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"Every man, whoever he may be and whether he be an official or not, is subject to the ordinary law of the land, administered by the ordinary tribunals."
—LORD HEWART, L.C.J., on *the Rule of Law.*

Vol. VIII. Tuesday, July 5, 1932 No. 11

Legislation by Order-in-Council.

A few issues ago, we had something to say about the annually recurring scandal of hasty legislation. But, its corollary, the evil of indiscriminate legislation by Order in Council is always with us. In spite of a strongly-worded resolution passed by the N.Z. Legal Conference of April, 1928, the only check on this creation of law by Departmental chiefs still seems to be the availability of paper and ink to the Government Printer. It is quite unnecessary for us to detail to practitioners the many pitfalls that are spread before them by the increasing multiplicity of Regulations by Order in Council. One example of the way in which our Legislature has become inured to this prevalent system may serve to remind them of the type of over-riding clauses that abound in our statutes: A principal Act of 164 sections, it should be noted, was passed in the previous session to an Amendment which contained this precious bit of law-making, a section which deserves careful reading:

> "*The Governor-General in Council may make such regulations as he thinks necessary or expedient for avoiding any doubt or difficulty which may appear to him to arise in the administration of the principal Act by reason of any omission or inconsistency therein, and all such regulations shall have the force of law, anything to the contrary in the principal Act notwithstanding.*"

Thus, the constitutional right of the Legislature to make laws and of the Judiciary to interpret them is arrogated to a single Minister of the Crown (in practice, the Department's head) and the legislative body stultifies itself by meek assent.

Although England is a country less Regulation-ridden than our own, a fact that is due to the step-motherly interference of the State in our undertakings, protests there against a similar state of affairs, which has become more noticeable since the War-years, have been frequent and vehement. In September, 1930, in his address to the American Bar Association, and, later, in his book, *The New Despotism*, the Lord Chief Justice of England (Lord Hewart) trenchantly criticised the manner in which Government Departments have been encroaching on the province of the Legislature and the Judiciary. The storm of objection that was raised as the result of his disclosures eventually forced the authorities to survey the position in Great Britain by means of a Commission,—the Committee on Ministers' Powers. Its terms of reference were as follows:

> "To consider the powers exercised under the direction of (or by persons or bodies appointed specially by) Ministers of the Crown by way of (*a*) delegated legislation and (*b*) judicial or quasi-judicial decision: and to report what safeguards are necessary to secure the constitutional principles of the sovereignty of Parliament and the supremacy of the law."

Before going on to consider briefly the findings of that Committee, we quote the resolution unanimously passed by the 1928 Law Conference, following the reading of an able paper by Mr. A. F. Wright (Christchurch). It was worded as follows:

> "That this Conference expresses its strong disapproval of the growing practice of legislating by regulation on important matters, and also of the tendency of recent legislation to entrust to officials wide powers not subject to control by the Courts, and, in particular, the power of deciding questions affecting private rights without allowing the constitutional right of appeal to the Crown."

The resolution parallels the purpose of the Committee on Ministers' Powers, which has just reported in England, and which consisted of about twenty members, including Sir Leslie Scott, K.C. (Chairman), Sir William Holdsworth, Sir Roger Gregory, Sir Claud Schuster, Professor Laski, Dr. Burgin and Mr. Gavin Simonds, K.C. Its Report runs to 118 pages, with six Annexes. Further volumes containing the evidence heads, and the Departmental memoranda supplied, are yet to be published. The Report is in three parts: Introductory; Delegated Legislation; and Judicial or Quasi-Judicial Decision.

In the first part of the Report, the Committee shows its knowledge of the growing body of literature which has appeared on this subject in recent years. The Committee prepares the way for detailed consideration of the position by admitting that delegated legislation is inevitable under our present Parliamentary system, and they think that it would be futile for Parliament to work out the details of large legislative changes. The Committee says that these details

> "may closely affect the rights and property of the subject, and even personal liberty. . . . There is at present no effective machinery for Parliamentary control over the many regulations of a legislative character which are made every year by Ministers in pursuance of their statutory powers, and the consequence is that much of the most important legislation is not really considered and approved by Parliament."

As regards the giving by Ministers of decisions "which determine the rights of private persons and deprive them of their access to the Courts of Law," the Committee reaches this considered opinion:

> "It cannot, we think, be denied that *prima facie* this involves an infringement of the rule of law which is a characteristic of the English Constitution (*Dicey*, p. 183)."

The Report goes on to quote with approval Lord Sankey's statement at the Mansion House on July 5, 1929, of the ideal of justice which should always be the aim of British statesmanship:

> "Amid the cross-currents and shifting sands of public life the Law is like a great rock upon which a man may set his feet and be safe, while the inevitable inequalities of private life are not so dangerous in a country where every citizen knows that in the Law Courts, at any rate, he can get justice."

The Committee does not go so far as to find that the exercise of judicial and quasi-judicial functions by Ministers is due to bureaucratic tendencies on their part; it absolves them from the desire of securing by Order in Council arbitrary power for themselves and their Departments. The Committee considers that, in general, substantial justice is done. But, before we consider the remedy for the present state of affiars recommended in the Report—as we propose to do in a future article,—we quote the sound proposition upon which such proposals are based: "It should always be remembered that justice is not enough," says the Report. "What people want is security for justice, and the only security for justice is Law, publicly administered." In this connection, we refer our readers to our issue of April 24, 1928, and the report therein of the application of practically identical expressions of opinion by members of the profession to instances from their local experience.

Court of Appeal.

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

March 22, April 12, 1932.
Wellington.

MANAKAU BEACH ESTATES LTD. v. WATHEW.

Vendor and Purchaser—Land outside Borough or Town District—Agreement Stipulating Title Free from Encumbrances thereon otherwise as Therein Provided—Whether Restrictions Imposed by Land Act, 1924, S. 16, Constitute an Encumbrance or Defect in Title—Land Act, 1924, Ss. 2, 16, 17.

The facts are set out in the report of the hearing in the Court below (1931) N.Z.L.J. 242, when Herdman, J., held that the restrictions imposed by s. 16 of the Land Act, 1924, constituted and encumbrance or defect in title, and the title offered by the Company could not be forced upon the purchaser. From this decision the Company appealed.

Held: Allowing Appeal: The Land Act, 1924, is a public general Act, which the purchaser was presumed to know and he could not be heard to say he did not know of the existence of that general statutory provision. The limitation imposed by s. 16, being imposed by the general law, is not "an encumbrance" in the sense used when a vendor undertakes to give a title "free of encumbrances." **Barraud v. Archer,** 9 L.J. Ch. (O.S.) 173 followed.

West for appellant.

Duggan for respondent.

MYERS, C.J., said that in **Nunn v. McGowan** [1931] N.Z.L.R, 47, at p. 51, he had expressed the view that the Fencing Act 1908 (which is a public general Act) *prima facie* confers upon every owner of land certain rights as against the owners of all adjoining lands and that the Act may be said to add those rights to the title of every landowner. Mr. Justice *Kennedy* in the same case at p. 80 expressed a similar view. The present case is the converse, in that the statute which the Court had to consider imposed a general restriction upon titles and to that extent derogated from the rights which a landowner would otherwise have in respect of lands affected by the statute. S. 16 of the Land Act, 1924 (which, like the Fencing Act, is a public general Act) imposes certain restrictions upon dealings where any land is subdivided for sale or lease or other disposition as a "town"; and "town" is defined by s. 2 as meaning "any parcel of land outside a borough or town district divided into areas for building purposes." Amongst the restrictions imposed by s. 16 is one contained in subs. (2) to the effect that "Every such subdivision shall except in special cases, and with the approval of the Minister, have a frontage of not less than forty feet. In any subsequent subdivision of the said land (whether for sale or lease or other disposition or not) the limits of frontage prescribed by this subsection shall not be reduced except in special cases, and with the approval of the Minister." In this case a subdivisional plan was prepared, and the allotment which the appellant agreed to sell and the respondent to purchase had a frontage of sixty feet to a road called "Wairoa Road." The agreement provided that upon payment of the purchase money the appellant would execute a proper registrable Memorandum of Transfer of the allotment for the purpose of effectually vesting the same in the respondent "free from encumbrances otherwise than as herein provided." The encumbrances "as herein provided" were drainage and other similar easements. The respondent repudiated the agreement because he contended that the restriction imposed by s. 16 of the Land Act, 1924, constituted an encumbrance or defect, and that consequently the title offered by the appellant is defective and cannot be forced upon him. The learned trial Judge upheld that view.

In the opinion of the learned Chief Justice, all the New Zealand authorities referred to by the learned Judge, and cited at the Bar in this Court, were distinguishable. The distinction was that in each of the cases cited the legislation that imposed the restriction upon the title to which exception was taken was not of general application and did not necessarily apply to the land comprised in the agreement, and therefore the title could not be forced upon a purchaser without notice who was entitled to expect a clear unencumbered and unrestricted title. In the present case, however, once it was known that the land was outside a borough or town district and was being divided into areas for building purposes, s. 16 of the Land Act, which as already stated is a public Act of general application, necessarily applied, and the purchaser must be presumed to know of its existence.

His Honour then set out the description of the land. On the deposited plan there was the following note: "Subject to sec. 16 of the Land Act 1924." The plan was deposited on March 25, 1927, two days after the sale of the agreement in question here, but if it be said that the respondent did not see the actual deposited plan there was nevertheless before the Court a lithograph plan which he apparently did see, and which, though the name of the town does not appear and there is no reference to s. 16 of the Land Act, showed clearly enough that the land was being divided into areas for building purposes. The plan described the subdivided estate as "a new marine suburb on the shores of the Manakau," and it was inconceivable that the respondent did not know that the land was outside a borough or town district. Whether or not the absence of knowledge or notice that the land was outside a borough or town district would be a good defence, the burden of proof of such absence of knowledge or notice would be upon the respondent, and there was no such proof. In any event, it was difficult to see how the defence, if a good one, could be made out in the face of the lithograph plan and the description of the land in the agreement.

Seeing that s. 16 of the Land Act is of general application and applies to and imposes a restriction in respect of all lands outside a borough or town district which are divided into areas for building purposes, and that it therefore of necessity applies to the land the subject matter of this agreement, His Honour did not see how it could be said that the appellant's title was defective merely because of the existence of that restriction, or that the title which he was able to give was not a title free from encumbrances within the meaning which in the circumstances must necessarily be given to that expression as used in the agreement. The decision in **Barraud v. Archer,** 2 Sim. 433, and (on appeal), 9 L.J. Ch. 173, supported the conclusion at which he had arrived. Indeed he thought that it was directly in point.

It is said that when the agreement for sale was entered into the appellant's then certificate of title to the land that was being subdivided contained no notification that the provisions contained in s. 16 of the Land Act applied, but on April 11, 1927, a new certificate of title was issued to the appellant upon which was noted a memorial that the lands were affected by this statutory provision, and it was admitted that the respondent had not prior to March 16, 1931, actual notice of this memorial. But the memorial was entered upon the Register by the District Land Registrar not because the law required the note to be made but for the convenience of his office. It was, of course, highly desirable and convenient that the memorial should be noted, but, whether it was noted or not, s. 16 of the Land Act would still apply, and in His Honour's view the presence or absence of the note in the circumstances of this case was in any event immaterial. Apart altogether from the memorial, the respondent knew, or should have known, the facts which made s. 16 of the Land Act applicable, and he could not be heard to say that he did not know of the existence of that general statutory provision.

His Honour thought, therefore, that the judgment appealed from was erroneous and that the appellant was entitled to a decree of specific performance.

BLAIR, J., concurred in the foregoing judgment.

