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

"The history of legal reform may be written in three chapters: Chapter I, a Commission makes recommendations; Chapter II, lawyers view the proposed changes with great apprehension; Chapter III, the recommendations are adopted and everyone asks why on earth they had not been introduced twenty years ago!"

—Rt. Hon. Viscount Sankey,
Lord Chancellor.

Vol. IX. Tuesday, August 22, 1933 No. 15

The Judicial Committee's Centenary.

On August 14, the Judicial Committee of His Majesty's Privy Council completed a century of existence, as it was established with the passing of the Judicial Committee Act (3 and 4 Will. 4, c. 41) on that date in the year 1833.

From the time of the Norman Conquest the Sovereign has exercised the royal prerogative of supreme appellate jurisdiction; since he is the fount of justice, the laws are his laws, and it is his prerogative to take care of the due execution of them. The exercise of the jurisdiction of the Sovereign in Council arising out of the common law of England was, however, in most instances gradually transferred to the ordinary Courts of law. The common-law writ did not run outside the bounds of the Kingdom, so that, when provision was made in 1495 for the hearing of appeals from the Channel Islands, it was ordered that thenceforth appeals from those islands should be made to the King in Council. Thus was originated a jurisdiction extending to subjects beyond the King's actual realm. It was not until 1605 that the rules of procedure on such overseas' appeals were brought into being, fixing as they did the appealable value of judgments suitable for the final consideration of the Crown.

In 1681, certain members of the Privy Council—as the King's Council had by then come to be popularly termed—were appointed a standing committee to deal with appeals, mostly on trade questions, from the colonial plantations in North America and in the West Indies. This Committee, to which the Attorney-General had been added, took over the appeals from the Channel Islands, as well. It was decided by *Jennett v. Bishopp* (1683) 1 Vern. 184, 23 E.R. 403; and *Fryer v. Bernard* (1683) 2 P. Wms. 262, 24 E.R. 722, affirmed the principle that all appeals from places overseas held under grant from the Crown came within the jurisdiction of the Privy Council as the King's advisers and lay only to them. Accordingly, all the Lords of the Privy Council were clothed with the powers of the supreme appellate tribunal and three of them were to form a quorum, from the making of an Order in Council to that effect on December 10, 1696; and this committee of the whole Privy Council continued so to be the appellate tribunal until the constitution of the Judicial Committee of the Council by Lord Brougham's Act, a hundred years ago.

The conclusion of the Napoleonic Wars found England firmly established in the overseas possessions which had survived the proclamation of the independence of the American colonies. By settlement and conquest she had added to her dominions Mauritius and Ceylon and parts of West and South Africa; and in the West Indies, and in what is now part of the Dominion of Canada, she was becoming securely entrenched. The voyages of Cook and other navigators had stirred the imagination of Englishmen, and throughout the British Isles the air was alive with possibilities of extension of the King's dominions beyond the seven seas. The Privy Council had become too unwieldy a body to cope with the appellate jurisdiction of the already expanding overseas dominions, and, as it happened, the Judicial Committee was established just in time to witness an era not only of increased colonization, but also of constitutional development. In turn, Canada, Newfoundland, New Zealand, and all the Australian colonies received self-governing constitutions. The progress extended to the present century, which was ushered in with the passing of the Commonwealth of Australia Constitution Act, to be followed by the completion in 1908 of Canadian Federation, which had begun in 1867, and the creation of the Union of South Africa in 1909.

Since 1833, the personnel of the membership of the Judicial Committee has seen many changes, arising as time went on from the expansion of British communities overseas. The Committee now consists of the President of the Council, the Lord Keeper or first Lord Commissioner of the Great Seal of England, and all Privy Councillors who have held these offices, or hold, or have held, high judicial office—that is to say, who have been Lords of Appeal in Ordinary, or Judges of the Supreme Court in England or Northern Ireland, or of the Court of Session in Scotland. The Sovereign may also by sign manual appoint two other specially qualified Privy Councillors to be additional Members of the Committee. Privy Councillors who are or have been Judges of Dominion Supreme Courts are also members, and there are usually two Indian High Court Judges.

During its century of existence, the Judicial Committee has played a notable part in the unification and development of legal principles, and it has had its effect on the exercise of judicial functions over more than a quarter of the earth's surface. It has done much, too, to establish respect for law and sovereignty among peoples of diverse races and nationalities. The question arises: What of the future?

When, in August, 1833, the Judicial Committee was constituted, it exercised practically without restriction the royal prerogative of supreme appellate jurisdiction over all persons and Courts within the King's dominions. But in recent years the growing consciousness of independent Dominion status and autonomy has been reflected in a gradual limitation of the judicial prerogative of the Crown by the transference of its exercise to the Dominions themselves, resulting in and from a surrender of that prerogative in a greater or less degree according to the wish of the Dominion concerned, as brief examination of some Imperial statutes will show.

In 1867, the British North America Act maintained the prerogative in its full extent as part of the general preservation of the existing common law. But by s. 74 of the Constitution of Australia Act, 1900, it was provided that the Commonwealth Legislature might make laws limiting the matters in which special leave to appeal from the High Court of Australia might be asked, but reserving for the royal assent any proposed laws containing any such limitation. The South Africa Act, 1909, excluded any appeal as of right except under the Colonial Courts of Admiralty Act, but maintained the right of the King in Council to grant special leave subject to the proviso that the Union Parliament might limit the matters in respect of which application for special leave might be granted. Latest of all, Article 66 of the Irish Free State (Constitution) Act, 1922, implicitly excludes any appeal as of right to the Judicial Committee, while its phrasing makes it, in Lord Buckmaster's words, "Quite plain on the face of it that as far as possible finality and supremacy are to be given to the Irish Courts": *Hull and Co. v. McKenna* [1926] I.R. 402. Definition and regulation of the right of appeal in the Dominions, Colonies, and Dependencies by statutes, charters of justice, letters patent, and Orders in Council, may be found in imposing array in *8 Halsbury's Laws of England*, 2nd Ed., p. 552 *et seq.*

It has been recognised with increasing emphasis in some of the Dominions that though, in fact, the Judicial Committee act in the capacity of Judges and advise His Majesty in a judicial spirit, their judgments are put into operation by means of Orders in Council which derive their authority from the Parliament of the only part of the King's dominions that is not subject to the Judicial Committee's jurisdiction. We do not propose here to traverse the implications of the Statute of Westminster in this regard, or to refer otherwise than in passing to the prevailing sentiment of New Zealanders favouring retention of the Judicial Committee as a supreme Imperial appellate tribunal. But it must be recognised that successive Colonial and Imperial Conferences have sought to supplant it with an appellate tribunal which will include all British territory, at home and abroad, within its jurisdiction. In 1926, the Imperial Conference declared that "it was no part of the policy of His Majesty's Government in Great Britain that questions affecting judicial appeals should be determined otherwise than in accordance with the wishes of the part of the Empire primarily affected." This implies that the exercise of the judicial prerogative of the Crown is as much subject to the will of the people in each part of the British Commonwealth of Nations as the legislative and executive functions: which is in accord with the principle enunciated by Viscount Haldane in *Hull and Co. v. Mc Kenna* (*supra*)—namely, that the Judicial Committee in granting leave to appeal must be guided by the wishes of the Dominions concerned, and that it became "with the Dominions more and more or less and less, as they pleased."

In his recent work, *The Sovereignty of the British Dominions*, Professor Berriedale Keith sums up the present position of the Judicial Committee in the light of the re-definition of inter-Imperial relations: "If the pressure continues, the appeal must be renounced formally as it probably has in practice. It is clearly inconsistent with autonomy, if that is pressed to its logical conclusion, and, while the other Dominions may not deem it wise or desirable thus to stress the point, they cannot be held to fetter the action of a Dominion that entertains a strong dislike to the Court."

Summary of Recent Judgments.

COURT OF APPEAL
Wellington
1933.
July 2, 4, 5, 21.
Myers, C.J.
Herdman, J.
Blair, J.
Kennedy, J.

INSPECTOR OF AWARDS v. R. and W. HELLABY, LTD.

Industrial Conciliation and Arbitration — "Settlement of an Industrial Dispute"—Powers and Functions of Council of Conciliation and of Assessors—Effect of 1932 Amendment Act—Industrial Conciliation and Arbitration Act, 1925, ss. 41 (5) (e) and (f), 43, 46—Amendment Act, 1932, ss. 3 (1), 5, 6, 7, 8.

