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BOSWELL: "*What do you think of supporting a cause which you know to be bad?*"

DR. JOHNSON: "*Sir, you do not know it to be good or bad until the judge determines it. . . . An argument which does not convince yourself, may convince the judge to whom you urge it, and if it does convince him, why then, sir, you are wrong and he is right. It is his business to judge.*"

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Natural Justice.

There is a long line of cases in which the Courts have applied to the facts before them the principles of natural justice. This may be observed in the very recent judgment of Mr. Justice Herdman in *O'Neill and Ors. v. The Pupuke Golf Club*, p. 262, *ante*, and in that of Mr. Justice Ostler at the last Gisborne Sessions in *Whitfield's Motor Services Ltd. v. Matthews and Ors.* Other recent cases in which the principles of natural justice have been considered and applied are *Perry v. Feilding Club* [1929] N.Z.L.R. 529, and *Morten v. Nicoll* [1932] N.Z.L.R. 685. For further instances of the application of those principles, reference may be made to *Halsbury's Laws of England* (2nd Ed.) Vol. 4, 493; and to *Fisher v. Keane* (1878) 11 Ch. D. 353; *Dawkins v. Antrobus* (1881) 17 Ch. D. 615; *Gray v. Allison* (1909) 25 T.L.R. 531; *R. v. Leman Street Police Station Inspector: ex parte Venecoff* [1920] 3 K.B. 72; *Cutler v. Law Society of Manitoba* [1931] 4 D.L.R. 453, and to the many cases referred to in the *English and Empire Digest*, passim.

Sir Frederick Pollock in his *Torts* (13th Ed., p. 194), in discussing the general rules as to quasi-judicial powers, says that the persons exercising them are protected from civil liability if they observe the rules of natural justice, which, he says,

> "appear to mean, for this purpose, that a man is not to be removed from office or membership, or otherwise dealt with to his disadvantage, without having fair and sufficient notice of what is alleged against him, and an opportunity of making his defence; and that the decision, whatever it is, must be arrived at in good faith with a view to the common interest of the society or institution concerned."

In *Lapointe v. L'Association, &c., de Montreal* [1906] A.C. 539, Lord Macnaghten in delivering the judgment of their Lordships of the Judicial Committee said that the proceedings of the directors of a Friendly Society were irregular and contrary to the society's rules, and, further, that they were "above all, contrary to the elementary principles of justice." "Although," he added, "it is hardly necessary to cite any authority on a point so plain," he referred with approval to the comment of Sir George Jessel, on the judgment in *Wood v. Wood* (1874) L.R. 9 Ex. 190, of which the eminent Master of the Rolls said:

> 'It contains a very valuable statement by the Lord Chief Baron as to his view of the mode of administering justice by persons other than judges who have judicial functions to perform which I should have been very glad to have had before me on both those Club cases that I recently heard, the case of *Fisher v. Keane* [*cit. supra*], and the case of *Labouchere v. Earl of Wharncliffe* [13 Ch. D. 346]. The passage I mean is this, referring to a committee: They are bound in the exercise of their functions by the rule expressed in the maxim '*Audi alteram partem*,' that no man should be condemned to consequence resulting from alleged misconduct unheard, and without the opportunity of making his defence. The rule is not confined to the conduct of strictly legal tribunals, but is applicable to every tribunal or body of persons invested with authority to adjudicate upon matters involving civil consequences to individuals."

Sir George Jessel remarked that such was "a most admirably worded judgment."

In the latest reported application by our Court of Appeal of the principles of natural justice, *N.Z. Sheepfarmers' Agency Ltd. v. Mosley and Hill* [1932] N.Z.L.R. 949, the learned Chief Justice (the Rt. Hon. Sir Michael Myers) said he found it necessary "just as MacGregor, J., had found it necessary in *Woodley v. Woodley and Meldrum* [1928] N.Z.L.R. 465, G.L.R. 405, to restate a principle of justice which is fundamental in our British system." His Honour then quoted from the judgment of Mr. Justice Adams, in delivering the Court of Appeal's judgment in *Geange v. Mahood* [1927] N.Z.L.R. 780, at p. 799, which, the Chief Justice added, did no more than state the principle of natural justice to which he had referred. In the same Report of the *N.Z. Sheepfarmers' case*, Mr. Justice Reed said, at p. 965:

> "It is not within the jurisdiction of any Court to transgress the rule of *audi alteram partem*, and, upon appeal, an offending Court will be set right, or the judgment may be quashed or its enforcement prohibited: *R. v. North, ex parte Oakey*, 43 T.L.R. 60."

Having so far expressed the highest judicial authority for the application of the rules of natural justice, it remains to examine the nature of natural or elementary justice and to ascertain the source whence it is derived.

While the principles of natural justice may be said to form part of our Common Law, their roots strike into far deeper soil: they are of far wider application than merely to "Club cases," and they cannot be analysed without a consideration of what "Justice" itself is. Justice may be defined as a constant and permanent habit to give each one his due; and, objectively considered, it is the relation of equality between two persons in virtue of which one is bound to give the other his due. Thus regarded, Justice is nothing else than the law of nature which demands that each person by virtue of his being (*essentia*), get his rights from everybody else. (Natural Law has been referred to by Sir Frederick Pollock as being the general rules binding on all men as moral and rational beings, and discernible by human reason without any special aid of revelation.) Persons, in the juridicial meaning of that word, alone can possess rights, and all persons are naturally equal in so far as the rights of all are inviolable. Hence, the acts of others, in order to be just, must be adjusted to be equal to or in conformity with these rights. This conformity or recognition of equality is that aspect of justice which is implied in the term "Natural Justice," for the direct motive of justice, both in its material and its formal object, is founded on the fact that the person towards whom the duty of justice lies is distinct from and independent of the person who has the duty.

The common interest of society requires the enforcement of law in terms of Justice, which, as we have seen, is the *adjusting* of the rights of persons *inter se*. That becomes the duty of the State, which, considered as a "person," has an end and purpose of its own. This end is the common good: *cf.* s. 53 of the New Zealand Constitution Act, 1852 (Imperial), which empowers

the General Assembly to make laws "for the peace, order, and good government of New Zealand." And the State itself has a distinct personality, having rights against the distinct persons who are its members, who, in turn have rights against the State. These reciprocal rights, and the duties which they severally connote, point to a distinction of personality sufficient for the true relations of Justice, which is concerned solely with acts that are obligatory because of the natural rights of others.

But Legal Justice arises from the law of nature, which binds every member of the State and requires him to contribute his due share in safeguarding and promoting the common good: since it is clear that if there were no natural law, every kind of action would be equally—from the nature of things—within one's rights, or just. Moreover, the enforcement of Legal Justice by the State emerges from the fact that the State, like the family, is a creation of nature, and needs the co-operation of its members in order to procure the common good, or even to exist. Hence, the duties of Legal Justice are directly founded upon the rights of a naturally constituted whole to the co-operation of its several parts in accordance with the natural capacity of each such part and the role it has to fulfil in the civil organism.

As man's nature has been fashioned in such a way as to need and to be suited to civil association with his fellow-men, the law of nature contains the sum of the duties and rights of Legal Justice which form the bonds of social and civil life. But Legal Justice, it must be remembered, has no extra-territorial application. Though the law of nature binds all men equally in their relations with one another, the principles of Legal Justice are the essential ties which, in relation to the rights and duties of the members of a State, bind them into one whole and distinguish them from the citizens of other States. In consequence, these mutual rights and duties are called "Legal Justice" because of its close connection with civil law. But as Legal Justice is founded on the law of nature, its scope is not confined within the limits of positive law: it extends to matters which positive law may not have defined. Usually the civil law defines such rights and duties; it is its special function to determine them by reason of the right of the State to the co-operation of each of its members for the common good.

Since, therefore, Law is that bond by which intellectual and free agents are bound, the way proper for the binding of such agents is not natural necessity—as in the case of physical "laws"—but moral obligation. From this it follows logically that Legal Justice must deal with the obligations of moral law, including the imposition of positive law, as well as the residue of the abstract principles which arise from the relation of one person with the distinct persons with whom he comes into civil and social contact. This residue is referred to as and is included in the term "the principles of natural justice." They are applied, as circumstances arise, by the State, through the Courts, for the common good, for "Legal Justice resides in the ruler, principally, as if he were the architect and director of the building, and in the subjects in a secondary way as if they were the assistants." As these principles are so clear, they impose definite obligations apart from positive law. In so far as they are not the subject of any positive law, such principles follow the implications of natural justice, which—by reason of its relation to natural law—"is discoverable by all rational beings." So, in Lord Macnaghten's words already quoted, the principles of natural justice scarcely need the assistance of judicial definition. As Maugham, J., said in *MacLean v. Workers' Union* [1929] 1 Ch. 602, the principles of natural justice are the principles of fair play deeply rooted in the minds of modern Englishmen.

There is a classic case in the Reports which indicates the law of nature as the source of the principles of natural justice: *R. v. the Chancellor, &c. of the University of Cambridge*, (1723) 2 Ld. Raymond, 1334; Stra. 557. Dr. Richard Bentley (remembered in Literature for the famous Boyle and Bentley controversy) was deprived by the Vice-Chancellor's Court of his doctorate of divinity, without his having been summoned thereto. He applied for a mandamus to the Court of Common Pleas for the restoration of his degree. The Lord Chancellor and Justices held that most of his objections were good, "but gave their judgment for a peremptory mandamus on one of them only, which could not be defended": that one was Bentley's objection to his being condemned unheard as being "against natural justice and against the law of God and man." In the course of his judgment, one of the Judges, Fortescue, said:

> "The want of a summons is an objection that can never be got over. To deprive him of a summons had been against natural justice. God Himself would not condemn Adam for his transgression until He had called him to know what he could say in his own defence: Gen. iii 9. Such proceeding is agreeable to justice."

In one of the earlier decisions cited in the judgment in *Bentley's case*, it was held by the Chancellor and Justices, 9 Edw. 4, "that it is required by the Law of Nature that every person before he can be punished ought to be present" (cited in *Fort. Rep.* 206), thus showing that our Courts from the earliest times have recognised the epigenetic connection between natural law and the principles of natural justice. Consequently, the approval by Sir George Jessel, M.R., of the rule expressed in the maxim, *Audi alteram partem*, is a recognition of those principles as flowing from natural law, because not to hear the other side is an injury only because it is opposed to natural law, its injurious character being nothing else than its opposition to natural law. For, if there were no natural law, then no one action would be any more just than any other; and no one action would be any more naturally injurious than another. This is of the essence of our Common Law, which has been described as "the perfection of reason." And, as Professor Carl Schmitt, the eminent jurist of the University of Berlin, has recently observed in *Essays in Order*: "Nature and Reason are one . . . any antithesis is as remote as the opposition between empty form and formless matter."

The rules of natural justice are thus expressed in practice by means of Legal Justice, and should be administered by virtue of the natural rights of persons in relations with one another by "every tribunal or body of persons invested with authority to adjudicate upon matters involving civil consequences to individuals." In other words, where Statute Law or Common Law fails to provide any other rule applicable to a matter that is the subject of judicial consideration, the standard of right and wrong must be applied, for, as has been wisely said, "it is clear and evident that the very notion of civilisation is a figment of the brain, if it rest not on the abiding principles of Truth and upon the unchanging laws of Justice."

Supreme Court

Reed, J. September 7; 12, 1932.
Wellington.

SOUTH BRITISH INSURANCE CO. LTD. v. FEELY AND SOTEROS.

Insurance—Extent of Indemnity—Motor-vehicles (Third Party Risks)—Jury awarding Special Damages for wages and board of additional employees necessitated by injured Plaintiffs' Incapacity—Whether same "a liability on account of bodily injury" and recoverable under statutory contract of indemnity—Whether Indemnifying Insurance Company liable for all costs when additional amount awarded not recoverable under indemnity—Motor-vehicles (Third Party Risks) Act, 1928, Ss. 6, 12.

Originating summons to determine the extent of the indemnity under the contract of insurance created by Section 6 of the Motor Vehicles Insurance (Third Party Risks) Act, 1928.

The first defendant had obtained judgment against the second defendant in respect of a motor collision for £600 general damages and £164 14s. 11d. special damages, or a total of £764 14s. 11d. with costs according to scale. The present proceedings were brought to determine, *inter alia*, whether the contract of indemnity between the plaintiff and the second defendant covers two items in the special damages awarded, that is to say, the sum of £63, wages paid for additional assistance, and £58 10s. 0d, Board and Lodgings for such additional persons employed.

It was submitted on behalf of the plaintiff that the disputed items are not damages directly and immediately connected with the bodily injury but are more in the nature of a property loss which is not covered by the statute.

A further question arose as to the allocation of costs, where the action succeeded against the owner of the motor-vehicle in respect of damage to property which is not covered by the statutory contract of indemnity.