MACGREGOR, J., said that the learned Judge in this case had decided in favour of the defendant, on the short ground that he could not obtain from the plaintiff company a clear title to the land purchased by him from it "free from encumbrances." The sole question the Court now had to determine was whether he had been right in so deciding. In other words, did the restrictions on alienation imposed by ss. 16 and 17 of "The Land Act 1924" constitute a defect or "encumbrance" in or, on the title to the land, which should have been disclosed to the purchaser on sale. In His Honour's opinion, they did not, for the following reasons: a tenant in fee simple has not the absolute ownership of land, either in England or in New Zealand. Ever since the passing of Magna Charta (1217) c. 39, his power of alienation has been more or less limited by statute. In New Zealand this has been effected from time to time by various Acts of Parliament. In particular, statutory provisions have been made regarding the subdivision of land, so as to prevent the creation of "slum areas" in towns. When the land in

question is situate in a borough or town district, the provisions of s. 335 of the Municipal Corporations Act, 1920, apply thereto, and impose certain well-defined restrictions on subdivision. When the land is a "parcel of land outside a borough or town district divided into areas for building purposes," it becomes a "town" within the meaning of the Land Act, 1924, and therefore subject to the restrictions on subdivision imposed by ss. 16 and 17 of that Statute. The present case falls within this latter class. But the Land Act, 1924, is a public statute of general application throughout the Dominion. Ss. 16 and 17 thereof apply to any land in New Zealand subdivided for sale or lease as a "town," unless situate within a borough or town district. In this case, it was clear from the contract itself, and the sale plan produced at the hearing, that the "town" in question is not within a borough or town district, but is a marine suburb a good many miles distant from the City of Auckland. That being the case, it was manifest that the land in that particular "town" could be subdivided and sold only under and in terms of s. 16, which is part of the general statute law of New Zealand, the ordinary law of the land. But everyone is presumed to know that law, **Cooper v. Phibbs,** L.R. 2 H.L. 149-170. As was said by Sir *W. Scott* in **The Charlotta,** 1 Dods. Admir. 392: "The subjects of this County are bound to construe rightly the statute law of the land: to aver in a Court of Justice that they have mistaken the law is a plea no Court is at liberty to receive." That in effect was the plea that the defendant set up by way of defence to this action. He averred that he did not know that ss. 16 and 17 applied to this piece of land, and suggested, therefore, that he should be relieved in equity from his contract to purchase. But that, as had been seen, was a plea this Court is not at liberty to receive. The defendant was conclusively presumed to have notice of the general statute law which governed the conditions of his purchase. If specific authority is required, the case of **Barraud v. Archer** (*supra*) was much in point here, as appears in the Lord Chancellor's judgment (p. 176). The same result must in His Honour's opinion, follow in the present case. The memorial on the face of the new certificate of title did not and could not in any way alter the legal position of the parties to the contract of sale and purchase. It simply expressed in a succinct form one of the already implied statutory conditions subject to which the land had been sold, being a provision in a public Act of Parliament "known to all the world"—including of course the defendant in this action. For these reasons, His Honour agreed that this appeal must be allowed.

KENNEDY, J., said that he inferred from the material before the Court that the respondent knew that the land he agreed to purchase was part of a parcel of land situated outside a borough or town district and divided into areas for building purposes. To such land s. 16 of the Land Act, 1924, applies. In any subsequent subdivision, the limit of frontage prescribed by subs. (2) may not be reduced except in special cases and with the approval of the Minister. The respondent's defence was that the appellant agreed to sell the land free from encumbrances other than those mentioned in the agreement and that, if he completed his purchase and took the title offered, he would not be free to subdivide the land in such manner as he pleases but that in so doing he must comply with the requirements of the subs. (2). Now the Land Act, 1924, is a public general act and s. 16 applies to all land situated in a "town" as defined in s. 2. Whether or not, therefore, there is any memorial upon the certificate of title, the purchaser will hold the land subject to s. 16. He is presumed to know the general law and it necessarily follows that he knew that the land he agreed to purchase might not be subdivided in what manner he desired, but only subject to the requirements of s. 16. The Legislature has by this section, as in many other cases, diminished the rights ordinarily conferred by the ownership of land, but the purchaser must be taken to know that his rights, as owner, will be such only as the law permits. It is not possible for any one to acquire, in respect of the land in question, more extensive rights than will be conferred by the title the appellant can give. Such a limitation upon the powers of an owner, imposed by the general law, was not an encumbrance in the sense in which these words are used when a vendor undertakes to give a title free from encumbrances. It cannot mean that he thereby undertakes to give a title which would exempt the holder from the requirements of the general law applicable to all the land situate within a "town," or, if the land were situate in a borough, free from the requirements of s. 335 of the Municipal Corporations Act, 1920.

The case of **Barraud v. Archer** (*supra*) was directly in point. The purchaser there refused to complete unless compensation was made to him in respect of certain embanking and drainage taxes not mentioned in particulars of sale but to which an estate was subject under a local but public act of Parliament. The defendant admitted that he had never seen the estate but had been informed before he purchased that it was situated in a district liable to embanking and drainage taxes. The Lord Chancellor, on the appeal, said: "In every way of looking at it, I cannot but think that the appellant had a very sufficient notice of the impositions in question. The Act, subjecting the lands to their operation was a public Act of Parliament, known to all the world: and on that ground alone, the purchaser ought to have inquired." His Honour thought, therefore, that, both on principle and authority, the defendant may not resist specific performance on the ground that the appellant was not able to give him that title to which in the circumstances, he was entitled, and that the appeal should be allowed accordingly.

Appeal allowed.

Solicitors for the Appellant: **Jackson, Russell, Tunks and West,** Auckland.

Solicitors for the Respondents: **H. R. Duggan,** Auckland.

Supreme Court.

Myers, C.J. June 4, 21, 1932.
Napier.

In re P's MORTGAGE.

Mortgagors Relief—"Pooling Arrangement"—Position of Stock Mortgagee Discussed—Mortgagors' Liabilities Adjustment Commission's Inability to recommend a Pooling Scheme as the Stock Mortgagee would not agree to it—Commission's Alternative Recommendation Reviewed and Not Adopted—Form of Order Made—Mortgagors Relief Act, 1931, Ss. 5, 7.

Applications under the Mortgagors' Relief Acts made by the Public Trustee as the statutory administrator of the estate of the mortgagor, who is a mental patient. The mortgagor is the owner of two parcels of land containing 757 acres and 927 acres respectively, which lands are and have been worked as one farm. As to the parcel containing 757 acres its capital value under the Valuation of Land Act, 1925, as on March 31, 1931, was assessed at £7,169. It is mortgaged to A and others to secure the principal sum of £5,475 with interest at 7 per cent. per annum reducible to 6 per cent. The currency of the mortgage is five years from June 4, 1929. On December 4, 1931, interest was in arrear to the extent of £328 10s. 0d., and on June 4, 1932, another half year's interest would have become payable. The parcel containing 937 acres was purchased on May 6, 1919, for the sum of £8,903. According to the Government valuation as at March 31, 1931, the capital value is assessed at £6,088. The land is subject to a mortgage to B and others securing the principal sum of £5,000 for a term of five years from February 21, 1929, with interest at 7 per cent. per annum reducible to 6 per cent. Interest was in arrear in August, 1931, to the extent of £300 and on February 21, 1932 a further payment of £150 became due and payable.

All the stock depasturing on the two parcels of land are mortgaged to a stock and station agency company, which is referred to in the judgment as "the Company," by an instrument under which there is owing something like £1,600 or £1,700.

The applications for relief were filed at Napier in January last. On March 2, Mr. Justice *MacGregor* had made an order referring them to the Hawke's Bay Adjustment Commission and directing that in both cases the Company should be served with copies of all the papers filed. The Adjustment Commission recently made its reports, and it was in the light of those reports and of the observations and arguments submitted by counsel for the Public Trustee and the mortgagees, that the Court was now called upon to deal with the applications.

Held: An order adopting the Commission's alternative recommendation would be an inequitable one, as it would mean an interference with the rights of the mortgagee of the land for the benefit of the stock mortgagee. It was not the intention of the Legislature to enable the stock-mortgagee in effect to agist his stock for nothing at the expense of the mortgagee of the land. His Honour accordingly made the Order which is set out in full at the end of the judgment.

Lusk for Public Trustee (as representing the Mortgagor).
Grant for mortgagees.

MYERS, C.J., after relating the facts, said that he understood that the Company was represented before the Commission, but no appearance was made on its behalf when the applications came before him. He adjourned the hearing to give the Company the opportunity of being represented, and caused an intimation to be given to it to that effect; but, to adopt the phrase of Mr. Justice Ostler in a similar case of **Shannon v. The Public Trustee** [1932] G.L.R. 250, the Company, apparently feeling itself to be the master of the situation, did not trouble to attend or be represented.

It was pointed out by Mr. Justice *Ostler* in **Shannon's case** that the Mortgagors' Relief Acts did not give the Court power to bind a stock-mortgagee by an order for what had come to be known as a "pooling arrangement,"—that was to say, an arrangement whereby, after the stock-mortgagee has reimbursed himself or itself any moneys advanced for the living expenses of the mortgagor and his household and for the necessary carrying on of the operations of the farm for the year, the surplus arising from the proceeds of the sale of the produce of the farm are divided rateably between the mortgagee of the land and the stock-mortgagee in reduction of interest owing to them respectively, in proportion to the amounts owing to them respectively for principal at the commencement of the year's operations. Apart from the statement by Mr. Justice *Ostler* in the judgment referred to, the learned Chief Justice said he also made representations upon the matter and suggested, as Mr. Justice *Ostler* had suggested, that the power of the Court should be enlarged by an amending Act. He recognised that there may have been difficulties of which he was unaware in the way of conferring the power suggested. Be this as it may, Parliament had not seen its way to confer the extended power.

In the present applications, the Adjustment Commission reported that it favoured the adoption of a pooling scheme, but could not recommend such a scheme because the Company would not agree to it. That being so, the Commission found itself forced to recommend an alternative and such alternative recommendation was that the arrears of interest on both mortgages should be remitted and cancelled and that "the rate of interest for the current year should be reviewed at the end of the next working year." Seeing that the Commission desired to make a very proper and fair recommendation and found itself prevented from doing so by reason of the fact that an order adopting such recommendation was futile unless the stock-mortgagee agreed, it involved no reflection on the Commission when His Honour said that an order adopting the alternative recommendation would be in his opinion an inequitable one which he could not see his way to make. It would be inequitable, not because of its interference with the rights of the mortgagee,—for every order involves such an interference and every one of the Judges must by this time have made many orders under these Acts,—but because it would mean an interference with the rights of the mortgagee for the benefit of the Company. The mortgagee of the land—who may have no other income than that derived from the mortgage—would get nothing whatever, while the stock-mortgagee would take the whole of the proceeds of the sale of the produce of the farm first in reimbursement of his advances for the season's operations, then in payment of his interest, and the balance in reduction of principal. The object of the Legislature, as His Honour understood it, was to enable concessions to be given to the farmer as against the mortgagee where practicable with a view to avoiding the ruin of the farmer,—not to make orders to enable the stock-mortgagee in effect to agist his stock for nothing at the expense of the mortgagee of the land. Such an order, as already stated, His Honour could not see his way to make. It would no doubt be possible in such cases to restrain the mortgagee from exercising his powers unless payment were made on the basis of current interest (perhaps at a lower rate than that fixed by the mortgage) which would be in the nature of an occupation rent, but the effect of such an order would not be so satisfactory as a pooling arrangement, and might result in an injustice to the stock-mortgagee in that the payment of the interest would fall upon him even though the working of the farm for the year resulted in a loss.

His Honour said he intended, therefore, to make what he considered to be the most equitable order in the circumstances, and the one order would cover both applications. It is as follows:

"1. Subject to and conditionally upon the Company within fourteen days filing in Court an undertaking under its common seal that it will until the 31st day of March, 1933, provide the mortgagor with sufficient moneys for:

(a) reasonable living expenses for the mortgagor and his household, and

(b) the reasonable working expenses of and incidental to the proper working of the lands and carrying on of the mortgagor's farming operations conducted thereon,

and will hold and apply the proceeds of the sale or disposal of all wool and produce (including culls, lambs, and calves) from the said lands as from the 1st day of April, 1932,

(i) in repayment of the advances made for the purposes (a) and (b) aforesaid with interest thereon at the rate of £6 10s. 0d. per centum per annum, and the surplus (if any)

(ii) in payment of land-tax and local rates accruing during the year commencing on the 1st day of April 1932.

(iii) in payment to the mortgagees of the land and the Company rateably on account of interest in proportion to the principal sums owing to them respectively by the mortgagor as on the 31st day of March, 1932, and

(iv) as to the surplus (if any), after one year's interest shall be paid in full to both the mortgagees and the Company, in reduction of the principal moneys owing to the company,—

arrears of interest shall be remitted as follows, that is to say, in the case of A and others the sum of £328 10s. 0d., and in the case of B and others the sum of £300, being in such case one year's arrears, and the mortgagees shall not nor shall either of them exercise their power of sale or do any act or exercise any of the powers set out in the notices given by the mortgagees under the provisions of the Mortgagors' Relief Acts until the 1st day of April, 1933, except with the leave of the Court first had and obtained in that behalf.

2. This order shall have no effect unless the above condition is performed: and if it is not performed the mortgagees shall be at liberty at the expiration of the said period of fourteen days to exercise all or any of their contractual or statutory rights and powers unaffected by anything in this order contained.

3. Liberty reserved to any party to apply generally as he, they, or it may be advised."

His Honour added that this order, if complied with, would ensure the carrying on of the farm till April 1, 1933, when, if necessary, the position may be reviewed, and on such review the Court would be able to consider what, if any, concession should be made in respect of further arrears of interest as at that date, and the terms upon which such concession (if any) should be granted.

His Honour said he had little doubt that the Company would be able to see its way to give the undertaking required. If it could not see its way to do so, the inference was that it regarded the position of the mortgagor as beyond possibility or hope of recovery: and, if that be so, it would be quite wrong in his opinion to prevent the mortgagee from exercising his legal rights.

Solicitor for Applicants: **The Solicitor, Public Trust Office,** Dannevirke.

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

Myers, C.J. June 4, 27, 1932.
Napier.

In re F's MORTGAGES.