Case Stated by the Judge of the Court of Arbitration for the opinion of the Court of Appeal.

The preliminary facts appear from the report of *In re the Auckland Retail Butchers' Dispute*, p. 153 *ante*.

On May 2, the Commissioner appointed as assessors the four persons recommended by the applicant employers and the four persons recommended by the union, disregarding the recommendation of assessors by the respondent employers (including the defendant), who thereupon gave written notice to the Commissioner declining to be represented by the assessors appointed by him and applying to be struck out of the proceedings as parties. This application was not granted, and they were joined as parties. They also gave notice in writing to the Commissioner refusing to recognise or be bound by an industrial agreement or other documents signed by the assessors on their behalf unless it be first submitted to and approved by the respondent employers in writing. The Council proceeded to hear the dispute and agreed upon terms of a settlement which, without reference to the respondent employers, was filed with the Clerk of Awards. Subsequently, an information was laid against the defendant company for an alleged breach of such agreement. On the hearing of the information, the Judge of the Court of Arbitration reserved the questions of law involved for the opinion of the Court of Appeal.

Answering certain questions in the Case Stated for the opinion of the Court of Appeal,

Johnstone and **Tuck** for plaintiff, **Stevenson** and **Towle** for defendant.

Held, as follows, per *Myers*, C.J., *Blair* and *Kennedy*, JJ., (and by *Herdman*, J., to the like effect), That what is required by s. 5 (1) of the Industrial Conciliation and Arbitration Amendment Act, 1932, is a settlement arrived at by agreement of the parties to the dispute who are present or represented at the inquiry; and terms of settlement, though they require to be signed by all the assessors, are nevertheless effective only if such parties to the dispute have agreed upon or consented to such terms. If any of the parties refuse to agree, there can be no settlement, and the only provision to meet such a case is contained in s. 7 (1) of the Act.

In re the Auckland Retail Butchers' Dispute, p. 153, *ante*, and **In re Forbes and the Canterbury Grocers', etc.,** p. 151, *ante*, dissented from.

In re Wellington Performing Musicians' Award (1912) 13 *Book of Awards* 374, referred to.

Per *Myers*, C.J., and *Herdman* and *Blair*, JJ., That the Conciliation Commissioner, having failed to consider the recommendation made by the respondent employers, the Council of Conciliation was not constituted in accordance with the provisions of the statute, and the proceedings before it were bad.

Per *Myers*, C.J., and *Blair*, J., That the dissenting employers were not applicants or employers subsequently joined as parties, but were respondents under s. 43 (5) of the principal Act.

That in a dispute where the applicants are employers, employers who do not agree with the applicants' proposals can be joined; but, inasmuch as an "industrial dispute" is defined as being a dispute between employers and workers, they should be linked with the applicant employers.

Per *Kennedy*, J., That the provision in s. 5 of the Amendment Act that the terms of settlement should be set forth in writing signed by all the assessors is an evidentiary requirement which takes the place of the requirement in s. 50 of the principal Act (now repealed) that the agreement reached in the inquiry should be signed by all the parties or their attorneys: it does not provide that a Council of Conciliation (or the assessors) has power to impose a settlement on the parties.

Per *Blair*, J., That employers who do not agree with the proposals of employers who are applicants in a dispute are entitled as respondents to nominate separate assessors as provided by s. 43 of the principal Act.

Semble, per *Myers*, C.J., and *Blair*, J., "The Terms of Settlement," even if otherwise valid, would be void on the ground of the inclusion therein of conditions relating to the closing of shops, the Court of Arbitration only having the powers in that behalf that the Council of Conciliation purported to exercise.

Beattie, Coster, and Co. v. Duncan [1922] N.Z.L.R. 1220, and **Inspector of Awards v. Thomas** (1907) 10 G.L.R. 173, referred to.

Semble, per *Herdman*, J., If assessors have been selected before respondent employers have been joined, there appears to be no machinery which would enable them to take part in the selection of assessors; but, being parties to a dispute, they are entitled to refuse to agree to proposals and thus prevent a settlement.

NOTE:—For the Industrial Conciliation and Arbitration Act, 1925, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, 1908-1931, Vol. 3, title *Industrial Disputes*, p. 939.

COURT OF APPEAL
Wellington.
1933.
June 22; July 21.
Myers, C.J.
Herdman, J.
MacGregor, J.
Blair, J.
Kennedy, J.

VINCENT v. TAURANGA ELECTRIC-POWER BOARD.
TAURANGA ELECTRIC-POWER BOARD v. VINCENT.

Electric-power Board—Injury suffered by Workman—Action commenced twenty-two months after Accident—Alternative Causes of Action—Breach of Implied Contract and Breach of Statutory Duty—Whether Power Board protected by Statutory Limitation of six months for commencement of Action—Electric-power Boards Act, 1925, s. 127—Public Works Act, 1928, s. 319.

V. claimed against the Board for general and special damages by reason of injuries received by him while in the Board's employment. He declared on two causes of action, which may be summarised as follows:—

(*a*) That on and prior to the date of the accident he was engaged as a linesman under a contract of employment with the Board, and that in breach of the implied terms of such contract the Board did not provide the necessary safeguards required thereby, in particular the necessary safety apparatus and disconnection from the source of supply of the transformer on which V. was working at the time of the accident to render it effectively safe as required by No. 178 of the Electric-power Supply Regulations, 1927.

(*b*) That the Power Board was under an absolute statutory duty to V. to comply with each and all of the said regulations made under the Public Works Act, 1908, as amended by s. 2 of the Amendment Act, 1911, and that by reason and in consequence of its non-compliance with Reg. 178 he received the injury and suffered the damage in respect of which he sued.

The action was not commenced until twenty-two months after the accident, and His Honour Mr. Justice *Smith*, after hearing argument before trial on the question of law involved—namely, "Whether s. 127 of the Electric-power Boards Act, 1925, is applicable to the plaintiff's cause of action and an effective bar to the proceedings instituted by him"—held, that in so far as plaintiff's claim rested upon the Board's omission to fulfil a statutory duty, s. 127 was a complete bar to such action; and also, that if plaintiff could at the trial of his action succeed in establishing the implied contract pleaded by him, then, in such a case, s. 127 would not operate as a bar to the action, (1932) 8 N.Z.L.J. 351. From the first part of the judgment, plaintiff appealed; and from the second part, the Board cross-appealed.

In the Court of Appeal,

Cooney, for appellant (respondent in cross-appeal); **Meredith,** for respondent (appellant in cross-appeal).

Held, *per Curiam*, dismissing the appeal and allowing the cross-appeal, That, however the action might be framed, the substance of what was complained of is the breach of a statutory duty, and s. 127 of the Electric-power Boards Act, 1925, applies.

Bradford Corporation v. Myers [1916] 1 A.C. 242, applied and followed; **Edwards v. Metropolitan Water Board** [1922] 1 K.B. 291, and **G. Scammell and Nephew, Ltd. v. Hurley** [1929] 1 K.B. 419, referred to; **Hayes v. County Council of King's County** [1917] 2 I.R. 496, distinguished.

Per *Myers*, C.J., and *Kennedy*, J., *Blair*, J., concurring, whether such acts and omissions as are within s. 127 occur in connection with the construction of the works or the user of the lines, an Electric-power Board is not precluded from the protection of that section, since the Board as a corporate body must be regarded as acting in pursuance of the Electric-power Boards Act, 1925, under which it is incorporated and from which ultimately it derives its powers, even though operating its lines under a license provided for by the Public Works Act.

Per *Myers*, C.J., *Blair*, J., concurring, That there is no power conferred on the Court by the Electric-power Boards Act, 1925, as by other statutes, to waive the non-compliance or insufficient compliance with the requirements of giving notice, if satisfied there was reasonable excuse, in cases of injury to the person (whether resulting in death or not).

Semble, per *Kennedy*, J., If the proper maintenance of the Board's power-lines were not obligatory, the Board was acting pursuant to or in execution or in intended execution of its powers for the public benefit, and not pursuant to any private arrangement or individual bargain; and the words of s. 127 cover the omission in the course of such an execution or intended execution of its powers.

