage to Property" in Policy includes Liability to meet claims in respect to Property Rights—Motor-vehicles Insurance (Third-Party Risks) Act, 1928, Ss. 3, 6.**

Appeal from the judgment of Ostler, J., reported p. 44 *ante* (*sub. nom. Jones v. National Insurance Co. Ltd.*), the construction there placed upon ss. 3 and 6 of the Motor-vehicles Insurance (Third-Party Risks) Act, 1928, being questioned. On appeal, the short point was whether the statutory indemnity extends to a claim made against an owner by an employer of a person who had sustained bodily injury, such employer having claimed and recovered from the owner damages for the loss of the injured servant's services.

Held: *Allowing appeal*: The Act did no more than create an indemnity by the insurance company against the owner's liability to pay damages to an injured person on account of (in the sense of "because of" or "by reason of") his bodily injury, or to the persons entitled to recover where death results from the injury (2) "Property," as used in the policy under consideration, means tangible property, and does not include choses in action.

Per Kennedy, J.: The liability to indemnify is not a liability to indemnify against the consequences of the wrongful act, but a liability for one of its results, namely, the bodily injury or death.

Leicester and McCarthy for appellant.
N. H. Moss and Heine for respondent.

MYERS, C.J., said that the first and principal question raised by this appeal depended upon the true construction of ss. 3 and 6 of the Motor-vehicles Insurance (Third-party Risks) Act, 1928, and very little assistance had been afforded by the mass of authorities which counsel in their industrious zeal thought it necessary to cite. S. 3 (1) enacts that every person being the owner of a motor-vehicle shall, in accordance with the Act and subject to the exceptions and limitations specified in s. 6,—which exceptions and limitations were not material to the consideration of this case,—insure against his liability to pay damages on account of the death of or bodily injury to any person in the event of such death or bodily injury being sustained or caused through or by or in connection with the use of such motor-vehicle in New Zealand. S. 6 (1) enacts that on payment of the insurance premium in respect of any motor-vehicle as provided by the Act the insurance company nominated by the owner shall be deemed to have contracted to indemnify him to the extent thereinafter provided from liability to pay damages (inclusive of costs) on account of the death of or of bodily injury to any person or persons, where such death or bodily injury was the result of an accident happening at any time during the period in respect of which the insurance premium had been paid, and was maintained or caused by or through or in connection with the use of such motor-vehicle in New Zealand.

The question was whether the statutory indemnity extended to a claim made against the owner by the employer of a person who had sustained bodily injury where such employer claimed and recovered from the owner damages for the loss of the injured person's services. Mr. Justice *Ostler* had answered this question in the affirmative. He said, firstly, that the owner's liability is not only to pay damages to a person injured and to the representatives of a person killed by the negligent use of his motor car, but also to pay damages to the master of any person so injured *or killed* if that master can prove that he has suffered damage through loss of service of the person injured *or killed*. He then said that in his opinion the Legislature had clearly shewn its intention, by the words used in s. 6, to provide that the statutory indemnity should include an indemnity against the owner's liability to pay damages to a master if those damages arose because of *the death or* bodily injury of a servant caused by the owner's negligent use of his motor car. Further on in his judgment, he said that wherever the damage to the master is caused by reason of bodily injury done to the servant *or by reason of the servant being killed* by the negligent use of a motor car the liability of the owner to the master is included in the indemnity.

It is not, and could not be, suggested that the Act was in tended (except in one case referred to in s. 3 of the Act, which excepted case had no application in the present action), to extend the common law liability of the owner of the car to third parties. And it was, of course, common ground that the insurance company's indemnity covered the owner's liability and no more. It was clear that the judgment in so far as concerned the words that the learned Chief Justice had italicised went too far. It was well settled by a long current of authority that, where the death of a servant resulted from another person's negligence, the master of the person killed had no cause of action against the tort-feasor for the death of the servant or for any damage that he may have suffered by reason of such death. For this proposition, it was sufficient to cite **Baker v. Bolton,** 1 Camp. 493; **Osborn v. Gillett,** L.R. 8 Ex. 88 and **Admiralty Commissioners v. S.S. Amerika** [1917] A.C. 38. It was clear, therefore, that if in the circumstances of this case the servant had died at once as the result of his injury the master would have had no right of action against the owner of the motor-vehicle, although if a period of time had elapsed between the date of the injury and the date of the servant's death the master may well have had a cause of action against the owner for loss of service during that period. If, then, the servant died immediately as the result of his injury, it was plain that there could be no claim against the insurance company because, as there would be no liability on the part of the owner, there would be nothing to indemnify.

The question still remained, however, whether the indemnity attached where the servant was not killed but was merely injured and the master claims against the owner for damages for loss of service during the period of the servant's inability to render such service by reason of his bodily injury. His Honour said he found himself unable to agree with the answer given by the learned Judge. The insurance company's obligation was to indemnify the owner from liability *on account of* the death or bodily injury to any person or persons. In the opinion of the learned Chief Justice, s. 6 (1) must be read as applying only to damages incurred *directly* "on account of" (whatever those words may mean) the death or bodily injury. He thought that the words "on account of" meant no more than "for"; but if they meant, as the learned Judge thought, "because of" or "by reason of," he thought that the effect is the same. The whole purview of the Act, it seemed to him, dealt, and was intended to deal, only with claims for damages for bodily injury and death resulting from bodily injury, and not to claims arising indirectly or from some reason other than or additional to service, and not merely "because of," or "by reason of," or "on account of" the servant's bodily injury. No doubt the injury done to the servant and the injury done to the master were collateral consequences from the same act, that was to say the negligent act of the owner of the motor-vehicle—per *Maule*, J., in **Martinez v. Gerber,** 10 L.J.C.P. 314: 3 M. & G. 88. But s. 6 of the statute here did not make the insurance company *indemnify against the owner's liability to pay damages* on account of his tortious act, but on account of "the death or bodily injury": and His Honour thought that, for the purpose at all events of construing this Act, the master's claim must be regarded as arising not on account of the bodily injury but on account of the "loss of service."

Moreover, as the learned Judge said, the master's claim arose by reason of damage to a species of property—see **Clerk and Lindsell on Torts,** 8th ed. 201—and it would, His Honour thought, be a strange result if the indemnity provided for by s. 6 of the Act could be held to include an indemnity against a claim based on damage to this species of property when no indemnity was provided against damage which may be caused to the tangible property of any third party.

In the Chief Justice's opinion, the Act did no more than create an indemnity by the insurance company against the owner's liability to pay damages to an injured person on account of or by reason of his bodily injury, or to the persons entitled to recover where death results from the injury. If the intention of the Legislature had been to extend the indemnity to cover liability against claims to property or property rights, one would expect such an intention to be expressed in plain language.

The question then arose as to whether the policy issued by the appellant to the owner covered the case. The material portion of the policy is as follows: "The Company will indemnify the insured in respect of THIRD PARTY PROPERTY RISK. Liability at law for damage (including law costs of any claimant) to property (including animals) other than property of the insured or in his custody or control caused by the use of the said motor-vehicle, but limited in respect of any one claim or number of claims arising out of one cause to the sum of Ten thousand pounds (£10,000) including such law costs."

The point was whether the word "property" here included the species of property or interest in question, namely the right that the master had to the service of his servant. In His Honour's opinion, it did not. Notwithstanding the diligent research made by counsel on both sides they were unable to refer to any authority which might be helpful in construing this portion of the policy. He thought the context showed that the word "property" as used here meant tangible property only and did not include a mere chose in action.

In His Honour's opinion, therefore, both questions should be answered in the negative and the appeal allowed.

HERDMAN, J., saie that he had given this legislation careful consideration and had come to the conclusion that the only construction that he was entitled to place upon the language used was that the obligation of the Appellant Company is limited to cases in which damages may be claimed for the death of a person, or for bodily injuries resulting from an accident. He could find nothing in the section which justified such an extension of the meaning as would oblige the insurance company to indemnify the policyholder against any claim which may be made upon the latter for injury that a master may suffer by reason of loss of services of a servant following an accident to the latter. Nor could he find anything in the policy issued to support the view that the liability of the insurance company extended to cases in which a master may recover for the loss of services of a servant. Under the heading "Third Party Risk" the policy covered damage to property but the phrase "damage to property" could not and did not include damage which a master suffered by reason of loss of the service of his servant. His Honour agreed that the questions should be answered in the negative.

BLAIR, J., concurred in the judgment of His Honour the Chief Justice.

KENNEDY, J., said that upon this appeal there arose for determination the precise extent of the indemnity afforded to the owner of a motor-car by an insurance company indemnifying him pursuant to the statutory contract defined in s. 6 of the Motor-vehicles Insurance (Third-party Risks) Act, 1928. The indemnity thereby provided clearly included an indemnity against damages payable to the person suffering bodily injury in respect to that bodily injury, or, where death was the result of the accident, payable to those entitled to claim under The Deaths by Accidents Compensation Act, 1908. It was equally clear that the indemnity was not a general indemnity against liability for all damage caused by the use of the motor-vehicle to the property of third parties. It was, however, submitted that the indemnity covered the liability to pay damages to a master who had by reason of the bodily injury to his servant suffered the loss of his servant's services. It would be strange if the indemnity did not extend to all the damage suffered by third persons, but covered such damage to them as might be consequential upon bodily injury. If indeed the statute required such a result, that would conclude the matter, but in His Honour's opinion that result did not follow. The statutory indemnity was not expressed to be against liability for damage on account of bodily injury to or of the death of, any person but "liability to pay damages on account of" bodily injury or death. His Honour read those words as indicating that the injury, in respect of which the damages insured are to be paid, was bodily injury or death. The scandal existing prior to the Act was the inability in some cases of those who had suffered bodily injury or in the event of death of those claiming under the Deaths by Accidents Compensation Act, 1908, to recover the fruits of a judgment which had been obtained. The answer to the respondent's submission, in his view, was that the master's claim for damages was for loss of service and not really on account of the servant's bodily injury. Both the bodily injury and the loss of service may be regarded as consequences of the one wrongful act or, as it was said by *Maule* J., in argument in **Martinez and another v. Gerber** (*supra*) as collateral consequences from the same act. The liability to indemnify was not a liability to indemnify against the consequences of the wrongful act but a liability for one of its results, namely the bodily injury or death.

The one remaining point was whether the respondents were indemnified by a certain policy of insurance. This would be so if the phrase "liability at law for damage (including law costs of any claimant) to property (including animals)" applied. He agreed that in such a collocation the word "property" referred to tangible property. In his opinion, both questions should be answered "No" and the appeal should be allowed.

Appeal allowed.

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

Solicitors for respondents: **Young and Moss**, Stratford.

Full Court.

Myers, C.J.
Herdman, J.
MacGregor, J.
Blair, J.
Kennedy, J.

April 5, 6; May 6, 1932.
Wellington.

LOFTUS v. MARTIN.

Licensing—Chartered Club—Carrying of Local "No License" in District Wherein Club was Situated, Suspending Charter—On Subsequent Alteration of Electoral Boundaries, Club became Situate within Limits of New Licensing District in which Licenses in Force—Whether the Fact that there had been no Local Licensing Poll in New District, but only National Poll, continued Suspension of Club's Charter as to Sale of Liquor—Licensing Act, 1908, s. 263—Licensing Amendment Act, 1910, s. 12 (b)—Licensing Acts Amendment Act, 1924, ss. 6, 50 (3).

The question in issue was whether a chartered club, as defined by S. 259 of The Licensing Act, 1908, in the circumstances mentioned *infra* is entitled to sell liquor in terms of its charter.

The Club was granted a charter in the year 1886, and it was admitted that the annual fees payable to keep such charter on foot have been paid continuously ever since.

On July 1, 1905, by reason of the carrying of "no license" in Ashburton, the charter was, by virtue of s. 263 of The Licensing Act, suspended for as long as the result of such poll continued, for the reason that the Club was situated in a "no license" district. In 1928, a change took place under the Electoral Act, 1927, whereby that portion of the Ashburton Licensing District wherein the Club's premises are situated became part of the new electoral district of Mid-Canterbury. The major portion of the Mid-Canterbury District comprised the former licensing district of Ellesmere, which was a licensing district. In November, 1928, a national poll was taken throughout New Zealand when National Continuance was carried. From that date the Club has assumed that the suspension of its charter, so far as the sale of liquor is concerned, had ended, and it has continuously sold liquor to its members in terms of its charter.