Mortgagors Relief—First and Second Mortgages—Farm Operations Resulting in Surplus of Receipts over Actual Expenditure—No Rates or Mortgage Interest Paid—Stock Mortgagee Receiving Interest and Reducing Principal Out of Farm Receipts—Adjustment Commission's Report Not Fair and Reasonable in Circumstances—Form of Order made by Court—Mortgagors Relief Act, 1931, Ss. 4, 5, 7.

The facts are set out in the judgment. The distinction made between such facts and those in the preceding judgment reported here, should be noted. The form of Order is accordingly in different terms to that made in *In re P's Mortgages* (*supra*).

Rogers for mortgagors and guarantor.
Grant for mortgagees.

MYERS, C.J., said that up to a certain point the circumstances of these applications were similar to those of the case with which he had dealt a few days previously: **In re P's mortgages** (*supra*). One matter of difference is that in the case of P's mortgages there were two separate pieces of land, each of them subject to a separate mortgage, while here there is one piece of land

which is subject to two mortgages, the first to secure £5,000, the second to secure £1,000. The other point of distinction—and it is a very material one—is that in the case of P's mortgages the operations of the farm would still have resulted in a loss if there had been no interest with which the mortgagor had to debit himself. Here, on the other hand, it was shewn on affidavit that from March, 1931 to January 29, 1932, the date on which the affidavit was made, there was a surplus of actual receipts over actual expenditure of about £150. The rates for the period, amounting to £49 0s. 10d. had not been paid, nor had any interest been paid to the mortgagees. It was only by debiting the £49 0s. 10d. which ought to have been paid for rates and the £375 which ought to have been paid for the year's interest that a loss was made out of £266 5s. 11d. On the other hand it would appear that the stock-mortgagee, in addition to receiving interest amounting to £62 0s. 9d. (representing interest on the whole of its principal), reduced its principal debt from £700 to about £450. His Honour said he had not had the advantage of hearing the views of the stock-mortgagee, but that was its own fault as he gave it the opportunity of being represented but it did not choose to avail itself of that opportunity. In fairness to the first mortgagee of the land, it seemed to him that the stock-mortgagee ought at least to have seen that the rates were paid, and that some payment was made on account of interest. The fact was that on December 21, 1931, there was £450 interest in arrear to the first mortgagee and £87 10s. 0d. to the second mortgagee. The stock-mortgagee could not be allowed to continue operations in this way for its own benefit at the expense of the mortgagees of the land.

The Adjustment Commission recommended that, as to the first mortgagee, the outstanding interest be rebated, and that the rate of interest be reduced to 3 per cent. for a period of two years: and that, as to the second mortgagee, no payments of interest should be made until such time as the first mortgagee is receiving his interest in full. It seemed to the learned Chief Justice that the Adjustment Commission had overlooked the facts that he had just stated, and, in view of these facts, he could not regard an order following the Commission's recommendations as being fair and reasonable.

The order that His Honour made, and the one order would cover both cases, is as follows:

"(1) Subject to the arrears of rates £49 0s. 10d. or thereabouts being paid by the mortgagor or by the stock-mortgagee within 14 days and subject to the sum of £75 being paid within the same period by the mortgagor or the stock-mortgagee to the first mortgagee of the land on account of interest owing as at the 21st day of December, 1931, and further subject to the stock mortgagee within the said period of fourteen days filing in Court an undertaking under its common seal that it will until the 31st March, 1933, provide the mortgagor with sufficient moneys for:

(a) reasonable living expenses for the mortgagor and her household, and

(b) reasonable working expenses of and incidental to the proper working of the land and carrying on of the mortgagor's farming operations conducted thereon

and will hold and apply the proceeds of the sale or disposal of all wool and produce (including culls, lambs, and calves) from the said land as from the 1st day of April, 1932.

(i) in repayment of the advances made for the purposes (a) and (b) aforesaid with interest thereon at the rate of £6 10s. 0d. per centum per annum, and the surplus (if any),

(ii) in payment of local and county rates and land-tax if any accruing during the year commencing on the 1st day of April 1932,

(iii) in payment to the first mortgagee of the land and the company rateably on account of interest in proportion to the principal sums owing to them respectively by the mortgagor as on the 31st day of March 1932, and

(iv) as to the surplus (if any), after one year's interest shall have been paid in full to both the first mortgagee and the Company, to apply such surplus on account of interest accruing due to the second mortgagee during the year commencing on the 1st April 1932—

the balance of arrears of interest owing to the first mortgagee and the whole of the arrears of interest owing to the second mortgagee as on the 21st day of December 1931 shall be remitted, and neither the first mortgagee nor the second mortgagee shall exercise their power of sale or do any act or exercise any of the powers set out in the notices given by them or mentioned in section 4 of the Mortgagors' Relief Act 1931 until the first day of April 1933 except with the leave of the Court first had and obtained in that behalf.

(2) This order shall have no effect unless the above conditions are performed: and if they or any of them are not performed both the first and the second mortgagees shall be at liberty at the expiration of the said period of fourteen days to exercise all or any of their contractual or statutory rights and powers, unaffected by anything in this order contained.

(3) Liberty reserved to any party to apply generally as he, they, or it may be advised."

His Honour added that, in the case of **P's mortgages,** this order if complied with would ensure the carrying on of the farm until April 1, 1933, when if necessary the position may be reviewed; and on such review the Court will be able to consider what if any concession should be made in respect of further arrears of interest as at that date owing to either the first mortgagees or the second mortgagees and the terms upon which such concession if any should be granted.

Solicitors for Mortgagors and Guarantor: **Rogers, Helleur and LePine,** Napier.

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

Ostler, J. May 27, 31, 1932. Wellington.

TOURIST MOTOR CO. LTD. v. UNITED INSURANCE CO. LTD.

Practice—Discovery—Application by Plaintiff for Order for Production for Inspection of Certain Documents not produced as "relating exclusively to the Evidence in Support of Defendant's Case"—Principles to be Followed—Correct Form of Affidavit to Obtain Protection on Grounds Indicated.

Summons on behalf of plaintiff company asking for an order for production for inspection of certain documents which had been discovered by defendant company but which it objected to produce on the ground that they referred solely to its own case.

The action on a policy of insurance of a motor car owned by plaintiff company which was burned in an extensive fire of its premises in Hastings which occurred on October 23, 1931. Defendant company had declined to pay the amount of the loss and resisted payment on the grounds of alleged fraudulent misstatement, first, in the proposal, and, secondly, in the declaration of loss. The alleged fraudulent misstatement in the declaration of loss which the defendant company relied on as a statement that after the fire the motor car had no value, whereas defendant company alleged that its value in fact amounted to £500. After the fire, defendant company employed an average adjuster named Bisley who resided in Napier to adjust the loss. It was admitted that there was bad blood between Bisley and the two brothers Hyslop who controlled the plaintiff company. Bisley investigated the claims, his enquiries lasting some months, and in the course of his enquiries he wrote to the Wellington manager of defendant company from time to time stating the results of his enquiries. He received replies from the Wellington manager. He also obtained estimates as to the cost of reinstating this motor car. It was these letters and estimates which defendant company objected to produce, on the ground that they relate solely to its own case. There is no claim of privilege on any other ground.

Held: Apart from questions of privilege, a party to an action is entitled as of right to the inspection of all documents held by the opposing party relating to the case which directly or indirectly tend to advance his own case or to damage the case of his adversary. In order to obtain protection on the ground that documents relate exclusively to the evidence in support of the defendant's case, the affidavit of documents should state in addition that they contain nothing supporting or tending to support the plaintiff's case or which may tend to damage or impeach the plaintiff's case.

Wilson for plaintiff company.
Goodwin for defendant company.

OSTLER, J., said that the affidavit of documents of defendant company was defective. It merely said that defendant company objected to produce these documents because they "relate exclusively to the evidence in support of defendant's case." In order to obtain protection on this ground, the affidavit should state in addition that they contain nothing supporting or tending to support plaintiff company's case or which may tend

to damage or impeach the defendant's case; see **Waihi Gold Mining Co. v. Waihi Grand Junction Gold Co.**, 24 N.Z.L.R. 198, at 210.

Counsel for defendant company, however, asked leave to file a proper affidavit. He stated that one could be made in the required terms with regard to these documents. He offered, moreover, to produce the documents for His Honour's inspection to enable him to judge whether they related solely to defendant's case. Not wishing to decide the matter on the form of the affidavit His Honour took advantage of the offer and read all the letters from Bisley to defendant company. He was satisfied after reading these letters that the affidavit that they related solely to defendant company's case had been made under a complete misapprehension. Apart from questions of privilege, a party to an action was entitled as of right to the inspection of all documents held by the opposing party relating to the case which directly or indirectly tend to advance his own case or to damage the case of his adversary: **Bustros v. White**, 1 Q.B.D. 423; **Compagnie Financiere du Pacifique v. Peruvian Guano Co.**, 11 Q.B.D. 55, at 63.

One of the defences pleaded in this case, as His Honour had said, was that plaintiff company in its declaration of loss fraudulently stated as a fact that after the fire the motor car was of no value. That defence would at once raise a question whether that statement was one of fact or merely one of opinion on which two experts might honestly differ. Bisley's letters may be of the greatest value to the plaintiff company in meeting this defence. They showed that he himself in the early stages expressed the opinion that the car could be reinstated, and he stated that he would obtain estimates from experts to see whether that opinion could be supported. At the time when the declaration of loss was made, none of these estimates had been obtained. It seemed to His Honour, therefore, that these letters might be of the greatest value to plaintiff company in tending to establish that the statement in the declaration of loss was not one of fact but of honest opinion, which would destroy the defence. Moreover the estimates of the cost of reinstating the car might be of the greatest value to plaintiff company's case. They gave the cost of reinstating, but they gave no estimate of the value of the car when the estimated work is done on it. If it will cost £500 to reinstate the car, but its value when the work is done will not be more than £500, then it might honestly be said that its value after the fire was nil.

In view of those considerations, it was impossible to say that the letters and estimates relate solely to defendant company's case, and, that being so, there must be an order for their production.

Solicitors for plaintiff company: **Morison, Spratt and Morison.**
Solicitors for defendant company: **Atkinson, Dale and Mather.**

Reed, J. February 29, March 1, 24, 1932.
Wellington.

MERCANTILE FINANCE CORPN. LTD. v. N.Z. INSURANCE CO. LTD.
SAME v. QUEENSLAND INSURANCE CO. LTD.

Fire Insurance—Motor Car—Claim by Mortgagee of Insured Chattels—Owner and Hirer also an "Insured" under Policy—False Statements as to Price of Motor Car and as to Place where "Housed"—Statements made by Owner as Proponent without Knowledge or Authority of Mortgagee—Admissibility of Owner's Books of Account to Prove Falsity—Whether Policy Void against Innocent Mortgagee.

These two cases were heard together. The broad facts are the same in both cases but with certain essential differences in detail. The plaintiff company finances the purchase of motor-vehicles from various dealers. The mode of dealing seems to be as follows: The plaintiff provides a printed form, which bears the title "Particulars of Transaction" which a motor dealer, requiring finance, fills up giving all details in connection with the transaction with the proposed hire-purchaser, particularly the identification numbers of the motor-vehicle, the selling price, and the terms. If the Company proposes to finance the transaction it receives from the dealer the hire-purchase agreement duly endorsed to the company, promissory notes in favour of the dealer for the amount of the instalments, also endorsed to the company, and a policy of insurance in the names of the dealer as owner, the company as mortgagee, and the hirer. The dealer in both of the present actions was W. Birkett & Sons Ltd., and the motor-vehicles in respect of which the insurance moneys are claimed were destroyed in an incendiary fire in that firm's garage. It was indisputable that this firm engaged in a series of frauds upon the plaintiff companies by falsely representing the prices at which the cars were sold and thereby obtaining advances in excess of the real value. It was a fair inference that the garage was destroyed in order to obtain the several insurances which were also based on these false values. The plaintiff companies were admittedly entirely innocent parties. The Insurance Companies defended upon the ground of false statements made in the proposals for insurance which, in most cases, were signed by W. Birkett & Sons Ltd., the plaintiff companies being no party to and not being aware of the statements made in such proposals.

Held: (1) The owners of the chattels, who had made two false statements in the proposal, were not alone the "insured"; it was a general insurance of the owner, mortgagee, and hirer, each of which was an "insured"; their individual interests under the policy were not insured and the Insurance Company was liable on loss for a lump sum in the apportionment of which it was not concerned. The general contract was an express one, based on the truth of the statements in the only proposal to the Insurance Company that was made by an "insured," and it is immaterial whether they had been authorised to be made by the others insured or not. There was also an implied authority for the owner of the chattels to make a proposal to insure; this, too, was ratified and confirmed by the acceptance of the policy which embodied the proposal.

(2) The Queensland Insurance Company was not estopped by the correspondence referred to in the latter part of the judgment from raising as a defence that the policies were void by reason of the false statements made in the proposals, as the Insurance Company, as a matter of construction of the contract, had not represented that the basis clause did not apply to the plaintiff as mortgagee.

Quaere: Whether mortgagee in policy issued to owner, mortgagee and hirer, may sue separately for what it claims as its share of the policy moneys.

Mazengarb and **James** for the plaintiff.
Watson and **Wilson** for the defendants.