Edwards v. Metropolitan Water Board [1922] 1 K.B. 291, followed.

Solicitors: H. O. Cooney, Te Puke, for appellant (respondent on cross-appeal); **Meredith and Hubble,** Auckland, for respondent (appellant on cross-appeal).

NOTE:—For the Electric-power Boards Act, 1925, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, 1908-1931, Vol. 3, title *Electric-lighting and Power*, p. 4; and for the Public Works Act, 1928, see *ibid*, Vol. 7, title *Public Works*, p. 622.

Case Annotation: *Bradford Corporation v. Myers*, E. & E. Digest, Vol. 38, p. 110, para. 784; *Edwards v. Metropolitan Water Board*, *ibid*, pp. 111-112, para. 795; *Hayes v. King's County, County Council*, *ibid*, p. 108, para. 778f; *G. Scammell and Nephew, Ltd. v. Hurley*, E. & E. Digest, 1932 Supplement (No. 8), Vol. 38, title *Public Authorities, etc.*, p. 7, para. 854a.

SUPREME COURT
Wellington.
In Chambers.
1933.
July 14, 21.
MacGregor, J.

RE A TRANSFER OF INSCRIBED STOCK, ALFORD TO DOMINION EXECUTIVE TRUST, LTD., *EX PARTE* ALFORD.

Public Debt—Inscribed Stock—Transfer—Application by Registered Holder for Order prohibiting Registration—Order subject to Conditions—New Zealand Loans Act, 1932, s. 50.

Motion by the registered holder of inscribed stock for an order prohibiting the registration of a transfer of such stock until further order of the Court, subject to a condition that the applicant commence an action for rescission of a contract in terms of which the inscribed stock was to be transferred as consideration for the issue of certain debentures.

Heine, in support; **M. O. Barnett,** to oppose.

Held: That section 50 of the New Zealand Loans Act, 1932, empowers a Judge of the Supreme Court to make an order prohibiting registration by the Registrar of Inscribed Stock of a memorandum of transfer of inscribed stock when it has been received but not registered by him, and to impose conditions to be performed within the time named in such order—*e.g.*, the bringing within fourteen days of an action for rescission of a contract for which the consideration was the transfer of such stock by its registered holder.

Order in terms of the motion.

Solicitors: W. Heine, Wellington, for the applicant; **M. O. Barnett,** Wellington, for the company.

FULL COURT
Wellington.
1933.
June 26, 27, 28; July 21.
Myers, C.J.
Herdman, J.
Blair, J.
Kennedy, J.

VALUER-GENERAL v. WELLINGTON CITY CORPORATION.

Valuation of Land—"Capital Value"—Assessment—Whether Owner to be considered as Hypothetical Purchaser—Whether Assessment Court Entitled to take into Account Cost of Erection of Buildings for Purpose of Ascertaining what a Purchaser would pay—Valuation of Land Act, 1925, s. 2.

"Capital value" is defined in s. 2 of the Valuation of Land Act, 1925, as meaning "the sum which the owner's estate or "interest therein, if unencumbered by any mortgage or other "charge thereon, might be expected to realise at the time "of valuation if offered for sale on such reasonable terms and "conditions as a *bona fide* seller might be expected to require."

On an appeal by the Valuer-General against the decision of the Assessment Court fixing the capital and unimproved value of an abattoir and septic tanks constructed by the respondent Corporation, the grounds of appeal were, *inter alia*, that the Court had misdirected itself, as a matter of law, (*a*) as regards the finding of capital value, in holding that the objecting Corporation should be excluded as a possible purchaser, and in declining to apply the definition of "capital value," as above set out, to such a sale as a sale of the properties to a person wishing to make use of them for the purposes for which they had been specially developed; and (*b*) as regards the finding of the value of improvements, in taking into account, for the purpose of ascertaining what a purchaser would pay, the cost of erecting the buildings on the respective lands assessed.

Solicitor-General, Fair, K.C., (with him **A. E. Currie**) for the appellant; **O'Shea,** for the respondent.

Held, *per Curiam*, 1. That the owner—in this case, the Corporation—is not excluded expressly by statute or by implication from the number of potential buyers merely because the valuation is of land owned by the Corporation.

London County Council v. Erith Overseers, &c. [1893] A.C. 562, followed; **Davies v. Seisdon Union** [1908] A.C. 315; **Melbourne Tramway and Omnibus Company, Ltd. v. Mayor, &c., of Fitzroy** [1901] A.C. 153; and **Colonial Sugar Refining Co. v. Valuer-General** [1927] N.Z.L.R. 617; referred to.

2. That, whether the Corporation constructed the septic tank in discharge of a statutory duty, or whether it merely availed itself of permissive powers, it is not to be excluded as a potential buyer.

Lambeth Overseers v. London County Council (The Brockwell Park Case) [1897] A.C. 625, distinguished; **Liverpool Corporation v. West Derby Union (No. 1)** (1905) 92 L.T. 467; referred to.

3. That the inquiry, whether the land has been purchased and the works have been constructed to discharge a statutory duty or for some other motive, is relevant to the question as to what sum might be expected to be realised by the hypothetical sale.

Inland Revenue Commissioners v. Clay [1914] 3 K.B. 466, considered.

4. That the Assessment Court is entitled to take into consideration, in ascertaining what a purchaser should pay, as a factor or as a circumstance, the cost of erecting the buildings on the land assessed.

Davies v. Seisdon Union [1907] 1 K.B. 630, applied.

Appeal allowed: Case remitted to Assessment Court.

Solicitors: The Crown Law Office, Wellington, for the appellant; **J. O'Shea,** Wellington City Solicitor, Wellington, for the respondent.

NOTE:—For the Valuation of Land Act, 1928, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, 1908-1931, Vol. 7, title *Rating and Valuation*, p. 1030.

Case Annotation: *London County Council v. Erith Overseers Davies v. Seisdon Union*, E. & E. Digest, Vol. 38, p. 523, paras. 717, 718; *Melbourne Tramway and Omnibus Co., Ltd. v. Mayor, etc. of Fitzroy, ibid*, p. 546, note (o); *Lambeth Overseers v. London County Council, ibid*, Vol. 36, p. 247, para. 12; *Liverpool Corporation v. West Derby Union (No. 1), ibid*, Vol. 38, p. 494, para. 494; *Inland Revenue Commissioners v. Clay, ibid*, Vol. 39, p. 226, para. 63.

SUPREME COURT
Dunedin.
1933.
March 14, 15; July 27.
Kennedy, J.

PUBLIC TRUSTEE v. PROVIDENT LIFE ASSURANCE CO.

Insurance—Accident Policy—Death from Pneumonia—Whether caused "directly and solely by Violent Accidental External and Visible Means"—Insured described as "Road Surfaceman" and "Surfaceman on Roads for the Waitaki Council"—Employed by Council but for two Months prior to Death in cutting Willows on the Banks and in the Bed of a Stream—Misdescription.

Action in which plaintiff as administrator of the estate of Alexander Robert Mather, deceased, claimed the sum of £750, being the amount, with bonus additions, for which the deceased was insured by the defendant.

M. was a surfaceman in the employ of the Waitaki County Council. He received wettings through the unevenness of a stream from which he was clearing a growth of willows. He died of pneumonia four days later. The policy under which he was insured provided: "If the insured shall . . . sustain any bodily injury caused directly and solely by violent accidental external and visible means," then the defendant would pay to the insured's personal representatives in the event of his death the sum specified in that behalf.

The policy was originally issued in November, 1919, insuring M. "of Maheno farmer," and was continued by renewal until it lapsed in November, 1930, but was revived in the following month, when deceased declared his occupation to be "road surfaceman," and the defendant was advised by its Oamaru agent that M. was then working "as a surfaceman on roads for the Waitaki Council," and that he still held land on which he worked when not otherwise employed, "returns from labour on farm is not sufficient for living." The defendant continued to cover M. under its "Farmers' Special Policy," and wrote accordingly to its agent, adding: "should he definitely dispose of the farm, it must be understood that the business will require to be rewritten under one of the other Tables." M. retained his interest in the farm and continued to work in the employ of the Waitaki County Council. For a period of about two months prior to his death, he worked at the Island Stream at Maheno, for about two weeks by himself, and then with and in charge of a party of unemployed labourers, the Waitaki County Council having decided upon the work of clearing out that stream.