The appellant, who was the secretary of the Club, was convicted by the learned Magistrate, who considered that the various amendments to the Licensing Laws, coupled with the fact that there had been no local poll, but only a national poll in the Mid-Canterbury District since the creation of the district, had the effect of continuing the suspension of the Club's charter so far as the sale of liquor was concerned.

Held: *Per totam Curiam*, quashing conviction: The Club is situate within a district in which for the time being licenses for the sale of liquor exist. S. 12 of the 1910 Amendment Act does not operate as a bar against a chartered club, situate in a license district in which licenses exist, exercising the right to sell liquor.

Per Myers, C.J.: Question at issue depends entirely upon s. 263 of the Licensing Act, 1908, and is a question of fact rather than of law. Para. (b) of s. 12 of the 1910 Act has no application in present case.

Per Herdman, J.: Para. (b) of s. 12 of the 1910 Act must be interpreted in light of the subsequent legislation.

Per MacGregor, J.: Charge against appellant was a criminal one of a grave character under statutes of a highly penal character. No cases should be held to be reached by them but such as are within the spirit and letter of such laws.

Per Kennedy, J.: The result of s. 12 (b) of the 1910 Amendment Act is not, for the purposes of s. 263 of the principal Act, to make a Club notionally situate in a non-existent licensing district.

Wright, Sim, and Kennedy for appellant.

Fair, K.C., Solicitor-General, and **Spratt** for respondent.

MYERS, C.J., said that the appellant is the secretary of the Ashburton Club which is a chartered club within the meaning of s. 259 of the Licensing Act, 1908. Its charter was granted in 1886 under the corresponding provisions of the Licensing Act, 1881. Such a charter once granted was a permanent charter requiring no annual or other renewal such as is required of any of the licenses granted under the Licensing Acts. The charter was issued subject to various statutory conditions, one of which was that an annual fee of £5 shall be paid in respect of the charter by the committee of the club to the treasurer of the local authority in whose district the club is situate. Even though a charter had become suspended under the provision which is now s. 263 of the Act of 1908 (to which section further reference will be made directly), that suspension only operated so far as the charter conferred the right to sell liquor. Notwithstanding such suspension therefore the charter in all other respects remained valid and subsisting so long as the payment of the annual fee was kept up. The Borough of Ashburton in which the Club is situate was formerly within the Ashburton Licensing and Electoral district as existing up to October 1928. The Ashburton Electoral and Licensing District became a "no-license district" in 1903. In 1904 there was passed the Licensing Acts Amendment Act of that year which enacted by s. 50 subsection (3) that "where any such club" (that is to say a club holding a charter under the Act of 1881) "is situate in a licensing district in which for the time being no licenses exist, whether as the result of a licensing poll taken before or after the passing of this Act, the charter of the club in so far as it confers the right to sell liquor shall be suspended for so long as the result of such poll continues." To this subsection there was a proviso that "in the case of the club at Ashburton the charter shall be suspended as from the first day of July, 1905." The Licensing Act, 1908, which was a consolidating measure repealed the Act of 1904 and in Part IX of the Act under the title of "Clubs," (commencing with s. 259) enacted by s. 263 as follows: "263. Where any chartered club is situate in a licensing district in which for the time being no licenses exist as the result of a licensing poll taken under the Licensing Acts, the charter of the club, in so far as it confers the right to sell liquor, shall be suspended for so long as the result of such poll continues."

There was no proviso relating to the Ashburton Club as there was to s. 50, subs. (3), of the Act of 1904, nor was there any reference at all to that club, the reason presumably being that any such proviso or reference was unnecessary because the club came within the express provisions of s. 263. That is to say, it was a chartered club situate in the then licensing district of Ashburton in which district for the time being no licenses existed as the result of a licensing poll taken under the licensing Acts.

This position obtained until the General Election and Licensing Poll of 1928. In that year, by reason of changes in various electoral districts, the Ashburton Electoral District was abolished and the Borough of Ashburton became included (with the whole or the greater portion of the old Ellesmere Electoral and Licensing district) in a new electoral and licensing district known as "Mid-Canterbury." It was admitted that that district was not a no-license district but was what was colloquially called a "wet" district as opposed to a no-license or "dry" district.

It was also admitted that the Ashburton Club had paid its annual fee of £5 in respect of its charter as required by s. 261 of the Act and that the charter was a valid and subsisting charter.

There was, of course, no question that from 1908 until the election of 1928, during the whole of which period the club was situate in the Ashburton licensing district, the right to sell liquor under the club's charter was suspended by reason of the provisions of s. 263. The sole question for present determination was whether that position still obtained. It was admitted by the learned Solicitor-General that the question of the club's position in so far as the right to sell liquor was concerned must necessarily be considered after every general election at which any licensing poll is held under the Licensing Acts; and at every general election (including that in 1928) a licensing poll was held until the election of 1931 when no poll was held consequent upon the provisions of the Licensing Poll Postponement Act of that year.

In His Honour's opinion the question at issue depended entirely upon s. 263 of the Licensing Act and was a question of fact rather than of law.

Since the election of 1928 there had been no Ashburton Licensing district: that district went entirely out of existence. During the argument the question was asked from the Bench: "In what licensing district is the Ashburton Club situate?"—The answer was necessarily: "The Mid-Canterbury district." The question was then asked: "Is that a district in which for the time being no licenses exist as the result of a licensing poll taken under the Licensing Acts?" The answer was necessarily in the negative. That being so, it seemed that the conditions which made the charter inoperative in so far as regards the right to sell liquor no longer existed and, if the conditions no longer existed His Honour failed to see how the suspension which depends upon their existence can continue. He thought that s. 263 meant simply that the right to sell liquor was suspended during the continuance of the result of the poll where the club was for the time being situate in a licensing district in which no licenses exist as the result of a poll. His Honour said he was conscious that this involves a transposition of the words "for the time being"; but this transposition simply made clearer what he considered was the meaning of the section without such transposition. The club had not since the election of 1928 been situate in such a district as is mentioned in s. 263, but, on the contrary, had been situate in a district in which licenses do exist. He thought, therefore, that on the true construction of s. 263 the suspension came to an end as soon as the situation of the club changed from a no-license district to a "wet" district.

Counsel for the respondent sought to support the learned Magistrate's judgment by invoking the provisions of s. 12 (b) of the Licensing Amendment Act, 1910. It is thereby enacted that whenever by reason of changes in electoral districts, the whole or any part of the area of a licensing district (thereinafter called "the original district") becomes comprised within the boundaries of another licensing district (thereinafter called "the new district"), then until the first licensing poll in the new district comes into force therein the result of the licensing poll in force in the original district immediately prior to the change shall continue in force throughout the whole of the area thereof in like manner as if that district existed unchanged.

It was contended that under that provision the result of the licensing poll in force in the Ashburton licensing district prior to the election of 1928 continued in force in the Borough of Ashburton, although that Borough became included in the "wet" district of Mid-Canterbury, and that consequently the charter of the club remained suspended. In His Honour's opinion, however, this contention could not be supported. He thought that the question depended entirely upon s. 263 which dealt with clubs and clubs only and that section 12 (b) of the Act of 1910 had no application.

It followed from this view of the case and from what His Honour considered to be the true construction of s. 263 that the Magistrate's judgment was, in his opinion, erroneous and that the appeal should be allowed.

As a matter of fact the Ashburton Club commenced to exercise its assumed right to sell liquor under its charter immediately or very soon after the General Election and Licensing Poll of 1923, and had continued to do so ever since and was still doing so. It seemed to have been assumed by all parties concerned, including the authorities responsible for the administration of the licensing laws, that the club had this right, and had it apparently on the construction which as His Honour had said he thought must be placed upon s. 263. It was stated at the Bar that the present proceedings were launched by reason of a statement in the judgment of Mr. Justice *Ostler* in **Scales v. Young** [1929] N.Z.L.R. 855 at pp. 897-898, commencing "Another difficulty in the way of the argument for plaintiff is . . . provided for." None of the other members of the Court appears to have dealt with this point, nor was it dealt with in the judgment of the Privy Council, [1931] A.C. 685. In the view that His Honour took, that expression of opinion by Mr. Justice *Ostler* did not affect the present case, because, s. 12 (b) of the Act of 1910 had no application. However, as the question of the construction of that section was discussed at some length during the argument of this appeal, the learned Chief Justice said he ought to add that he desired to guard himself against the assumption of concurrence with the view expressed by His Honour. It was argued by Counsel for the appellant—and it may well be—that the section was capable of another construction, but it was then unnecessary and therefore inadvisable to express a concluded opinion.

HERDMAN, J., said that he had no doubt as to the decision which this Court should arrive at in this appeal. Under the licensing laws in New Zealand a chartered club differs from such an institution as an hotel which is controlled by the holder of a publican's license, and a charter of a club is not the same thing as a license of licensed premises.

Part of the Licensing Act, 1908, was specially devoted to clubs; and an examination of the provisions contained therein made it plain that, although "No-License" may have been carried in the past in a particular licensing district or may be carried in the future for the whole Dominion, that has not effected and will not effect the annihilation of the club's charter: see s. 263 of that statute. It was evident from the terms in which the section was framed that the legislature had in mind that conditions in a licensing district might change from time to time. A district in which "No-License" with all its consequences might operate to-day, might to-morrow become a licensed district in which holders of licenses might carry on their business. S. 263 therefore provided in the case of a club charter for the discontinuance of the sale of liquor during a period in which the granting of licenses in a district was prohibited. There was no cancellation of a charter. No permanent prohibition against the sale of liquor was provided for. The section as it stands provides for a temporary restriction only. That was the plain meaning of the section unless there existed in some other part of the licensing legislation a provision or provisions which made a contrary interpretation necessary. When s. 263 was enacted the fate of each licensing district was decided by the electors of each district. So if "No-License" was carried—a verdict which put an end to the sale of liquor for the time being by licensees of licensed houses—it was but natural to provide that a chartered club within a no-licensed district should, in respect of the sale of liquor, be required to submit to a similar disability. That, no doubt, was the reason for the existence of s. 263 of the Licensing Act, 1908.

It was, however, contended that s. 263 must be read and considered in conjunction with para. (b) of s. 12 of the Licensing Amendment Act, 1910. When that section was passed, the principle of what may be termed "local no-license" had not been abolished. The electors of each licensing district determined the fate of each district. In 1918, however, a radical alteration was made in the policy of the licensing law. The Licensing Amendment Act of 1918 was passed which provided that no question relating to local no-license should be submitted at a licensing poll, and that the electors in districts should decide whether there should be national continuance or State purchase or national prohibition. Special provision was made for districts in which the principle of no-license operated. S. 77 of the Act of 1918 provided that the electors in these districts should vote for the purpose of determining whether licenses in these districts should be restored.

But with the ebb and flow of population the boundaries of licensing districts change from time to time. Changes may be so extensive in their character as to involve the abolition of a district. As a result of the alteration of district boundaries the Ashburton licensing district, within which the Ashburton Club was situated, ceased to exist. A new district, the Mid-Canterbury district, was created which embraced that part of the old Ashburton district in which the club was situated. As a result of this change, the club, which before was within the boundaries of a "no-license" district, was now within the limits of a district in which licenses for the sale of liquor may be and have been granted. Applying the language of s. 263 it was situated within a district in which for the time being licenses exist.

Nevertheless, it was contended that para. (b) of s. 12 barred the club from selling liquor under its charter. It was said that notwithstanding the complete disappearance of the Ashburton licensing district, the consequences of carrying "No-License" within it in its lifetime still subsisted. It was in effect argued that part of the new Mid-Canterbury district is still subject to the restrictions which a declaration in favour of No-License by the electors of the old Ashburton district entailed.

As His Honour understood Respondent's argument, it amounted to this: that part of Mid-Canterbury which was once Ashburton cannot divest itself of the consequences of a no-license verdict until a local poll is taken in the Mid-Canterbury district. But a local poll could never be taken in that district for all local polls are abolished excepting those preserved for the purpose of trying the issue of restoration. It seemed to His Honour that para. (b) of s. 12 must be interpreted in the light of the legislation that has been passed since the year 1910. The only licensing poll that can possibly have any operation now in the Mid-Canterbury district is a poll held for the purpose of determining the national issue. If Continuance be carried throughout New Zealand, Continuance will operate in Mid-Canterbury; and if National No-License be carried Mid-Canterbury will be without licenses. It was in his judgment inconceivable that the legislature intended that the whole of Mid-Canterbury district should be directly affected by a national poll and that part of that whole should also be affected by the result of another poll taken some years ago in a district which has ceased to exist. The legislature could never have intended to produce such a grotesque consequence.