REED, J., said that he should first deal with the action against the New Zealand Insurance Company Ltd. The documents and evidence showed that Birkett & Sons Ltd. represented to the plaintiff Finance Company that it had disposed of a Big Marmon Sedan to one Montague Dennis the cash selling price being £1,775. Various documents bearing date December 15, 1930, were as follows: (1) "Particulars of Transaction" with Montague Dennis as hirer; (2) "Particulars of Transaction" with Conducted Tours Ltd. as the hirer with the same sale price and particulars; (3) Hire Purchase Agreement with Conducted Tours Ltd. as the hirer; (4) Proposal for Insurance to the New Zealand Insurance Company Ltd. with Montague Dennis as the hirer. Nothing appeared to turn on these discrepancies. It would appear however that the shareholders in Conducted Tours Ltd. were Montague Dennis and W. Birkett & Sons Ltd. The plaintiff company on December advanced £1,176 17s. 3d. on account of M. Dennis and paid to the defendant company the premium on the policy £45 12s. 6d. which was debited to Dennis' account. The first promissory note, which was payable at the office of Birketts, was met on January 19, as was the second on February 17. From Birkett's books it would appear that these payments were made from their own funds. The plaintiff company was then asked to substitute Conducted Tours Ltd. for Dennis which was done and the Hire Purchase Agreement with Dennis was returned, the one with Conducted Tours Ltd. being received in place of it. This was probably some time in March for on the 9th inst. the plaintiff Company credited Dennis with the amount then owing and opened a new account in the name of Conducted Tours Ltd.

The proposal of Insurance was dated December 13, and Montague Dennis was named as hirer. It was apparently received by the Insurance Company on the 20th December and the Policy was issued on the 22nd December. The proposal has a slip attached dated the 5th March, 1931, and there is an endorsement on the Policy of the same date both reading that the "Policy shall henceforth during its currency be held to cover in the names of Mercantile Finance Corp. Ltd. as Mortgagees W. Birkett & Sons as owners and Conducted Tours Ltd. as hirers and not as heretofore." The proposal is signed "Per Pro W. Birkett & Sons Ltd. W. Birkett Managing Director." The defendant company claims that this proposal contains two misstatements. (1) Under the heading "Date of Purchase and Price Paid by Insured" the answer is "Dec. 1930 £1775."

(2) In reply to question "Where is the Motor Vehicle usually housed?" appears the answer "7 Ariki St. Hataitai." It is shown that there is no garage or approach by which a car could be taken into the allotment on which stands 7 Ariki Street.

As to the first alleged misstatement. The books of Birkett & Sons were examined about a week after the fire by Mr. Donald Gordon Johnston a public accountant who made a report to the Insurance Companies in respect of a large number of cars. His evidence satisfies me that the books show that the car in question was purchased by Birkett & Sons on the 17th July, 1930 for £951 3s. 9d. and sold to Dennis on the 13th December for £1,175 0s. 0d. An attack was made on the loose leaf ledger and it was suggested that it could not be relied upon. Mr. Stewart the secretary of the plaintiff company examined the loose leaf ledger in January 1931 before the fire for the purpose of checking the particulars supplied by Birketts in connection with a large number of cars which his company was financing. He is positive that this ledger showed the sale price as £1,775. Unfortunately he did not examine the bound ledger, for that verifies the sale price at £1,175. I am satisfied that the loose leaves shown to Mr. Stewart were prepared by Birketts for the purpose of deceiving him. As regards the books now produced Mr. Johnston is satisfied that they are the genuine books of Birkett & Sons Ltd. and points out that "it would not be possible to alter the loose leaf ledgers without the alteration becoming apparent in the bound ledgers." Mr. Stewart very frankly admits "I should say that the books inspected by Mr. Johnston are the true records of the company." It was attempted to be shown that £1,775 was a reasonable price for the car. Mr. Stewart stated that his company had obtained a valuation of the car when the transaction came before the company. He was not aware, however, that the valuation, which was favourable, had been given by Campbell Motors who were the vendors of the car to Birketts and who were largely interested in that firm. The present Chairman of Directors is the Receiver of Birketts and he put obstacles in the way of the books being inspected for the purpose of these actions. He gave evidence that he thought that the price of £1,775 was not unreasonable where a car was to be traded in and where new duties had been recently imposed. It was clear from the books that no car was traded in. Mr. Johnston's evidence was very clear and convincing, and His Honour was satisfied that the books record the real transaction between the parties. Objection was made to the reception of the books in evidence, but he was of the opinion that they were receivable. The policy is a joint one according to the respective rights and interests of these insured. These are the books of an interested proponent for the Insurance, and the three insured are privies in that interest. In **Bell v. Ansley,** 16 East 141, Lord *Ellenborough,* C.J., said: "Though an action upon a policy may be brought in the name of the person who effected it, though he be not the person interested: yet the persons interested are so far looked upon as parties to the suit, that the declarations of any of them are received as admissible in evidence against the plaintiff and what would be a defence against them is in many instances a defence against the plaintiff."

His Honour thought, therefore, that these books afford *prima facie* evidence that the true sale price was £1,175, and as there was no evidence in rebuttal it must be taken as proved.

As regards the second misstatement that the vehicle was usually "housed" at 7 Ariki St. Hataitai, two questions arose. First, must "housed" be taken literally as meaning kept in a place under shelter—a garage or shed? Secondly, if so, did the misstatement as to its being housed affect the right to recover after the endorsement on the policy was made substituting another entity as hirer for the one who would "house" the car at 7 Ariki St.

"Housed" is defined in the *Oxford Dictionary* as "Lodged, enclosed, or shut up in or as in a house; provided with a house or houses." It was clearly proved that there was no building that could be used as a place for housing a car at No. 7 Ariki Street nor even a means of access for a car on to the allotment; there was a fall of 16 feet from the roadway the approach being a zigzag path 4 feet wide. This was not disputed. From enquiries it would appear that the car was parked in the street. It was submitted by the plaintiff that leaving the car in the street was housing it. There was some evidence that it was a common practice in Wellington for people who did not own garages to park their cars in the street. His Honour could not accept that as equivalent to housing. Surely there must be a much greater risk of "Loss or Damage to a Motor Vehicle" as covered by the policy, if the car were habitually left all night parked in a street than if properly housed. However, it was not necessary to show that the answer was material, an inaccurate answer, if the validity of the contract was made conditional on the answer being accurate, avoided the policy and this principle had been applied to an inaccurate answer as to where a vehicle is usually garaged: **Dawsons Ltd. v. Bonnin**[1922] A.C. 413. In His Honour's opinion, the answer in the present case was inaccurate. But, it was contended that the consent by the Insurance Company, evidenced by the endorsement on the policy, to the substitution of Conducted Tours Ltd. for Montague Dennis, created a new contract, on the basis, not of the whole proposal, but only so much thereof as was applicable to the new assignee, and that the parties could not have contemplated that the housing was a term of the new contract. The consent to the substitution was not a new contract any more than would be the case of a consent to an assignment of the policy. "The insurers do not by the mere fact of giving their consent to the assignment preclude themselves from afterwards asserting that the policy had already been avoided at the date of the assignment": **Welford and Otter-Barry's Fire Insurance** (3rd Ed.) 223, and see p. 227. In **Macgillivray's Insurance Law,** p. 274, it is said: "When a policy is void or voidable or the insurers are discharged from liability as against the original assured an assignee takes no better title." The case of **Liverpool London and Globe Insurance Company v. The Agricultural Savings and Loan Company,** 33 Canada S.C. Report 94, was instructive. Under an Ontario Statute a mercantile risk can only be insured for one year and may be renewed by a renewal receipt instead of a new policy. In the proposal in respect of which a Policy was issued there was an untrue statement as to the existing Policies of Insurance on the property. The undisclosed policy lapsed during the year and was not in existence when the first-mentioned policy was renewed, nevertheless an innocent mortgagee to whom the policy, in case of loss, was made payable, failed to recover the insurance moneys on the property being destroyed by fire, upon the ground that the original policy being void for non-disclosure of the prior insurance had ceased to exist in the interval. His Honour thought that it was clear law that where the truth of statements made in a proposal was the basis of a policy, an untrue statement nullifies the policy *ab initio* and no subsequent dealings with the policy or alteration in the circumstances will render the policy good.

It having been proved, therefore, in the present case that two false statements were made in the proposal the question was whether, within the terms of the contract for insurance, the policy was void. It was only necessary to consider two clauses. On the face of the policy, it was stated that the "Proposal dated the 13th December 1930 is the basis of this contract and incorporated herein"; and it was expressed to be granted "subject to the terms and conditions and to the exceptions contained herein and endorsed hereon." The other clause is the first part of the Conditions endorsed on the policy of which the relevant part is as follows: "This policy is issued on the express condition that the written and printed statements made to the Company by or on behalf of the Insured in the proposal for this policy are true in all respects and that the same shall be the basis of the contract between the Insured and the Company. If such statements are untrue in any respect or if any material fact affecting the nature of the risk is omitted therefrom or if this policy or any renewal thereof is obtained through any misrepresentation suppression or untrue averment whatever . . . this policy shall be void. . ."

Mr. *James* for the plaintiff quite properly made two admissions: first, that where the policy makes the proposal the basis of the contract any false statement avoids the policy; and, secondly, that it is not essential that the misstatement should be material. His submission was that the statement on the face of the policy was cut down by the first condition which he submitted limits the results following on misstatements, to the person who makes them; in other words, that the policy may be void as regards Birkett & Sons Ltd. but of full effect as regards an innocent mortgagee who was no party to the misstatements and never authorised them being made. He relied on the words "by or on behalf of the Insured" and contends that Birkett & Sons had no authority to make the statements on behalf of the plaintiff. **Dawsons Ltd. v. Bonnin** (*supra*) is an authority for the proposition that a Policy of Insurance may be so worded that the condition endorsed may cut down the words employed in the body of the policy, but it is also an authority for the further proposition that where the terms of the contract provide that the statements "are true in all respects and that the same shall be the basis of the contract," the materiality or otherwise of the statements is not in issue. However, this latter point did not arise, it having been, as His Honour had said, quite properly admitted that the materiality of the answer did not affect the question. His Honour thought it should be observed, however, that in **Dawson's** case, although the House of Lords was divided on the construction of the Policy before them, it was quite clear that there would have been an unanimous decision, instead of a majority decision, in favour of the Insur-

ance Company had the policy contained the words which are in the first condition of the present policy; that is to say that the policy was issued on the express condition that the statements in the proposal were true in all respects. The misstatement in that case was as to the place where the motor vehicle was garaged. Mr. *James* having established, by the authority of that case, that the conditions endorsed on a policy may cut down the words in the body of the policy submitted that " by or on behalf of the Insured " necessitated proof that Birkett & Sons Ltd. had authority from the plaintiff company to make the statements contained in the proposal, and he cited the case of **Comptoir Nationale V Law Car and General,** reported at p. 353 of **Macgillivray's Insurance Law,** and the comments thereon of the learned author. This case is reported nowhere else; in a note, it is said to be a decision of *Bray*, J., and the Court of Appeal. It was not referred to in any other text book on Insurance Law nor in **Halsbury,** and His Honour inferred from that, and the very limited information given, that it was not a case of general application but was decided on the particular document before the Court, and that document would appear to be in the form of an indemnity bond, containing no clause nullifying the contract if the statements upon which it was given were false. The report is preceded by a general statement which His Honour quoted. **Venner v. Sun Life,** 17 Can. S.C. 394 was cited in support. That was a case in which an unconditional life policy of insurance was issued in favour of a third party, creditor of the assured " Upon the representations agreements and stipulations " contained in the application for the policy signed by the assured, one of which was that if any misrepresentation was made by the applicant or untrue answers given by him to the medical examiner of the company, then in such case the policy would be null and void. On the death of the assured and on action brought, by the person to whom the policy was made payable, it was proved that the answers given by the assured as to health were untrue. The action failed it being held that the policy was void *ab initio*.

The type of policy referred to in the **Comptoir Nationale** case and in the notes in **Macgillivray** was entirely different from those in the present case and contained no provision nullifying the policy if false statements were made in procuring it. The most that can be made of the case and the comments was that where false statements were made in procuring a policy and there is no condition in the policy making true statements the basis of the contract, it must be shown, in order to vitiate the policy on the ground of fraud, that the proponent or applicant was the agent of the person claiming on the policy. That does not help in the construction of the present policy.

Upon Mr. *James'* main submission, His Honour agreed with his contention that the whole policy must be read together; and if by the conditions the covenants on the face of the policy were modified it should be read with that modification.