On a claim by M.'s administrator for the policy moneys,

F. B. Adams, for the plaintiff; **Callan,** with him **McLeod,** for the defendant.

Held, 1. That the wetting was a violent, accidental, external, and visible means, within the meaning of the policy, causing directly and solely the chill and the pneumonia which was the sole, actual, and direct cause of the death of the insured.

Hamlyn v. Crown Accidental Insurance Co., Ltd. [1893] 1 Q.B. 750; **Isitt v. Railway Passengers Assurance Co.** (1889) 22 Q.B.D. 504, and **Accident Insurance Co. of North America v. Young** (1892) 20 S.C.R. 280 followed; **Fidelity and Casualty Co. of New York v. Mitchell** [1917] A.C. 592, applied and followed; **Fitton v. Accidental Death Insurance Co.** (1864) 17 C.B. (N.S.) 122, 144 E.R. 50; **Smith v. Accident Insurance Co.** (1870) L.R. 5 Exch. 302; **Winspear v. Accident Insurance Co.** (1880) 6 Q.B.D. 42; **Lawrence v. Accidental Insurance Co., Ltd.** (1881) 7 Q.B.D. 216; **Mardorf v. Accident Insurance Co.** [1903] 1 K.B. 584, and **Re Etherington and Lancashire and Yorkshire Accident Insurance Co.** [1909] 1 K.B. 591, referred to.

2. That the insured's occupation was, in fact, for the time being changed from that specifically declared to the defendant or from that of which the defendant was aware when it revived the policy; as the work upon which insured was engaged for two months prior to and at the time of his death was the cutting and chopping of willows and branches on the banks and in the bed of a stream, which was not so connected with the roads that it could be regarded as the work of a "road surfaceman" or of a "surfaceman on roads for the Waitaki Council."

The plaintiff's claim accordingly failed.

Solicitors: **Adams Bros.,** Dunedin, for the plaintiff; **Duncan and MacGregor,** Dunedin, for the defendant.

Case Annotation: *Hamlyn v. Crown Accidental Insurance Co. Ltd.*, E. & E. Digest, Vol. 29, p. 401, para. 3177; *Isitt v. Railway Passengers Assurance Co., ibid*, p. 400, para. 3172; *Accident Insurance Co. of North America v. Young, ibid*, p. 402, para. 3181 (*i*); *Fidelity and Casualty Co. of New York v. Mitchell*; *ibid*, p. 394, para. 3140; *Fitton v. Accidental Death Insurance Co., ibid*, p. 400, para. 3169; *Winspear v. Accident Insurance Co., ibid*, pp. 399-400, para. 3168; *Lawrence v. Accidental Insurance Co., ibid*, p. 399, para. 3163; *Mardorf v. Accident Insurance Co., ibid*, pp. 400-401, para. 3173; *Re Etherington and Lancashire and Yorkshire Accident Insurance Co., ibid*, p. 396, para. 3148.

FULL COURT
Wellington.
1933.
July 5, 21.
Myers, C.J.
Herdman, J.
Blair, J.
Kennedy, J.

PUBLIC TRUSTEE v. T. AND OTHERS.

Mortgagors Relief Acts—Guarantor—Consideration of Financial Position of Guarantor and Mortgagor on Hearing of Applications for Relief—"Other Relevant Considerations"—Effect on Guarantor's Liability of Order for Relief of Mortgagor—"Payable under the Mortgage"—Mortgagors Relief Act, 1931, ss. 7, 8—Amendment Act, 1931, ss. 7 (1), 10—Mortgagors and Tenants Relief Act, 1932, s. 5 (1) (2).

Originating Summons in which the Court was asked, *inter alia*, if, in considering the application of T., a mortgagor, for relief, the financial position of the named guarantors, as well as the financial position of the mortgagor, should be taken into consideration in determining whether relief under the Mortgagors Relief Act, 1931, and its amendments, should be granted or not.

W. J. Treadwell, with him **E. S. Smith,** for the plaintiff; **W. A. Izard,** with him **N. Izard,** for the defendants.

Held, 1. In the case of the security of a mortgage being supported by the guarantee of a third party, whether an application for relief comes before the Court on the application of the mortgagor alone or on the applications of both mortgagor and guarantor, the financial position of the guarantor is a matter that should be investigated by the Commission under s. 10 of the Mortgagors Relief Amendment Act, 1931; and it is also a relevant matter to be taken into consideration by the Court under s. 8 of the principal Act.

2. That the words "all other relevant considerations" in s. 8 of the principal Act are not to be construed *ejusdem generis* with the matters mentioned in s. 7 of that Act.

Australian Mutual Provident Society v. Howie [1918] N.Z.L.R. 113, G.L.R. 71, and **Cresswell v. Tully** [1916] G.L.R. 273 mentioned.

Semble, If, on a mortgagor's application for relief, the Court makes an order reducing the rate of interest payable under the mortgage, the mortgagee cannot recover as against the guarantor interest at a higher rate than the reduced rate fixed by the Court; if the Court postpones the due date for payment of any principal or interest, the mortgagee's right against the guarantor is similarly postponed: and, if an order is made for the remission of arrears of interest, such an order enures for the benefit of the guarantor.

Solicitors: **Treadwell, Gordon, Treadwell, and Haggitt,** Wanganui, for the plaintiff; **Marshall, Izard, and Wilson,** Wanganui, for the defendants.

NOTE:—For the Mortgagors Relief Act, 1931, and Amendment Act, 1931, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, 1908-1931, Vol. 6, title *Mortgages*, pp. 18 and 24, and also, with the Mortgagors and Tenants Relief Act, 1932, *Kavanagh and Ball's New Rent and Interest Reductions and Mortgage Legislation.*

SUPREME COURT
Auckland.
June 27, 28;
Aug. 7.
Reed, J.

FINN v. THE KING.

Prerogative of the Crown—Power of Dismissal at Pleasure—Appointment to Office by Notice in *New Zealand Gazette*—Right of Resignation at any Time—No Provision for Remuneration—Office abolished by Statute—No Contractual Relationship—Unemployment Act, 1930, ss. 12, 16—Amendment Act, 1931, s. 26.

Petition of Right under the Crown Suits Act, 1908, whereby the suppliant claimed to recover the sum of £391 13s. 4d. by way of damages for wrongful dismissal.

The Unemployment Act, 1930, provided, *inter alia*, for the establishment of an Unemployment Board, consisting among others of two members to be appointed on the recommendation of the Minister for the time being administering the Act, and that such members should be appointed by the Governor-General for a term of two years, removable for disability, insolvency, neglect of duty, or misconduct, or they might resign office. Provision was made for filling any vacancy. Section 16 of the Act provided the members should, "out of the Unemployment Fund, be paid such allowances as may from time to time be approved by the Minister of Finance, and all travelling expenses reasonably incurred by them in respect of their attendance at meetings of the Board or otherwise in transacting the business of the Board."

F. was gazetted a member of the Board for a period of two years from November 20, 1930. He performed his duties as a member of the Board for eight months, during which time he received an allowance of £2 2s. per diem as the Board sat continuously. On July 31, 1931, his occupancy of the position was terminated by s. 26 of the Unemployment Amendment Act, 1931, which provides "Notwithstanding anything to the contrary in the principal Act, the Unemployment Board as constituted at the passing of this Act shall be abolished on the thirty-first day of July, nineteen hundred and thirty-one."

F. claimed damages for the wrongful termination of his employment.

Rice, for the suppliant; **Meredith,** for the respondent.

Held, 1. That the office of membership of the Unemployment Board as constituted by the Unemployment Act, 1930, was abolished by s. 26 of the Amendment Act, 1931.

2. That, even if the office had not been abolished, the Crown's absolute power of dismissal of a servant of the Crown at any time without incurring liability for damages or compensation was not restricted by the Unemployment Act, 1930, or by the Amendment Act, 1931.

Young v. Waller [1898] A.C. 661, considered; **Coker v. The Queen** (1896) 16 N.Z.L.R. 575, and **Gould v. Stuart** [1896] A.C. 575 distinguished.

3. That there was no contractual relationship between the Crown and the suppliant as appointee to the office—he was simply gazetted as appointed to the Unemployment Board of 1930; he could resign at any time, and there was no provision for his remuneration; and, since there was no *animus contrahendi*, a valid claim could not be established against the Crown.