Held: The amount allowed by the jury on both disputed items was payable by the plaintiff under the contract of indemnity. (The question as to the allocation of costs was not answered for the reasons given at the end of the judgment).

Leicester for the plaintiff.
Sievwright for the first defendant.

REED, J., said that the finding of the jury must be taken to be that the expenses detailed above were occasioned to the first defendant by reason of his inability personally to carry on his ordinary avocation owing to the injuries he had received in the collision, and that they were necessarily and properly incurred by him. The second defendant, having no money, professed not to be interested in the present proceedings and was not represented. The contest, therefore, was between the first defendant and the plaintiff, the former losing the fruits of his judgment in respect of these two items if they were not covered by the indemnity.

Whether or not the disputed items were covered by the contract of indemnity depends upon the true construction of the Act. Eliminating provisions irrelevant to the circumstances of the present case, an owner of a motor-vehicle is required by the Statute (s. 3) to "insure against his liability to pay damages on account of . . . bodily injury to any person in the event of such . . . bodily injury being sustained or caused through or by or in connection with the use of such motor-vehicle in New Zealand." The owner, on applying for a license for his motor-vehicle (without possession of which it is unlawful for him to drive), is required to nominate one of the Insurance Companies, registered under the Act, as the Company he desires should be his indemnifier, and to pay the prescribed fee. (S. 5). The effect of compliance with those conditions is, without further formality, to create a statutory contract between the nominated Insurance Company and the owner of the motor-vehicle. By s. 6 "the Insurance Company nominated by the owner shall be deemed to have contracted to indemnify him . . . from liability . . . to pay damages (inclusive of costs) on account of . . . bodily injury to any person or persons where such . . . bodily injury is the result of an accident happening at any time during the period in respect of which the insurance premium has been paid, and is sustained or caused by or through or in connection with the use of such motor-vehicle in New Zealand."

In interpreting a statute, which is claimed to be obscure, the rules in **Heydon's case**, 3 Co. Rep. 8 are as in full force and effect to-day as they were when first laid down by the Barons of the Exchequer nearly 250 years ago (*q.v.*). Moreover our Acts Interpretation Act, 1924, provides that every act and every provision and enactment thereof shall be deemed remedial and shall accordingly receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Act and of such provision or enactment according to its true intent, meaning, and spirit.

The mischief that the Legislature had *inter alia* sought to remedy by this Act is the failure of persons, suffering bodily injury through the negligent driving of a motor-vehicle, to recover the fruits of a judgment for damages through the possible impecuniosity of negligent drivers and owners of vehicles. The Act only extends to cases of damages for bodily injuries (including death); it has no application to damages to property. In all actions for bodily injury due to negligence damages may be awarded by a jury for the actual bodily injury sustained; the pain undergone; the effect on the health of the sufferer according to its degree and probable duration as likely to be temporary or permanent; the expenses incidental to attempts to effect a cure, or to lessen the amount of injury; the pecuniary loss sustained through inability to attend to a profession or business as to which, again, the injury may be of a temporary character, or may be such as to incapacitate the party for the rest of his life. **Phillips v. South Western Railway Coy.**, 4 Q.B.D. 406. To these may be added matters not in issue in that case: pecuniary loss sustained through inability to earn wages, and the expenses of assistance in connection with a business, necessarily occasioned through the plaintiff being prevented by his injuries from attending to that business or, in the case of a woman, from attending to her household affairs.

All these have been treated in the Courts as proper heads of damage in actions in respect of bodily injuries received in motor accidents. Is there any indication in the statute that these heads of damage should be excluded from consideration? Is not the contention here advanced an instance of "the subtle invention and evasion for the continuance of the mischief and *pro privato commodo*" that the Judges are charged of *suppress? There is no half-way house; either the full damages* that a person who has suffered bodily injury by the negligent driving of a motor-vehicle can be recovered, or this remedial measure is whittled away to the extent that a labourer could not recover his wages whilst confined to his bed from bodily injuries received, nor a widow with young children the expense of assistance in the house during the time her injuries prevented her looking after them. The Act, in His Honour's opinion, has no such restricted meaning. Two New Zealand cases in which the Act had been under consideration had been cited: **National Insurance Coy. Ltd. v. Joyes** [1932] G.L.R. 287; **Findlater v. Public Trustee** [1931] G.L.R. 291.

It was not contended that either of these cases had any direct bearing on the facts in the present case, but isolated observations of the learned Judges concerned were quoted and were claimed to indicate the principles to be applied to a consideration of the facts in the present case. Now in considering statements made by Judges in cases it must be always remembered that such observations, unless *obiter dicta*, are solely referrable to the facts of the case under consideration. No observation, made by any Judge in either of the cases cited, can be said to warrant a construction that would exclude from consideration the items here in dispute, as not being part of the damages to which the contract of indemnity applies. His Honour was of opinion, therefore, that the amount allowed by the jury on both these disputed items was payable by the plaintiff under the contract of indemnity and the question asked on this point would be answered accordingly.

A further question was submitted, namely as to the allocation of the costs. S. 6 provides that the indemnity shall include costs. It is also provided by s. 12 that where, as in the present case, the Company takes over the conduct and control of the proceedings it "shall indemnify the owner against all costs and expenses of and incidental to any such proceedings while the Company retains the conduct and control thereof." *Ex facie* that would appear to cover all costs in any claim in regard to the defence of which the Company assumes the conduct and control. There was a good deal to be said, however, for the contention that the liability is limited proportionally to the liability for damages, that is to say where damages are found by a jury partly in respect of injury to the motor car or other property for which the Company was not liable, and partly for bodily injury, that the costs payable by the Company should be apportioned proportionally. Such a construction might, however, do a serious injustice to an owner were the same

reasoning applied to the question of the duties of the Company in affecting a settlement of a mixed claim in respect of both property and bodily injury. His Honour said he need not enlarge further on this; it was unnecessary to decide the question in these proceedings. It was a mistake to attempt to lay down any general rule: costs are within the discretion of the Judge hearing the action, the discretion being of course a judicial discretion. In the present case, the damages assessed by the jury included as special damages (if, His Honour said, his judgment with regard to the two disputed items be sound) a comparatively small sum, admittedly irrecoverable against the plaintiff, it being for damages to property. The amount did not alter the scale of costs and there is only a few pounds difference between the full costs as allowed and the costs that would have been allowed had those small amounts not been recovered.

In these circumstances, the costs payable under the indemnity by the plaintiff to the second defendant should be ascertained. His Honour thought, by assuming a judgment confined to the amount of the total damages for which the plaintiff is required to indemnify the second defendant, and adjudging that the costs should be on that scale. He repudiated in advance any suggestion that he was stating this as a general principle. Every case must be dealt with in the light of its own facts. He did not consider it expedient to endeavour to answer the more general question on this point asked in these proceedings. He understood that the costs of these proceedings had been arranged between the parties, and that no order was required.

Solicitors for the plaintiff: **Leicester, Jowett and Rainey,** Wellington.

Solicitors for the first defendant: **A. B. Sievwright,** Wellington.

Herdman, J. September 7, 1932.
Auckland.

PEARCE AND ORS. v. WAIHI GOLD MINING CO. LTD.

Practice—Warden's Court—Plaintiffs Non-suited—Appeal to Supreme Court—Motion to Strike Out Appeal—Whether Judgment or Non-suit in Warden's Court is a "Final Order, Judgment or Other Decision"—Mining Act, 1926, s. 366.

Motion to strike out an appeal.

The Plaintiffs brought an action in the Warden's Court, claiming payment of the balance of moneys alleged to be due to them under a contract between themselves and the defendant company. At the hearing in the Warden's Court, the only evidence called was that of the plaintiffs, and the Warden non-suited them upon such evidence. From this decision they appealed, by way of general appeal, to the Supreme Court. Prior to the hearing thereof, a motion was lodged to strike out such appeal upon the grounds that no appeal would lie from a non-suit, which was not a final order, judgment or other decision within the meaning of s. 366 of the Mining Act, 1926.

It was contended that the only evidence called was that of the plaintiffs themselves, and they were quite free to proceed again if they so desired, a non-suit not being a final order.

Held: A judgment of non-suit in a Warden's Court is not a "final order, judgment, or other decision" within the meaning of Section 366 of the Mining Act, 1926; and from such judgment there is, accordingly, no right of appeal to the Supreme Court.

O'Regan in support.

West to oppose.

HERDMAN, J., (orally) said that this was a motion to strike out a general appeal from a judgment of non-suit in a Warden's Court. At the hearing in the Warden's Court, the only evidence called was that of the plaintiffs, the present appellants. Upon that evidence, the Warden non-suited the plaintiffs. The appeal was brought under the provisions of s. 366 of the Mining Act, 1926. By that section, there may be an appeal from a "final order, judgment, or other decision." A judgment of non-suit is not a final order or judgment within the meaning of these terms as interpreted by the Court in **Willis v. Gardner** [1917] N.Z.L.R. 602, 615. The non-suit did not finally determine the rights of the parties. It followed that the application in the present case must be granted and the appeal struck out.

Application granted: appeal struck out.

Solicitors for plaintiffs: **J. J. Sullivan,** Auckland.

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

Myers, C.J. May 26, 28; June 2, September 5, 1932.
Napier.

WALKER v. WALKER AND PRICE, THE N.Z. LOAN AND MERCANTILE AGENCY CO. LTD. AND ORS.

Land Transfer—Memorandum of Incumbrance to secure Annuity—Default in Payments—Buildings being part of Security Insured by Incumbrancers in own name—On destruction by Fire no Demand for Reinstatement—Claim by Incumbrancee for Payment of Policy Moneys held by Insurance Company—Garnishee Order Absolute in respect of Judgment against Incumbrancer affecting the Insurance Moneys—Whether Annuity Payable out of Income or Capital—Whether Judgment against Incumbrancers can attach Insurance Moneys under Policy in their names—Nature of Incumbrance considered—Land Transfer Act, 1915, Ss. 2, 101, 103, 164; Second Schedule, Form F; Fourth Schedule Cls. (3), (4), (5); Property Law Act, 1908, s. 111; Fires Prevention (Metropolis) Act, 1774 (14 Geo. III, c. 78), s. 83.

By a certain Memorandum of Incumbrance duly registered against the title, the defendants Alfred Edward Walker and Susan Jane Price (then McKeown) incumbered certain land for the benefit of the plaintiff to secure to her payment of an annuity during her life of £250 by equal monthly payments in advance as from August 27, 1925. Default was made in payment of the annuity and on February 27, 1932, the arrears amounted to £212 10s. 0d. The Memorandum expressly provided that the plaintiff should be entitled to all powers and remedies given to an incumbrancee by the Land Transfer Act, 1915. The Memorandum was in the form F referred to in s. 101 (1) of the Act, and it was claimed that by virtue of s. 103 (1) the covenant for insurance contained in the Fourth Schedule to the Act was implied therein. The incumbrancers effected an insurance policy upon the buildings on the land against loss or damage by fire but effected such insurance not in the plaintiff's name as they should have done but in their own names. On or about November 7, 1931, the buildings were destroyed by fire, and the policy moneys amounting to £650 were paid by the insurance company to its agent the second defendant, (the New Zealand Loan and Mercantile Agency Company Ltd.), to pay to the person or persons entitled to receive the same. In the subjoined judgment the second defendant is referred to as "the Company." The plaintiff's solicitors on January 14, 1932, wrote to the Company confirming information which had already been given orally in regard to the plaintiff's security, and they demanded that the insurance moneys should be paid to them on the plaintiff's behalf. The letter also contained the following paragraph: "As you are also aware default has been made in payment of the moneys due to our client and by virtue of the terms of the mortgage our client is entitled to have these insurance moneys paid to her notwithstanding that the same or any part of them may not have accrued due under the terms of the mortgage."

On January 26 the plaintiff's solicitors wrote a further letter to the company in the following terms: stating that the Mortgagors were not willing to pay the moneys to the plaintiff, but that in terms of the Mortgage given by them the whole of these moneys were payable to the plaintiff in the event of fire notwithstanding the fact that the whole of the moneys secured by the mortgage had not then become payable to the Mortgagee. To this letter the Company, on January 28, 1932, replied that it had been advised that the annuitant was then entitled to payment only of the arrears of her annuity to date, but that she was not entitled to the balance of the insurance money without the consent of the then second mortgagee and owners. They said further that provided that the annuitant's solicitors indemnified them against any expense in connection with the settlement of the dispute regarding payment of the balance, they would forward their cheque for the arrears of the annuity.

The subsequent actions of the parties, including the garnishee Krogh, are detailed in the judgment.