It was to be observed that the Proposal, which was declared to be the basis of the contract and incorporated therein, was identified by date as the Proposal to which the condition refers. The policy must be read as if the proposal was set out in detail in the body thereof. The proposal contains these words: " I do hereby declare and warrant that the answers given above are in every respect true and correct and I have not withheld any information likely to affect the acceptance of this Proposal; and I agree that this Proposal and Declaration shall be the basis of the contract between the Company and myself; and I further agree to accept the Company's Policy subject to the terms and conditions and exceptions contained therein." If Birkett & Sons were alone the insured, the fact that it had been proved that misstatements have been made in this proposal rendered the policy void *ab initio*. **Hamborough v. Mutual Life Insurance Company of New York,** 72 L.T. 140; **Welford and Otter-Barry** (3rd Ed.), 89. Did the first condition keep the policy alive for the benefit of the other interests insured? His Honour did not think so, for the following reasons: This was a joint insurance; the individual interests were not insured but each of the three was an " insured." The policy does not purport to insure any interest apart from the others and the proportion of the total insurance, as between the three insured must vary from time to time, but with this the Insurance Company was not concerned. It is liable on loss for a lump sum, the respective interests in which is entirely a question for the three insured. But assuming that the mortgagee can, as is done in this case, sue separately (a matter of considerable doubt) for what it claimed as its share, it sued upon a contract based on and incorporated with a proposal, and the proposal dated December 13 was the only proposal and it was in that proposal in which the statements made were warranted true, and were proved not to be so. Those misstatements were made by an " insured," and it was immaterial whether they were authorised to be made on behalf of the other insured or not, the general contract was based on the truth of the statements in the only proposal made to the company. Counsel referred to **Pearl Life Assurance Company v. Johnson** [1909] 2 K.B. 288 as authority for the proposition that a person who accepts a policy does not adopt the proposal as his own. All that case decided was, that where by a policy it is provided that the proposal is the basis of the contract and that the policy is void if untrue statements are made in such proposal, the Insurance Company is estopped from contending that there is no contract where it is shown that *no proposal was ever made*. Reference was also made to **Samuel and Co. v. Dumas** [1924] A.C. 431, and **Small v. United Kingdom Marine Mutual Association** [1897] 2 Q.B. 311. These were both cases of marine insurance and involve considerations of the Statutes bearing on such. The former case was cited in **McLaren and Co. v. N.Z. Insurance Coy** (1930) 6 N.Z.L.J. 75, and Mr. Justice *Adams* there pointed out that in the case before him there was the express contract. And so it was in the present case, the whole policy was made void if obtained by a misrepresentation in the proposal.

But, if it must be shown that the statements were made by the authority of the other insured, it was clearly shown that there was an implied authority, for it was essential that a proposal should be made before a policy would issue, and, as that policy was to be a joint one, the authority to the owner of the chattel to make that proposal must be implied, and it was ratified and confirmed by the acceptance of the policy embodying that proposal.

His Honour thought, therefore, that the claim failed. Judgment would be for the New Zealand Insurance Company.

His Honour then considered the claim against the Queensland Insurance Company. In this case, Birkett and Sons Ltd. were the local agents for the Insurance Company, and, as the plaintiff company did a considerable amount of business with Birkett & Sons, it had a large number of Policies with the defendant company covering motor-cars sold on the hire-purchase system by Birkett & Sons. Eight cars were in this case the subject of the same type of fraud as in the case against the New Zealand Insurance Company. His Honour said that it was unnecessary to go into details, and he found that in each case a false statement as to the sale price of the car was made in the proposal for insurance and that the policies issued in respect thereof were similar in terms to the Policy in the New Zealand Insurance Company's case. There was this difference, however, in the cases. It was claimed on behalf of the plaintiff that the defendant company was estopped from raising as a defence that the Policies were void owing to the false statements made in the proposals for insurance. On April 14, 1930, Mr. Justice *Adams* gave judgment in a case of **W. A. McLaren and Co. Ltd. v. N.Z. Insurance Co. Ltd.** (*supra*), and His Honour stated the facts therein and part of Mr. Justice *Adams'* judgment. The present plaintiff company, being disturbed by the possible effect of the judgment on policies that might be taken out by it, wrote to the defendant company. This letter was not produced owing to its having been addressed to Christchurch, and, notice to produce not having been given in time, the substitution of a copy was opposed and it was not admitted. The letter in reply, dated May 3, 1930, however, was put in evidence.

This letter was received before any of the Policies upon which the action was brought were issued—they covered from September to December 1930. Before considering the effect of that letter as raising an estoppel, there was another letter which His Honour thought had a bearing on the matter. It is dated January 6, 1931, and is of a later date than the Policies of Insurance now in question were effected, but is earlier than the fire which destroyed the motor cars covered by these Policies. This letter is signed by the Secretary of the plaintiff company who gave evidence that the reply was a telegram that a cheque was being posted for the amount claimed.

From this correspondence the following position appeared to be clear: (1) The plaintiff company on April 17, 1930, was anxious as to its position as an innocent mortgagee in the event of some act or default on the part of a mortgagor entitling the Insurance Company to refuse payment of the Insurance Moneys, and by a letter of that date endeavoured to ascertain the position. (2) The answer is not very definite but the following appears: " the question is one of good faith between your Corporation and Underwriters " and " whilst it is not possible for my Company to waive the Conditions of the Policy, you may rest assured that innocent mortgagees have always been considered, and more or less protected by Insurance Companies when a claim arises." (3) It was generally claimed by Insurance Companies that the very drastic conditions embodied in their policies were only used as a shield against fraudulent claims when, although the fraud could not be proved, it was known to exist, and that the innocent insurer had nothing fear.

(4) Such a construction could fairly be put upon that not highly ingenuous letter. (5) The plaintiff company appeared to have been satisfied with this indefinite assurance for they continued to accept policies (including the ones in dispute) from the defendant company. (6) In January, 1931, the assurance, impliedly given, was put to the test, for the defendant company having endeavoured to avoid paying the full insurance moneys in respect of a claim the plaintiff company required a more definite undertaking. In the letter of the 6th of that month, which His Honour quoted in full, after stating its position the plaintiff company says: "unless we can have an assurance that our position is protected we will have to decline advancing on any agreement where the Insurance is through your office." The answer to this was a cheque for the full amount of the disputed claim. (7) It was said that this letter was not relevant as having been sent after the policies now in dispute had been taken out. His Honour thought it relevant; the policies were current and if an unfavourable reply had been given could have been cancelled and policies taken out in another office. (8) He thought a fair construction to put upon these letters, coupled with the act of payment, was a representation that assuming the innocence of the plaintiff company in any transaction its interests as a mortgagee would be protected. (9) There was not, nor could there be, any suggestion of the plaintiff company having been anything but an innocent party in these frauds committed by the Insurance Company's own agent though admittedly not *qua* agent.

Whether it was in accordance with business integrity that, in the circumstances of this case, the defence should be pleaded was not a question for this Court, the question was purely one of law as to whether the above facts estopped the defendant company from setting up the misstatements in the proposal as a defence to the plaintiff's claim.

The estoppel claimed was estoppel in *pais* which has been defined as "an impediment or bar, by which a man is precluded from alleging, or denying, a fact in consequence of his own previous act, allegation or denial to the contrary." Mr. *James* put the point in two ways: (1) the letters showed that the Insurance Company had waived the basis clause as regards the plaintiff and alternatively (2) that the letters showed that the Insurance Company regarded the basis clause, as a matter of construction and as not applying to the plaintiff. His Honour did not think that the clause in the conditions endorsed on the policy regarding the effectiveness of any waiver of any provision or requirement of the policy requiring any matter or thing to be done or to be written or endorsed thereon unless expressly written or endorsed on the policy had any bearing on the matter; the whole question was one of estoppel. That clause did not preclude estoppel: **Crane v. Colonial Mutual Fire Insurance Co. Ltd.** [1920] C.L.R. 305, 328. Estoppel may be established whatever the terms of the contract may be. Although the doctrines of waiver and estoppel are very intimately connected, and it is often difficult to discern accurately the distinction, His Honour thought that the correspondence in this case could only be relied on for the purpose of establishing an estoppel. It was not suggested, nor could it be, that it constituted a binding variation of the contract.

Now "in order to support a plea of estoppel by representation, the representation must be representation of an existing fact, a promise or a representation of an intention to do something in the future is entirely insufficient and this though Lord *Bowen* said in **Edgington v. Fitzmaurice,** 29 Ch. D. 459, 483 that the state of a man's mind was as much a fact as the state of digestion"; **Yorkshire Insurance Coy. v. Crane** [1922] 2 A.C. 541, 553. That, His Honour observed, was an appeal to the Privy Council from the High Court of Australia in the case he had already cited of **Crane v. Colonial Mutual Fire Insurance Co. Ltd.** He thought that the construction, most favourable to the plaintiffs, that could be put on the correspondence in this case was that it had been represented by the Insurance Company that, assuming the innocence of the plaintiff company in any transaction, its interests as a mortgagee would be protected. Nowhere was this definitely stated, but even if it were, it was not a statement of an existing fact but either a non-enforceable promise or "a statement of a present moveable intention" to use the language of *Stephen*, J., in **Alderson v. Maddison,** 5 Ex. D. 293, 303 and as added by that learned judge: "If a person chooses to act upon such a representation without having it reduced to the form of a binding contract, he knows or ought to know, that he takes his chance of the promisor changing his mind." The second way in which Mr. *James* urged that there had been an estoppel, was that the Insurance Company as a matter of construction of the contract represented that the basis clause did not apply to the plaintiff as mortgagee. No doubt there were a number of cases where a representor had secured for himself an advantage involving a corresponding and proportionate disadvantage to the representee by putting a particular construction upon an instrument, and where the doctrine had been applied to prevent such representor from alleging a different construction: **Spencer Bower on Estoppel by Representation,** 139; but no such representation that the construction now sought was to be placed on these policies could be spelled out of the correspondence: indeed the Insurance Company made it clear, in the letter of May 3, that to place the plaintiff in the favourable position it asked for would be to waive the conditions of the policy, and that this was not possible.

His Honour said that much as he regretted, in view of the circumstances, to have to find against the plaintiff, he thought the law compelled him to do so. Judgment would be for the defendant company with costs according to scale, disbursements and witness expenses and costs of interlocutory proceedings to be settled by the Registrar. He desired to add that in the event of these cases going further, and his judgment being reversed, that it was agreed by the parties that the amount recoverable by the plaintiffs should be ascertained by Arbitration in accordance with the terms of the policies.

Judgment for Defendants accordingly.

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

Solicitors for both Defendant Companies: **Chapman, Tripp, Cooke and Watson,** Wellington.

Farmers' Applications for Relief.

Two Judgments of Special Importance.

Two months ago, we discussed certain passages in Mr. Justice Ostler's interim judgment in *In re a mortgage from S. to the Public Trustee*, in the course of which His Honour referred to what he termed "a grave defect in the Mortgagors' Relief Acts preventing the Court in the exercise of its jurisdiction from doing adequate justice." He was referring to the Court's inability, as the law stood, to bind a stock mortgagee by an Order made on an application by the mortgagor for relief against the mortgagee of his land. His Honour hoped that Parliament then in session would amend the Act so as to give the Court power to bind the stock and station agent or company so that the Court might hold the scales fairly between mortgagor and mortgagee (see p. 110, *ante*).

The particular attention of practitioners is now drawn to the two recent judgments of the Chief Justice, the Rt. Hon. Sir Michael Myers, which come to us as we go to press, and which are given in full on pp. 163 and 164, *ante*. In the course of the former of these judgments, His Honour, after referring to Mr. Justice Ostler's remarks already mentioned, said:

> "Apart from the statement by Mr. Justice Ostler in the judgment referred to, I also made representations upon the matter, and suggested, as Mr. Justice Ostler had suggested, that the power of the Court be enlarged by an amending Act. I recognise that there may have been difficulties of which I am unaware in the way of conferring the power suggested. Be this as it may, Parliament has not seen its way to confer the extended power."

The Chief Justice pointed out that, although every Order made by the Court involves an interference with the rights of the mortgagee, it would be inequitable "to enable the stock mortgagee to agist his stock for nothing at the expense of the mortgagee of the land." He, therefore, made two comprehensive Orders suited to the special conditions, since the facts in each case differed. A careful consideration of these Orders will repay those practitioners who are dealing with relief applications by farmers.

Rules and Regulations.

Fisheries Act, 1908. Amended regulations for Trout-fishing in the Ashburton Acclimatization District.—*Gazette* No. 42, June 23, 1932.

Hawke's Bay Earthquake Act, 1931. Napier Alignment Regulations, 1932.—*Gazette* No. 42, June 23, 1932.

Public Revenues Act, 1926. Justices of the Peace Act, 1927. The Crown Legal Business Regulations, 1932.—*Gazette* No. 42, June 23, 1932.

Rabbit Nuisance Act, 1928. Regulations relating to the destruction of rabbits in the East Waikato Rabbit District.—*Gazette* No. 42, June 23, 1932.

The Statute of Westminster.

By R. McVeagh.

In this valuable and instructive paper which will be concluded in a later issue, Mr. Robert McVeagh out of the wealth of his legal knowledge gives us a suggestive and arresting commentary on the much-discussed Statute of Westminster and its anomalies. His paper was written by him before the publication of Lord Parmoor's opinion as to the competency of the Irish Free State Parliament to abolish the oath of allegiance. Mr. McVeagh treats that question from its purely legal aspect, without any consideration of the ethics of the proposal. The Law Journal *feels sure that the profession generally will be grateful for the service rendered them in the preparation of his paper by this highly-esteemed member of our senior Bar.*—Ed.