Nixon v. The Attorney-General [1930] 1 Ch. 566; *on app.* [1931] A.C. 184, and **Reilly v. The King** [1932] Ex. C.R. 14; *on app.* [1932] S.C.R. 597 followed.

Judgment for respondent.

Solicitors: **Holloway and Huband,** Auckland, for the suppliant; **Crown Solicitor,** Auckland, for the Crown.

NOTE:—For the Unemployment Act, 1930, and the Amendment Act, 1931, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, 1908-1931, Vol. 8, title *Work and Labour*, pp. 1216 and 1224.

Case Annotation: *Young v. Waller*, E. & E. Digest, Vol. 38, p. 139 (*m*); *Gould v. Stuart, ibid*, Vol. 11, p. 505, para. 79; *Nixon v. Attorney-General, ibid*, 1932 Supplement (No. 8), Vol. 39, title *Revenue*, p. 14, para. 841a; *Reilly v. The King, ibid*, Vol. 11, title *Constitutional Law*, pp. 41-42, para. 81 (iii).

SUPREME COURT
Wellington.
1933.
May 8; July 31.
Ostler, J.

IN RE LYON (DECEASED): PUBLIC TRUSTEE v. LYON.

Insurance—Life—Will—Policy issued in Scotland to Deceased Policy-holder when domiciled there—Issuing Company having no Office in New Zealand and never having carried on Business therein—Availability of Proceeds for Payment of Debts of Testator dying domiciled in New Zealand—Life Insurance Act, 1908, s. 65.

Originating Summons taken out by the Public Trustee as administrator.

L., the testator, died domiciled in New Zealand. Among the assets in his estate, which was being administered under Part IV of the Administration Act, 1908, was a policy of insurance on L.'s life in the Scottish Widows' Fund and Life Assurance Society, taken out by him in Scotland when he was domiciled there. The society had its head office in Edinburgh and had never had an office or agent in New Zealand or carried on business therein.

The Court was asked whether the provisions of s. 65 of the Life Insurance Act, 1908, are applicable to the said policy so as to render the moneys under it not available for the payment of testator's debts.

E. S. Smith, for the Public Trustee; **Rout,** for Lyons and other beneficiaries; **Fletcher,** for representative creditor.

Held, 1. That the only policies dealt with in s. 65 of the Life Insurance Act, 1908, are life policies issued in New Zealand or issued elsewhere by a company doing business in New Zealand to policy-holders in compliance with a proposal made in New Zealand; and, accordingly, the protection given by s. 65 (1) in the event of the bankruptcy of the policy-holder (to the amount specified in s. 66) is confined to policies "now issued or hereafter to be issued" in or for New Zealand.

2. That there are no words in the Life Insurance Act, 1908, sufficiently strong to rebut the presumption that all legislation is territorial, and the definitions applicable to Part II of that Act were made as wide as they were to include the case of a company doing business in New Zealand, but with its head office elsewhere, which accepts New Zealand proposals and issues its policies only at its head office.

Pharmacy Board v. Kenworthy (1900) 18 N.Z.L.R. 667, referred to.

Question answered accordingly.

Solicitors: The Public Trust Office Solicitor, Wellington, for the plaintiff; **Pitt and Moore,** Nelson, for the creditors.

NOTE:—For the Life Insurance Act, 1908, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, 1908-1931, Vol. 4, title *Insurance*, p. 78.

SUPREME COURT
Wellington.
In Chambers.
1933.
July 21; Aug. 4.
MacGregor, J.

RE BODDIE, EX PARTE AMBURYS LTD.

Bankruptcy—Practice—Creditor's Petition—Non-verification of Material Allegation therein—Summons issued without Jurisdiction—Bankruptcy Notice—Omission of Words in Prescribed Statutory Form—Invalidity—Bankruptcy Act, 1908, ss. 26 (*f*), 36—Amendment Act, 1927, s. 2 (1).

Creditor's Petition in bankruptcy.

Section 36 of the Bankruptcy Act, 1908, provides:—
"A creditor's petition shall be verified by affidavit of the creditor or of some person having knowledge of the facts, and filed in the Court."

The creditor's petition alleged by cl. 3 thereof "that your petitioner has no security for the said debt," but this was not verified in the affidavit filed in support.

The form of bankruptcy notice prescribed under s. 26 (*f*) of the Bankruptcy Act, 1908, as amended by s. 2 (1) of the Bankruptcy Amendment Act, 1927, gives formal notice to the debtor that he must pay the amount due to the judgment creditor "or you must secure or compound for the said sum to his satisfaction or the satisfaction of the Court."

The bankruptcy notice upon which the above-mentioned petition was founded, omitted the words "or the satisfaction of the Court."

On application that the petition should be dismissed,

Sievwright, for the petitioning creditor; **Evans-Scott,** for the debtor, to oppose.

Held, dismissing the petition, 1. That, as the affidavit filed in support of the petition did not verify a material allegation, *viz.*, cl. 3 thereof, the summons was issued without jurisdiction.

In re Nicol (1902) 22 N.Z.L.R. 129, followed; **Burton v. Taylor** (1909) 20 N.Z.L.R. 149, 18 G.L.R. 46, explained; **Re Hudson** (1910) 12 G.L.R. 771, and **In re Olsen** [1919] N.Z.L.R. 73, referred to.

2. That, as the omission from the bankruptcy notice of the words in the statutory form, "or the satisfaction of the Court," was a material defect and could not be rectified by amendment, no act of bankruptcy had been proved to support the petition.

Re Skinner (1910) 13 G.L.R. 79; **Re Howes, ex parte Hughes** [1892] 2 Q.B. 632; and **In re a Judgment Debtor** [1908] 2 K.B. 483, applied and followed.

Petition dismissed.

Solicitors: A. B. Sievwright, Wellington, for the petitioner; **Menteath, Ward, Macassey, and Evans-Scott,** Wellington, for the judgment debtor.

NOTE:—For the Bankruptcy Act, 1908, and the Bankruptcy Amendment Act, 1927, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, 1908-1931, Vol. 1, title *Bankruptcy*, pp. 466, 574.

Case Annotation: *Re Howes, ex parte Hughes*, see E. & E. Digest, Vol. 4, pp. 96-97, para. 871; *In re a Judgment Debtor, ibid*, p. 97, para. 874.

SUPREME COURT
Christchurch.
1933.
May 16; Aug. 2.
Blair, J.

MORGAN v. NICOLL.

Practice—Magistrates' Courts—Joinder of Possible Defendants in Action arising in Tort—Election—Evidence—Observations as to Inadmissibility of Opinion or Deduction as to whether Accident caused by Negligence—Magistrates' Courts Act, 1928, ss. 53, 54.

Appeal from the decision of a Stipendiary Magistrate at Christchurch.

N. brought an action in the Magistrates' Court claiming damages against M. and W. arising out of a collision between two motor-cars driven by them respectively, she being a passenger in M.'s car. At the conclusion of her evidence, M. applied for a nonsuit on the grounds that there was no evidence against him, and he rested his case on N.'s evidence which, he claimed, exonerated him. On refusal of nonsuit, he retired from the Court. W. and his witnesses gave evidence, but M. was not represented while it was being given, though he was heard later on the question of costs.

The Magistrate gave judgment with costs against M. in favour of N., and awarded to W. costs as against N., and also additional costs to N. as against M. in the same amount as had been awarded to W. against her. M. appealed.

On the appeal,

Sargent, for the appellant; **Sim,** for the respondent.

Held, 1. That there had been a misjoinder as to one or other of the defendants, as both could not be sued in the same proceedings in the Magistrates' Court by a plaintiff seeking a remedy in tort against one of two possible defendants.

Carter v. Rigby and Co. [1896] 2 Q.B. 113, following **Smurthwaite v. Hannay** [1894] A.C. 494, followed; **Williamson v. Auckland Electric Tramways Co. Ltd.,** (1911) 14 G.L.R. 403, applied; **Captain and Owners of s.s. "City of Naples" v. Gollin and Co., Ltd.** [1927] N.Z.L.R. 297, referred to.

2. That, since appellant, as one of the defendants in the Magistrates' Court, had not demanded that respondent (as plaintiff) elect as to which defendant she desired to proceed against, and had not waived the misjoinder of the two defendants (as he could have done), he had waived his right to call for such an election.