Held: (1) The annuity was payable out of capital as well as income according to the terms of the Memorandum of Incumbrance, and the annuitant was entitled to payment out of the policy moneys to all annuity money in arrear; (2) That the Garnishee's claim against the Incumbrancers could not succeed as the insurance moneys, if and when received by a mortgagor, must be regarded as held in trust for the mortgagee (here, the Incumbrancee), and a mortgagor cannot claim policy moneys against his own mortgagee for whose benefit and in whose favour he had covenanted to insure. (3) The Insurance Company's proper course, when two adverse claims had been made upon it for payment of the insurance moneys, was to interplead, and it was accordingly refused costs on account of its inaction having increased the expense incidental to the settlement of the rights of the claimants.

Mason for plaintiff.

Rogers for defendants Walker and Price.

Humphries for defendant Company.

Duff for defendant W. J. Walker.

E. T. Gifford for defendant Krogh.

MYERS, C.J., after setting out the facts and the relevant correspondence, said that at the date of the last letter referred to, the position was that two adverse claims had been made upon the company for payment of the insurance moneys. In those circumstances, the Company's proper course was to interplead. Its failure to do so had created an additional difficulty which, had the proper course been taken, would not have arisen.

The present action was commenced by the plaintiff on March 16, 1932, against the incumbrancers and the Company as defendants. The plaintiff claimed, (1) as against the Company judgment for the sum of £650; and (2) as against the incumbrancer-defendants an order as follows: "(a) That the amount of the unpaid annuity payable to the plaintiff down to the date of judgment herein be retained by the plaintiff out of the said insurance moneys of £650. (b) That the balance of the said insurance moneys of £650 after payment of the amount of the unpaid annuity be paid to and held by the Public Trustee upon trust to pay to the plaintiff each month the amount of annuity payable to her in the event of the first defendants making default in payment of the said annuity in terms of the said Memorandum of Incumbrance and that upon the death of the plaintiff the residue (if any) be paid to the first defendants."

His Honour said that even then the Company might have proceeded by way of interpleader under R. 482. Instead of doing so, it filed a statement of defence stating that it held an unpresented cheque for the sum of £650 as agent for the Insurance Company and that inasmuch as the plaintiff and the incumbrancers were rival claimants to the said sum, and the company itself having no interest in the matter other than as such agent to see that the money was paid to the claimant legally entitled thereto and capable of executing a valid discharge therefor, the Company was accordingly ready and willing to make payment to such of the parties as the Court should determine was legally entitled to the money.

So far as the incumbrancers were concerned the material part of their statement of defence was that the annuity was payable out of the income arising from the land and that the plaintiff was not entitled to claim any part of the capital which the sum of £650 represents.

When the action first came before His Honour on May 26, Mr. *Mason* who appeared for the plaintiff applied for an order joining as defendant Mr. William James Walker to whom the incumbrancers had given a second mortgage to secure the sum of £400 and interest thereon. That mortgage contains a provision that the covenants, conditions, powers, and provisions implied in mortgages by virtue of the Land Transfer Act, 1915, shall be implied except so far as the same were contradictory to or inconsistent with the express terms of the mortgage. Mr. William James Walker had evidently been previously notified of the intention to apply to join him as a defendant because his counsel, Mr. *Duff*, was present in Court, and by consent of all parties then concerned the order for joinder was made and the further hearing of the action was adjourned until May 28.

On either the 26th or the 28th, His Honour was also informed that, in an action brought by one Krogh in the Magistrate's Court at Hastings against the incumbrancers, Krogh had obtained judgment and had issued an attachment order. His Honour then made an order for payment by the Company into Court of the sum of £650 to abide the result of the present action, the plaintiff by her counsel undertaking to join the garnisher Krogh as a defendant in order that all claims to the moneys might be determined.

On June 2, the matter came before His Honour again when an order was made joining Krogh as a defendant, and Mr. *Gifford* appeared as counsel on his behalf. The Court was then informed that Krogh's judgment had been obtained on confession on March 23, that an attachment order *nisi* had been issued on April 22 against the insurance company as sub-debtor, and that, on May 25, this order which was for a sum of £107 5s. was made absolute and served upon the insurance company. It was to be observed that Krogh did not obtain his judgment until a week after the issue of the plaintiff's writ in this action, and it is the difficulty caused by the issue of the attachment order to which His Honour had referred as having been created by the company's failure to take earlier the proper course of interpleading.

It had been held that s. 83 of the Fires Prevention (Metropolis) Act, 1774 (14 Geo. 3 c. 78) is in force in New Zealand: **Cleland v. South British Insurance Co. Ltd.** (1891) 9 N.Z.L.R. 177; **Searl v. South British Insurance Co. Ltd.** [1916] N.Z.L.R. 137. That being so, it would, irrespective of but probably subject to the provisions of the Land Transfer Act, 1915, have been competent for either of the mortgagees to require that the destroyed buildings should be reinstated. Had such a notice been given, the case would have been similar in all material respects to **Sinnott v. Bowden** [1912] 2 Ch. 414, except that in that case there was a garnishee order *nisi* whereas here the order had been made absolute. However, in this case, the plaintiff, the incumbrancers, and the second mortgagee, were unanimously of opinion that it was undesirable to reinstate the buildings, and no notice had been given by any of them under the English Act.

It was stated by *Parker*, J., (as he then was), in **Sinnott v. Bowden,** to be clear that, apart from special contract or the provisions of some statute, a mortgagee has an interest in the moneys payable under a policy of insurance effected by a mortgagor on the mortgaged premises. One of the authorities cited by the learned Judge is **Lees v. Whiteley** (1866) L.R. 2 Eq. 143, where the deed under consideration contained a covenant to insure but no provision for the application of the policy moneys, in case of fire, in liquidation of the mortgage debt. In the very recent case of **Halifax Building Society v. Keighley** [1931] 2 K.B. 248, *Wright*, J., referring to this last-mentioned case says: "The decision of **Lees v. Whiteley** was in 1866 at which time I apprehend there was no statutory provision analogous to that which was afterwards found in section 23 subs. 4 of the Conveyancing Act 1881." By the Conveyancing Act, 1881, s. 23 (3) it was enacted that "All money received on an insurance affected under the mortgage deed or under this Act shall, if the mortgagee so requires, be applied by the mortgagor in making good the loss or damage in respect of which the money is received." That was the subsection which, apart from the Fires Prevention (Metropolis) Act 1774, came under the notice of *Parker*, J., in **Sinnott v. Bowden,** and the learned Judge said: "I do not think that a mortgagor can get rid of the right of the mortgagee under this section by himself parting with the right to receive the money." He added: "The only remaining question is whether the rights of the mortgagees have been displaced by the garnishee order *nisi*. In my opinion they have not. It appears from the cases of **Evans v. Rival Granite Quarries Ltd.** [1910] 2 K.B. 979; **Cairney v. Back** [1906] 2 K.B. 746, and **Norton v. Yates** [1906] 1 K.B. 112, that the equitable rights of the holder of a floating charge will not be displaced by a garnishee order, even when made absolute, if before actual payment of the charge crystallises and the holder applies for relief. It appears to me that the principle of those cases must, *a fortiori*, apply to a right conferred by statute. "I hold, therefore, that the policy moneys, so far as attributab e to the mortgaged cottage and shed, cannot be attached in the face of opposition from the mortgagees."

In **Halifax Building Society v. Keighley** (*supra*) it was subs. (4) of s. 23 of the Conveyancing Act that had to be considered. That subsection is as follows: "Without prejudice to any obligation to the contrary imposed by law, or by special contract, a mortgagee may require that all money received on an insurance be applied in or towards discharge of the money due under his mortgage."

Referring to the contention that subs. (4) should be construed as subject to the same limitation by way of implication as is expressed in the preceding subsection (3), *Wright*, J., said: "I do not think that any such limitation can be read into subs. (4). That section may be limited, and I think ought to be limited, to insurances in which the parties are one or the

other or both interested, and therefore will cover an insurance effected by the mortgagor . . ." The learned Judge cited and approved **In re J. B. Doherty** [1925] 2 I.R. 246, where subs. (4) of s. 23 of the Conveyancing Act had been construed in the same way.

Mr. *Mason* admitted that, if he could not distinguish **Lees v. Whiteley** (*supra*) the plaintiff was not entitled to succeed to the full extent of her claim, and that her rights must at least be subordinated to those of the garnisher. It was necessary, therefore, to consider the provisions of the Land Transfer Act, 1915, for the purpose of seeing whether the position is affected by "special contract or the provisions of some statute."

First of all, "Mortgage" is defined in s. 2 of that Act as meaning and including any charge on land created under the Act for securing (*inter alia*) "the payment to any person or persons by yearly or periodical payments or otherwise of any annuity, rent-charge, or sum of money other than a debt." Then s. 101 (1), under the title of "Mortgages" provides that whenever any estate or interest under the Act is intended to be charge with or made security for payment of any money, the registered proprietor shall execute a memorandum in the form E or F in the Second Schedule as may be applicable to the case. Form E is the ordinary form of Memorandum of Mortgage. Form F is intituled "Memorandum of Incumbrance for securing a Sum of Money," and in the body of the form are the words, "I, A.B., being registered as proprietor . . . and desiring to render the said land available for the purpose of securing to and for the benefit of C.D. the sum of money (annuity or rent-charge) hereinafter mentioned, do hereby incumber the said land for the benefit of the said C.D. with the sum (annuity or rent-charge) of £ . . . to be raised and paid," etc. That is the form which was adopted in the present case to secure the annuity payable to the plaintiff. S. 103 (1) enacts that in every mortgage under the Act there shall be implied the covenants, conditions, and powers, set forth in the Fourth Schedule except so far as is otherwise expressed in the mortgage. S. 105 and the following sections under the title of "Remedies of Mortgagee" state (*inter alia*) the powers and remedies of the mortgagee upon default in payment of the principal money, interest, annuity, or rent-charge secured by any mortgage. The Fourth Schedule of the Act is intituled "Covenants, Conditions, and Powers implied in Mortgages." His Honour quoted Cls. (2), (4) and (5).

These extracts showed (as is pointed out in **Hogg's Australian Torrens System,** 969) that "the case of New Zealand is peculiar since by the wide definition of "mortgage—which includes what is elsewhere known as 'charge' or 'incumbrance'—all provisions relating to mortgages *prima facie* apply also to charges." See also **Kerr's Australian Lands Titles (Torrens) System,** 355.

It was to be observed then that the statutory duty of the mortgagor is to effect an insurance in the name of the mortgagee for the *full insurable value* of the building and erections on the land. Where, as here, the mortgagor effected an insurance for the full insurable value but took the policy in his own name instead of in the name of the mortgagee it seemed to His Honour that necessarily the intention must be to insure on behalf of the mortgagee, and consequently that the policy—and the policy moneys if and when received by the mortgagor—must be regarded as being held by the mortgagor as trustee for the mortgagee. The mortgagee in such a case could at any time insist upon the policy being transferred to him—see s. 164 (a) of the Act—and His Honour thought the mortgagor could not claim the policy moneys against his own mortgagee for whose benefit and in whose favour he covenanted to insure—**Garden v. Ingram,** 23 L.J. Ch. 479.

If that be the true position, as His Honour thought it was, then the case was distinguishable from **Lees v. Whiteley** (*supra*) and the authorities show that the moneys cannot be attached by a judgment creditor, the principle being that a garnishee order binds only so much of the debt owing to the debtor from a third party as the debtor can honestly deal with at the time the garnishee order *nisi* was obtained and served: **In re General Horticultural Society, ex patre Whitehouse** (1886) 32 Ch. D. 512; **Badeley v. Consolidated Bank** (1888) 38 Ch. D. 238; **Davis v. Freethy** (1890) 24 Q.B.D. 519.

Alternatively, His Honour said he was inclined to think, though it was unnecessary for present decision and he did not decide, that there was substance in Mr. *Mason's* contention that the circumstances amounted to an equitable assignment of the policy moneys: see **Halsbury's Laws of England,** Vol. 4, p. 379, and the cases there cited. If the case can be regarded as one of equitable assignment, and notice to the Company was necessary, such notice was in fact given by the letters sent in January by the plaintiff's solicitors.

As to the point made on behalf of the second mortgagee that the annuity is payable only out of the income arising from the land, His Honour was unable to agree. In his opinion that contention opposed to the express language of the Memorandum of Incumbrance. The document recites that the incumbrancers desired to render the land available for the purpose of securing to and for the benefit of the plaintiff the annuity therein mentioned. And the Memorandum then says that the incumbrancers "do hereby encumber the said land for the benefit of the said Mary Ann Walker with an annuity of £250 to be raised and paid at the times and in the manner following that is to say . . ." It then proceeded to state that the annuity should as from August 27, 1925, be paid to the plaintiff in advance by equal calendar monthly payments on the 27th day of each month and each year during her life—"Provided always that in case we the said Alfred Edward Walker and Susan Jane McKeown . . . shall sell and convert into money the whole or any part of the said land these presents shall thereupon if we the said Alfred Edward Walker and Susan Jane McKeown . . . shall so desire and at our cost be released by the said Mary Ann Walker upon condition that we the said Alfred Edward Walker and Susan Jane McKeown . . . shall immediately upon such sale and release set aside and invest such sum of money as shall in our opinion be sufficient to provide the said annuity and that we the said Alfred Edward Walker and Susan Jane McKeown our executors and administrators shall at our own cost execute a proper deed of covenant setting forth the covenant hereinafter appearing."