His Honour did not feel called upon to decide in precise terms the full extent and meaning of s. 12 (b) of the Act of 1910. For the purpose of the present appeal it was sufficient for him to state that he was definitely of opinion that it did not operate as a bar against a chartered club, now situated within a licensed district in which licenses existed, from exercising the right of selling liquor.

MACGREGOR, J., said that in this case he agreed that the appeal should be allowed, for the reasons given by other members of the Court. He desired, however, to add a few observations relating mainly to the construction of the statutory provisions in question. The charge against the appellant was a criminal offence which was treated by the Licensing Acts as of a grave character, and involving serious consequences. The penalty provided for a first offence is a fine not exceeding £50, and for any subsequent offence is imprisonment not exceeding three months (s. 146 (a) (ii) of the Licensing Act 1908). Apart from this penalty imposed on the appellant himself as secretary of the club, it is provided by s. 266 (b) of the Act that the Minister of Internal Affairs may at any time revoke the charter of any club on being satisfied that liquor is sold in the club when the charter is suspended. It was obvious, accordingly, that the legislation involved in this case was of a highly penal character. The law of England in modern times had always been that penal statutes should be construed strictly, so that no cases shall be held to be reached by them but such as are within both the spirit and letter of such laws. As was said by Lord *Esher*, M.R. in **Tuck and Sons v. Priester** (1887) 19 Q.B.D. at p. 638: "We must be very careful in construing that section because it imposes a penalty. If there is a reasonable interpretation which will avoid the penalty in any particular case, we must adopt that construction. If there are two reasonable constructions, we must give the more lenient one. That is the settled rule for the construction of penal sections." These judicial remarks appeared to His Honour to be relevant to the present case. The main question to be decided on this appeal was the true construction of s. 263. If he adopted the literal and indeed obvious construction of that section, it was clear that the charter of the Ashburton Club was not now suspended, and that no penalty had been incurred by the appellant. His Honour could see no good reason for adopting instead a suggested alternative construction, (involving a penalty), which was based upon what appears to him a strained interpretation of another section in an amending statute. In his opinion, therefore, this appeal must be allowed, and the conviction quashed.

BLAIR, J., after relating the facts, said that the matter was most elaborately argued before the Court, and for the respondent it was contended that when s. 263 of the Licensing Act, 1908 is read in conjunction with s. 12 (b) of the Amendment Act, 1910, the only method whereby the suspension of the club's charter could end would be by the holding of a local option poll in the new district of Mid-Canterbury, and as local option polls (except in "no license" districts) have now been abolished, the result of the argument is that the suspension of the club's charter will never end, notwithstanding the fact that the club is now situated within a licensing district.

It was admitted during the argument that unless s. 263 of the 1908 Act were read with s. 12 of the 1910 Act, the appellant was entitled to succeed. To His Honour's mind the whole matter is concluded by s. 263. The club was, at the time of coming into operation of the local option poll at Ashburton, then situated in a "no license" district, and accordingly therefore its charter, in so far as it conferred the right to sell liquor, became suspended. It was to be noted that the charter had not been cancelled, but remained in full force and effect except for the partial suspension so far as the selling of liquor was concerned. The club was now situated in a license district, namely the Mid-Canterbury District, which is admittedly a license district, and therefore it was not now a club which is caught by the suspension provisions in s. 263. The club is situated "for the time being" in a licensing district where licenses exist as the result of a licensing poll. The suspension provisions of s. 263 therefore did not apply.

KENNEDY, J., said that the Ashburton Club and Mutual School of Arts is a chartered club which continued for a time to be situate in the Ashburton Licensing District after that district had become a "no-license" district. When that event occurred the charter was not cancelled but in so far as it conferred the right to sell liquor it became suspended in accordance with s. 50 (3) of The Licensing Acts Amendment Act, 1924, s. 6 of the same Act contained provisions which correspond with s. 12 (b) of the Licensing Amendment Act, 1910. His Honour quoted s. 263 of The Licensing Act, 1908, upon the true construction of which, he said, the present appeal turned. The argument of the appellant was that that section was to be construed literally and that the Ashburton Club is not now situate in a licensing district in which for the time being no licenses exist as the result of a poll taken under the Licensing Acts, but is situate in the Mid-Canterbury Licensing District which is a district where licenses are in force. The respondent's contention was that s. 263 must be looked at, to determine when suspension arose and that, once it arose, it was continued by s. 12 (b) of the Licensing Amendment Act, 1910, although the club might become, by changes of electoral boundaries, situate in fact in a licensing district in which, it could not be said "that for the time being no licenses exist as the result of a licensing poll taken under the Licensing Acts." After quoting s. 12 of the Licensing Amendment Act, 1910, so far as it was relevant, His Honour said it followed from that provision that in any area, corresponding to the former Ashburton Licensing District, the result of the licensing poll in the original district would continue until the result of the first licensing poll in the new district came into force therein. While, however, this result might continue in a former area, the old licensing district was not still continued, so that it may be said in fact that the Ashburton Club was not situate in the Ashburton Licensing District. S. 263 itself provided for suspension of the club's charter so long as the result of a poll continued and it treated "no-licenses" as the result of a licensing poll taken under the Licensing Acts. His Honour said he could not read s. 12 (b) as in the result so amending section 263, that the suspension was continued if the club was not in fact situate in a licensing district in which for the time being no license existed as the result of a licensing poll. No licenses in fact, exist in the part of the Mid-Canterbury Licensing District where the club is now situate; but no licenses do not exist in the Mid-Canterbury Licensing District as the result of a licensing poll. The result of s. 12 (b) is not, for the purposes of s. 263, to make a club notionally situate in a non-existent licensing district.

Nor could His Honour read s. 263 as applying a suspension which once subsisting, continued so long as the result of the no-license poll continues in the area of the former licensing district. The club's situation remaining in a no-license district in which for the time being no licenses existed, its suspension continued so long as the result of the poll continued. But he thought the suspension automatically ends, if the condition on which the suspension arises, ceases to exist. The Legislature might have treated the charter of the club as a license but that it had not done, and, His Honour did not see how, without straining the language of section 263, that section could be interpreted to continue a suspension, when the club is, as the result of changes in electoral boundaries, in fact situate in a licensing district in which licenses obtain. Upon these grounds, he agreed that the appeal should be allowed, and the conviction should be quashed but without costs.

Solicitor for the appellant: **R. Kennedy,** Ashburton.
Solicitor for respondent: **The Crown Solicitor,** Christchurch.

Supreme Court.

Reed, J. February 22; March 18, 1932. Wellington.

DAVIDSON v. THE ATLAS ASSURANCE CO. LTD. AND DAYSH.

Workers Compensation—Alleged Agreement to Admit Statutory Liability and Pay Compensation—Quantum left at large—Offer of *ex gratia* Payment on Insurer discovering Injured Person not a "Worker"—On Failure to establish Claim in Arbitration Court, Proceedings taken to enforce Agreement—Whether any consideration for Company's Admission of Liability—Whether Company estopped from denying liability previously admitted through Mistake as to Status of Claimant.

Action praying specific performance of an alleged agreement to admit liability for compensation under the Workers' Compensation Act, 1922, and to pay compensation in accordance therewith, or, in the alternative, the sum of £1,000 as compensation or as damages for breach of contract. There was a further claim for £50 damages in respect of unsuccessful proceedings brought by the plaintiff in the Arbitration Court.

The plaintiff in May, 1928, being then a sharemilker under a written agreement with the defendant Daysh, suffered such injury as would, if he were a worker within the meaning of the Worker's Compensation Act, 1922, have entitled him to compensation. Daysh was insured with the defendant, the Atlas Assurance Coy. Ltd. Due notice of the accident was given and the Insurance Company specifically admitted liability, and the only question was as to the quantum of compensation. The condition of the plaintiff fluctuated from time to time, and it was impossible to ascertain the degree of disability under which he suffered. Finally, in December 1929, or some 19 months after the accident, a doctor was able to pronounce a 56% permanent disability, which would entitle the plaintiff to the full compensation allowed by the Act. Then, for the first time the Insurance Company took legal advice and was advised that the plaintiff was not a "worker" within the meaning of the Act. and that there was no liability. The Company had paid all doctors' expenses of examination of the plaintiff and his travelling expenses incurred in attending on doctors, and offered without prejudice an *ex gratia* payment of £150. This was refused, and the plaintiff took proceedings in the Arbitration Court against the defendant Daysh claiming compensation for the injury, on the following grounds: (1) That the plaintiff was a "worker" within the meaning of the Act, and (2) That the defendant through his insurers had agreed to admit liability and had agreed to pay compensation. The learned President of that Court, Mr. Justice *Frazer*, in a considered judgment, which has not yet been reported, held that the plaintiff was not a "worker," and that, as regards the admission of liability, the Arbitration Court had no jurisdiction to enforce an agreement to admit liability where the plaintiff was not a worker. These proceedings were then commenced.

Held: (1) Company had made no promise nor could any promise be implied: it had mistakenly admitted a fact in the necessary proof of liability and there had been no consideration for such admission. (2) As the Company's representation had not been made with the intention and with the result of inducing the plaintiff, on the faith of such representation, to alter his position to his detriment, there could be no estoppel.

Macassey and Lawson for the plaintiff.
O'Leary for both defendants.

REED, J., said that, there being no right of appeal from the decision of the Arbitration Court, the judgment conclusively established that the plaintiff never had any legal right to recover compensation. To be successful, therefore, in the present action, he must establish a right based on the mistaken admission of liability by the Insurance Company.

The whole transaction was evidenced in the correspondence, to the important parts of which His Honour then referred at length.

Eventually the relapse of the plaintiff postponed enquiry into the question as to the amount of the plaintiff's average weekly earnings. It was arranged to await a further medical report and on August 19, the Insurance Company wrote: "Should it appear from that report that there is no liklihood of being able to arrive at an immediate and final settlement of the claim, we will at once take steps to pay whatever compensation is due up to date. To arrive at the basis for such payment, the writer will visit Featherston, as previously arranged, and as soon as we receive the further medical report, we shall let you know on what day he will be going up."

Considerable delay occurred in obtaining the report and it was not until December 11, that the medical report dated December 7, was received by the Insurance Company from the solicitors. This reported that the plaintiff "has suffered permanent injury to the extent of about 50% of his previous usefulness." A date was then fixed to go into the question of what

the average weekly earnings of the plaintiff had been; but, before the date arrived, the Insurance Company wrote that it had taken legal advice, which was that the plaintiff was not a worker within the meaning of the Act, and that no liability attached. An *ex gratia* payment was offered, the amount being subsequently increased; but was declined.

This correspondence showed: (1) That there was a voluntary unqualified admission by the defendant company of the status of the plaintiff; (2) That at the time of this admission there was neither a request by the Company that the plaintiff should forbear from suing nor a promise by the plaintiff that he would postpone taking action; (3) That the quantum of any compensation payable to the plaintiff was at large, to be determined by arrangement if possible, and if not by an award of the Court.