The appeal was dismissed, but the Magistrate's judgment was varied to the extent of disallowance as against appellant of any of the costs relating to the successful defendant.

The learned Judge observed that evidence as to opinion or deduction by witnesses as to whether an accident was caused by the negligence of one or other of the parties, is a usurpation of the function of the Court, and inadmissible.

Appeal dismissed: Magistrate's judgment varied as to costs.

Solicitors: **Slater, Sargent, and Connal,** Christchurch, for the appellant; **Duncan, Cotterill, and Co.,** Christchurch, for the respondent.

NOTE:—For the Magistrates' Courts Act, 1928, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, 1908-1931, Vol. 2, title *Courts*, p. 98.

Case Annotation: *Carter v. Rigby and Co.*, E. & E. Digest, Vol. 34, p. 236, para. 2016; *Smurthwaite v. Hannay*, *ibid*, Vol. 41, p. 537, para. 3643.

SUPREME COURT
Wellington.
1933
July 17.
MacGregor, J.

BRYANT AND MAY, BELL AND COMPANY, LTD. v. THE COMMISSIONER OF TAXES.*

Revenue — Income-tax — Deductions — "Interest" — Postponed Payment of Purchase-price of Goods supplied from England pending Anticipated Reduction of Exchange-rate—Interest on same paid by Purchaser-company during such Postponement—Whether same deductible in calculating its Assessable Income—Land and Income Tax Act, 1923, s. 80 (1) (h), (2).

Appellant, a company carrying on business in New Zealand, incurred indebtedness to its parent company in England for goods supplied, a large part of which was used for the manufacture of matches in the Dominion. Owing to the then prevailing adverse rate of exchange, appellant by arrangement with its parent company postponed during the tax-year remittance to it of the moneys payable, and was debited with interest on the purchase-price of the goods. Appellant, in its return of income for the year in question, claimed as a deduction from its assessable income the interest so credited. The Commissioner disallowed such deduction.

On objection and appeal,

Hadfield, with him **James,** for appellant company; **Fair, K.C.,** with him **H. D. C. Adams,** for the Commissioner of Taxes.

Held, dismissing the appeal, 1. That it is for the Commissioner of Taxes to be satisfied, where a deduction of interest is claimed, "that it is payable on capital employed in the production of assessable income"; and, so long as he is acting in good faith, there is no appeal from his decision.

Kemball v. Commissioner of Taxes [1932] N.Z.L.R. 1305, referred to.

2. That, in any event, on the facts, the payment of interest to the parent company was incurred to save exchange on income already produced, and its expenditure was "not exclusively incurred in the production of the "assessable income" of the tax-paying company.

Appeal dismissed.

Solicitors: **Hadfield and Peacock,** Wellington, for the appellant; **Crown Law Office,** Wellington, for the respondent.

NOTE:—For the Land and Income Tax Act, 1923, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, 1908-1931, Vol. 7, title *Public Revenue and Expenditure*, p. 271.

*Notice of Appeal has been lodged.

SUPREME COURT
Napier and
Wellington.
1933.
March 6, 7, 8,
21, 22, 23; June 29
Blair, J.

THE HAWKE'S BAY ELECTRIC-POWER BOARD v. THOMAS BORTHWICK AND SONS (AUSTRALASIA), LTD.

Contract—Interpretation—Agreement from a Particular Date for Five Years and "thereafter shall be continued subject to its being determinable by . . . Six Months' Notice in Writing from the First Day of any Month"—Damage caused to Premises by Napier Earthquake—Frustration.

Action for recovery of £2,080 6s. 8d. alleged to be due to the plaintiff under an agreement for the supply of electricity at the premises of the defendant at Pakipaki. By cl. 7 of such agreement, it was provided that a minimum sum of £1,000 per annum should be paid by defendant during the currency of the agreement whether defendant took energy to that value from the plaintiff or not. The plaintiff claimed to recover at such rate per annum for the period from April 1, 1931, to May 1, 1933.

On July 14, 1927, plaintiff and defendant entered into a written contract for the supply of electrical energy by the former to the latter. The agreement was to be for a period of five years from the date of commencement of supply (November 1, 1927), and "thereafter shall be continued subject to its being determinable by either party giving to the other six months' notice in writing from the first day of any month."

The agreement contained clauses providing that defendant agreed to pay the minimum amount of £1,000 per annum during the currency of the agreement, whether the defendant took electrical energy to such value or not from the plaintiff; that if, as the result of action by constituted authority, the defendant was prevented from operating or passing over the contract, the contract was to determine; and providing also as to failure of supply due to accidents to mains and such like, and for rebate in price of current for interruptions. There was no exemption provided for in the event of fire in the defendant's works. On the contrary, defendant agreed to indemnify the plaintiff from injury or destruction by fire or otherwise of plaintiff's meters or apparatus on defendant's premises; and express provision was inserted in respect of certain specified untoward interruptions as far as plaintiff was concerned.

The earthquake on February 3, 1931, extensively damaged defendant's meat-freezing works, and it would have involved some nine or ten months' work and the expenditure of £33,000 to have reinstated the premises ready for use as a meat-freezing works. Defendant did not reinstate, and from February 3 (except for a trifling immaterial supply), took no power from plaintiff. Defendant's contentions in plaintiff's action, claiming moneys alleged to be due under contract were, *inter alia*, that the contract was for five years only, and that frustration by the damage caused by the earthquake had excused performance on defendant's part.

The case is reported in so far as it involves these contentions.

Callan, for the plaintiff; **Johnston, K.C.,** with him **Laing** and **Jessep,** for the defendant.

Held, 1. That the earliest time within which the contract could be determined by notice was five years and six months.

Jacks (William) and Co. v. Palmer's Shipbuilding and Iron Co. (1928) 98 L.J. K.B. 366, followed; **Brown v. Symons** (1860) 8 C.B. (N.S.) 208, 141 E.R. 1145, and **Costigan v. Gray Bovier Engines, Ltd.** (1925) 41 T.L.R. 372, distinguished; **Langton v. Carleton** (1873) L.R. 9 Exch. 57; **Marshall (Sir Herbert) and Sons, Ltd. v. John Brinsmead and Sons, Ltd.** (1912) 106 L.T. 460, referred to.

2. That the defence of frustration by the Napier earthquake had not been established, and the contract had not been discharged by reason of the damage to defendant's freezing-works by that earthquake, on the following grounds: Earthquakes occur frequently in New Zealand, and most business men in charge of large business premises either insure or consider whether the risk shall be taken by the business itself.

The clauses referred to above, the fact that no exemption was provided for in the event of fire in defendant's premises,

and the circumstances of the case, made it impossible to apply the test propounded by Lord *Loreburn* in **F. A. Tamplin S.S. Co., Ltd. v. Anglo-Mexican Petroleum Products Co., Ltd.** [1916] 2 A.C. 404—*viz.*, "Were the altered circumstances such that, had they thought of them, they would . . . as sensible men have said, 'If that happens, of course, it is all over between us.'"

Hearing adjourned for quantum of damages to be settled by agreement, with liberty to either party to produce evidence.

Solicitors: **Kennedy, Lusk, and Morling,** Napier, for the plaintiff; **J. Macfarlane Laing,** Masterton, for the defendant.

Case Annotation: *Jacks (William) and Co. v. Palmers' Shipbuilding and Iron Co.*, E. & E. Digest, 1932 Supplement (No. 8), title *Contract*, Vol. 12, p. 22, para. 2861 (*a*); *Brown v. Symons*, E. & E. Digest, Vol. 34, p. 55, para. 296; *Costigan v. Gray Bovier Engines, Ltd.*, *ibid*, pp. 63-64, para. 388; *Langton v. Carleton*, *ibid*, p. 63, para. 387; *Marshall (Sir Herbert) and Sons, Ltd. v. John Brinsmead and Sons, Ltd.*, *ibid*, Vol. 42, pp. 932, para. 56; *F. A. Tamplin S.S. Co., Ltd. v. Anglo-Mexican Petroleum Products Co., Ltd.*, *ibid*, Vol. 12, p. 612, para. 5056.

SUPREME COURT
Wellington.
1933.
June 22; July 17.
Ostler, J.