I.

The above Statute received the Royal Assent on December 11, 1931 — and came into force on that date. As it affects changes of a momentous character in the relations between the Mother and Dominion Parliament its provisions, naturally, are of great interest. It may be regarded as a chapter of law marking and emphasising the development of the constitutional life of the Dominions. It is a recognition of the attainment by them of a wider political capacity. It is an implied affirmation that all conditions essential to government have so progressed that the delegated powers which they previously enjoyed may be enlarged and that most of the limitations hitherto imposed upon them may be removed. It is a legislative ratification of resolutions adopted in 1926 and 1930 by delegates of the Imperial, Canadian, Australian, New Zealand, Union of South Africa, Irish Free State and Newfoundland Parliaments at Imperial Conferences held in those years. Its terms and its implications are therefore of surpassing importance—more so, of course, to those practising the profession of the law than to other members of the community.

The Statute contains a series of preambles. One of them claims a special degree of consideration for the reason that it is not followed by any legislative direction adapted to the facts recited, unless, indeed, upon its true construction, such a direction can be gathered from the terms of the preamble itself. The second paragraph of the preamble is as follows:

> "And whereas it is meet and proper to set out by way of preamble to this Act that, inasmuch as the Crown is the symbol of the members of the British Commonwealth of Nations, and as they are united by a common allegiance to the Crown, it would be in accord with the established constitutional position of all the members of the Commonwealth in relation to one another that any alterations in the law touching the Succession to the Throne or the Royal Style and Titles shall hereafter require the assent as well of the Parliaments of all the Dominions as of the Parliament of the United Kingdom."

This preamble gives rise to various reflections. It will be observed that the phrases "British Commonwealth of Nations" and "Commonwealth" are employed. The statement that the Crown is the "symbol of the free associations of the members of the British Commonwealth of Nations" therefore implies that the United Kingdom is included in the expressions. It may be a question whether the Crown Colonies are not included. Nothing, however, of a practical nature is ever likely to turn upon this and the question possesses only academic interest.

The reference to the "established constitutional position" is somewhat remarkable. The Statute contains new Constitutional adjustments and the expression relates to those adjustments. It could not have been aptly applied to the Constitutional relation existing between the Mother Country and the Dominions before the Act was passed. It is intended to give weight and force and emphasis to the conditions newly created by the Statute. This conclusion may, however, be questioned. It may be contended with great plansbility that the term the "established constitutional position" relates as well to the state of affairs existing prior to the enactment. This contention may be supported by an appeal to the circumstance that the preamble supplies a reason for the assertion of the "established constitutional position," viz., that "the Crown is the symbol of the free association of the British Commonwealth of Nations," and that "they are united by a common allegiance to the Crown." In other words, it may be said that it logically follows that where those conditions exist an "established constitutional position" arises.

It is interesting to consider the possibilities that may arise in the event of any legislative movement affecting the succession to the Throne, or the Royal Style and Titles. The consent of all Parliaments of all the Dominions and of the United Kingdom is required to effect such an alteration. If this is to be regarded as something more than a pious ejaculation—if it is to be treated as a positive legislative mandate—what position would arise if the Parliament of one of the members of the "Commonwealth" refused to assent to a proposed change? How would such a deadlock be overcome? Time was when the genius of the race would have enabled it to overcome such an obstacle.

But it is a question whether in these days, when fundamental conceptions are challenged and the continued existence of ancient institutions called into question, the practice of compromise would be resorted to. One has to look no further than the State of New South Wales in order to visualise to what extremities men and the leaders of men are prepared to go, in our own days.

It may, of course, be retorted that an alteration to the succession to the Throne is so remote as not to be in the region of practical politics; yet it should be remembered that at least on two occasions the British Parliament adopted legislation altering the course of succession. If a position of stalemate should arise could the Imperial Parliament meet the difficulty by modifying legislation, made applicable to the dissenting Dominions? This necessitates a consideration of the terms of section 4 of the Act which is in the following terms:

> "No Act of Parliament of the United Kingdom passed after the commencement of this Act shall extend, or be deemed to extend, to a Dominion as part of the law of that Dominion unless it is expressly declared in that Act that that Dominion has requested and consented to the enactment thereof."

It has hitherto been an accepted principle that it was within the competence of the Imperial Parliament to make laws for any part of the King's Dominions.

This principle was emphatically expressed in The American Colonies Act, 1766 (6 Geo. 3, c. 12) which, after a reference in the preamble to the "Colonies and plantations of America," enacted:

> "The said Colonies and plantations in America, have been, are, and of right ought to be, subordinate unto, and dependent upon, the Imperial Crown and Parliament of Great Britain; and that the King's Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons of Great Britain, in Parliament assembled, had, hath, and of right ought to have, full power and authority to make laws and statutes of sufficient force and validity to bind the Colonies and people of America, subjects of the Crown of Great Britain in all cases whatsoever."

It is important to bear in mind that when the last-mentioned Statute was passed by the Imperial Parliament, the colonies and plantations, by their local legislatures, had claimed the sole and exclusive right of imposing taxes. The Statute was, therefore, an assertion of the paramountcy of the Imperial legislature and this represented the position until the passing of section 4 of the Statute of Westminister. This being so, the purport of the section is to qualify that paramountcy, by providing that no future legislation of the United Kingdom shall apply to a Dominion unless that Dominion has requested and consented to the enactment thereof.

But it may be emphatically questioned whether the Imperial legislature can renounce its right to legislate for any part of the King's Dominions. The theory pertaining to the Parliament of the United Kingdom is that it is omnipotent, so far as any human institution can be omnipotent. So much is this the case that no Parliament can fetter the freedom or capacity of a subsequent Parliament. This is a fundamental necessity. The wellbeing—nay perhaps the very existence—of a supreme legislative body depends upon the maintenance of this principle. Blackstone says:

> "Acts of Parliament, derogatory from the power of subsequent Parliaments bind not. So the Statute 11 Hen. VII, c. 1, which directs that no person for assisting a King *de facto* shall be attainted of treason by act of Parliament or otherwise, is held to be good only as to common prosecutions for high treason, but it will not restrain or clog any Parliamentary attainder. Because the legislature being in truth the sovereign power, is always of equal, always of absolute authority; it acknowledges no superior upon earth, which the prior legislature must have been if its ordinances could bind a subsequent Parliament."

Parliament has acted on the views set forth in the foregoing statement of Blackstone. Thus, though the Union with Ireland Act, 1800 (39 & 40 Geo. 3, c. 67) provided for the maintenance of the Established Church in Ireland, the Irish Church Act, 1869 (32 & 33 Vict. c. 42) disestablished that Institution. Another instance is that of the Septennial Act, 1715 (1 Geo. 1 stat. 2, c. 38) whereby Parliament prolonged its own life to seven years.

Hence in the event of any Dominion refusing to concur with the Imperial Parliament in any question touching the succession to the Throne or the Royal Style and Titles it would be within the competence of that Parliament to proceed to give legislative effect to its proposals and to declare that the law so adopted should apply to the whole Empire including the dissenting Dominion. The Legislative Body that had power to enact has *ex vi termini* power to repeal, since a repeal is an enactment.

These considerations, assuming that the preamble contains by implication a legislative mandate, serve to show what serious consequences follow from the doctrine of the supremacy of Parliament.

(*To be continued in next issue*).

Changes in England's Judiciary.

Retirements and a Promotion.

By Inner Templar.

The subject of the moment is the Judiciary, having regard to the retirement of that wonderful veteran, for long acknowledged to be the most stalwart member of the highest appellate court both in intellect and personality, Lord Dunedin; the promotion of Mr. Justice Wright; the retirement of Mr. Justice Rowlatt; and the promotions of their successors to the Bench of the King's Division.

Let us pay our tribute to the two retiring Judges.

Lord Dunedin's vitality has long been apparent to the general public, from the divers and interesting communications he has been in the habit of making to the *Times*, as occasion has suggested. Stern, to a degree, of expression, he was always particularly master of any tribunal over which he presided: never suffering fools gladly, he was every quick to see a point and to appreciate, but not with premature haste, its worth. His condemnation of the false point was always scathing, usually merciless and often irritated; but a Judge may choose what manner of condemnation he pleases, if he has the gift of being so often right as was Lord Dunedin, whatever the ultimate decision of the House or Board. It was impossible not to admire him, and, if affection was not apparently welcomed and from strangers only permitted from a distance, to love him. He was the archbrother of the legal fraternity, so long as he remained part of it; and no retirement will deprive him of that status nor release him from it. In private life he retained, it almost seemed with a grim persistence, all the vigour of youth with which advancing years did not compel him to part: but in private life and in public life it must shortly and simply be said of him that he is altogether admirable, on the part of those who admire those human qualities usually summed up in the two words, humour and guts.

Mr. Justice Rowlatt, though of different stature and physically older to look upon, was just such another. We have more than once registered our regret that he was not promoted to a higher rank, and one more commensurate with his tremendous abilities of brain. In this case there could be no resisting the immediate affection he inspired in all who knew him or, but for an occasion, even knew him not. Humane and chivalrous in the extreme, bubbling over with an ever vivacious humour, quicker at the uptake than any man you can ever have known and more full of character than any whom Charles Dickens ever portrayed, it is almost impossible to believe that he can have retired on grounds (of all others) of old age. Mackinnon, J., full of shrewd wisdom as I have told you, said of him long ago that he could never grow old; and he spoke true. Almost fanatic lover of the sea and daring sailor, he brought back to London from his vacations and took round whatever circuit he went the salt and freshening breezes: and I venture to say of him, with all submission and apology to the various authorities which did not promote him, that he has been the most distinguished Judge (excepting possibly, only Fletcher Moulton) of our generation.

Mr. Justice Wright, promoted to be a Law Lord, was his pupil and has yet to make good the high opinion

his master entertained of him, long before the profession (some twenty years ago) first discovered his hidden talents. I have told you the story of his meteoric rising so often that I dare not venture it again. It is to be recalled, however, to warrant the belief, or hope, that being a slow-comer, he will in the fulness of time develop those qualities which his master saw in the past and which high authority, in thus promoting him, must presumably see for the future. The gift of golden silence is one of them; the power to recommend himself to those, to whom he is a stranger, with the same emphasis as that with which he recommends himself to those who know him intimately, is another. These things are necessary, and necessary to be produced in him and from him, if he is to fulfil the essential demands upon the "Perfect Judge" to whom, I see, reference is made in the NEW ZEALAND LAW JOURNAL of February 2, just come to my table.

It would be appropriate to refer back to that short article, as at this time and in this context. Incidentally, it is curious that the expression should have come from Lord Russell of Killowen, for the qualities to which he refers are not, perhaps, his own. Though he must give infinite pleasure to the academic lawyer, for his wide knowledge and quick grasp of every rule and formula of the forensic game and for the invincible skill with which he wins against every other player pitted against him (now, as Judge, formerly in his capacity of advocate), to the layman he can hardly give the comfortable satisfaction upon which he insists if perfection is to be had. Not to put too fine a point upon it, it may be that it is said with truth that the litigant, if not left smarting under a sense of justice (for Lord Russell is patently determined always to be just), is not infrequently left infuriated that, as he supposes, the merits of a dispute have been forgotten in a discussion of arbitrary subtleties of the legal mind and that he has lost his cause, not because he was in the wrong, but because he has been caught in some unnecessary and, to him, fatuous and futile complexity of legal procedure and has been held in the trap by the two specialist hands of an arch-lawyer. And if he does so feel, there is no doubt about it that there is relentless intransigeance about Lord Russell, when he is on such a point especially if it be an inhuman and, forgive me, tiresome Chancery point. Be that as it may, however, the point made as to Judicial Perfection in general is, you no doubt concede, sound; and it provides an excellent basis upon which to consider the present matters.

I do not think that even the extreme ferocity of Lord Dunedin, when there has been occasion for it, can have disguised from his litigating victim the justice which is being done; and it may well be that the individual Judge referred to, in the article, was he. I equally am sure that even Mr. Justice Rowlatt's sometimes too generous toleration of bad people can never have concealed from better men the perfect justice, so far as this can be attained here on earth, of his judgment; and I think that others, than our profession, have watched with amusement the ups and downs of his cases carried to appeal: the frequent reversal of Rowlatt, J., by the Court of Appeal to be followed by his restoration in the House of Lords decision.

If Rowlatt, J. had, at least, been made Rowlatt, L.J., it is not too much to say that the stock of our Court of Appeal would have been standing higher now; but for my part I should have liked to see him, even at his age, a Law Lord, to enhance the improving reputation of the Highest Appellate Courts.

Australian Notes.

WILFRED BLACKET, K.C.