The first question to be decided was this: Was there any consideration for the admission of liability? The admission was communicated to the plaintiff's solicitors on September 17, and no consideration, proceeding from the plaintiff to the defendant, was given for such admission; there was no agreement by the plaintiff to postpone proceedings. The first time that there was any suggestion by the defendant Company that there should be any delay in the settlement is in the letter of September 15. This letter contained no request that, in view of the admission, proceedings should be stayed nor was it in any way linked to the admission. It was impossible to effect a settlement until the full measure of the plaintiff's disability had been ascertained, and the Insurance Company in that letter stated that it proposed leaving the matter open to enable that to be ascertained. Mr. Shorter, Superintendent of the Insurance Company, admitted that that was a request that no steps be taken until the position of the plaintiff had been ascertained. This proposal was acquiesced in, and as is shown by the correspondence, all subsequent delay was for the same purpose. There was, therefore, no evidence of consideration in the ordinary sense. But a consideration may be spelled out if the plaintiff were able to bring the case within the ruling in **Currie v. Misa,** L.R. 10 Ex. 162, that is to say that there was something done, forborne, or suffered by the plaintiff in consequence of some promise by the defendant Company. Did the plaintiff do, forbear, suffer, or promise anything in respect of such admission? It was quite clear that he did not promise anything. At all times, as the correspondence showed, he had claimed the right to bring his action. A forbearance to sue was consideration for a promise: **Alliance Bank v. Broome,** 3 Dr. & Sm. 289. The test was stated by *Bowen,* L.J., in **Miles v. N.Z. Alford Estate Coy.,** 32 Ch.D. 266, 288: "We have to see here in the first place whether there was forbearance promised, in which case the promise would be the consideration of the guarantee, or whether there was an actual forbearance given at the request of the guarantor and in return for something." As His Honour had already pointed out the admission was made under the mutual mistake that the plaintiff was a worker within the meaning of the Act, there was no suggestion that in consideration of this admission there should be a forbearance to sue, nor was there any promise that the Company would pay whatever amount was claimed as compensation. In giving evidence Mr. Card, solicitor for the plaintiff, said: "If liability had been repudiated at the start we would have commenced immediately." The extent of the plaintiff's injuries at that time being uncertain all that could have been obtained in such an action would have been a declaration of liability, the case being then adjourned until the amount of liability could be ascertained. As can quite readily be believed, and as sworn to by Mr. Shorter, legal opinion as to the Company's liability would in all probability have been taken before a judgment, which would impose an indefinite liability upon the Company, would have been consented to. But assuming that there was forbearance in obtaining a suspensory award that was not a forbearance based on any promise by the Insurance Company. It had made no promise, nor can any promise be implied. It was nothing more than a mistaken admission of one fact in the necessary proof of liability. All other questions were at large.

No promise can be implied that it would pay such compensation as the plaintiff might claim. If it could be claimed that there was an implied promise to pay such compensation as the Court of Arbitration might award, there was no reality in the consideration, for it would be bound to do so by law. The only other promise that could be implied is that the defendant Company would pay such compensation as it considered right. This would be altogether too indefinite a promise upon which to base a contract. There being no consideration founded on forbearance, it was further contended that the facts showed that what occurred had been a compromise, and that the compromise of a suit furnished consideration. No doubt if what took place had been a compromise and there was forbearance to sue as a term of that compromise, that would constitute good consideration: **Callisher v. Bischoffstein,** L.R. 5 Q.B. 449. His Honour said he had no hesitation in holding that nothing in the nature of a compromise could be spelled out from either the admission or the subsequent correspondence. At the time the admission was made, neither party had the faintest idea what the amount of the claim for compensation would be. When the matter was so far progressed as to become ripe for formulating a claim the question of the compromise might then arise, and, if not arrived at, neither party was debarred from having the matter determined by the Court. Although the Superintendent of the Insurance Company had some doubt as to whether the plaintiff was a worker or not, that doubt was overborne by the Manager of another Insurance Company which was more largely interested in the policy than the defendant Insurance Company. No suggestion of any doubt was expressed to the plaintiff and there was nothing in the evidence to show that there was anything in the nature of give and take which was essential in order to constitute a Compromise: **Huddersfield Banking Company Limited v. Henry Lister and Sons** [1895] 2 Ch. 273. His Honour was of the opinion, therefore, that there had been no consideration for the admission and that the plaintiff could not recover.

Further, His Honour thought the plaintiff must fail upon the ground that the admission was made through a mutual mistake as to the status of the plaintiff. The question as to whether the claimant in the Arbitration Court was a worker or an independent contractor, was a question of fact. It had been so held in New Zealand: **Leafberg v. Public Trustee** [1921] G.L.R. 193; and repeatedly in England: **Willis's Workmens Compensation** (27th Ed.) 121.

It was contended on behalf of the plaintiff that as the manager of the Insurance Company read the contract under which the plaintiff was working and construed it as constituting the relationship of employer and employee that the mistake was one of law and not of fact, and that the Insurance Company was, therefore, bound by its admission. His Honour thought it was unnecessary to consider whether this had been a mistake of law or fact; it was a fundamental error as to the status of the plaintiff, and if contract there was, it was based on the common mistaken belief that the plaintiff was a worker within the meaning of the Act. His Honour then quoted Lord Justice *Lawrence* in **Lever Bros. Ltd. v. Bell** [1931] 1 K.B. 557, at p. 590. The qualification suggested by the learned Lord Justice was that "the mistake must be as to some fact which affects the fundamental basis of the contract."

In the present case, the plaintiff must stand or fall upon the assumption that the admission constituted a contract. It was quite clear that, assuming a contract, it had been made in the mistake of a fact that was fundamental: that was to say that the plaintiff was a worker.

His Honour said he had already quoted the reference by Lord Justice *Lawrence* to the speech of Lord *Westbury* in **Cooper v. Phibbs,** L.R. 2 H.L. 149, at p. 170, where a distinction was made between ignorance of the general law and ignorance of a private right which although a matter of fact "may be the result also of a matter of law." The speech of Lord *Chelmsford* in **Earl Beauchamp v. Winn,** L.R. 6 H.L. 223, at p. 234, was instructive on that point. The judgment in **Lever Bros. Ltd. v. Bell** (*supra*) had been reversed by the House of Lords, 48 T.L.R. 133, but only on the application of the principles to the facts of that case. Indeed those principles were re-stated in some of the speeches, thus Lord *Warrington,* in whose judgment Viscount *Hailsham* concurred, quoted with approval the ruling by the learned trial Judge (Mr. Justice *Wright*) as to the class of mistake sufficient to justify the Court in saying that there was no true consent as being: "Some mistake or misaprehension as to some facts . . . which by the common intention of the parties, whether expressed or more generally implied, constitute the underlying assumption without which the parties would not have made the contract they did." And His Lordship commented: "That a mistake of this nature common to both parties is, if proved, sufficient to render a contract void is, I think, established law." Lord *Atkin* quoted with approval a proposition formulated in argument by Sir *John Simon* (p. 151). No such difficulty was presented in the present case wherein there was no question that it was a contractual assumption that it was the basis of the contract. Lord *Thankerton* citing certain cases said (p. 155): "In all of them it either appeared on the face of the contract that the matter as to which the mistake existed was an essential and integral element of the subject-matter of the contract or it was an inevitable inference from the nature of the contract that all the parties so regarded it."

The plaintiff, therefore, must fail on this further ground of mistake.

Further, the plaintiff submitted that the defendant Company was estopped from denying liability. To constitute an estoppel it must be shown that the representation was made with the intention (actual or presumptive), and with the result, of inducing the plaintiff on the faith of such representation to alter his position to his detriment. **Spencer Bower on Estoppel,** p. 10. Simply to have put the plaintiff "to rest" is not sufficient; "it must be shown, not only that they have been put to rest, but also that they have been damaged by being put to rest" per *Brett*, J. in **Sim v. Anglo-American Telegraph Co.,** 5 Q.B.D. 188, 211. Now the only damage that could be suggested was that, if the Insurance Company had denied liability, the plaintiff might have obtained a suspensory order from the Court affirming liability which the Insurance Company in its ignorance of the legal position might not have resisted. Otherwise than in this respect the plaintiff could show no damage. On the other hand, no advantage could be shown to have accrued to the Company except of the same problematical and illusory nature. There must be some real tangible loss or detriment, and it was not shown in the present case. Further, the doctrine of estoppel by representation was only a rule of evidence and except as a bar to testimony, had no operation or efficacy whatsoever. In **Galloway v. Galloway,** 30 T.L.R., 531, the plaintiff and defendant, believing (as was not the fact) that they were lawfully married, entered into a deed of separation. In an action on the Deed to recover £10 alleged to be due thereunder it was contended that the defendant was estopped from saying that the plaintiff was not his wife, having regard to the recitals in the Deed. The Court held that the Deed was void on the ground of mutual mistake of fact. The case was followed on almost similar facts in **Law v. Harrigan,** 33 T.L.R. 381, and referred to in **Lever v. Bell** (*supra*). His Honour thought, therefore, for the reasons given, that the Insurance Company was not estopped.

One further point should be referred to. A number of cases were cited, decided both in New Zealand and in England, in respect of claims by workers under the respective Compensation Acts. Those had no bearing on the matter in question inasmuch as the Statutes referred to contained a special provision entitling the parties to agree, *inter alia*, as to the liability to pay compensation; and it was held that an agreement so made under the section was binding. There was, however, one case, to which His Honour's attention was specially directed by Mr. *Macassey* for the plaintiff, as containing an observation by *Pollock*, M.R., as to the law apart from the Statute. It is the case of **Guest, Keen and Nettlefield v. Williams,** 18 B.W.C.C. 68. The case was decided under the Statute, but in the course of his judgment the learned M.R. made this observation: "Now, quite apart from the Act, it seems to me that the appellants, having undertaken to accept liability, cannot now seek to reopen the matter in order to take advantage of **Hewitson's** case. If the matter stood apart from the Act it seems that they were prepared to compromise their rights whatever they were, and to enter into an agreement accepting liability. The learned County Court Judge seems to have had abundant evidence, and to have come to a right decision that the employers did in fact accept liability." (P. 73). That was clearly *obiter*, and in any case was directed to the facts of the case which differed in material respects from the present case.

Judgment for the defendants accordingly.

Solicitors for the plaintiff: **Card and Lawson,** Featherston.

Solicitors for defendant: **Bell, Gully, McKenzie and O'Leary,** Wellington.

Smith, J. March 11; April 8, 1932. Hamilton.

In re WALLACE (DECD.): WALLACE v. WALLACE & ORS.

Will—Interpretation—Wife Appointed Sole Executrix with Devise to Wife "in trust for the benefit of our children"—Wife "to have control of Estate during her Lifetime"—Whether Widow takes Beneficial Interest under Will—Meaning of "Control" discussed.

Originating Summons for an order interpreting the will of William Wallace late of Hamilton Farmer who died on June 22, 1931, leaving a will made on May 1, 1912. The relevant part of the will, which was a home-made document, made on a printed form, is as follows: "I APPOINT my wife Elizabeth Emma of Hamilton to be the sole executrix of this my will to be the Executors of this my will. I direct my Executors to pay my just Debts and Funeral and Testamentary expenses I GIVE DEVISE AND BEQUEATH all my property to my wife Elizabeth Emma to be held in trust by her for the benefit of our children. The said Elizabeth Emma to have control of the estate during her lifetime."

When the will was made the children were all minors aged respectively, (to the nearest year) 14, 13, 10, 5 and 4; but at the time of the testator's death in June 1931 they were all of full age.

The Originating Summons asked for an order defining the right of the plaintiff Elizabeth Emma Wallace under the will. The question which is raised was whether the widow takes any beneficial interest under the will.

Held: Widow became a bare trustee for the children. The words "control of the estate" mean the "management of the estate" so long as the widow was alive and there was a trust to administer. The will did not impliedly confer a life estate on the widow since the words of the will did not create a beneficial interest in favour of the widow; it was wholly given to the children.

MacDiarmid for plaintiff.
Tompkins for defendant.

SMITH, J., said that counsel for the widow (plaintiff), and counsel for the children, defendants, had both argued that the effect of the will was to create a life estate in the whole of the testator's property in the wife with remainder to the children. Upon consideration, His Honour found himself unable to accept that interpretation of the will. There could be no doubt that under the testator's gift of his property, the widow was to hold it in trust for the children. She became a bare trustee under this bequest for the children. Counsel argued that this construction was affected by the next clause. They submitted that that clause must be given some meaning and that the only reasonable meaning is that it created a life estate in the widow whereby she could use for herself the income of the estate during her life. The difficulty of this interpretation was that it seemed to His Honour to do violence to the words used. Counsel admitted that the dictionary meaning of "control" does not include the meaning of "use," but they submitted that the testator must be regarded as having created his own dictionary and, upon this view, that "control" in his will includes the meaning of "beneficial use." In the absence of authority, Mr. *MacDiarmid* referred for instruction to two American decisions cited under the title of "Control" in "*Words and Phrases Judicially defined*," Vol. II page 1549—viz. *Porter v. Thomas*, 23 Ga. 467, 472, and *Randall v. Josselyn*, 10 Atl. 577, 579. These reports were not available to him. The record of the decision in *Porter v. Thomas* is as follows "In a will where testator bequeathed to his wife all his property, both real and personal, to be at her control during her natural life, the word 'control' cannot mean that she will have an absolute fee simple or power of sale, so as to pass a fee during her natural life; it cannot have been used in a different sense from its usual signification and import. The testator, it is manifest, did not use it in any other sense. He intended that she should have authority over it—the management and superintendence and use of it—during her natural life."