There then follows a covenant that the incumbrancers for themselves and each of them and their and each of their executors administrators and assigns jointly and severally covenant with the plaintiff that they shall during her lifetime duly and punctually pay to her the said annuity at the times and in manner aforesaid.

Reference was made to **Brown v. Abbott,** 5 C.L.R. 487, in which it was held that an instrument of charge to secure an annuity under the Victorian Transfer of Land Statute rendered the corpus as well as the income of the land liable to satisfy the accruing payments of the annuity, that that charge equally attached to the proceeds of the sale of the land, and that the annuitant was entitled to an order for payment of arrears of the annuity out of the corpus of the investments representing the proceeds of the sale of the land. In **Kerr's Torrens System,** 355 (Note 4), it is said that **Brown v. Abbott** seems distinguishable under our Act in so far as it relates to the setting aside of money against future payments, "as this cannot be done in New Zealand." But the learned author presumably had not under his notice the provisions of s. 111 of the Property Law Act, 1908. The point, however, was not of importance in the present case because it was not the case of a sale of the land.

His Honour held, therefore, first, that the garnisher's claim could not succeed, and secondly that the plaintiff was entitled to payment out of the policy moneys of all moneys in arrear to date in respect of the annuity payable to her under the Memorandum of Incumbrance and that those arrears must be paid accordingly out of the fund in Court together with her costs which he fixed at Twenty Guineas plus disbursements. All other parties must pay their own costs—including the Company to which he felt that it would be quite inequitable to allow costs seeing that its action (or inaction) had increased the expense incidental to the settlement of the rights of the parties. As to the balance of the fund, His Honour thought that it should remain in Court for one month to enable to be taken the proceedings under the Mortgagors Relief Act; or otherwise which he was informed at the Bar were either pending or contemplated. If at the end of the period of one month such proceedings had not been commenced and the parties had found themselves unable to agree as to the disposal of the balance of the moneys the matter could be brought before him again. If the proceedings are commenced, but cannot be disposed of, within the period of one month, such period would be extended for a reasonable time to enable them to be disposed of. Liberty to apply was, therefore, reserved.

Solicitors for plaintiff: **Mason and Dunn,** Napier.

Solicitors for defendants Walker and Price: **Rogers, Helleur and Le Pine,** Napier.

Solicitors for the defendant Company: **Humphries and Humphries,** Napier.

Solicitors for defendant W. J. Walker: **Duff and Averill,** Hastings.

Solicitors for defendant Krogh: **Sainsbury, Logan and Williams,** Napier.

MacGregor, J. September 2, 6; 1932.
Wellington.

C. v. C.

Nullity of Marriage—Jurisdiction—Both Parties going through Ceremony of Marriage knowing their Relationship of Uncle and Niece—Whether Woman Petitioner Entitled to Decree of Nullity—Divorce and Matrimonial Causes Act, 1928, S. 3 (1).

Petition by a woman seeking a decree of nullity of marriage. The respondent did not appear to defend the suit. The evidence disclosed that on June 6, 1929, the petitioner and respondent went through a form or ceremony of marriage at Hastings, and the parties have lived together as husband and wife. It is further proved at the hearing that the respondent was the brother of the petitioner's mother.

Held: The Court having the same jurisdiction in respect of, *inter alia*, nullity of marriage as any Ecclesiastical Court or person in England, it has no discretion and must declare the marriage null and void. **Andrews v. Ross,** 14 P.D. 15 applied and followed.

Rogers for the petitioner.

MACGREGOR, J., said that the marriage appeared to be null and void, the parties being within the prohibited degrees of consanguinity: **Wilson v. Bennett,** 8 G.L.R. 647. The petitioner, however, admitted that both parties were well aware that the respondent was her uncle, before the ceremony took place on June 6, 1929. In these circumstances, His Honour had some doubt whether the petitioner was entitled to a decree for nullity, she having gone through the marriage ceremony with a knowledge of all the circumstances. He found, however, that, in **Andrews v. Ross,** 14 P.D. 15, it was held in a considered judgment by *Butt*, J., that even in such circumstances the Ecclesiastical Courts in England would pronounce a marriage so celebrated null and void. In New Zealand by s. 3 (1) of the Divorce and Matrimonial Causes Act, 1928, it is provided that this Court shall have the same jurisdiction in respect of (*inter alia*) nullity of marriage as "any Ecclesiastical Court or person in England." It seemed to His Honour, accordingly, that he should follow **Andrews v. Ross,** and declare this marriage null and void. Indeed, it would appear from **Bateman v. Bateman,** 78 L.T. 472, that in a case of this sort the petitioner is entitled *ex debito justitiae* to a declaration of nullity of marriage, and the Court has no discretion as to granting relief. He saw no reason for granting a decree *nisi* in this case: see **Sim on Divorce,** p. 46.

Decree absolute for nullity of marriage without costs.

Solicitors for the petitioner: **Rogers, Helleur and LePine,** Napier, by their Agents, **Dolan, Rogers, Stephenson and Anyon,** Wellington.

Ostler, J. August 19; September 15, 1932.
Gisborne.

WHITFIELD'S MOTOR SERVICE LTD. v. MATTHEWS AND ORS.

Transport Licensing—Passenger Service—Unauthorised Curtailment of Scheduled Runs—Licensing Authority Cancelling License without giving Licensee Proper and Reasonable Opportunity of being heard in its Defence—Whether Licensing Authority in revoking License acted in a Judicial Capacity or whether such Revocation was a Ministerial Act—Whether Public Inquiry must be held before License may be Cancelled—Proper Procedure Outlined—Transport Licensing Act, 1931, Ss. 31 (3), (4), 36.

Motion by plaintiff company against the defendants as members of the District Licensing Authority for No. 4 Transport District for a writ of certiorari for removing into the Supreme Court a decision of that authority given on July 26, 1932, revoking a continuous passenger service license held by plaintiff company.

Plaintiff company is a duly incorporated company having its registered office in Gisborne, whose business is the carrying on of passenger carrying motor services in No. 4 Transport District, being a district constituted by Regulations made under the Transport Licensing Act, 1931. On March 2, 1932, defendants were appointed members of the District Licensing Authority for this district, the Chairman being the defendant, Frank Bannerman Logan. Plaintiff company and its predecessor, one Whitfield, have been carrying on a regular motor service between Gisborne and Napier for the past ten years and the company owns a fleet of nine large motor cars and has ten employees.

On the coming into operation of the Transport Licensing Act, 1931, plaintiff company was entitled under that Act to have granted to it a passenger service license for this run. It applied for and was granted such a license at the first sitting of the Authority held at Gisborne on March 23, 1932, the license authorising it to carry on a passenger service between Gisborne and Napier from March 1, 1932, to February 28, 1933. The license was in the form prescribed in the Regulations made under the Act: see *New Zealand Gazette*, 1931, vol. 3, p. 3505. One of the conditions of the license provided that "the licensee must not abandon or curtail the service without the consent of the Licensing Authority, to which must be given 28 days' notice of such intention." The schedule attached to the license provided that plaintiff company should each day except Sunday run three cars with a capacity for six passengers from Gisborne and from Napier. Similar licenses were at the same time granted to the Hawke's Bay Motor Company and to the Duco Service.

On April 4, plaintiff company wrote to the Secretary of the Licensing Authority asking if it was necessary to run every car according to the timetable in the winter months, notwithstanding that no passengers had booked seats for that run. It was suggested that during such a slack period the three services might arrange between them to despatch one car. In reply plaintiff company received a letter from the Secretary dated April 19, 1932, which said: "The timetable approved by the Licensing Authority must be strictly adhered to by all three cars until such time as an alteration is approved," etc. Again at a conference held on June 7, 1932, in which the company brought up the question of cutting out some of its runs in slack periods the Chairman of the Licensing Authority expressly warned the company that its timetable must be strictly adhered to, and that if it curtailed its services its license would be cancelled. In spite of these warnings plaintiff company apparently did omit to run certain of its cars according to its timetable, or at least His Honour for the purpose of these proceedings assumed that fact to be true.

On July 19, plaintiff company received the following telegram from the Secretary of the Licensing Authority: "Take notice evidence of curtailment of your Gisborne Napier service lodged and any evidence in rebuttal why action should not be taken under section 31 (4) (a) will be heard by the Licensing Authority at the Hastings Courthouse Tuesday twentysixth July."

Plaintiff company at once consulted its solicitor, who on July 21 sent a telegram in the following words to the Chairman of the Licensing Authority: "Logan, Chairman Transport Licensing Authority, Napier. Referring Whitfield's matter set down hearing Hastings twentysixth obliged if will grant adjournment Gisborne sitting Authority sixth August desire call six or eight Gisborne witnesses Burnard."

Meantime the Secretary had followed up his telegram by the despatch of a letter which reached plaintiff company on July 21. The letter was as follows: "Evidence having been lodged that you have curtailed your service on the above-named route without permission from this Licensing Authority I have to advise you that I am directed by the Chairman on behalf of the Authority to inform you that the question of cancelling your license under Section 31 (4) (a) of the Transport Licensing Act will be considered at a meeting to be held at the Hastings Courthouse on Tuesday, 26th July, commencing at 10 a.m. I should be advised before that date of the names and addresses of any persons whom you wish to call on your behalf.

"I enclose herewith for your information details of services stated to be omitted by you."

The details enclosed with the letter showed that between the 1st and the 13th July on 22 occasions cars were not run.

On the afternoon of July 21 the Secretary telephoned Mr. Burnard, and a conversation took place in which the Secretary said that the Licensing Authority had received written evidence of the curtailment of the service, and suggested that the company should forward written evidence to be put before the Authority at its sitting in Hastings on July 26. Mr. Burnard demurred to this suggestion stating that the matter involved questions of law as well as of fact, and that the procedure proposed would not be a satisfactory way of determining all questions involved. The Secretary stated that the Licensing Authority was of opinion that it was bound automatically to revoke a license

upon evidence being supplied that the service authorised had been curtailed, and he also stated that the Licensing Authority was composed of laymen who were not prepared to take on themselves the determination of questions of law. He further stated that the reason for fixing the hearing at such short notice at Hastings was to give the company an opportunity of appealing to the Transport Appeal Board at its sitting in Gisborne on August 6.

On July 22 Mr. Burnard wrote the Secretary strongly urging an adjournment. In the letter he said: "We must point out that an issue of such importance cannot properly be determined in the manner proposed. We should, in the first place, be supplied with a copy of the evidence upon which the Board is apparently at present prepared to rely. We should have the opportunity of cross-examination of the witnesses. We should further have the opportunity of tendering *viva voce* evidence, and of presenting our argument to the Authority. When we have been supplied with a note of the complaints lodged, we desire to have an opportunity of considering them, and we should have available at the hearing a considerable body of evidence consisting entirely of Gisborne residents. It is essential, therefore, that the hearing should take place in Gisborne, and that the Authority should be prepared to consider the matter from a much broader point of view than that suggested in our interview with your Secretary . . . We shall be pleased if you will kindly treat this as an application both for an adjournment and for a change of venue. We anticipate that one or two of the local witnesses will only attend under subpoena, or as required by the Chairman, but we shall get into touch with you on this aspect when it arises."

On the same date, and before the receipt of the last-mentioned letter, the Secretary despatched a telegram to Mr. Burnard in the following terms: "Mr. Logan informed contents your telegram *re* Whitfield and confirms telephone conversations submit evidence in writing and if license cancelled appeal to appeal court sitting Gisborne about sixth August."

Plaintiff company did not attend the meetings of the Licensing Authority which was duly held at Hastings on July 26. At that meeting some evidence was given on behalf of the two rival companies and also by an official of the Public Works Department as to the curtailment of its services by plaintiff company, and the Licensing Authority thereupon, although it had Mr. Burnard's letter applying for an adjournment before it, pronounced its decision revoking plaintiff company's license.

The decision was duly reduced to writing and a copy sent to the company. The following is a copy: "This Licensing Authority having received information that Messrs. Whitfield's Ltd. the holder of a transport license to operate over the Gisborne Napier route had curtailed the service, notice was served on the Licensee that this Licensing Authority proposed at its sitting in Hastings to-day to consider the question of revoking his license under Section 31 (4). The Licensee has been given every opportunity to supply evidence in rebuttal but has failed to do so or appear at the sitting. Evidence of a conclusive nature having been supplied by Messrs. Kohlis and Hill of the Duco Ltd. and Messrs. McArthur and Howard of the Hawke's Bay Motor Co. Ltd., and this having been verified, that cars timed to leave Napier and Gisborne on specific dates at specific times had not run, this licensing Authority has no alternative but to cancel the license. . . . We therefore decided that Messrs. Whitfield's license shall be cancelled. The Appeal Board will sit in Gisborne during the first week in August and the Licensee may appeal against this decision to be heard before that Court on points of law."