An Anxious Architect: Sydney already rejoices in its Beautiful Harbour, its Bridge, and its Bradman, but to add to its greatness the Teachers' Federation of N.S.W. planned or rather retained an architect to plan a noble building which like a Freetrader's tariff was to be mainly for revenue producing purposes. When the architect's fees due and payable amounted to £1,934 the Federation paid him £300 on account and then becoming legally conscience-stricken by the thought that such an expenditure of trade-union moneys might be *ultra vires* applied to Harvey, C.J.E., under the provisions of the Trustee Act for advice as to whether payment of the architect's account was within the words "any lawful objects or purposes" contained in Section 52A of the Arbitration Act of 1918. His Honour thought the matter so doubtful that he was compelled to advise the trustees of the Federation to resist the claim and have the issue tried at law. It is quite possible that the architect may not be pleased with this decision, for it may be that he would rather get his £1,634 in spot cash than that the sum should represent the stakes in a leading case in which he will be—even possibly at his own cost—an anxious protagonist.

Concerning Dogs: In *Simpson v. Bannerman* the Alsatian dog case mentioned by me (p. 50 *ante*), the High Court has granted special leave to appeal, and so the doubt I expressed as to the correctness of the majority decision will be resolved. Sydney suburban residents have recently complained considerably to the Councils and the newspaper anent the howling of dogs at night, but although there is power under the Local Government Act to deal with "nuisances" this has been construed by the Councils and their advisers to mean "public nuisances" affecting a large number of persons, and so it is thought that if a dog is only able to keep thirty or forty people awake it may continue to do so until someone resorts to strychnine for its suppression. In one case complaint was made as to the howling and evil odours of dogs emanating from a dog hospital in one of Sydney's classiest suburbs, but the Council replied that the matter was not within its jurisdiction, and this apparently because neither the howls nor the smells were of sufficiently long range to constitute a nuisance which the Aldermen could notice without loss of dignity.

Residents insist that the hospital is a broadcasting station for the things complained of, and that residents over a considerable area get the wave lengths of the dogs. This matter of long-range howling naturally recalls the case of George Ade's youth in Arizona. "He didn't like work, and reading law hurt his head, and so, as on a calm night he could be heard a mile, he became a Statesman."

The Two Magraths.—In *Magrath v. Goldsbrough Mort and Co. Ltd.* the High Court had to decide whether E. C. Magrath had jurisdiction to enquire into a matter in which his namesake was concerned. He had been appointed by the Industrial Commission as their Deputy to determine the matter stated, his order under the Act being subject to appeal to the Commission. Whilst he was so engaged the Ministry for reasons that need not be here stated appointed Justice Kenneth Street, a member of the Commission, to a seat on the Supreme

Court Bench; and this appointment, admirable in itself, for Street, J., is worthy to sit on the Bench with his father Sir Philip Strect, C.J., suspended the powers of the Commission. Then a question having been raised as to the jurisdiction of the Deputy, Magrath, the matter was brought before the High Court. Rich, Dixon and McTiernan, JJ., held that the Deputy's jurisdiction did not rest upon an independent foundation, and that when the powers of the Commission were suspended his powers must also be suspended. Starke and Evatt, JJ., thought that, as the Commission still existed as a legal entity, the powers it had conferred on Magrath could be lawfully exercised. (It is perhaps unnecessary to mention that the odds of three to two make an absolute certainty at the High Court though it would be very much otherwise at the ponies.)

"**Good Old Pidds.**"—A. B. Piddington in recent years has been an outstanding official and judicial figure. In private life he is the most courteous, kindly and generous of men, a profound scholar of classic and modern literature—he speaks nearly all the languages that there are or ever have been,—and a close student of all modern problems.

He was once a High Court judge for a few days. It was in this wise: When at Colombo returning from a trip to England his brother-in-law, one O'Reilly, cabled him that a High Court judgeship would be offered him, and, in a later cable, asked if he had reliable views regarding State Rights, to which inquiry he replied in a non-committal kind of way. When offered the position, he at once accepted it; but, before he could take his seat, he came to the conclusion that the appointment greatly resembled a bargain and sale, and therefore resigned. The facts relating to this affair were gone into at great length when he, later on, opposed at North Sydney Election the Rt. Hon. W. M. Hughes, who had appointed him. Hughes won on votes; but on recriminations the honours were divided. Then, in 1923, Mr. Justice Piddington, having been given a free hand in fixing the basic wage, raised it from £3 to £4 2s. 0d. being greatly assisted in this good work by the erroneous supposition that every "worker" had a wife and two children, and, in June, 1927, he raised the amount to £4 5s. 0d. for one man, child endowment having been provided for any children he might have. From thenceforth "Good old Pidds" was the term of endearment used by the workers to describe him. He so greatly appreciates the claims of the "workers" that these rates are less than might have been anticipated, but they were the beginning of the end of the State's solvency. Now he has eclipsed all earlier performances by resigning his £3,000 a year billet as a protest against the Governor's dismissal of Premier Lang. His letter covering his resignation is a remarkable document and "will be recorded as a precedent," that is not likely ever to be followed.

The Law and the Profits.—Upon the hearing at Sydney of summons taken out by R. C. Dibbs, a solicitor of Temora, N.S.W., requiring the Registrar-General to enter a certain writ of execution upon the Register Book, it appeared in evidence that the applicant had acted for one E. S. Siggers in endeavouring to obtain a further advance upon security of land at Casino, valued at £3,800 and mortgaged for £2,100. He was unable to obtain the advance but charged £31 for his costs. He then sued for the amount, and, having obtained judgment, levied on the land; and although informed that the amount he demanded in settlement £56, was being telegraphed, caused the right title and interest of the debtor to be sold at Temora—700 miles away from Casino. There was quite naturally no competition in bidding, and Dibbs, the judgment creditor, was declared the buyer on his bid of 10s. The Registrar-General, possibly moved thereto by the judgment debtor, required the order of the Court before entering the transaction on the Register. Harvey, C. J. S., is a man of extreme courtesy and forbearance but his remarks concerning that solicitor cannot have been pleasant for Mr. Dibbs to hear, and His Honour also had something to say concerning the iniquitous Stamp Duties Act which required the payment of £104 stamp duty upon a consideration of 10s. Ultimately the solicitor and his former client agreed to a settlement on terms not disclosed, and, as this agreement was arrived at after conference with the Judge in private chambers, there is some reason to hope that the client got a good deal more than half a sovereign out of it.

Bench and Bar.

Mr. A. V. P. Ford, recently of Auckland, has gone to Rotorua, where he has commenced practice in Tutanekai Street.

Mr. G. G. Rose, M.A., LL.B., who has been the Public Trust Office Solicitor for some years, has been appointed to the new office of Solicitor to the Treasury. Mr. Rose who was originally on the staff of the Post and Telegraph Department, qualified at Victoria University College and joined the Public Trust Office as Assistant Solicitor in 1919.

Mr. G. E. Miller, who now becomes Deputy Superintendent of the State Advances Department, has been District Public Trustee for Wellington since 1924. Formerly a member of the State Advances staff, he qualified there as a Solicitor, and transferred to the Public Trust Office after his return from active service. He was Assistant Controller of the Estates Division before attaining the position he has now vacated to take up his new appointment.

Mr. C. E. Cole has been appointed Solicitor to the Public Trust Office in succession to Mr. G. G. Rose. He was admitted to practice in 1908, after study at the Otago University, and with Messrs. Adams Bros., in Dunedin. After some years in private practice, he joined the Public Trust Office staff in 1922 as Assistant Solicitor, becoming First Assistant Solicitor in December last.

On the Prince of Wales's birthday the annual golf tournament of the Wellington practitioners was held on the Hutt Gold Club links. A bogey competition was held in the morning, and a four-ball bogey in the afternoon. The winner of the morning competition was A. Park (15), 1 up; runner-up, R. L. A. Cresswell (12), 2 down. In the afternoon A. B. Buxton and S. A. Wiren returned a card of 7 up. The next best scores were P. C. Miles and B. Vickerman, 5 up; R. McKenzie and C. C. Marsack, 4 up; C. W. D. Bell and J. W. Ward, 4 up; A. M. Cousins and W. B. Rainey, 4 up; E. D. Blundell and R. L. A. Cresswell, 4 up; G. C. Phillips and A. G. Todd, 4 up; L. C. Hemery and A. Park, 3 up; D. R. Richmond and W. Cunningham, 3 up.

Appeals in Forma Pauperis.

Some Precedents.

The forms printed below follow those accepted by the Court of Appeal in proceedings of this nature under the existing Rules, which are contained in the Code of Civil Procedure. They are published in the hope that they may serve as an easy reference to practitioners, more particularly in districts where access to the ever helpful Court officials is not convenient.

A form of Case for Opinion of Counsel has not been included, partly because it must be infinitely various, and partly because it is not a form of the Court. It is considered that the better practice is to lodge the Case and Certificate of Counsel with the Petition; but it is not necessary to do so, and, in some circumstances, it may be inadvisable. It is sufficient that the Case and the Certificate be produced to the Court on the hearing of the Petition: R. 37. The Respondent is not entitled to inspection of the Case and the Opinion. *Sloane v. Britain Steam Ship Company* [1897] 1 Q.B. 185. The Certificate must be in the form prescribed by R. 36, and Counsel giving the Certificate must be independent: R. 33.

Generally, as to the Court of Appeal Rules relative to appeals *in forma pauperis*, see Stout and Sims's *Supreme Court Practice*, 7th Ed., pp. 467-473, with notes and cases therein set out.

Except as to typewriting being substituted for printing, the format of all documents should comply as nearly as possible, with R. 15.

Rule 34.

I. AFFIDAVIT OF COMPLIANCE.

IN THE MATTER of a Petition by for leave to appeal *in forma pauperis* from a Judgment delivered by the Honourable Mr. Justice in the Supreme Court of New Zealand at Wellington on the day of in an action brought by him against .

I, of the City of Wellington, Solicitor, make oath and say as follows:—

1. I am the Solicitor for the above-named .
2. Attached hereto and marked with the letter "A" is a Case for Opinion of Counsel, pursuant to Rules 32, 33, and 34 of the Court of Appeal Rules.
3. The said Case contains all the particulars required by the said Rule 33 to enable Counsel to advise honestly and impartially upon the same, namely,
   (1) Copies of the pleadings
   (2) Copy of Associate's Notes of Evidence
   (3) Full and true statement of the material facts.
   (4) Copy of the exhibits, namely:

SWORN, etc.

Rule 28.

II. PETITION FOR LEAVE TO APPEAL IN FORMA PAUPERIS.

IN THE COURT OF APPEAL OF NEW ZEALAND

BETWEEN

Appellant

AND

Respondent

TO The Court of Appeal of New Zealand.

THE PETITION of of SHEWETH AS FOLLOWS:—

1. Your Petitioner was Plaintiff in an action commenced by a Writ of Summons issued under Number out of the Supreme Court of New Zealand Wellington District (Wellington Registry) wherein the above named was Defendant.
2. A copy of the Statement of Claim annexed to the said Writ of Summons is annexed hereto and marked "A."
3. A copy of the Statement of Defence filed in the said Action is annexed hereto and marked "B."
4. The said action was tried before the Honourable Mr. Justice at on and judgment was delivered in favour of the Defendant, with costs, on the day of . A copy of the reasons for the learned Judge's Judgment is hereto annexed and marked "C."
5. Judgment in the said action was entered on the day of 19 .
6. Annexed hereto and marked "D" and "E" respectively are copies of an Agreement and Memorandum of Transfer referred to by the learned (Judge) in his Judgment.
7. Annexed hereto and marked "F" is a copy of the Notes of Evidence taken at the trial of the said action by the Associate to the learned (Judge) .
8. Your Petitioner is not worth £25, his wearing apparel and the subject matter of the said action excepted.
9. Your Petitioner is desirous of obtaining the leave of this Honourable Court to appeal as a pauper from the said Judgment.

DATED at Wellington this day of 19 .

Your Petitioner therefore HUMBLY PRAYS that he be admitted to appeal as a pauper from the said Judgment of .

(signature)
(occupation)

I, of make oath and say that so much of the foregoing Petition as relates to my own acts and deeds is true and so much thereof as relates to the acts and deeds of any other person I believe to be true.

SWORN, etc.

RR. 29, 30.

III. AFFIDAVIT OF PETITIONER IN SUPPORT.

(*Heading*)

I, (*Appellant*) , of (*occupation and address*) make oath and say:—

1. That I am the Appellant in the above named action.
2. That I reside at No. (*with etc.*)
3. That I own the furniture in two rooms of the premises in and that I am informed and verily believe that the value of the said furniture is £27.
4. That with the exception of the said furniture I have no estate or interest whatever whether vested or contingent in any real or personal property whatever.
5. That my just debts amount to the sum of £ or thereabouts.
6. That on the day of 19 , I paid to of Solicitor, the sum of £25 and that on the day of 19 , I paid to the said (Solicitor) the sum of £5.
7. That the said payments amounting in all to the sum of £30 were paid to the said (Solicitor) as costs in an action commenced by Writ of Summons issued out of the Supreme Court of New Zealand Wellington District as Number wherein I was Plaintiff and the above named was Defendant.
8. That the said payments amounting to £30 excepted, I have not nor to the best of my knowledge information and belief has any other person on my behalf or at my request or in my interest or for my benefit paid or become liable for or has promised or undertaken to pay any sum for costs charges disbursements or other expenses in respect of the said action or in respect of any advice consultation or other work preliminary to the said action.