That case was not analagous to the present, because there had been there no gift to the wife in trust for the children. The record of the decision in **Randall v. Josselyn** is as follows: "The words 'control and management' as used in a will devising property to the testator's son, and declaring that he shall have the control and management of the same during life, means that the son should have the use, possession, superintendence, and direction of the property, and the power of exercising a general restraint over the same during the continuance of his estate, or until the happening of the event that will determine the taker of the fee in the same, and manifestly does not include a power of disposal." Again, there was no analogy to the facts of the present case. On the other hand, there are cited under the same title the cases of *Wolffe v. Loeb*, 13 South 744, 746, 98 Ala. 426, and *Hogan v. Hogan*, 61 N.W. 73, 74; 102 Mich. 641. These reports likewise were not available. The record of the decision in *Wolffe v. Loeb* is as follows: "When used in a will giving a wife exclusive control over testator's property, 'control' is not to be construed as giving the power to make absolute disposition thereof, and use and enjoy it as her own, but only to give her the management and control thereof." That view was in accord with His Honour's in the present case. The decision in *Hogan v. Hogan* is recorded as follows: "In a provision in a will giving a widow 'control' of certain lands, with a remainder to children, a tenancy without impeach-

ment of waste is not imported by the use of the word 'control.'" In *Hogan's* case the children took a remainder after the widow that would import a life estate in the widow, though not without impeachment of waste. The children were not in the present case given a remainder after the widow. The property was given to her in trust for the children and she was to have control during her lifetime.

His Honour did not think that he was required by such a disposition to create a new meaning for the word "control." The words "control of the estate" seemed to him to mean "the management of the estate." The widow was to have that management during her lifetime. He thought that the purpose of this provision appeared in the light of the fact that the children were minors in the year 1912. If the testator had died shortly after the making of his will, someone would have had to manage the estate even after the executor had paid the just debts funeral and testamentary expenses. The provision was equivalent to a specific appointment of the widow as the trustee of the estate during her lifetime. If, as the children respectively attained full age, each child became entitled to his or her share of the property when he or she came of age, such child could withdraw that share from the trust and the widow would cease to have control of it. When all shares were withdrawn, there would be no need for further control and the trust would cease even though the widow were still alive. So long, however, as there was a trust to administer and so long as she was alive, the widow was to have the management of the estate. As was pointed out by Mr. Justice *Cooper* in **In re Adlington** [1916] G.L.R. 445, it may be implied in the will that, as there was no definite provision for the wife, there is implied in the words used in this will provision for the maintenance of the wife during the continuance of the trust, otherwise she would not be able to hold the property in trust for the benefit of the children and to control it. That question did not arise on the present Summons and the children are now all of age.

Mr. *Tompkins* argued further that in the first part of his will the testator did not deal with income, and that it must be assumed that he did deal with income in the second provision. His Honour said he was unable to assume this. In the first part of his will, the testator referred to his "property" and in the second part to his "estate." His Honour had come to the conclusion that there was no material difference in the meaning of the words "property" and "estate" as used in this will. He thought they both referred to the corpus of the estate.

Mr. *Tompkins* further submitted, in the event of the Court concluding that the widow took no beneficial interest upon the construction of the words used, that the will impliedly conferred a life estate upon the widow and his cited 28 **Halsbury**, p. 846, para. 1505; **Watson v. Watson,** 15 G.L.R. 52, and **In re Adlington** (*supra*). In His Honour's opinion, none of these cases applied here. There was no gift to the children after the death of the wife. Nor was there any gift to the wife before the children took, except in so far as the words "control of the estate during her lifetime" may be said to create it. He had held that these words did not create a beneficial interest. Accordingly, he was of opinion that the authorities which justified the implication of a life estate did not apply.

The testator may not have intended to exclude his wife from a beneficial interest in his estate; but he had used words which in His Honour's opinion shewed that the whole beneficial interest had been given to the children. He thought that the wife's remedy lay under the Family Protection Act.

The answer to the question asked by the Originating Summons was that the widow takes no beneficial interest under the will.

Solicitors for the plaintiff: **MacDiarmid, Meares and Gray** Hamilton.

Solicitors for the defendant: **Tompkins and Wake,** Hamilton.

MacGregor, J. February 8, 9, April 26, 27, 1932. Wellington.

BYRON v. WOOLNOUGH WINDOW CO. LTD. AND HANSFORD AND MILLS CONSTRUCTION CO. LTD. (IN LIQDN.) (No. 1).

Practice—Motion for New Trial—Motion by Defendants to Set Aside Judgment on Ground of "Technical Misconduct" on the part of Plaintiff's Counsel—Alleged Misstatement of Law to the Jury—What constitutes "Misconduct"—Procedure to be followed in such circumstances—Motion for New Trial—Code of Civil Procedure, RR. 401, 405.

Motion by the two defendant companies to set aside the judgment entered at the trial in favour of the plaintiff, and to enter judgment for each of the defendants *non obstante veredicto*. The trial took place in February of this year, before MacGregor, J., and a jury of twelve. The action may be divided into two claims, one against the Woolnough Window Co. Ltd. and the other against the Hansford and Mills Construction Co. Ltd., and His Honour dealt with each separately and held that the verdict against the Hansford Co. must stand, but he entered judgment for the Woolnough Co., on the ground that there was no proof of negligence on its part. The case is reported on the practice point, *infra*.

Held: There was no ground for such "misconduct" as was suggested. Such "misconduct" must be serious and obvious. The real ground to be relied on in this respect is either: (1) Non-direction, or (2) Misdirection regarding the law on the part of the presiding judge, which should be set out as a substantive ground in support of the Motion.

Mazengarb and **James** for plaintiff.

O'Leary for the first defendant.

Stevenson for the second defendant.

MACGREGOR, J., said, orally, that the Hansford Co. Ltd. asked for a New Trial on (*inter alia*) the ground that there was technical "misconduct" on the part of plaintiff's counsel in misstating the law to the jury. The trial took place on February 8 and 9, and the motion was filed on February 23, and no affidavit was filed in support of it. On April 22, an affidavit was filed by Mr. Stevenson setting out the facts relating to the allegation of "misconduct" at the trial. This affidavit was filed just before the date fixed for the hearing of this motion, and under R. 405 should not even have been considered at this hearing. R. 405 of the Code of Civil Procedure is as follows: "No affidavit shall be read in support of any motion unless such affidavit has been filed in the office of the Court at least two clear days before the day named in the notice for the hearing of the motion, nor shall an affidavit be read in answer to any affidavit in support of the motion unless it has been filed in the office of the Court before noon on the day preceding."

Thus, similarly, an answering affidavit could not duly have been filed in time for the present hearing. It was unfortunate that this Rule had not been followed here, and the natural assumption that occurred to His Honour when he had first read the papers had been that this branch of the motion had been abandoned. In the result, the evidence of what actually happened was not very clear. It was not sufficient in his judgment, to justify him in granting a new trial, which "ought never to be lightly granted": **Turnbull v. Duval** [1902] A.C. p. 436. If it had been intended seriously to rely on the ground, proper and prompt steps should have been taken, to place the full facts relied on before the Court, and full opportunity given to have answering affidavits filed, in terms of the rules. In any case, His Honour was not satisfied on the evidence before him that there was such "misconduct" on the part of counsel as suggested, which was a serious charge to make, and which certainly should have been proved in a regular and convincing way. His Honour did not believe that any such statement as to the law, made by counsel in his address, could have influenced the jury's verdict as suggested, and such "misconduct" must be serious and obvious as in **Stringer v. Norton,** 29 N.Z.L.R. 249, which was not the case here. According to Mr. Stevenson's affidavit (and quite apart from the motion) it now appeared that the real ground on which he should have relied in this respect was either: (1) Nondirection or (2) Misdirection regarding the law on His Honour's part, which of course, should have been set out as a substantive ground in support of the motion. R. 401 shews that this is peremptory, in motions for a new trial. R. 401 is as follows: "Notices of motion shall state precisely the grounds on which it is intended to move; but the Court may, except on motions for new trials, make an order on any other grounds if it seems expedient so to do." No suggestion either of non-direction or misdirection had been made at or after the trial. In the result, His Honour could see no substantive ground for granting a new trial.

Solicitors for the plaintiff: **Mazengarb, Hay and Macalister,** Wellington.

Solicitors for the first defendant: **Bell, Gully, Mackenzie and O'Leary,** Wellington.

For the second defendant: **Izard, Weston, Stevenson and Castle,** Wellington.

A Legal Lottery.

Three Lords of Appeal—or ?

By CLAUDE H. WESTON.

Bell and another v. Lever Bros. Ltd. and others, 48 T.L.R. 133, is a startling instance of minority rule in our Courts. Three Lords of Appeal (Lords Blanesborough, Atkin and Thankerton), out of a House of five, overruled two of their peers (Viscount Hailsham and Lord Warrington of Clyffe), three Appellate Court Judges (Scrutton, Lawrence and Greer, L.J.J.) and a Judge of the King's Bench Division (Mr. Justics Wright): three against six; and the names of all are entitled to respect. Yet the better opinion seems to be that the three were right and the six were wrong. Perhaps the six were more morally than legally right, and if they were moving beyond the limit of settled principles they were attempting to pave with honourable conduct a highway for us mortals.

According to a British Jury, presumably of men and women, Messrs. Bell and Snelling, when servants of the company, had indulged in trading which lined their pockets with gold that should have filled the coffers of the company they served, and while, in the view of the jury, not guilty of fraud, had done something which would have justified and which, no doubt, would have led to their instant dismissal. Let us say that in March, 1929, they held their executive positions under contracts subject to termination without compensation if these private dealings became known: in fact their lengthy and lucrative contracts were voidable. Now, in that month of March, certain amalgamations were made, and as these two gentlemen did not fit into the new mosaic, they were paid the handsome sums of £30,000 and £20,000 to cancel their contracts which, as we have seen, were, if the directors and shareholders of the company had only known, voidable at the option of the latter.

The Defendants, however, were exonerated by the Jury from any suggestion of fraud, and in answer to a question framed by Mr. Justice Wright after addresses of Counsel and before his own summing up, the jury decided that Messrs. Bell and Snelling at the time of the interviews prior to the agreement arranging for payment of these large sums did not have in mind their acts in respect of the offending transactions. Unfortunately for the company, it was not until July, 1929, that that knowledge reached the ears of its directors who then started hot-foot for recovery. Its case was founded almost entirely on fraud, although, tucked away in its statement of claim, was a clause for rescission based on unilateral mistake, which, after the jury's findings was converted by the Trial Judge into one of mutual mistake. Mr. Justice Wright held that the agreement was based on the mutual belief that the benefit of the contracts could only be bought by the company paying compensation, whereas, in fact, it could have been obtained by notices of dismissal. The Court of Appeal agreed with him on that point, and also held that, as servants and agents of the company, the defendants should have disclosed their own peccadilloes when contracting with the company.

To recapitulate the findings, Mr. Justice Wright in the Divisional Court decided that it was a case of mutual mistake. The Court of Appeal considered that the defendants should have disclosed their wrongdoing and therefore the agreement should be set aside. Lord Justice Scrutton, with the Coronation Cases in mind, further considered there was an implied term in the agreement that there was a real contract of service in existence which was worth paying for: that both parties had contracted on that basis and there was consequently, under the circumstances, a mutual mistake as to the rights of the parties, and for that reason also the agreement should be rescinded. Lawrence and Greer, L.JJ. classed the case among those in which the subject matter of the agreement had been held to be non-existent. The Court of Appeal agreed that Mr. Justice Wright was correct in allowing any amendment necessary to allow rescission on the ground of mutual mistake to be considered.