It will be noticed that the decision states that the licensee had been given every opportunity to supply evidence, but had failed to do so or to appear at the sitting. No mention was made, however, of Mr. Burnard's strong protest and application for further time which the Licensing Authority had before it. The first intimation given to plaintiff company that the complaint against it had been made by its business rivals was a report of the hearing in the *Hawke's Bay Herald* of July 27.

On August 1 the statement of claim in this action was filed. It alleges that the Licensing Authority exceeded its jurisdiction in coming to its decision because: "The defendants have failed and neglected to give and have refused and deny the plaintiff company a reasonable and proper opportunity: (a) Of knowing the fact that an application was lodged against them with the Defendants as such District Licensing Authority and of the nature of such application and the parties by whom it was lodged; (b) Of ascertaining the nature of the communications upon which the Defendants were purporting to act and of the allegations therein set out; (c) Of cross-examining the persons whose statements were being received by the Defendants as evidence; (d) Of calling the *viva voce* evidence of the Plaintiff company's witnesses and of summoning such witnesses to give evidence; (e) Of obtaining sufficient time for the preparation of its case; (f) Of presenting an argument upon the questions of law involved; (g) Of a proper hearing and enquiry into the matters in issue." In addition to a writ of certiorari plaintiff company asked for a writ of prohibition prohibiting the Licensing Authority from requiring plaintiff company to deliver up its license.

Held: Ss. 31 and 36 must be read together, and no license can be revoked until a public enquiry has been held. The Licensing Authority had acted without jurisdiction in purporting to revoke the license, because it did not purport to hold an inquiry. Its decision was void in law, and must be called up by certiorari and quashed, and the Licensing Authority prohibited from acting further on its decision by calling up the license.

Burnard and Iles for plaintiff company.

Blair for the defendants.

OSTLER, J., after setting out the facts as stated, said that the questions involved could not be determined without an examination of the provisions of the Transport Licensing Act, 1931, and owing to the peculiar way in which the relevant provisions of the Act have been drawn, he found it an extremely difficult task to construe them. It was unnecessary to set out the scheme of the Act. It was sufficient to say that it provides for the constitution of Transport Districts and for a district licensing authority for each district. Passenger services are to be carried on only pursuant to licenses granted under the Act, and the licenses for such services as are carried on wholly within a district are to be issued by the Licensing Authority of that district. The classes of license are specified and the Licensing Authority must fix the class of license and of vehicle to be used and the other conditions prescribed in s. 30. Then comes s. 31, subss. (3) and (4) of which are in point (*q.v.*).

It was this provision under which the Licensing Authority purported to act in revoking the plaintiff company's license. In so doing it was clear, and it was admitted by counsel for defendants, that they were acting in a judicial capacity, and that being so, before they could revoke a license and so take away or destroy a valuable property right, they were bound to give the person concerned a reasonable opportunity of being heard. Counsel for the Licensing Authority had since argued in a written memorandum that the revoking of the license was merely a ministerial act. In His Honour's opinion, it was a judicial decision depending on the prior fact which had been found by the Licensing Authority that the service had been curtailed. It is in the ascertaining of that fact that the Licensing Authority is bound to act judicially. The Act does not in so many words lay down the procedure which must be followed by a Licensing Authority in order to ensure a fair hearing before the revocation of a license under s. 31 (4), but it does in s. 36 (*q.v.*) provide for the holding of a judicial enquiry for the purpose of ascertaining whether a passenger service is being carried on in conformity with the terms and conditions of the license. Now one of the conditions of the license is that the licensee will not curtail the authorised service without consent: s. 31 (3). If that condition is broken the Licensing Authority has a statutory duty imposed on it to revoke the license. Before it can do that it must exercise the judicial function of ascertaining whether the condition has been broken. It can only do that by holding a judicial enquiry. When therefore the Legislature has provided by s. 36 that the Licensing Authority *may* hold a public enquiry in the manner of the Commissions of Enquiry Act, 1908, as to whether the conditions of a license are being performed, and then goes on in subs. (5) to provide that without holding such an enquiry it can do no more than to suspend the license for such period as it thinks fit, whereas it may *after* such an enquiry revoke the license, His Honour thought it must have been the intention of the Legislature to provide that no license could be revoked until a public enquiry had been held under s. 36. Ss. 31 and 36 must be read together, and in his opinion that is their meaning. The Legislature intended that before taking such a serious step as to revoke a license for a breach of its conditions by the licensee, the Licensing Authority should hold a public enquiry of a judicial nature and with all the powers of a Commission of Enquiry to summon witnesses, and administer oaths. Without having determined by such means that a licensee had not observed the conditions of his license, the Licensing Authority was to have no power to revoke his license. The most it could do would be to suspend it. The condition as to not abandoning or curtailing an authorised service was deemed of such importance that the duty was imposed on the Licensing Authority of revoking the license for a breach of that condition. But the fact that a breach had taken place must be ascertained in the

same manner as the breach of any other condition, *i.e.* by a public enquiry under s. 36. For all breaches of other conditions a discretion is given to the Licensing Authority as to whether or not it will revoke the license. For a breach of the condition referred to in s. 31 the Licensing Authority has no discretion; a statutory duty is cast on it to revoke the license. His Honour said he confessed that the intention is not clearly stated, and it was no wonder that laymen should be misled, but in his opinion that was the construction of the Act.

That being so, it was clear that the Licensing Authority acted without jurisdiction in purporting to revoke this license, because it did not purport to hold an enquiry under s. 36, and therefore plaintiff company was entitled to the relief it asks for. The Licensing Authority has by a judicial decision deprived plaintiff company of a valuable right, and it has not taken the steps provided by the Act as a condition precedent to its coming to that decision. Its decision was, therefore, void in law, and must be called up by certiorari and quashed and the Licensing Authority will be prohibited from acting further on its decision by calling up the license. If the Licensing Authority was of opinion that it ought to enquire into the alleged curtailment of its service by plaintiff company it had a perfect right to do so, but in order to do so it must commence *de novo* and take all the steps prescribed by s. 36. In conducting the enquiry the Licensing Authority will be acting judicially. It must allow plaintiff company a full and fair opportunity of appearing, if it wishes by counsel, and of cross-examining all witnesses giving evidence against it, and of calling such evidence as it desires. Moreover the Licensing Authority, although composed of laymen, will be the judge not only of the facts, but of any question of law which may arise, such as the meaning of any section of the Act. If any question of law should be raised the Licensing Authority will have two alternative courses open to it: (1) to determine the question to the best of its ability, leaving it to the Transport Appeal Board which is presided over by a Judge, to review its decision if appealed from; or (2) to state the question of law for the Supreme Court under s. 10 of the Commissions of Enquiry Act, 1908. His Honour thought also that where the licensee concerned lives in a distant town and has a large number of witnesses to call who reside in that town, the Licensing Authority should arrange to sit in that town to hear those witnesses. To require plaintiff company to bring a large number of witnesses from Gisborne to Hastings, a distance of some 160 miles, would be to put it to unreasonable expense.

An affidavit had been filed on behalf of plaintiff company in these proceedings showing that Mr. Ivan B. Logan, solicitor, (who is a brother of Mr. Frank B. Logan the Chairman of the Licensing Authority), as a co-trustee in the estate of F. C. Stopford was the registered owner of 2,150 shares in the Hawke's Bay Motor Co. Ltd., that Mr. Maurice S. Chambers' father was the registered owner of 395 shares, and that his late uncle Bernard Chambers had been the owner of 700 shares in the same company. On these facts, it was argued that Mr. F. B. Logan and Mr. M. S. Chambers were interested parties in the proceedings, or so interested as to create a probability of bias on their part. With regard to Mr. Logan, who was a farmer and has no interest in his brother's business, the suggestion of interest was ridiculous. As to Mr. Chambers, if he had acquired any of the shares under his late uncle's will then he ought not to sit on the enquiry. If not, the fact that a few shares in the rival company are owned by his father and his uncle's estate was, in His Honour's opinion, altogether too remote an interest to create any possibility of bias.

Even if His Honour had not come to the conclusion that an enquiry under s. 36 is a condition precedent to the power to revoke a license, or even if he were wrong in his conclusion, still in his opinion plaintiff company would have been entitled to the relief claimed. In that case, a judicial enquiry would have had to be held, and of that enquiry ample notice would have had to be given, and a full opportunity given to be heard. In His Honour's opinion the time given was not sufficient, and the notice was (no doubt unintentionally) misleading. The time given from the date of the first notice by telegram was only six clear days, and by the time the letter explaining the telegram arrived plaintiff company had only four clear days in which to prepare its case and to take its counsel and witnesses 160 miles to the hearing. Even where the Licensing Authority merely wishes to alter or revoke or vary the conditions in a license the statute provides that it shall give seven days' notice of its intention. That means seven clear days, excluding the day on which the notice is received and the day of the hearing. It would be a wise preceding for the Licensing Authority whenever (apart from s. 36) it has to make a judicial decision affecting the interest of a licensee to give him at least seven clear days' notice, and to be ready to grant any reasonable adjournment it asked for. Even before a license is suspended under s. 36 (5), although a public enquiry is not necessary, an enquiry of a judicial nature must be held and the licensee concerned must be given ample notice and a reasonable opportunity of being heard and of cross-examining witnesses. No doubt the motive of the Licensing Authority in making the time short was a worthy one. They wanted to give plaintiff company a chance of getting its appeal heard promptly. But when plaintiff company expressly rejected this proffered benefit and asked for an adjournment, it should have been granted. Moreover the first telegram and letter were misleading. They intimated not that information had been laid, but that *evidence had been lodged*. Plaintiff company's solicitor was misled by that statement into thinking that written evidence of the fact alleged had been handed to the Licensing Authority, and he naturally asked for a copy. It was moreover not notified to plaintiff company that the complaint had been lodged by its business rivals. Where a complaint is lodged with the Licensing Authority that a licensee is not complying with the conditions of his license and the Licensing Authority proposes to investigate that complaint, the licensee is entitled to be told the name of the complainant. That is part of the "particulars of the matters proposed to be enquired into" referred to in s. 36 (2), and even if the enquiry is not being held under that section the licensee is entitled to the same particulars in order that he may have an opportunity of answering the complaint. His Honour said he had discussed the matter at some length because he thought that it might be of assistance to the Licensing Authority.

Judgment as prayed, though it will not be necessary to issue the writs. As the Licensing Authority have acted *bona fide* and were misled by the way in which the Act is drawn, no costs were allowed.

Solicitors for plaintiff company: **Burnard and Bull,** Gisborne.

Solicitors for the Licensing Authority: **Blair and Parker,** Gisborne.

Reed, J. October 5, 1932.
Christchurch.
(In Chambers)

In re BARR.

Divorce—Practice—Application to excuse intending Petitioner from making alleged Adulterer Co-respondent in proposed Petition—Whether such Motion may be heard before filing of Petition—Procedure outlined—Divorce and Matrimonial Causes Act, 1928, s. 11 (1); Divorce Rules, R. 9.

Motion for an order granting leave to one James Barr to be excused from making an alleged adulterer a co-respondent to an intended petition for divorce from his wife on the ground of adultery. No petition had been filed. The proposed petitioner had filed an affidavit in support of the motion, alleging adultery by his wife with one Langley and further alleging that the said Langley died on July 16, 1932.

Held: Refusing Order: Petition must be filed before making application to excuse petitioner from naming alleged adulterer a co-respondent. The grounds for such application must be stated in Petition and the fact that alleged adulterer is dead makes no difference to procedure.

REED, J., in a memorandum, said that he thought the motion was premature. S. 11 (1) of the Divorce and Matrimonial Causes Act, 1928, and Rule 9, clearly indicate that the petition must be filed prior to the application, and the special grounds on which the petitioner is to be excused from making the alleged adulterer a co-respondent must be stated in the petition. See note to Rule 9, **Sim's Divorce Act and Rules.** The fact that the alleged adulterer was dead made no difference: **Slaytor v. Slaytor** [1897] P. 85. The alleged adulterer should not be named in the title of the proceedings, but only in the body of the petition. See also **Browne and Latey on Divorce** (11th Ed.) 532. No order could be made on the present motion.

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

Breach of Statute (or Statutory Regulation)

As Prima Facie Evidence of Negligence.

By C. C. CHALMERS.

In these days of numerous street accidents arising out of motor traffic, there is usually involved the breach of some motor regulation, besides the infringement of common law rights giving rise to a civil claim for damages. It appears to be authoritatively laid down that the breach of a statute, or of a regulation having the force of statute law, is *prima facie* evidence of negligence, assuming certain ingredients are present. The intention of this short article is to refer to a number of decisions both here and elsewhere where that principle has been applied.