WANGANUI-RANGITIKEI ELECTRIC-POWER BOARD v. THE KING.

Electric-power Board—Statutory Charge on Land for Unpaid Electric Installation—Equitable Mortgage of Land held by the Crown at Time of Installation—Subsequent Registered Mortgage to Crown—Sale and Buying-in by Crown as Mortgagee—Whether Board's registered Charge on Land maintainable in priority to the Crown's Rights—Electric-power Boards Act, 1925, s. 119.

Originating Summons taken out by plaintiff Board for determination of certain questions of law arising out of the undermentioned facts.

Section 119 of the Electric-power Boards Act, 1925, is as follows:—

"Where in the exercise of the powers conferred on it by [s. 118] the Board has, whether before or after the passing of this Act, installed any motor, electric wires, electric lamps, or other fittings or equipment on any land, or in any building thereon, the cost of any such motor, electric wires, electric lamps, and other fittings or equipment, shall be a charge on such land, and may be recovered as rates are recovered under the Rating Act, 1925, and the provisions of that Act as to the recovery of rates shall apply accordingly."

On October 10, 1927, G. agreed to purchase from the Crown a section of land with dwellinghouse thereon for £725, of which he paid £35 as a deposit and agreed to satisfy the balance by giving a table-mortgage to the Crown. He entered into possession on the day he signed the agreement, and on that day, as owner, signed and sent to the plaintiff Board an application-form for the installation of electric light in the dwelling. Without the Crown's knowledge or consent, the installation was undertaken and completed by the Board on October 20, 1927. The agreement was subsequently completed by transfer and by a mortgage to the Crown.

G. later made default under the mortgage and also failed to pay the installation charges to the Board. On April 22, 1931, the Crown sold through the Registrar and bought in the land.

For the purpose of deciding, *inter alia*, the question of law whether the charge over land given to an Electric-power Board by s. 119 of the Electric-power Boards Act, 1925, took priority over a mortgage to the Crown, the plaintiff Board, by agreement between the parties, was assumed to have registered on November 25, 1930, a charge under the Statutory Land Charges Registration Act, 1928, against the land for the moneys due to it for the installation costs.

W. A. Izard, for the plaintiff; **Solicitor-General, Fair, K.C.,** for the Crown.

Answering the preliminary question as to whether the plaintiff Board had ever acquired a charge over the land,

Held, 1. That s. 119 of the Electric-power Boards Act, 1925, does not create any charge over land owned by the Crown.

2. That, if the equitable position be regarded, such charge as the plaintiff Board acquired was subject to the Crown's equitable mortgage over the land (by reason of the purchaser's agreement to mortgage), and remained so subject when that mortgage was changed into legal form.

The King v. The Mayor, &c., of Inglewood [1931] N.Z.L.R. 177, applied; **Smith v. Patterson** (1910) 13 G.L.R. 99; **In re Legge** (1872) Mac. 1009; and **Taylor v. Commissioner of Stamp Duties** [1924] N.Z.L.R. 499, referred to.

3. That on the subsequent sale and buying-in by the Crown as first mortgagee, the charge was extinguished.

The King v. Mayor, &c., of Inglewood [1931] N.Z.L.R. 177, followed.

Solicitors: **Marshall, Izard, and Wilson,** Wanganui, for the plaintiff; **Crown Law Office,** Wellington, for the Crown.

NOTE:—For the Electric-power Boards Act, 1925, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, 1908-1931, Vol. 3, title *Electric-lighting and Power*, p. 4.

SUPREME COURT
Nelson.
1932
December 5.
1933
July 24.
Blair, J.

CHITTENDEN v. HALE AND WIFE.

Dogs—"Injury done by Dog"—Scienter—Negligence—Liability of Owner—Defences open to him—Dogs Registration Act, 1908, ss. 27, 29.

Appeal from the decision of a Stipendiary Magistrate who gave judgment for the plaintiffs in an action against present appellant.

C., a blind man, went to visit a friend and chained his dog upon the veranda with a very short chain. Mrs. H., also as a visitor at about 7.15 p.m., walked up the flight of concrete steps to the veranda in felt slippers. As she reached the top step, the dog suddenly becoming aware of her approach sprang towards her and attempted to bite her, but was unable to do so as the chain was too short. Mrs. H., thinking the dog could reach her, moved back, lost her balance, fell down the steps, and sustained injuries for which, in an action by Mrs. H. and her husband against C., a Magistrate, giving judgment in her favour, awarded her damages.

On appeal from the Magistrate's decision,

Glasgow, for the appellant; **Fell,** for the respondents,

Held, 1. That s. 27 is of general application to all claims for damages for injury done by dogs, and is not limited to claims for damages made "in a summary manner."

2. That s. 27 does not place upon dog-owners in New Zealand an absolute liability for all damages, direct or indirect, done by their dogs.

3. That the fact that the Legislature has dispensed with the necessity of proof of *scienter*, and proof of negligence on the owner's part to impose liability on a dog-owner for injury done by his dog, does not mean that all dogs are to be deemed dangerous animals and in the same class as wild beasts.

4. That s. 27 takes away from a dog-owner the benefit of the common law exemption from liability for trespass injuries caused by his dog, and the principle ennunciated by *Bankes*, L.J., in *Buckle v. Holmes* [1926] 2 K.B. 128 has, therefore, no application in New Zealand.

5. That it is still open to the dog-owner, if he can, to establish one or other of the defences open to persons who harbour animals of evil disposition—*e.g.*, want of negligence on his part.

Simpson v. Bannerman (1932) 47 C.L.R. 378, referred to.

6. The injury to the plaintiff was due to accident, and not to any negligence on the part of the defendant.

Semble, That, on the facts, the injury was not a canine injury "done by the dog" within the meaning of s. 27.

The learned Judge drew attention to the fact that, as in England proof of *scienter* brings a domestic animal into category of wild animals, the English cases dealing with injuries inflicted by wild animals are applicable to cases of injuries by dogs in New Zealand by reason of the abolition in the Dominion of the necessity of proof of *scienter* in cases of injuries inflicted by dogs.

Appeal allowed.

Solicitors: Glasgow, Rout, and Cheek, Nelson, for the appellant; **Fell and Harley,** Nelson, for the respondent.

NOTE:—For the Dogs Registration Act, 1908, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, 1908-1931, Vol 1, title *Animals*, p. 204.

SUPREME COURT
In Chambers.
Auckland.
1933
July 7, 10.
Reed, J.

WALTERS v. RYAN.

Public Trustee—Moneys or Damages payable on behalf of Infant—Trusteeship—Compromise—Claim by Public Trustee for Preference of Appointment as Trustee of Fund, except in Exceptional Circumstances—Principles on which Court's Discretion exercised—Public Trust Office Amendment Act, 1913, s. 13.

Motion for an order sanctioning a compromise and appointment of a trustee and directing payment of compensation moneys. The action which was compromised was brought by the plaintiff as the father and guardian *ad litem* of his son, aged six years, against the defendant for injuries to his son alleged to be caused by the negligent driving of a motor-car by the defendant. The motion asked that the Guardian Trust and Executors Company of New Zealand, Ltd., be appointed trustee. That the compromise was beneficial to the infant was not in question.

Section 13 of the Public Trust Office Amendment Act, 1913, is, in part, as follows:—

"(1) In any cause or matter in any Court in which money "or damages is or are claimed by or on behalf of an infant or "a person of unsound mind, no moneys or damages received or "awarded in any such cause or matter, whether by compromise, "payment into Court, or otherwise, before or after the trial, "shall be paid to the next friend of the plaintiff or to the "plaintiff's solicitor.

"(2) All moneys or damages so received or awarded shall, "unless the appropriate Court otherwise orders, be paid to the "Public Trustee, and, shall, subject to any special or general "directions of the appropriate Court, be held and applied by "him in such manner as he thinks fit for the maintenance "and education or otherwise for the benefit of the persons "entitled thereto."

On the motion for an order sanctioning the compromise, appointment of a trustee of the fund, and directing payment of the moneys to a trust company, the Public Trustee, to whom notice of the motion had been given, questioned the jurisdiction of the Court to appoint any one but the Public Trustee to the position of trustee of the fund.

Johnstone, for the Public Trustee; **Glaister,** for the plaintiff; **Barrowclough,** for the Guardian Trust and Executors Co. of N.Z., Ltd.