Then came one of those disconcerting events which sometimes occur when cases that appear so simple from the judgments of the Courts below, reach consideration by the Court of final appeal. Lord Blanesborough, in an exhaustive and brilliant analysis of the facts and of the procedure followed, exposed what appeared to him to be a gross injustice to the appellants in allowing the amendment and in deciding, on the ground of innocent mutual mistake, a case that had been in part tried on the basis of fraud and then tried again *de novo* after giving the Respondents leave to amend by adding further and graver charges of fraud, which, in the end, were completely dismissed by the Jury. The learned Law Lord quoted from Lord Watson's judgment in *Connecticut Fire Insurance Coy. v. Kavanagh* [1892] A.C. 473:

> "When a question of law is raised for the first time in a Court of last resort, upon the construction of a document or upon facts either admitted or proved beyond controversy, it is not only competent but expedient in the interests of justice to entertain the plea. The expediency of adopting that course may be doubted when the plea cannot be disposed of without deciding nice questions of fact, in considering which the Court of ultimate review is placed in a much less advantageous position than the Courts below. But their Lordships have no hesitation in holding that the course ought not, in any case, to be followed, unless the Court is satisfied that the evidence upon which they are asked to decide establishes beyond doubt that the facts, if fully investigated, would have supported the new plea. To accept the proof adduced by a Defendant in order to clear himself of a charge of fraud, as representing all the evidence which he could have brought forward in order to rebut a charge of negligence might be attended with the risk of doing injustice."

His Lordship then proceeded to suggest defences in law and fact that might have been advanced by the appellants in the Divisional Court if they had been concerned with a case based on mutual mistake and non-disclosure. He voted for the appeal on that ground alone.

Lord Atkin and Lord Thankerton made short-shift of the duty to disclose as between master and servant. They approved of the view of Mr. Justice Avory on this point expressed in *Healy v. Societe Anonyme Francaise Rubastic* [1917] 1 K.B. 946, and Lord Atkin said:

> "Ordinarily the failure to disclose a material fact which might influence the mind of a prudent contractor does not give the right to avoid the contract. The principle of caveat emptor applies outside contracts of sale. There are certain contracts expressed by the law to be contracts of the utmost good faith, where material facts must be disclosed: if not, the contract is avoidable. Apart from special fiduciary relationships, contracts for partnership and contracts of insurance are the leading instances. In such cases the duty does not arise out of contract; the duty of a person proposing

an insurance arises before the contract is made, so of an intending partner. Unless this contract can be brought within this limited category of contracts *uberrimae fidei* it appears to me that this ground must fail. I see nothing to differentiate this agreement from the ordinary contract of service; and I am aware of no authority which places contracts of service within the limited category that I have mentioned. It seems to me clear that master and man negotiating for an agreement of service are as unfettered as in any other negotiation. Nor can I find in the relation of master and servant when established anything that places agreements between them within the prohibited category."

With regard to the second point—Lords Atkin and Thankerton came nearer to grips with the majority of six. They based their opinion on the doctrine of *Caveat Emptor*: this, they thought, was a parallel case to that of the unsound horse. "When a horse is bought under a belief that it is sound, if the purchaser was induced to buy by a fraudulent representation as to the horse's soundness, the contract may be rescinded. If it was induced by an honest misrepresentation as to its soundness, though it may be clear that both vendor and purchaser thought that they were dealing about a sound horse and were in error, yet the purchaser must pay the whole price unless there was a warranty; and even if there was a warranty, he cannot return the horse and claim back the whole price unless there was a condition to that effect in the contract."

It is obvious that as the sale of a contract, as this really was, is outside the scope of the Sale of Goods Act, the restrictions on the doctrine of *caveat emptor* contained in that act (section 16 Sale of Goods Act, 1908, New Zealand) do not apply and the above statement can be accepted without qualification.

As to mutual mistake, Lords Atkin and Thankerton would not go beyond the principle laid down in *Kennedy v. Panama, etc. Mail Company*, L.R. 2 Q.B. 580, and held that agreements are void (not voidable) only where the mistake is as to the substance and not to the quality of the subject matter. Here the Respondents had bought a contract: it is true that it was not quite a good contract that they acquired, but it was a contract (even if voidable) and the contract they required, and their Lordships were not for reading any warranties or terms into the agreement that would support the Respondents.

If one attempts to take a long view of the connection of the case with the evolution of law that is proceeding before our unconscious eyes, one may see it as a wave that beats in vain on the beach of progress. Of two innocent parties, which is to be protected by the law: the vendor who gets something more than the state of the goods he sells entitles him to, or the purchaser who pays for something he does not get? Fair dealing, I suppose, would range itself on the side of the latter. The law as yet, in all cases, does not.

Mr. C. E. Purchase who for some years past has been under Mr. W. J. Sim, of Duncan, Cotterill & Co., has now joined the Common Law staff of Messrs. Izard, Weston, Stevenson & Castle, of Wellington.

The practices of Messrs. McIntyre, Murphy and Taylor and of Mr. T. L. Seddon have been amalgamated as from May 1 last. The combined practice will henceforth be known as McIntyre, Taylor and Seddon, and will be carried on in the premises of the first-named firm, at Feilding.

Evidence of Complaints.

By A. L. Haslam, B.C.L., D. Phil. (Oxon.) LL.M. (N.Z.)

The late Lord Denman's description of the law of evidence as "that neglected product of time and accident" has peculiar force when one considers the admissibility of complaints on the part of the victim of a sexual offence. In the time of Bracton, it was obligatory for the ravished woman forthwith to "go to the next town and there make discovery to some credible persons of the injury she has suffered." Appeals subsequently lost their place in criminal procedure and the "hue and cry" fell into desuetude. But the importance of the complaint remained. "A perverted survival of the ancient requirement" (Holmes, J., *Commonwealth v. Cleary*, 172 Mass, 175) persists to this day, and, much to the embarrassment of learned counsel for the defence, the rule has broadened in scope long after its historical justification has disappeared.

In all sexual charges, the prosecution may lead evidence not only of the fact that the alleged victim made a complaint shortly after the outrage, but of the actual contents of the complaint itself. Of recent years, such evidence has been received in cases of offences against males: *R. v. McNamara* [1917] N.Z.L.R. 382; *R. v. Camelleri* [1922] 2 K.B. 122. To be admissible, a complaint must "not be elicited by questions of a leading and inducing or intimidating character" and further must be "made at the first opportunity after the offence which reasonably offers itself."—*R. v. Osborne* [1905] 1 K.B. 541. Furthermore, it was laid down in the latter case and in *Rex v. Lillyman* [1896] 2 Q.B. 167, that the complaint is not evidence of the facts complained of, but merely tends to show the consistency of the conduct of the prosecutrix with her story in the witness-box and where consent is in issue, negatives consent.

But it was not until the decision of the Court of Criminal appeal in *R. v. Lovell*, 17 C.A.R. 163, that the ambit of the rule was properly defined. As a matter of practice, juries are warned against the danger of convicting in the sexual cases in the absence of corroboration: *R. v. Crocker*, 17 C.A.R. 46; *R. v. Jones*, 19 C.A.R. 40). It was not until the year 1923 when the appeal in *R. v. Lovell* was heard, that it was finally decided that a complaint on the part of prosecutrix was not corroboration of her story and did not relieve the trial Judge of the responsibility of giving the jury the customary warning. In fact, the previous year Hewart, L.C.J., expressed no disapproval of the summing-up of Roche, J., in *R. v. Camelleri* (*supra*) when he admitted the complaint "to show consistency of conduct was tending to corroborate the evidence of the young person." Confusion had been caused by the words of Ridley, J., in *R. v. Osborne* when he described the complaint as "being corroborative of the complainant's testimony."

In *R. v. Lovell*, Hewart, L.C.J., referred to this dictum and laid down the correct principle: "Historically . . . in sexual cases, the fact of a complaint by the prosecutrix was admitted, not so much as new matter tending to support a story sufficient in itself, but rather as an indispensable ingredient in the story of the prosecutrix, without which the story of the prosecutrix would be open to suspicion." Later, in *R. v. Whitehead* [1929] 1 K.B. 99, he remarked: "In order that evidence may amount to corroboration, it must be extraneous

to the witness who is to be corroborated. A girl cannot corroborate herself, otherwise it is only necessary for her to repeat her story some 25 times in order to get 25 corroborations of it": see also *R. v. Evans*, 18 C.A.R. 123.

What then is the precise position of the complaint in the general law of evidence? Mr. Justice Holmes, in one of his best known aphorisms, sagely observed: "The life of the law is not logic but experience." Why, in the name of logic, admit a complaint as part of the evidence of the prosecution in a sexual charge and reject it in an affiliation case, or for that matter on an indictment for common assault? The contents of the complaint are received neither as original evidence nor as an exception to the hearsay rule. Nor do the obscure principles of *res gesta* apply. The complaint is *sui generis*. It simply "confirms" testimony already given.

Admittedly, age-long experience has shown that a victim will usually complain at once unless her story is a base fabrication. But, in fairness to accused persons, the rule is hardly justified. Though the Judge may warn the jury that the complaint has no probative force in itself, the 12 conscientious laymen can hardly be expected to treat it with academic detachment. Inevitably in their minds it assumes a corroborative character that a subsequent reference from the bench will serve to strengthen rather than to eradicate. The law of evidence owes its development chiefly to mistrust of the jury system. In this instance, it is submitted that a wisely drafted amendment to the Evidence Act might sweep away an anomaly and leave it to defending Counsel to open up the matter in cross-examination if he considers it judicious to do so.

The Statute of Westminster.

Sir John Simon's Comment.

In a Foreword to *The Statute of Westminster*, annotated by Mr. Robert P. Mahaffey, B.A., formerly Whewell Scholar at Cambridge and sometime Legal Adviser to the Governor of Malta, which is just to hand, the Rt. Hon. Sir John Simon, Secretary of State for Foreign Affairs, says:

"Certainly, the Statute of Westminster is a very remarkable document, for it not only embodies much that was the unwritten practice, but ventures upon formal pronouncements on some matters which, in the evolution of the British Commonwealth of Nations, might otherwise be points of controversy. Whether the Statute of Westminster does not raise Constitutional controversy as well as allay it, time will show."

Coming Events.—In *Paddison v. Bank of Australasia*, the presiding Judge, Halse Rogers, asked the plaintiff: "Do you say that £31,000 was drawn out of your bank account during two years without your knowledge?" "Yes, your Honour, I do." His Honour took off his wig, threw it on the Bench, and said: "Oh well go on with your case." The case was one in which the Bank was being sued for £3,800 the total amount of certain cheques said to have been forged; but the Judge had no opportunity of commenting on the matter in charging the jury, for on the next morning the considerably discouraged plaintiff accepted a nonsuit.

London Letter.

Temple, London,
28th April, 1932.

My dear N.Z.,—

The three Judges are appointed, now, and I think you have at least one opinion, commonly held, that Lawrence, J., inheriting all his father's soundness of view and having acquired in his pupillage much of Sir John Simon's brilliant powers of ratiocination, is likely to prove to be the best of them, though, to the ordinary practitioner unaccustomed to the Courts where brows are high and more concerned with business in which the Stars sparkle, he is the least known of them. Du Parcq, J., Rayner Goddard, J., and Lawrence, J.: it seems odd that men with whom we so recently frequented and so intimately fought cases, should now have become of different clay to ourselves; and it is not only odd, but positively embarrassing, suddenly to meet them again outside the Courts and to have to remember—"By Jove, I've got to take my hat off to this fellow, now!"

Parliamentary Draughtsmen: Let us pass to the Other Side, for a change, forgetting the place where and the Eminents by whom the law is construed and devoting ourselves to the factory where the law is made, or at least is drafted and where, by the way, there is ever sizzling the pent-up anger of the man whose work is forever being criticised but who has no opportunity of retort. The art of Parliamentary draughtsmanship, upon which we have dwelt much in this correspondence in the past, has, in the period which this letter covers, come much into the limelight; in so far as the dusty precincts of the draughtsman's life are capable of producing romance or drama, there is romantic or dramatic point to the story. At least it is, from the point of view of a man who is just enough of a "newspaper" man to write this periodical London letter, a "Story."