The classic authority in New Zealand may be said to be *Canning v. The King* [1924] N.Z.L.R. 118; [1923] G.L.R. 595, Salmond, J. That was a petition under the Death by Accidents Compensation Act, 1908. The representative of the deceased (Canning) claimed damages arising out of the death of Canning while driving across a railway crossing. He committed a breach of s. 10 of the Government Railways Amendment Act, 1913, which requires every person in charge of a motor on a street when approaching a railway crossing to slacken speed when within 100 yards of the crossing to a rate not exceeding 10 miles an hour and to stop before coming into contact with the railway line, etc. The Crown contended that the violation of this statutory duty constituted an act of contributory negligence. The jury having found for the petitioner, in damages, at common law, Salmond, J., on a motion by the Crown, pursuant to leave reserved to move for a non-suit or for judgment for the Crown, upheld the contention of the Crown. Upon this point Salmond, J., said this (see p. 123, N.Z.L.R.):

> "Before the breach of a statutory duty can be regarded as an act of disqualifying contributory negligence it is clear that certain conditions must be fulfilled. In the first place, the breach must be a *wilful* or *negligent* breach, and not the outcome of inevitable mistake, accident, necessity, or other justifying circumstance. . . .
>
> "In the second place, the *breach* of the statute must have been the *cause* of the accident. . . .
>
> "In the third place, the *purpose* of the statute must have been to *prevent* the kind of accident which actually happened."

He refers to various decided cases in support of the principle so enunciated by him and he considered it as applicable equally to negligence as to contributory negligence (see p. 127 of N.Z.L.R.):

Smith, J., in *Black v. Macfarlane*, reported in [1929] G.L.R. 524 and 5 N.Z.L.J. 308, applied the principle laid down by Salmond, J., in Canning's case, *supra*, to the breach of what is known as the "off-side" rule, *i.e.* Regulation No. 11 (13) of the Regulations made in 1928 under the Motor Vehicles Act, 1924. Smith, J., (p. 526 of G.L.R.) pointed out, in view of *Phillips v. Britannia Hygienic Laundry*, [1923] 1 K.B. 539; 1923, 2 K.B. 832, that the breach of the regulation did not *per se* give a right of action to the person aggrieved, but went on to say (p. 527):

> "The plaintiff takes the onus of proving the regulation and of the fulfilment of the conditions" (*i.e.* laid down by Salmond, J.) "and when he has done that he has established a *prima facie* case of negligence."

Canning v. The King, *supra*, and *Black v. Macfarlane*, *supra*, were, upon this point, also followed by Blair, J. in *Coleman v. Hogg*, [1931] N.Z.L.R. 513 (see at pp. 518-9), where there had been a breach of a motor regulation as to speed at an intersection. Blair, J.'s decision in *Coleman v. Hogg* was in respect of an appeal from the Magistrate's Court. It was followed by a motion for leave to appeal to the Court of Appeal, *Hogg v. Coleman* (*No.* 2) 1931, N.Z.L.R. 520, Myers, C.J. and Blair, J. Myers, C.J. (see p. 522), took the view that, if the appeal had turned (which it did not) upon the point alone that the breach of the bylaw involved there was in itself in the circumstances of the case *prima facie* proof of negligence, he would have been prepared to say that leave to appeal to the Court of Appeal should be granted. Although he went on to say that he guarded himself from expressing an opinion upon the matter without further consideration, the inference is that he regarded the principle as at least arguable. Myers, C.J., himself, however, in *Canham v. Sharp*, [1930] N.Z.L.R. 741, in effect treated the violation of the motor regulation involved there as some evidence, or proof, of negligence. At p. 744 he says:

> "I think, however, in view of the bylaw, that he ought to have contemplated the possibility of such a vehicle being on his left . . . In the circumstances, having regard to the bylaw and the motor regulations and to the nature of the traffic contemplated by the bylaw, this was negligence."

There remain four further New Zealand decisions to refer to, namely *Humphreys v. Wilson*, reported only [1931] G.L.R. 26; 6 N.Z.L.J. 303, Kennedy, J., and *Dickson v. White*, [1931] N.Z.L.R. 849; G.L.R. 400, Kennedy, J. In the latter case there was a breach of the motor regulations as to speed. Kennedy, J., said at p. 851:

> "Plaintiff admitted a breach of the regulations . . . The Magistrate might treat such a breach as *prima facie* evidence of negligence."

In *Humphreys v. Wilson*, *supra*, the same learned Judge dealt with this principle more fully. In *Humphrey's case*, there was a breach of the motor regulations as to lights. Kennedy, J. in his judgment, refers, *inter alia*, to *Pressley v. Burnett*, [1914] S.C. 874. There, also, a breach was involved of a motor regulation relating to lights, *i.e.* the vehicle at the time of the collision had only one light instead of two, Lord Dundas, at p. 879, said:

> "Now, I do not say that breach of a statutory order such as this would as a fact, *per se*, necessarily infer fault on the part of the contravener, so as to involve him in liability for damages, if an accident occurred (*cf. e.g. Macfarlane v. Colam*, [1908] S.C. 56). It might be established that the absence of the prescribed light had no material bearing upon or relation to the occurrence of the accident. On the other hand the fact of contravention may be of the greatest moment, *and may of itself import liability as for fault and negligence*, if it appears that the absence of the light was intimately connected with the occurrence of the catastrophe. I am satisfied that this was so in the case before us."

The same Judge, Lord Dundas, in *Macfarlane v. Colam* referred to by him, *supra*,—a case where there had been a breach of the Turnpike Act, and where the Sheriff-substitute had held that the accident had been caused by such breach,—said at p. 59 [1908] S.C.:

> "I am unable to see any relation of cause and effect between the breach of the statute . . . and the accident to the pursuer's horses and wagonette."

The language of Lord Dundas both here and above, supports the second of the three essentials for the application of the principle, laid down by Salmond, J. in *Canning's case*, *supra*, namely, that:

> "the breach of the statute must have been the cause of the accident."

See to the same effect *Lankester v. Miller*, (1910), 4 B.W.C.C. 80, C.A.

To go back to *Humphreys v. Wilson, supra*, Kennedy, J., there said, at p. 28 of [1931] G.L.R.:

> "... while the breach of such a regulation as the regulation as to lights may, as McCardie, J., pointed out," *Phillips v. Britannia, etc.* [1923], 1 K.B. 539 at 548) be *prima facie* evidence of negligence, it does not *per se* give a right of action against a person so guilty of a breach."

With regard to the remaining two of the four New Zealand decisions, I have space only to mention them by name: *Benson v. Kwong Chong* [1931] N.Z.L.R. 81 at p. 103, *per* Reed, J. The decision of the Court of Appeal was reversed by the Privy Council this year; but upon the ground that the jury's answers had been misinterpreted and that there was evidence to support their findings. The principle here discussed was not dealt with by the Privy Council. There remains *Algie v. Brown* [1932] N.Z.L.R. 557, 560, Adams, J.; a case also recently reversed on appeal: see *ante*, p. 191; but the principle stated by Adams, J., is recognised by the Court of Appeal. As pointed out in that Court's judgment, however, the presumption as to negligence may be displaced by other evidence.

In *Phillips' case, supra*, McCardie, J., said ([1923] 1 K.B. at 548):

> "I agree, however, that the breach of a statutory regulation will usually afford *prima facie* evidence of negligence."

This principle is also stated in *Lane v. Norton* (1928) 28 S.R. (N.S.W.) 143; see the judgment of Gordon, J., at p. 145.

While a breach of a statute, or statutory regulation, is usually *prima facie* evidence of negligence, it does not follow that the reverse holds good, namely that compliance with a statute, or statutory regulation, excludes negligence. This is shown by the decision in *Wintle v. Bristol Tramways, etc.*, 116 L.T. Rep. 125; 117 L.T. Rep. 238, C.A. There a regulation as to lights required only one light and there had been compliance wth that regulation; but it was held that, under the circumstances, it was negligence to have had only the one light and not two.

Three Generations on the Bench.

The second Willes on the Bench was the son of the first. Campbell, whose opinions were so often more interesting than just, describes him as a person of slender intellect, and cites an anecdote of doubtful authenticity in support of his poor opinion. But other biographers, with more reason, hold him in higher esteem. Five years after the death of his father, he was made S.G. in 1706; might have been Lord Chancellor of Ireland in the following year, and in 1768 was made a judge of the King's Bench. The third generation produced a police magistrate. So was it in the Denman family; Denman, C.J., having been father of a High Court Justice and grandfather of Mr. Denman, of Marlborough Street.

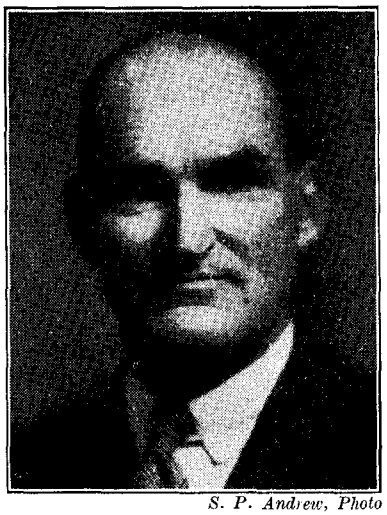
The third Willes, James Shaw Willes, an Irishman commonly called Willes the Great, and one of the editors of *Smith's Leading Cases*, became a judge in 1855 at the age of 41; his tragic death in October, 1872, is one of the saddest events in the judicial history of modern times.

The new Secretary of the N.Z. Law Society.

Appointment of Mr. H. J. Thompson, M.C., M.A., LL.M., M.Comm.

At a special meeting of the Standing Committee of the N.Z. Law Society on Friday last at Wellington, the selection was made of the new Secretary of the parent body and of the Wellington District Law Society. It resulted in the appointment of Mr. H. J. Thompson of the firm of Messrs. Foden and Thompson of Wellington.

The new Secretary has had a very distinguished career. He received his early education at the Havelock North District High School, where he obtained an Education Board scholarship, and at the Napier High School. After matriculating, Mr. Thompson attended Otago University. He graduated as Master of Arts with honours, and took a section of his LL.B. After a period of teaching in the Stratford District High School, he enlisted in 1915. At Trentham, he passed his examination for a commission and was posted to the Tenth Mounted Rifles, but, on the cessation of the despatch of mounted reinforcements, transferred to the Infantry.



S. P. Andrew, Photo

Mr. H. J. Thompson

On proceeding overseas, he was posted to the First Battalion of the Rifle Brigade to which he was attached until the conclusion of hostilities. Among Mr. Thompson's appointments was that of organising, in 1917, the Lewis Gun course at Brocton and of training reinforcements. On his return to France, he was in turn Commander of his battalion, Adjutant to the Divisional Machine Gun School, and Company Commander until the disbandment of the battalion in Cologne. Mr. Thompson returned to New Zealand with the rank of Captain and wearing the Military Cross.

While awaiting embarkation, the new Secretary had attended the University of London taking lectures at the School of Economics. Realising the importance of accountancy to a solicitor, Mr. Thompson, after completing his LL.B., took the course for Master of Economics and obtained that degree with first-class honours. He also passed the Professional Accountants' examination, and took his Master of Laws with the equivalent of second-class honours. He is a member of the N.Z. Society of Accountants and a Fellow of the Royal Economic Society.

Since 1927, Mr. Thompson has been in practice in Wellington after office experience elsewhere. He has lectured on accountancy at the Palmerston North Technical School, and on Mercantile Law, Trustee Law, and Company Law at the Wellington Technical School for the last four years.

(*Continued on p. 287*)

Overdue Mortgages and the Relief Acts.

Should Simultaneous Notices be Given?

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

Where an overdue mortgage is by reason of the acceptance of subsequently accruing interest brought within the operation of s. 68 of the Property Law Act, 1908, a practitioner may well consider what notice or notices he is required to give on behalf of a mortgagee before he proceeds to exercise any of the powers referred to in s. 4 of the Mortgagors' Relief Act, 1931.

It is apparent in the first place that s. 68 where otherwise applicable, still applies and that (provided there is no other default under the mortgage), the mortgagee may not call up and compel payment of the principal sum without giving to the mortgagor three clear months' notice of his intention so to do (*Watson v. Brown* [1919] G.L.R. 25; *re Kennedy and Cheeseman* [1923] G.L.R. 577). Under s. 5 of the Mortgagors' Relief Act, 1931, before proceeding to do any of the acts or exercising any of the powers referred to in the immediately preceding section of the same Act, the mortgagee is to give to the mortgagor notice in writing of his intention to do such act or exercise such power. Must a mortgagee, then, give notice under s. 68 and after the prescribed time has elapsed give a second notice under the Mortgagors' Relief Acts or can simultaneous notices be given in the one document?