SWORN, etc.

R. 31.

IV. AFFIDAVIT OF SOLICITOR FOR PETITIONER IN SUPPORT.

(*Heading*)

I, of Solicitor, make oath and say:—

1. That I am the Solicitor for the Plaintiff in an action commenced by Writ of Summons issued out of the Supreme Court of New Zealand Wellington Registry as Number wherein the above named was Plaintiff and the above named was Defendant and the matters here n deposed to are within my personal knowledge.

2. That on the day of I received from the above named Appellant the sum of £25 on account of the costs of the said act on but no bill of costs has ever been rendered by me to the said Appellant nor have I any agreement with him as to the amount of costs of the said action. In view of the Appellant's financial position I did not consider it worth while rendering any bill of costs for work done in the said action.

3. That on the day of 19 , I received from the Appellant the sum of (£5). This sum was paid by me to cover the fees payable to the Associate to for copies of the Judgment and Notes of Evidence in connection with the proposed Appeal in the said action.

4. That the said payments amounting in all to the sum of (£30) are the only payments I have received on account of the costs of and incidental to the said action and of all preliminary consultations and advice in connection with the said action.

5. That I have not received any other payment from the said Appellant or from any other person on behalf of or for the benefit of the said Appellant nor has the said Appellant or any other person on his behalf or in his interest or for his benefit undertaken or promised to pay any sum for costs charges and disbursements or other expenses touching or in respect of the said action or of any advice consultations or professional charges whatsoever preliminary to the said action.

SWORN, etc.

V. Notice of Motion for Leave to Appeal in Forma Pauperis.

(*Heading*)

Mr. of Counsel for the above named Appellant, the Petitioner, TO MOVE this Honourable Court at the sittings thereof commencing (or which commenced) on at o'clock in the forenoon or so soon thereafter as Counsel may be heard FOR AN ORDER in terms of the prayer of the Petition filed herein that the above named Appellant be at liberty to prosecute the above named Appeal as a pauper AND FOR A FURTHER ORDER that the Appellant be relieved from complying with Rules 12, 13, 14, 15 and 22 of the Court of Appeal Rules, and that the Appellant in lieu of printing the Case on Appeal for the purposes of Rule 16 of the said Rules shall cause typewritten copies thereof to be made in accordance with Rule 597A of the Code of Civil Procedure.

DATED

Counsel moving.

Certified pursuant to the Rules of Court to be Correct.

Counsel moving.

VI. Order Granting Leave to Appeal in Forma Pauperis.

(*Heading*)

Before the Right Honourable the Chief Justice of New Zealand,
Sir Michael Myers, P.C., K.C.M.G.
The Honourable
The Honourable
day the day of 1932.

UPON READING the Petition of the above named filed herein and the Notice of Motion for an Order in terms of the said Petition and Affidavits of and filed in support thereof and the Case for Opinion of Counsel and Certificate of Counsel produced to this Court upon the hearing of the said Petition and UPON HEARING Mr. of Counsel for the said (Appellant) IT IS ORDERED that leave be and the same is hereby granted to the said (Appellant) to appeal as a pauper to this Court from the Judgment of the Supreme Court of New Zealand delivered in an action commenced by Writ of Summons issued out of the said Supreme Court as Number wherein the above named was Plaintiff and the above named was Defendant AND IT IS FURTHER ORDERED that the said shall be and he is hereby relieved from complying with Rules 12, 13, 14, 15 and 22 of the Court of Appeal Rules and that the said in lieu of printing the Case on Appeal herein for the purposes of Rule 16 of the said Rules shall cause typewritten copies thereof to be made in accordance with Rule 597A of the Code of Civil Procedure AND IT IS FURTHER ORDERED that the said shall serve a sealed duplicate of this Order on the above named with Notice of Motion on Appeal.

By the Court,

Deputy Registrar.

Legal Literature.

Blackwell's Law of Public and Company Meetings.

Part I: Public Meetings, by A. W. Nicholls, M.A., and Part II: Company Meetings, by P. J. Sykes, M.A., Author of *Changes in Company Law*. Seventh Edition; pp. 211, xxiii + Index 26. Butterworth & Co. (Publishers) Ltd.

This is a handy little book, concisely written and well indexed. It is an ideal "Chairman's Guide," as it answers every reasonable question that may arise in the conduct of public and local body meetings. Moreover, Company Chairmen, Directors and Secretaries will find the latter part of the book most useful in dealing with matters relative to the calling of statutory, general and other meetings, minutes, resolutions and proceedings generally.

A lengthy Index of Cases shows where the law in extended form is to be found in support of the necessarily brief commentary of the authors.

Underhill's Principles of Partnership Law.

By Sir Arthur Underhill, M.A., LL.D. Fourth Edition by Milner Holland, B.C.L., M.A., Assistant Reader in Equity to the Council of Legal Education. Pp. 180, xxvii + Index 27.

Twelve years have elapsed since the last edition of this useful summary of the law of partnership. The intervening decisions affecting the subject matter, together with other up-to-date material has been included, but, as the Editor remarks, "in other respects the original words of the learned author have been preserved with the least possible alteration." The law student, and the layman, will find all the salient features of the subject in these pages in easily accessible form.

Crew's Mercantile Law.

A Synopsis of Mercantile Law. For Commercial Students and Business Men, by Albert Crew, Examiner in Commercial Law and Company Law, H.M. Civil Service Commission, assisted by Harry Infield, M.A. B.Sc. and C. G. Austin, B.A., Examiner in Mercantile Law, Chartered Institute of Secretaries, all of Gray's Inn, Barristers-at-Law. Fifth Edition, pp. 268, xxiii + Index, 46 (Butterworth & Co. (Publishers) Ltd. 1932.)

This edition comes quickly on the heels of its predecessor, so great is the demand for the work. In the author's words, it "is primarily intended to supplement the law lectures which commercial students and business men attend for the purpose of preparing for the examinations in connection with the professions of accountant, of secretary, and of banker, or with the examinations in commercial law held by the various public examining bodies."

As far as possible, the author and his assistants have avoided technical language, and, in supporting the statements of law in their text by including references to a vast number of cases, give opportunity to the reader to pursue further the points under notice.

The inclusion of a number of examination papers is of immense value to the student.

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.

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.

AGRICULTURE

Bankruptcy—Agricultural Floating Charge—Enforcement of Security—Agricultural Credits Act, 1928, sec. 12.—JONES, *In re*; NATIONAL PROVINCIAL BANK, LTD. *v.* OFFICIAL RECEIVER TRUSTEE (p. 220).

As to charges in favour of a bank: DIGEST 3, p. 282.

BANKERS AND BANKING.

Crossed Bearer Cheques Stolen by Employees—Payment by Employees into Branch Bank to credit at another Branch—Negligence—Bills of Exchange Act, 1882, sec. 82.—E. B. SAVORY & Co. *v.* LLOYDS BANK, LTD. (p. 273).

As to conditions of protection to Banker: DIGEST 3, p. 237 *et seq.*

BANKRUPTCY AND INSOLVENCY.

Execution Against Goods—Withdrawal of Sheriff—Payments to Creditor Subsequent to Withdrawal—Re-entry of Sheriff—Receiving Order.—KERN, *In re* P. E. and B. E. A.; THOMAS HENRY, LTD. *v.* THE TRUSTEE (p. 256).

As to the rights of creditors under executions: DIGEST 5, p. 808 *et seq.*

COMPANIES.

Winding-up—Surplus Assets—Preference Shareholders—Right to Participate.—JOHN DRY STEAM TUGS, LTD., *In re* (p. 205).

As to distribution amongst contributories: DIGEST 10, p. 956.

Winding-up—Pension to Widow of Director—*Ultra Vires.*—LEE BEHRENS & Co., LTD., *In re* (p. 220).

As to the powers of directors with respect to gifts: DIGEST 9, p. 487.

Attachment of Directors—Non-compliance with Order of Court—Incomplete Form of Order—Service out of Time.—IBERIAN TRUST, LTD. *v.* FOUNDERS' TRUST AND INVESTMENT Co. LTD. (p. 274).

As to attachment against directors of companies: DIGEST 16, p. 52.

CONFLICT OF LAWS.

Divorce—Domicil—Wife's Petition in Egypt—Instructions to Discontinue—Petition in England.—HUGHES *v.* HUGHES (p. 275).

As to the jurisdiction in divorce: DIGEST 11, p. 421.

DAMAGES.

Personal Injuries—Trial without Jury—Appeal—Power of Court of Appeal to Assess Damages.—REANEY *v.* CO-OPERATIVE WHOLESALE SOCIETY, LTD. (p. 292).

As to the review of assessment of damages: DIGEST 17, p. 164.

Breach of Contract—Printing Bank Notes for Bank—Unauthorised Issue of Notes Printed from Plates—Liability of Printers.—BANCO DE PORTUGAL *v.* WATERLOW & SONS, LTD. (p. 343).

As to damages for breach of contract: DIGEST 17, p. 130.

EASEMENTS.

Light—Dominant Tenement—Restrictive Obligation Imposed on Owners of Servient Tenements.—SHEFFIELD MASONIC HALL Co., LTD. *v.* SHEFFIELD CORPORATION (p. 327).

As to the extent of easement of light: DIGEST 19, p. 133.

ELECTRIC LIGHTING AND POWER.

Electricity—Supply Undertakings—Compensation for Loss of Employment—Coming into Operation of Scheme—Closing of Works in Consequence Thereof.—BETTS AND OTHERS *v.* LEICESTER CORPORATION (p. 311).

As to electricity supply undertakings: DIGEST 20, p. 198 *et seq.*

EXECUTORS AND ADMINISTRATORS.

Probate—Non-dispositive Words—Distressing to Testator's Family—Exclusion from Probate—ESTATE OF BOWKER (deceased) *In re* (p. 256).

As to omissions of part of will from Probate: DIGEST 23, p. 137.

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 19, p. 477 *et seq.*

FRIENDLY SOCIETIES.

Industrial Assurance Company—Claim that Inspection should be in Private—Discretion of Inspector—.HEARTS OF OAK ASSURANCE Co. *v.* AG. (p. 309).

As to collecting societies and industrial assurance companies: DIGEST 25, p. 292.

HUSBAND AND WIFE.

Divorce—Variation of Settlements—Agreement to Separate—Provision for Wife—Husband's Petition for Dissolution.—COOPER *v.* COOPER AND FORD (p. 205).

As to when settlements will be varied: DIGEST 27, p. 517 *et seq.*

Summary Jurisdiction—Maintenance Order—Husband's Application for Revocation—Time—Appeal.—NATBORNY *v.* NATBORNY (p. 311).

As to varying or discharging orders: DIGEST 27, p. 565.

SALE OF LAND.

Vendor and Purchaser—Sale of Land Reserving Timber to be Removed before Fixed Date.—ELLIS *v.* JOHN HEMMING & SON, LTD. (p. 310).

As to sale of timber: DIGEST 40, p. 75.

SOLICITORS.

Agreement between Solicitor and Client—Equitable Lien on, or Assignment of Damages to be Recovered—Verbal Agreement—*In re* AN UNDERTAKING BY SOLICITORS (JONESCO *v.* EVENING STANDARD, LTD.) (p. 309).

As to form of agreements as to costs: DIGEST 42, p. 126.

New Books and Publications.

The Statute of Westminster, 1931, by R. T. Mahaffy. (Butterworth & Co. (Pub.), Ltd. Price 9/6.

The Story of the Temple, Gray's and Lincoln's Inn. By Col. R. J. Blackham, C.B., C.M.G., C.I.E., D.S.O. (Sampson Low Marston Co.). Price 16/-.

Applied Psychology for Advertisers. By A. P. Braddock, M.A., B.Sc. (Butterworth & Co. (Pub.) Ltd.). Price 9/6.

Emergency Customs Duties. By C. E. Fitzroy. (Butterworth & Co. (Pub.) Ltd.). Price 6/6.

English Law and its Background. By C. H. S. Fifoot, M.A., 1932. (Bell & Sons). Price 13/6.

Temperley's Merchant Shipping Act. By R. Temperley and W. L. McNair. Fourth Edition. (Stevens & Sons Ltd.). Price 57/6.

Maclachlan on Merchant Shipping. By G. St. C. Pilcher and O. E. Bateson. (Sweet & Maxwell Ltd.). Price 74/-.

Indemaur's (Wilshere's) Common Law. Third Edition. (Sweet & Maxwell Ltd.). Price 37/-.

Company Transfer Work. Second Edition, 1931. By J. A White. (Effingham Wilson). Price 9/6.

Chitty's Annual Statutes, 1930-1931. (Sweet & Maxwell Ltd.). Price 19/-.

The Yearly County Court Practice. Thirty-sixth Edition, 1932. (Butterworth & Co. (Pub.) Ltd.). Price 47/-.

Williams' Law and Practice of Bankruptcy. By W. D. Stable and J. B. Blagden. Fourteenth Edition. (Stevens & Sons and Sweet & Maxwell). Price 57/6.