The First Parliamentary draughtsman is Sir William Graham-Harrison, who has not only many letters of civilian distinction after his name but also the letters B.C.L. He was, sometime, Vinerian Law Scholar in the University of Oxford, and is a Fellow of All Souls. There cannot be living many equivalent authorities in his subject; and, if you wish at any time to appreciate the depth and breadth of his knowledge of the specialist order, beg or borrow or steal a copy of his Thesis (printed for private circulation, only, and sent to me with no intention whatever that I should thus mention it in public): *Notes on the Delegation by Parliament of Legislative Powers, with a Particular Examination of the Case of* The Institute of Patent Agents v. Lockwood, *and some Considerations with Respect to the Future Granting, Exercise and Control of Such Powers.* The subject came under discussion by reason of a brisk assault by the Lord Chief Justice upon the Bureaucracy, which you will recall; we need not enter into the controversy, here; and it is enough (for our point) to observe that the *Reply*, needing to refer to origins and earliest examples of the Statutory delegation of legislative powers, goes back in its researches to the middle of the fourteenth century and the Statute of 11 Ed. 3 (cap. 1) which, in 1337, prohibited the export of wool "till by the King and his Council it be otherwise provided."

The most coldly academic man I have ever seen; the most intelligent friend I have ever had; and the best judge of the wines of France with whom I have ever consorted at the evening meal—there you have the ultimate master of drafts, from whose office the Statutes emerge in their former and better shape and to whose office those hurry, for relief, who are faced with (often having caused, in Parliament) any resulting difficulties or the dilemna of any mistake or slip.

The Hawke's Bay Earthquake Act: Pausing here, I do not think I am betraying any confidence or revealing any secret when I say that I met a (or should I say 'the') New Zealand draughtsman not so long ago in Graham-Harrison's office? After all, you, too, are troubled with Statutes: and, indeed, in every part of the Empire where I have been in practice or have had business, I find the same complaint! But I doubt if anyone else, than our sticky selves, maintains quite such a watertight division between the departments of the Parliamentary Counsel and the Judiciary; and, as I write, I have before me a recent legislation of your own, Hawke's Bay Earthquake Act, 1931, which is not only of general, and essential, interest to us, here, as a striking (and, I should suppose and do hope, efficacious) constitution of a new "Court of Record . . . which shall (in addition to the jurisdiction conferred upon it by this Act) have all the powers inherent in a Court or Record," but is also of a particular and relevant point, in that the source from which and the means by which it finds itself upon my table suggest to me that you 'order these things better' in New Zealand and have no small degree of co-operation between the two sorts of law-makers. However, that may all be, if you are in any way intrigued by the true inwardness of the recent Runciman excitement (which we are, by gradual stages and slow, approaching in this letter) you may obtain all the local colour, necessary from your own draughtsman, aforesaid, who will probably be at this moment visualising the episode with exactitude.

There is a difference, in years, between your affairs and ours, of course, which is not to be denied and which has been incidentally typified herein by the fortuitous contrast of an Act of yours of 1931, and an Act of ours of the fourteenth century; or, if we are to select a more comparable instance, let us mention the Act of Sewers of 1531 (23 Hen. 8, cap. 5) which gave powers to Commissioners of Sewers to make laws, ordinances and decrees. Probably you knew, as I did not, that sewers are four hundred years old, at least; and by this time you will have realised what a vast area there is, which the Parliamentary Counsel must cover with their knowledge; where the Parliamentary Counsel may be, at any moment and from any source, faced with the consequences of fault of commission or, more likely, omission.

Turning, thus, from Sewers to Crowns, we have first to call to your Lordships' attention the Succession to the Crown Act, 1707 (6 Anne cap., 41) by section 24 of which there are debarred from sitting or voting in the House of Commons holders of any new office or place of profit created after October 25, 1705; by section 28 of which penalties are imposed.

(I am full of digressions this morning; and you must really forgive me this one more. There was recently a movement to apply, or extend the application of, this principle to the House of Lords; the necessary Draft was actually in print, about fourth proof I think, whereby the Law Lords were to be forbidden either to speak or vote in the House wherein they could not be prevented from sitting! Conceive the satisfaction of the counsel of a collapsing appeal to the House of Lords, who should have discovered this error (if it had been accomplished) and whose last point in his desperate argument should be that the House could not allow the appeal against him because it could not arrive at or deliver any judgment).

A Matter of Statutes: The Succession to the Crown Act, abovementioned, is a statute which should be and is thoroughly well known in those ancient and venerable precincts, in Whitehall, above described. The Board of Trade Act, 1909 (9 Edward 7, cap., 23) must have been and no doubt was carefully drafted and redrafted, discussed and analysed and finally re-re-drafted, with the Act of Anne in view. More, still, in view was the Board of Trade (President) Act, 1826 (7 Geo. 4, cap. 32) whose first section enabled a salary not exceeding £2,000 per annum to be paid to the President of the Board of Trade but expressly provided that such office should not by reason of such salary being annexed thereto be deemed to be a new office. These high and admirable masters of their craft may be assumed to have had in aid of their work all the relevant history of the past and the greatest ability, humanly possible, to apply it, as men of the very best type which the ancient seats of learning and experience produce. So the 1909 Act was, in Bill shape, drafted and, as drafted enacted, to provide that the Salary of the President of the Board of Trade should be paid out of moneys provided by Parliament and should be such as Parliament determined. Implementing this provision, the 1826 Act was repealed.

Meanwhile, in altogether younger and more recent and most modern milieu, the article in *Halsbury* on Constitutional Law was published on April 20, 1909, when the 1826 Act was still in force. (The 1909 Act came into force October 20, 1909, as I should have mentioned). You will find it at page 102 of Volume VII; and you will recall that the whole of this work is now being revised, and in the revised, a "Hailsham" edition, the title Constitutional Law is in Vol. VI, due towards the end of the year, I believe. The Editor of the revision is Sir William Holdsworth, and he is assisted by Mr. F. H. Lawson.

Mr. Lawson Makes a Discovery: Where have you heard that name before? Only the other day? Why, you have heard it in association with the suddenly arising question, what about Mr. Runciman's sitting and voting . . . ? We are told, and I can well believe it, that the representative of the Old Order and this representative of the New, met at dinner at Oxford; a discussion ensued; and hence, at any rate in academic eyes, this Sensation. For, as you would have observed for yourself if Mr. Lawson had not observed it first for you, the saving grace of the 1826 Act had, on the repeal of that Act, omitted to be saved itself. . . .

That there was discussion, and of a most learned nature, there can be no doubt; we have seen a re-echo of it in the press, notable in the London *Times*: the Interpretation Act, 1889, sections 11 (1), 38 (2), have been prayed in aid, by a legal stalwart who complains that "the gentleman from Oxford" has been troubling himself and us, and both Houses of Parliament quite unnecessarily. An Act which repeals an Act does not repeal any repeal contained in that Act.

A still more stalwart legal stalwart complains that the other legal stalwart is most unnecessarily complicating the trouble we are in, by misleading us into a false sense of security: the Interpretation Act can have, and has, nothing to do with the matter. The shadow is very far from vain, in which we are being disquieted. . . . And, so, if you regard it as a friendly encounter between the Old Sage and the young blood,—well, I suppose Halsbury wins?

Maybe I ought, in fairness to Antiquity with whom I once dwelt to point out that Youth, in this encounter, enlists its Generals from no new schools of its own and from no new Fancies relying upon the light of nature only? But, here again, I doubt if *Halsbury*, (or is it to become *Hailsham*?) which, as a pupil I was warned to despise without ever permitting myself to open it, desires any better Apology than that! So there it is; and I have only to remind you that, sitting as Deputy Recorder at Oxford, on a not very distant occasion, I once had a case to try (simple larceny) and, as foreman of my Grand Jury to try it *prima facie* for me, I had this same Sir William Holdsworth: being privately warned of which fact, by Mister Mayor upon my right hand, I thought proper to state (in my Charge to the Grand Jury) that they might be under difficulty in comprehending the law of simple larceny, by reason of lack of means of legal comprehension generally, and, fixing my eye upon Sir William, I told him All About It.

Yours ever,

INNER TEMPLAR.

Judicial Independence.

In the midst of political and social change and turmoil, there is one thing which we, in British communities, feel entitled to regard as enduring—the independence of the judiciary. We are not in any present danger of witnessing such a comic episode as occurred in Portugal as recently as 1910. The young King Manoel had just been overthrown by the Republican revolution. The new government soon proved quite as incompetent and unscrupulous and much more aggressive and dictatorial than any of their predecessors in office. The five judges of the Court of Appeal had been dismissed at the beginning of the year for a legal decision unwelcome to the Government, and the new appointees, it was known, sought and had been influenced by the directions of the Government.

A Portuguese sought to recover in the Lisbon Civil Court the amount for which he had insured a house destroyed by fire when the revolution of 1910 was at its height. The British insurance company pleaded that the loss fell within the exception in the policy of "insurrection, war, riot, tumult, disorder, or civil commotion or disturbance of any kind." It was argued for the Plaintiff that descriptions such as these could not, without impropriety, be applied to the glorious revolution of 1910. The judge accordingly submitted them one after another to the jury. Was it an insurrection, he inquired, was it a war—was it a riot—was it a tumult, or a disorder, or a civil commotion or disturbance? To each of these questions they returned an emphatic, No! How then, he asked, ought it to be described? "As a social emancipation," said they. Judgment accordingly went against the unfortunate insurance company.

Legal Literature.

Welford's Accident Insurance.

The Law Relating to Accident Insurance, including Insurance against Personal Accidents, accidents to property and liability for accidents.

By A. W. BAKER WELFORD of Lincoln's Inn, Barrister-at-law.

Second Edition; pp. 612 cvix + Index 57. Butterworth & Co. (Publishers) Ltd.

The first edition of this work, on its appearance in 1923, at once sprang into popular favour with all whose interests attract them to problems of accident insurance. The great development of motor transport and the extension of the system of statutory subrogration to all kinds of liability for accident, have made this new edition necessary. The frequent reference in the Courts to its predecessor shows that it had become an indispensable authority in the wide range of insurance against accident, and the new edition is very welcome indeed to bring that proved usefulness thoroughly up to date.

Merely a cursory run through the pages of this comprehensive and well-arranged text-book shows that even important 1931 cases have been included and commented upon, for instance, *Rogerson v. Scottish Automobile and General Insurance Co.* (1931) 48 T.L.R. 17, H.L. (effect of absolute assignment of subject matter of policy); *Bothamley v. Bannister* (1931) 48 T.L.R. 39 C.A. (no warranty as between the landlord and tenant that demised dwellinghouse fit for purpose for which it is to be used), *Miller v. Cannon Hill Estates, Ltd.* (1931) 144 L.T. 567 (Lessor's express warranty), *Morgan v. Provincial Insurance Co.* (1931) 48 T.L.R. 52 (original use of car resumed); *Ward v. British Oak Insurance Co.* (1931) 48 T.L.R. 13, C.A. (third party risks); *Barnard v. Scully* (1931) W.N. 180, (as to *prima facie* evidence of relationship in relation to driver of car); *Birch Brothers v. Brown* [1931] A.C. 605 (assessment of average weekly wages); *Blakey v. Pendlebury* [1931] 2 Ch. 255, C.A. (moneys payable under hire-purchase agreement as subject of insurance), and many others.

The new Edition is liberally sprinkled with New Zealand cases, consideration of which is facilitated in this setting. *Carr v. Guardian Assurance Co. of N.Z.* [1928] N.Z.L.R. 108; *Foster v. Standard Insurance Co. of N.Z.* [1924] N.Z.L.R. 1093; *Braund v. Mutual Life and Citizens Assce. Co.* [1926] N.Z.L.R. 529; *Robson v. N.Z. Insurance Co.* [1931] N.Z.L.R. 35, by no means exhaust the recent decisions quoted and discussed.

It is obvious, therefore, that the book is of immense value to practitioners; and the general principles of accident insurance, property insurance, liability insurance—employers', workers' compensation, public liability, and driving liability, especially the growing body of decisions in regard to third party risks,—all are there, exhaustively treated. The portions dealing with motor vehicles in their various relations to the subject of the work, give us ample cause for gratitude to the author for assistance in constantly recurring problems.

Up to the Minute Case Law.

Noter-up Service to The English and Empire Digest.

All important current cases since the last Supplement (Jan. 1, 1932) to the *English and Empire Digest* are indexed in this feature under the classification prevailing in the latter work.

Through this Super Service, subscribers to THE NEW ZEALAND LAW JOURNAL and to the *English and Empire Digest* are enabled to find all cases involving the same point of law. The exhaustive search hitherto necessary to find case law from the earliest time down to the present moment, is now accomplished by examining only *three* sources, *i.e.*, the appropriate volume of *Digest*, the latest *Annual Supplement* thereto, and the current issue of this JOURNAL.