It is submitted that it is not permissible to combine with a notice under s. 68 a notice in a form similar (say) to that set out in the report of *Smith v. Megann and Anor.* (*No. 2*) [1932] G.L.R. 407, 408. Section 5 (3) of the Mortgagors' Relief Act, 1931 provides that on the expiration of one calendar month after the giving of such notice of intention to exercise any power, etc., the mortgagee may if the mortgagor has not in the meantime made application for relief "proceed to do such act or exercise such power as aforesaid." If such a simultaneous notice is given the result might then be that, relying upon the provisions of the Mortgagors' Relief Acts, the mortgagee might claim to exercise a power which, by reason of non-compliance with s. 68 of the Property Law Act, 1908, he is prevented from exercising for a further two months. It must be obvious that he cannot so enlarge his rights.

It is further submitted that the mortgagee may not give simultaneous notices as aforesaid and in the document stipulate that that portion of it which is given in pursuance of the Mortgagors' Relief Acts is not to be operative until after the expiration of the three calendar months required by the Property Law Act, 1908, since by subs. (3) already referred to, the notice is operative from the date of giving it and by subs. (2) such notice is deemed to be given when delivered personally, or if posted at the time when the registered letter would, in the ordinary course, be delivered.

The intent of the Mortgagors' Relief Acts would appear to be that restrictions are (for the benefit of the mortgagor) imposed on a mortgagee in exercising powers which otherwise would be available to him—thus, the preamble recites that " . . . it is desirable to confer jurisdiction to postpone the exercise of powers of sale by mortgagees . . ."—and it is contended that a mortgagor is entitled to claim that a valid notice can only be given when the mortgagee, at the time of giving such notice, is in a position to exercise his remedies under the mortgage. In *Smith v. Megann and Anor.* (*No. 2*) (*supra*) MacGregor, J. particularly pointed out that at the date the notice was given in that case, default had been made by the mortgagor and the mortgagee's remedies under the mortgage would have been available to him but for the special mortgagors' relief legislation now under consideration.

It may be conceded that such legislation should be interpreted with the greatest strictness and that no right claimed by a mortgagee should be taken away unless it is perfectly plain that the legislation intended to destroy it, but where a case falls under s. 68 of the Property Law Act, 1908 and the mortgage is one affected by the Mortgagors' Relief Acts, it is suggested that a mortgagee can confidently pursue his remedies under the mortgage only when he has given a second notice under the Mortgagors' Relief Acts after the due expiration of his earlier notice under s. 68 and the mortgagor has then failed to make application for relief.

Damage by Riot.

Recent events have reminded main-street property-holders that damage by riot is a risk which, if they do not take precautions by way of insurance, falls upon their own shoulders. In England the law is different. The Riot (Damages) Act, 1886, 490 & 500 Vic. c. 38, which (with some amendment) is still law, provides that " where a house, shop, or building in any police district has been injured or destroyed, or the property therein has been injured, stolen, or destroyed, by any persons riotously and tumultuously assembled together, such compensation as hereinafter mentioned shall be paid out of the police rate of such district to any person who has sustained loss by such injury, stealing, or destruction."

There was no novelty in the principle of this Act. An earlier Act of the same year had been passed " to provide for the payment of compensation for damage done during a certain riot in the metropolitan district." The main Act of 1886 repealed and replaced an Act of Geo. IV dealing with the same subject-matter, and this in turn was no more than " an Act for consolidating and amending the laws in England relative to remedies against the hundred." It provided, in the luxurious language of the time, that " if any church or chapel, . . . or any house, stable, coach-house, out-house, warehouse, office, shop, mill, malt-house, hop-oast, barn, or granary . . . shall be feloniously demolished, pulled down, or destroyed, by any persons riotously and tumultuously assembled together, in every such case the inhabitants of the hundred, wapentake, ward, or other district in the nature of a hundred . . . shall be liable to yield full compensation to the person or persons damnified."

Under the present law the borough fund, borough rate, or other moneys available for the expenses of the police force are the source from which claims for damages are met. The whole system seems a rather neat method of encouraging authorities responsible for maintaining a police force to do so in an efficient manner.

In a country where the police force is maintained entirely from the funds of the central government, it might be difficult to persuade the legislature to view the matter in the same light.

Court Publicity.

Names of Counsel in Court Proceedings.

The embargo placed by the Newspaper Proprietors' Association several months ago upon the publication in the Press of the names of Counsel and Solicitors appearing in Court proceedings has now been removed, and as from October 10 the former practice of mentioning such names in the newspaper reports of the proceedings will be resumed.

This decision has been arrived at as a result of an assurance given at the request of the Newspaper Proprietors' Association by the President of the New Zealand Law Society that the view of that Society, so far as paragraph 2 of its advertising agreement with the Public Trustee of July, 1931, was concerned, was that the Society had done all that was required of it under that clause, that no further action under it would be taken by the Society, and that the clause would be treated as a "dead letter."

Clause 2 is the clause by which the Law Society had agreed to make an effort to induce the trustee companies in Auckland and Dunedin to "fall into line" by discontinuing their advertising contracts upon their expiry, and to cease newspaper and journal advertising, as the Public Trustee and the Law Society had agreed to do.

The request to the Trust Companies, made shortly after the date of the Agreement, was not acceded to, and the Public Trustee has agreed that this part of the Agreement may be regarded as a "dead letter," and no further effort need be made to induce them to alter their decision.

A. GRAY,
President,
New Zealand Law Society.

EDITORIAL NOTE: *The* LAW JOURNAL *takes the first opportunity of congratulating all parties concerned on the happy conclusion announced in the above memorandum. To Mr. Gray, the legal profession is especially indebted for his painstaking work in this connection during the past year. We feel that happy relations between the three parties—The Legal Profession, The Public Trustee, and the Newspaper Proprietors' Association—have been placed on a firmer foundation than ever before, which is a very pleasant prospect to us all.*

Not "Air-minded."

In giving an illustration of a question he had put previously, the Chief Justice (Sir Michael Myers) during the hearing of the appeal, *Dominion Air-lines Ltd. (in Liqdn.) v. Strand,* asked counsel in the Court of Appeal to assume that he (the Chief Justice) and Mr. Justice MacGregor were thinking about taking a trip by aeroplane from Wellington to Palmerston North. The idea did not appeal to Mr. Justice MacGregor, whose comment was as quick as it was terse. "Speaking for myself, I would go no further than thinking," he said amidst laughter.

The Appointment of Receivers.

Some of the Effects Considered.

By C. PALMER BROWN, M.A., LL.B.

(*Continued from p. 266*).

The effect of the appointment of a Receiver on the contracts of the Company is discussed in the case of *re Newdigate Colliery* [1912] 1 Ch. 468. There a Receiver and manager appointed by the Court found that the Company was encumbered with forward contracts for the sale of coal and the price having risen it would be far more profitable to disregard these contracts. The first debenture holder applied to the Court for an order declaring that the Receiver and manager should be at liberty to disregard these contracts. Eve, J., refused the application and his refusal was confirmed by Cozens Hardy M.R., Fletcher Moulton, L.J., and Buckley, L.J. Cozens Hardy, M.R., said:

> "There are really two separate properties comprised in a security of this kind; one is that of which he is receiver merely and the other is the goodwill of the business of which he is appointed manager. Now it is said here that if an individual mortgagee had taken possession of this colliery he would not be bound by these contracts; he would have taken the unworked coal at his own risk as mortgagee in possession or if he had been receiver he would have sold it as he liked . . . . but if he elects to act as manager and to take upon himself the duties of manager in carrying on the business it seems to me plainly his duty to do nothing that will destroy or prejudicially damage the goodwill of the business at the time when as in this case it is not and cannot be apparent that the mortgagor may not have a real interest in the equity of redemption both of the colliery itself and the business . . . . What I have said will not in any way prevent the receiver and manager from making a particular application under special circumstances dealing with a particular contract but to ask for this general authority is altogether wrong."

Buckley, L.J., said:

> "Something has been said about these contracts being binding on the receiver and manager. Of course that is not so at all. The receiver and manager is a person who under an order of the Court has been put in a position of duty and responsibility as regards the management and carrying on of this business having standing behind him I do not know what word to use but I will call them constituents—the person to whom he is responsible in the matter—namely, first the mortgagees and secondly the mortgagor. . . . . The order asked for is one which is an order calling upon the receiver and manager to disregard the contractual obligations of one of his constituents, the mortgagor, which he has no right to do in order to benefit another of his constituents namely the mortgagee. It seems to me that such an order is necessarily wrong. No precedent has been cited for such an order. I never heard of such an application before and it seems to me in principle it is wrong."

The principle of this case was attempted to be carried a step further in *re Thames Ironworks: Farrer v. The Company,* 106 L.T. 674. There a contract had been made for the building of warships and large sums had been spent on them, but payments under the contract had been assigned to the Ottoman Bank and there was nothing to show any benefit to the Company by the completion of the contracts. The Bank was joined as a party and urged that moneys should be borrowed in priority to debentureholders for the purpose of fulfilling the contracts so as to preserve the goodwill of the business. Parker, J., refused the order. He said:

"I am of opinion that the receiver would be justified in refraining from doing anything towards completing the contract. I do not consider that the Court of Appeal *in re Newdigate* (*ubi sup.*) laid down any rule that the Court was bound to sanction any borrowing by a person who had been appointed by the Court a receiver and manager of the Company in order to enable him to complete any contract enetered into by the Company before his appointment. In this case I am of opinion that on the evidence I ought not to sanction such a borrowing as is contemplated to complete the contract. . . . . I should require very strong evidence that the goodwill of the Company would be injured by reason of the contract not being completed to induce me to sanction such a borrowing ahead of the debentureholders' security."

The limits of the principle were further laid down in *In re Great Cobar Ltd.* [1915] 1 Ch. 682. There a sole agency agreement had been entered into and the fact of its existence was set out in the prospectus on the issue of the debentures but the debentures were not made subject to the performance of the contract. It was apparent that there was no surplus after payment of debentures. Warrington, J., (as he then was) made an order giving the Receiver liberty to disregard the contract. He said:

"The debentureholders took their security without being bound by the contract: neither is the receiver and manager bound by it. He will not be incurring any liability at law or in equity to pay damages if he disregards it. I express no opinion for the moment on the question whether the contract has otherwise come to an end by the appointment of a manager either on the theory applicable to contracts of service or on the theory that the Company is no longer selling any goods to which the contract relates. I think that it is much better not to express any opinion on that question inasmuch as it might possibly prejudice the rights of the parties hereafter. What I do say is that this contract in no way affects the value of the goodwill of the business. There is therefore no obligation on the receiver that I can see, morally or otherwise to carry this company's contract into effect. He is appointed to manage the business of the Company and it is for him to determine through what agents and generally in what way the Company's produce shall be sold."

(To be Concluded)

Bench and Bar.

The profession is delighted to learn that His Honour Mr. Justice Blair is now convalescent after his recent serious illness. He will take the Wellington Sessions commencing on 25th inst.

Mr. B. Sinclair-Lockhart, associate to Mr. Justice Kennedy, was recently admitted by His Honour as a barrister and solicitor.

Recent admissions at Wellington are Mr. G. I. Joseph as a solicitor, on the motion of Mr. C. H. Treadwell, Mr. H. D. Taylor as a barrister, on the motion of Mr. F. C. Spratt, and Mr. J. D. Kinder as a barrister and solicitor, on the motion of Mr. W. L. Rothenberg.

In the last issue of the JOURNAL, a curious typographical misplacement credited Mr. W. L. Rothenberg, of Wellington, with having been recently admitted by Mr. Justice MacGregor. For an item of "news," this had a somewhat ancient flavour, as was obvious to our readers, for this well-known and highly respected member of the Bar has for over three decades practised his profession in Wellington, after admission in due form. In the instance referred to, he moved for the admission of Mr. D. Clark as a Barrister.

New Zealand Law Society.

Meeting of Council.

A meeting of the Council of the New Zealand Law Society was held on Friday, September 30, 1932, in the Supreme Court Buildings, Wellington.

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

The following gentlemen were in attendance as the representatives of the District Law Societies in the Dominion: Auckland: Messrs. A. H. Johnstone and R. P. Towle; Hamilton: Mr. N. S. Johnson; Gisborne: Mr. C. A. L. Treadwell; Hawke's Bay: Mr. H. B. Lusk; Taranaki: Mr. R. H. Quilliam; Wanganui: Mr. N. G. Armstrong; Marlborough: Mr. H. F. Johnston, K.C.; Nelson: Mr. Gurdon Samuel; Canterbury: Mr. A. T. Donnelly; Otago: Messrs. J. B. Callan and R. H. Webb; Southland: Mr. S. A. Wiren (proxy); Westland: Mr. A. M. Cousins; and Wellington: Messrs. A. Gray, K.C., C. H. Treadwell, and G. G. G. Watson.