The reference given in brackets immediately following the case is to the page in the current volume of *The Law Journal*, (London), where the report can be found; and, secondly, to the *Digest*, where all earlier cases are to be found.

CHARITIES.

Charity—Practice—Parties—Legacies to Parishes in Ireland—Whether Attorney-General of Irish Free State a Proper Defendant.—LOVE, *In re*; NAPER *v.* BARLOW (p. 168).

As to the Attorney-General as a party: DIGEST 8, p. 397.

COMPANIES.

Company—Voluntary Winding-up—Meaning of "Surplus Assets"—Rights of Shareholders.—DUNSTABLE PORTLAND CEMENT CO., LTD., *In re* (p. 118).

As to distribution of assets according to capital: DIGEST 10, p. 956.

CRIMINAL LAW AND PROCEDURE.

Criminal Law and Procedure—Habitual Criminal—Prior Convictions in Scotland.—REX *v.* ALEXANDER MURRAY (p. 153).

As to Habitual Criminals: DIGEST 14, p. 481, *et seq.*

DAMAGES.

Damages—Tort in—Direct and Natural Consequence—Collision—Total Loss.—THE "EDISON" (p. 168).

As to remoteness of damage: DIGEST 17, p. 93 *et seq.*

ECCLESIASTICAL LAW.

Tithe Rentcharge—Sinecure Rectory—Rectory and Vicarage in Same Person—Tithe Act, 1925, secs. 3, 7, 24 (1).—GREENING *v.* QUEEN ANNE'S BOUNTY (p. 63).

As to the nature of tithe! DIGEST 29, p. 477 *et seq.*

EDUCATION.

School—Non-provided School—Trust Deed Conveying Site and Appointing Managers—Order Made by Board of Education—Power to Amend Order.—FALCONER *v.* STEARN (p. 152).

As to foundation managers: DIGEST 19, p. 561.

EXECUTORS AND ADMINISTRATORS.

Right of Retainer—Insolvent Estate—Executor's Right to Retain Against Crown.—COCKELL (decd.), *In re*; ATTORNEY-GENERAL *v.* JACKSON (p. 187).

As to right of retainer: DIGEST 24, p. 370.

ESTATE AND OTHER DEATH DUTIES.

Estate and Succession Duty—Settled Funds—Accumulations—Settlor Retaining Control of Funds—Property Passing on Death of Settlor.—A.-G. *v.* ADAMSON (p. 117).

As to property passing on the death: DIGEST 21, p. 7.

INCOME TAX.

Financial Business House—Profit Made by Conversion of Bonds into War Loan.—WESTMINSTER BANK *v.* OSTLER; NATIONAL BANK *v.* BAKER (p. 117).

As to profits of companies from realised investments: DIGEST 28 (Supp.), Case No. 309a.

Flats—Method of Assessment—Deductions.—CONSOLIDATED LONDON PROPERTIES, LTD. *v.* JOHNSTONE (INSPECTOR OF TAXES) (p. 117).

As to the assessment of flats: DIGEST 28, p. 7 *et seq.*

INSURANCE.

Insurance (Accident)—Proposal Form—Statement of Insurer in—Whether Warranty or Description of Risk.—MORGAN AND ANOTHER *v.* PROVINCIAL INSURANCE CO., LTD. (p. 136).

As to accident insurances: DIGEST 29, p. 393.

LANDLORD AND TENANT

Rent Restrictions—Crown Original Landlord—Sale by Crown—Tenancy under Successors in Interest—Landlords Never in Possession—WIRRAL ESTATES LTD. v. SHAW (p. 136) confirmed on appeal (p. 238).

As to Rent Restrictions Acts: DIGEST 31, p. 555 *et seq.*

LIBEL AND SLANDER.

Publication—Privilege—Domestic Tribunal—Duty of Publication.—CHAPMAN *v.* ELLERSMERE AND OTHERS (p. 274).

As to privileged reports: DIGEST 32, p. 135.

LOCAL GOVERNMENT.

Municipal Corporation—General Rate Fund—Establishing Printing and Stationery Works—*Ultra Vires*.—ATTORNEY-GENERAL *v.* SMETHWICK CORPORATION (p. 30).

As to the General Rate Fund of the Borough: DIGEST 33, pp. 80-87.

MASTER AND SERVANT.

Workmen's Compensation—Miner's Nystagmus—Certificate of Medical Referee.—PENRIKYBER NAVIGATION COLLIERY CO. *v.* EDWARDS (p. 273).

As to reference to medical referee: DIGEST 34, p. 467.

MONEY AND MONEYLENDING.

Moneylender—Renewal of Loan—Altered Terms—Transaction Disclosed on Memorandum.—B. S. LYLE, LTD. *v.* CHAPPELL (p. 28).

As to the restrictions on carrying on moneylending business: DIGEST 35, p. 204 *et seq.*

NUISANCE.

Land Excavation and Retaining Wall—House Built on Adjoining Land at Higher Level—Collapse of Wall.—WILKINS *v.* LEIGHTON (p. 255).

As to the liability of neighbouring owners: DIGEST 36, p. 186.

PRACTICE.

Application for leave to sign Final Judgment—Action by Indorsee of Promissory Note—Negotiation affected by Fraud—Right to Unconditional Leave to Defend.—POWSZECHNY BANK ZVRAZKEWY W. POLSCE *v.* PAROS (p. 204).

As to summary judgment: DIGEST, Vol. 6, p. 474.

PRACTICE NOTE.

References to Reports—Appendix to Case—Citation of Reported Cases (p. 273).

As to reports of judicial decisions: See DIGEST 30, p. 203.

SETTLEMENTS.

Settled Land—Settlement of Unbarrable Estates under Private Act and Three Conveyances—Appointment of Trustees.—HEREFORD'S (LORD) SETTLED ESTATES, *In re*; HEREFORD *v.* DEVEREUX (p. 153).

As to a settlement: DIGEST 40, p. 726.

WILLS.

Specific Legacy—War Loan—Inaccurate Description.—PRICE, *In re*; TRUMPER *v.* PRICE (p. 238).

As to the descriptions of Funds, Stocks, and Securities: DIGEST 44, pp. 702-709.

Canterbury College Law Students' Society.

A Running Down Case and a Dinner.

On April 30, the Canterbury College Law Students' Society held a Moot in the Supreme Courthouse at Christchurch. The case for argument arose out of a collision between a motor car and a bicycle. Witnesses were examined by Counsel before a Jury drawn from the members present.

The following took part: Judge, A. T. Donnelly, Esq.; Plaintiff, A. C. Brassington, Esq.; Defendant, K. M. Gresson, Esq.; Registrar, J. A. Wicks; Crier, A. G. Van Asch; Counsel for Plaintiffs, H. M. S. Dawson and R. J. S. Bean; Counsel for Defendant, H. W. Hunter and M. P. Eales; Witnesses, Miss M. R. Kennedy, J. R. Crawford and A. C. Fraser; Foreman of Jury, T. A. Leitch.

The case proved most interesting to the spectators and it is hoped will prove more useful as training in advocacy than the more usual "banco" proceeding.

The jury found for the Plaintiff.

The Annual Dinner of the Society was held at "Dixieland," on May 6, at 7 p.m. Mr. A. S. Taylor, Dean of the Faculty presided over an attendance of fifty-four. Mr. A. T. Donnelly, President of the Canterbury District Law Society was the guest of the Society.

The following Toasts were honoured: "The King," moved by the Chairman; "The Society," moved by Dr. A. L. Haslam and responded to by Mr. J. T. Watts; "The Profession," moved by Mr. J. A. Wicks and responded to by Mr. A. T. Donnelly; "The Faculty," moved by Mr. A. C. Fraser and responded to by Mr. L. W. Gee; "The Chairman," moved by Mr. A. G. Van Asch and responded to by Mr. A. S. Taylor. The function was most enjoyable and proved a success in every way.

THE N.Z. LAW JOURNAL thanks the Society for service of its "Citation of Respondent" following a Petition filed in the Students' Court of New Zealand, Canterbury District: *In Terpsichore*: Relating to its Annual Dance to be held on July 5, notice being duly taken that unless the Respondent attends the said Dance in accordance with the said Petition, the Society will proceed to hold the said Dance notwithstanding the Respondent's absence.

Rules and Regulations.

Trade Agreement (New Zealand and Canada) Ratification Act, 1932. Ratification of commencement of Trade agreement between the Dominions of Canada and New Zealand.—*Gazette* No. 36, May 23, 1932.

Customs Amendment Act, 1921, revoking Order in Council altering rates of Duty on certain Canadian goods.—*Gazette* No. 36, May 23, 1932.

Sale of Foods and Drugs Act, 1908. Amended regulations.—*Gazette* No. 37, May 26, 1932.

Public Trust Office Act, 1908. Amended regulations *re* rates of interest payable on moneys in the Common Fund of the Public Trust Office.—*Gazette* No. 37, May 26, 1932, p. 1329.

Post and Telegraph Act, 1928. Alterations in rates of postage on letters, post-cards, letter cards, magazines, commercial papers, parcels, etc.—*Gazette* No. 37, May 26, 1932.

Health Act, 1920. Amended regulations as to notifiable and infectious diseases.—*Gasette* No. 37, May 26, 1932.

Finance Act, 1932. Mortgagors Relief Costs Regulations.—*Gazette* No. 37, May 26, 1932.

Defence Act, 1909. Amendments to Financial Instructions and Allowance Regulations for the N.Z. Military Forces.—*Gazette* No. 37, May 26, 1932.

Judicature Act, 1908. Additional sitting of Supreme Court Appointed.—*Gazette* No. 37, May 26, 1932.

Finance Act, 1932. Notice by Minister of Finance fixing rate of interest payable by the Public Trustee on moneys invested in the Common Fund of the Public Trust Office.—*Gazette* No. 37, May 26, 1932.

Unemployment Act, 1930; Unemployment Relief Tax Regulations, 1932. Regulations as to Unemployment Relief Tax levied on Income other than salaries and wages.—*Gazette* No. 37, May 26, 1932.

Motor-vehicles Act, 1924. Regulations relating to Registration plates.—*Gazette* No. 38, May 27, 1932.

National Expenditure Adjustment Act, 1932. Order in Council excluding certain classes of contract from the operation of Part III of the Act.—*Gazette* No. 39 June 2, 1932.

National Expenditure Adjustment Act, 1932. Certain Classes of Contracts excluded from the operation of Part III of the Act.—*Gazette* No. 40, June 9, 1932.

National Expenditure Adjustment Act, 1932. Fixing maximum rates of interest payable on deposits with Stock and Station Agents.—*Gazette* No. 40, June 9, 1932.

National Expenditure Adjustment Act, 1932. Fixing maximum rate of interest payable on deposits with Savings-banks. *Gazette* No. 40, June 9, 1932.

National Expenditure Adjustment Act, 1932. Fixing maximum rates of interest payable by Building and Investment Societies. *Gazette* No. 40, June 9. 1932.

National Expenditure Adjustment Act, 1932. Exempting certain Classes of Securities from the operation of Part IV of the Act (relating to Stamp Duty on interest from Government and Local Bodies Securities).—*Gazette* No. 40, June 9, 1932.

National Expenditure Adjustment Act, 1932. Establishment of Adjustment Committee for adjustment of anomalies and relief of hardship.—*Gazette* No. 40, June 9, 1932.

Magistrates' Courts Act, 1928. Amendment to Magistrates' Courts Rules, 1928.—*Gazette* No 40, June 9, 1932.

New Books and Publications.

Law of Hire and Purchase, 1932. By A. A. Pereira. (Butterworth & Co. (Pub.) Ltd.). Price 19/-.

Introduction to the Law of Real Property. By J. A. Watson, LL.D., B.Sc. (Sweet & Maxwell Ltd.) Price 19/-.

Leading Cases in Criminal Law. Being Sixth Edition of Warburton's Criminal Law, by L. B. Odgers and A. H. Armstrong. (Stevens & Sons Ltd). Price 19/-.

Dicey's Conflicts. By A. B. Heath. Fifth Edition. (Stevens & Sons Ltd.). Price 63/-

Some Aspects of the Theories and Workings of Constitutional Law. By W. P. M. Kennedy. (Macmillan—New York). Price 9/6.