The Council considered several matters of interest to the profession. Among the subjects the following were dealt with:

Appointment of Secretary and Librarian of both the New Zealand Law Society and the Wellington District Law Society.—The Committee appointed to invite applications for these positions reported that out of a large number received it had set several applications aside for further consideration, and recommended that a special meeting of the Standing Committee be called to consider them, and that those gentlemen whose applications had been so reserved for further consideration be requested to attend the meeting in order that the Standing Committee might make a final selection. The Committee's recommendation was approved, and the necessary communications were directed to be despatched.

The Rating Act, 1925.—The Council considered correspondence relating to suggested amendments of the Rating Act in the direction of legislation requiring that existing judgments for rates be registered against the land affected within three months after the passing of an amending Act, and that future judgments should be made subject to the provisions of the Statutory Land Charges Registration Act, 1928.

A Committee was appointed to prepare a memorandum for submission to the Attorney-General indicating the reasons why an amendment of the Rating Act is necessary.

Solicitors Acting for Members of a Farmers' Union.—A proposal put forward by a Farmers Union through a District Law Society for the appointment by the Union of a solicitor in each Supreme Court District to act as solicitor for members of the Union in that district was considered.

The Council passed the following resolution:

"That in the opinion of this Council it is improper for a solicitor to accept a retainer from a corporation or other association of persons upon terms that he should act for the individual members of such corporation or association at reduced fees."

Registration of Chattel Instruments.—A question was raised relating to the places in the Dominion in which instruments may be registered under the Chattels Transfer Act, 1924. Under section 5 of the Act, an instrument may be registered in any one of several places in a Provincial District, so that when a search is being made it cannot be regarded as complete until made in all of those places.

It was resolved to set up a committee to consider the position and report in due course.

The Law Practitioners Act, 1931.—The Council considered a letter from a District Law Society suggesting an amendment of the Law Practitioners Act to the effect that upon the conviction of a solicitor for the crime of theft of trust funds his name should *ipso facto* be struck off the rolls of the Court, and that such a provision should be retrospective in effect.

The matter was left to the Standing Committee of the Council to consider with other proposed amendments of the Act.

Solicitors' Audit Regulations: Audit Committee's Report.—The Council, in considering a report furnished by the Audit Committee upon the first year's working of the new Regulations, resolved to forward to the District Law Societies the following suggestions which received the unanimous approval of the Council:

(1) Where a practitioner who has received authorised receipt-books gives up practice he should be required to return the unused receipt forms to the District Law Society, or forward a certificate from his auditor that they have been destroyed.

It was pointed out that if this suggestion is not adhered to, in a few years there will be a number of receipt books in the Dominion belonging to solicitors who have ceased to practise, and that some of these may find their way into the hands of persons who might make wrong use of them.

(2) Where a practitioner changes his auditor, the new auditor should apply to the Distributors for a copy of the certificate issued to the previous auditor of the numbers of the books supplied to the practitioner.

Reduction of Solicitors' Charges.—A District Law Society brought to the notice of the Council that some District Law Societies were not strictly observing the New Zealand Law Society's ruling with regard to the 10 per cent. reduction of solicitors' charges.

The Council, in considering the matter, ascertained that the Council of the Wellington District Law Society had passed a resolution on the subject which had been forwarded to its members with a memorandum subjoined as follows:

"That the special discount of 10 per cent. now allowed in respect of solicitor and client charges be extended to include all charges, whether for solicitor's work or Counsel's work, and whether the amount is itemised or a lump sum; but that such special discount be given only subject to payment of the account within twenty-one days of rendering."

"(It is suggested that the accounts be subscribed in a form similar to the following:—

"'A special 10 per cent. discount to £ s. d. will be allowed on the above account if same is paid on or before the day of 19 ')."

It was unanimously resolved that no objection could be taken to the resolution referred to, and that copies of it be sent to other District Law Societies leaving them to take similar action if considered desirable.

Legal Literature.

WILL'S ELECTRICITY SUPPLY.

by His Honour the late Judge J. Shirless Will, K.C. Sixth Edition by Edgar Macassey, of the Middle Temple, Barrister at Law; pp. 689 and Index+lv.

The great development in the application of electricity that has taken place during the past eight years, and the increasing use made of electric-supply for industrial and domestic purposes, as well as for transport undertakings, render necessary a new edition of this standard text-book. Problems arising from the adaptation of statute law to these changing conditions have resulted in a wealth of new judicial interpretations. With a discussion of these various factors, the new edition demonstrates its practical and up-to-date value.

It will be noticed that the title of the work has been altered to express more thoroughly than the former title, "Electric Lighting," the wide scope covered by its pages. The editor, in his discussion of the technical aspects of his subject, has had the expert assistance of Mr. Frederick Purse, M.I.E.E., M.I.Mech.E., of the London and Home Counties Joint Electricity Authority, whose valued help and assistance make for added usefulness.

In a very comprehensive Introduction, the whole subject is treated in a general way; and not its least valuable feature is the chapter dealing with the development of electrical legislation. An Appendix performs the praiseworthy task of explaining to the non-technical mind the principal terms used in connection with the supply of electricity.

The general arrangement of the subject is all that could be desired; and the new importance in this country of all matters dealing with electric-supply, consequent on our State hydro-electric scheme coming into operation and the rise and development of Electric-power Boards throughout the Dominion, makes the appearance of the new edition of this text-book a very welcome one.

The New Secretary of the N.Z. Law Society.

Continued from p. 283.

Mr. Thompson has played football for the Pirates first-grade team in Dunedin, and has represented Otago at hockey, and his University at tennis, hockey, and athletics. He represented Manawatu at tennis. He now plays for the Thorndon Club, as well as being a member of the Thorndon and Karori first-grade Badminton teams. He is the Manawatu delegate on the New Zealand Tennis Council.

The highly varied and successful career of the new Secretary of the Law Society also includes his being awarded the Bronze Medal of the Royal Humane Society for saving the life of a young man who was carried out to sea at Napier.

The profession is glad to welcome Mr. Thompson to his new post, feeling confident that in his appointment the Council has made an excellent selection. He brings to his new task the congratulations and good wishes of his fellow-practitioners, and the Journal is glad to add its own share of felicitations. Mr. Thompson will commence his duties after the long vacation.

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 in 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.

BANKERS AND BANKING.

Banker and Customer—Cheques—Signatures forged by customer's wife—Ratification and estoppel—Loss of right of action owing to death of forger.—GREENWOOD (Pauper) *v.* MARTINS BANK, LTD. (p. 78).

As to estoppel with respect to cheques: DIGEST 3, p. 230.

BILLS OF EXCHANGE.

Bill of Exchange—Material Alteration—Name of Place of Drawing Changed—Alteration from Inland to Foreign Bill.—KOCH *v.* DICKS (p. 108).

As to what alterations are material: DIGEST 6 p. 372.

CHOSES IN ACTION.

Assignment of Debt—Order by Debtor to his Banker to transfer Current Account—No Acceptance of Transfer—Garnishee Order.—REKSTIN *v.* KOMSERVERPUTY BUREAU (BANK FOR RUSSIAN TRADE GARNISHEES) (p. 59).

As to communication of assignments: DIGEST 8, p. 455.

DAMAGES.

Contract—Penalty or Liquidated Damages—Inadequacy of Sum as compared with Prospective Loss.—CELLULOSE ACETATE SILK CO. *v.* WIDNES FOUNDRY (1925), LTD. (p. 108).

As to liquidated damages or penalty: DIGEST 17, p. 136.

ELECTRIC LIGHTING AND POWER.

Electricity—Negligence in Supply of Electricity—Damage to Customer's Appliances—Statutory Penalties recoverable summarily.—STEVENS *v.* ALDERSHOT GAS, WATER & DISTRICT LIGHTING—COMPANY (NOW MID-SOUTHERN DISTRICT UTILITY CO.) (p. 95).

As to the supply of electricity: DIGEST 20, p. 204, *et seq.*

EXECUTORS AND ADMINISTRATORS.

Income Tax—Arrears—Insolvent Estate—Preferential Payment—Assessment for any year before death of Deceased.—COCKELL, *In re*; JACKSON *v.* ATTORNEY-GENERAL (No. 2) (p. 79).

As to the administration of insolvent estates: DIGEST 24, pp. 815 *et seq.*

HUSBAND AND WIFE.

Divorce—Practice—Jury's finding that wife not guilty of adultery.—Reversal of that Finding by Court of Appeal—Right of Court of Appeal to grant Decree *Nisi*.—CROKER *v.* CROKER and SOUTH (p. 79).

As to appeals from the Divorce Division: DIGEST 27, pp. 487 *et seq.*

Insurance—Life Policy—Husband insured for Wife's benefit—Death of Wife before Husband—Claim by Wife's Executors.—COUSINS *v.* SUN LIFE ASSURANCE SOCIETY (p. 94).

As to policies effected under the Married Women's Property Act, 1882: DIGEST 27, p. 149.

LANDLORD AND TENANT.

Landlord and Tenant—Perpetual Yearly Rentcharge—Power of Re-entry—Statute of Limitation—Relief against Forfeiture.—SYKES *v.* WILLIAMS (p. 79).

As to relief from forfeiture for non-payment of rent: DIGEST 31, p. 482.

MASTER AND SERVANT.

Contract of Service—Sickness Benefit—Incapacity from Accident arising out of and in course of Employment.—MALONEY *v.* ST. HELENS INDUSTRIAL CO-OPERATIVE SOCIETY, LTD. (p. 8).

As to remuneration during illness: DIGEST 34, p. 86.

Rules and Regulations.

Dairy Industry Act, 1908. Amended regulations as to the manufacture and export of dairy-produce.—*Gazette* No. 63, September 29, 1932.

Transport Licensing Act, 1931. Amended regulations relating to passenger-services.—*Gazette* No. 63, September 29, 1932.

Hawke's Bay Earthquake Act, 1931. Hawke's Bay Earthquake (Miscellaneous). Regulations *re* Solicitors' Bills of Costs.—*Gazette* No. 63, September 29, 1932.

Land and Income Tax Act, 1923. Land and Income Tax (Annual) Act, 1932. Order in Council fixing the date and place for the payment of Land-Tax and Income-Tax.—*Gazette* No. 63, September 29, 1932.

Board of Trade Act, 1919. Regulations for the licensing of dealers in gold coins.—*Gazette* No. 19, September 29, 1932.

New Books and Publications.

Willis's Workmen's Compensation Acts. 28th Edition, 1932. (Butterworth & Co. (Pub.). Price 21/-.

Underhill's Law of Torts. Twelfth Edition, 1932. (Butterworth & Co. (Pub.) Ltd.). Price 16/-.

The Articled Clerks' Cram Book. By W. S. Chaney. (Sweet & Maxwell Ltd.). Price 21/-.

Powers of Attorney—(Manual of the Law and Practice). Third Edition, 1932. Issued by the Chartered Institute of Secretaries. (Heffer & Sons Ltd.).

The Hague Court Reports (Second Series). By J. B. Scott. (Oxford University Press). Price 12/6.

International Adjudications—Ancient and Modern History and Documents. By John Bassett Moore, Modern Series Volume 4. (Oxford University Press). Price 15/6.

Digest of Bar Examination Questions. By Marston Garsia. Third Edition, 1932. (Sweet & Maxwell Ltd.) Price 7/6.

A Guide to Diplomatic Practice. By the late Rt. Hon. Sir Ernest Satow. Third Edition. Revised by H. Ritchie, 1932. (Longmans Green Ltd.). Price 45/-.

Principles of Company Law. By J. Charlesworth, LL.D. 1932. (Stevens & Sons Ltd.). Price 9/6.

Cases Decided by Lord Bacon, 1617-21. By J. Ritchie. (Sweet & Maxwell Ltd.). Price 49/-.

Paterson's Licensing Acts, 1932. (Butterworth & Co. (Pub.) Ltd.) Price 27/6.

Chalmer's Marine Insurance. Fourth Edition, 1932. (Butterworth & Co. (Pub.) Ltd.) Price 19/-.

Brewery Trade Review and Licensing Law Reports, 1931. (Butterworth & Co. (Pub.) Ltd. Price 10/6.

Gale's Easements. By F. Graham Glover. Eleventh Edition. (Sweet & Maxwell Ltd.). Price 42/-.

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

The Mixed Arbitral Tribunal—an experiment in legal procedure. A Reading delivered before the Hon. Society of the Middle Temple, by H. L. Hart, K.C., LL.D. (Sir Isaac Pitman & Sons). Price 2/6.

Witton-Booth's Valuations for Rating. Second Edition. (Butterworth & Co. (Pub.) Ltd. Price 37/-.

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

Robert and Gibbs' Law of Collisions on Land. Third Edition. (Sweet & Maxwell Ltd.). Price 21/-.

Bills of Costs. By J. E. Thomas, assisted by R. G. Clark. Together with Full Precedents of Bills. (Stevens & Sons and Sweet & Maxwell Ltd.). Price 49/-.