Held, That the section places no restriction upon the Court's discretion, nor is there any indication that any preference should be shown to the Public Trustee. The Court's discretion must be exercised with the interests of the infant or person of unsound mind as the sole and guiding principle, the two matters to be considered in such exercise being, first, security, and, secondly, facilities for administration.

Kiernan v. Donovan [1930] N.Z.L.R. 145, explained.

The Guardian Trust and Executors Co. of New Zealand, Ltd., was appointed trustee of the fund as requested by the plaintiff's guardian *ad litem*.

Order accordingly.

Solicitors: Glaister and Ennor, Auckland, for the plaintiff; **The Office Solicitor,** Public Trust Office, Auckland, for the Public Trustee; **Russell, McVeagh, Macky, and Barrowclough,** Auckland, for the Guardian Trust and Executors Co. of New Zealand, Ltd.

NOTE:—For the Public Trust Office Amendment Act, 1913, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, 1908-1931, Vol. 8, title *Trusts and Trustees*, p. 972.

SUPREME COURT
Auckland.
June 22, 26, 27;
July 14.
Reed, J.

SMITH v. HERRING AND ANOTHER.

Contract—Defences—Mutual Mistake—Parties not *ad idem*—Indefiniteness of Clause.

Action for specific performance in respect of a contract evidenced by letters, or, in the alternative, damages for breach thereof.

By correspondence, plaintiff agreed to sell and defendants to purchase certain lots of an estate on, *inter alia*, the following terms: Clause (2), Defendants to form Shirley Road to the satisfaction of the Auckland City Council at their earliest convenience; and cl. (6), The offer was conditional on defendants being permitted to connect houses built on the above lots with the existing sewer through the property. The latter condition was inserted because the then City Engineer had stated to one of the defendants that the sewerage drain in Shirley Road was fully charged. However, eventually, the City Engineer wrote confirming a prior verbal consent—*i.e.*, "that when Shirley "Road is formed and constructed to the Council's standard "requirements and dedication has been accepted by the Council, "I will be prepared to issue permits for the drainage facilities "of any houses that may be erected fronting this thoroughfare "to the existing sewerage facilities."

It had been assumed by all parties that when in the course of construction Shirley Road was kerbed and channelled, stormwater would run down the channels and be discharged into two existing sumps or cesspits at the junction of Shirley and Ivanhoe Roads. The disposal of storm-water was, therefore, never taken into consideration and never mentioned in the negotiation. The City Council, however, required—before the formation of Shirley Road was proceeded with—that a storm-water sewer, costing approximately £300 should be put down that road.

In an action by plaintiff against defendants for specific performance or, in the alternative, damages for breach, among the defences raised were the following (the only ones upon which the case is reported): (*a*) mutual mistake; (*b*) the parties not *ad idem*; and (*c*) that cl. (6) of the contract was too indefinite to be enforced, that clause being in the following words: "That this "offer is conditional on our clients [the defendants] being "permitted to connect houses built on the above lots with "the existing sewer through the property."

Gould, for the plaintiff; **Northcroft,** for the defendants.

Held, 1. That, as the parties had agreed in the same terms on the same subject-matter, the identity of which remained as it was in the original state of the facts and was not destroyed by the new facts, they were bound and must rely on the stipulations of the contract for protection from the effect of facts unknown to them; and that there was no such mutual mistake as would negative or nullify consent and so afford a defence.

2. That, for the same reason, the defence failed that the parties were not *ad idem*.

Bell v. Lever Brothers, Ltd. [1932] A.C. 161, applied.

3. That, as the conditions of the Council clearly required the construction of proper drainage as essential in the formation of a road to its satisfaction, there was nothing definite in the clause.

Specific performance decreed.

Solicitors: Morpeth, Gould, and Wilson, Auckland, for the plaintiff; **W. H. Ready,** Auckland, for the defendants.

Case Annotation: *Bell v. Lever Brothers, Ltd.*, see E. & E. Digest, 1933 Supplement, Vol. 35, title *Mistake*, p. 5, para. 58a.

SUPREME COURT
In Chambers.
New Plymouth.
1933.
June 24, 28.
Reed, J.

IN RE CAMPBELL (DECEASED).

Probate and Administration—Practice—Letters of Administration *cum testamento annexo*—Rival Applications by Testator's Widow and by the Residuary Legatees—Priority of Right to Grant—Code of Civil Procedure, R. 531J.

Applications for grant of letters of administration with will annexed (*a*) by the widow of the testator, and (*b*) by Wallace Campbell, a son. The testator, who died at Hawera on April 28, 1933, by his last will and testament, dated December 9, 1929, appointed Allan Campbell, of Pihama, Farmer, and Washington Pollock, of Hawera, Farmer, his executors and trustees, but they refused so to act.

The widow applicant was the testator's second wife, but there was no issue of his second marriage.

Apart from a legacy of £100 to a niece, Jean Davy, a minor, and a trust created for two minors, Robert Campbell and Brian Campbell (which trust owing to the disposal of the land affected thereby by the deceased in his lifetime had probably no effect), the only beneficiaries under the will were the widow and the five children of testator's first marriage. The residuary legatees, May Crawford, Alice Dalton, and Wallace Campbell, were children of the testator, the two named daughters having filed a consent to the grant to Wallace Campbell of letters of administration with will annexed.

McCormick, for Walter Campbell; **L. A. Taylor,** for the widow.

Held: That the priority of right to the grant of administration with will annexed is regulated by the value of the interest under the will, the widow (as such) having no such priority of right as she would have in the case of the grant of general letters of administration without a will.

Letters of administration with will annexed were, therefore, granted to the said Wallace Campbell.

Order accordingly.

Solicitors: **Crocker and McCormick,** New Plymouth, for Wallace Campbell; **L. A. Taylor,** Hawera, for the widow.

NOTE:—For the Code of Civil Procedure, R. 513J, see Stout and Sim's *Supreme Court Practice*, 7th Edn., p. 336.

Rules and Regulations.

Mining Act, 1926. Orders in Council bringing Certain Provisions of the Mining Act (*re* Prospecting and Mining for and the Storage of Petroleum and other Mineral Oils) into force within certain Parts of New Zealand.—*Gazette* No. 51, July 20, 1933.

Orchard and Garden Diseases Act, 1928. Amended Regulations in regard to the Importation of Fruit or Plants into New Zealand.—*Gazette* No. 52, July 27, 1933.

Dairy Industry Act, 1908. Amended Regulations relating to the Manufacture and Export of Dairy Produce.—*Gazette* No. 52, July 27, 1933.

Sales Tax Act, 1932-33. Exempting certain Goods from Sales Tax.—*Gazette* No. 52, July 27, 1933.

Customs Act, 1913. Regulating the Importation and Exportation of Coined Silver.—*Gazette* No. 52, July 27, 1933.

Transport Licensing Act, 1931. Amended Regulations relating to Goods-services within Controlled Areas under the Act.—*Gazette* No. 55, August 3, 1933.

Land Act, 1924. The Taupo Landing Reserve Regulations Amendment No. 2.—*Gazette* No. 55, August 3, 1933.

Glimpses of Old Bailey.

Practice and Personalities.

By "N.Z. WIG."

The antipodean barrister on sojourn in the Old Country may have made a thorough tour of the Royal Courts of Justice—Appellate, King's Bench, Chancery, or Admiralty—and found nothing more interesting than an abstruse argument on derating, or a wordy wrangle over the terms of a charterparty. But as he wends his way down Fleet Street and up Ludgate Hill he cherishes a hope that Old Bailey may perhaps provide more attractive forensic fare.

Upstairs he goes into the Central Criminal Court where Scrutton, J. (as he then was), told George Joseph Smith that exhortation to repentance would be wasted on him, and where Sir Roger Casement played the last "Act" of his hectic career. A small, dingy, rather stuffy room it is,—with seating accommodation in the gallery for but twenty-four of the general public, and with scarcely more generous space for the legal fraternity downstairs.

In a case of outstanding importance the Attorney-General, or some other advocate of eminence, will represent the Crown, but as a rule the prosecution is left in the hands of lesser counsel. Sir Travers Humphreys, who was frequently engaged as a public prosecutor before his elevation to the Bench some three years ago, must have presented a pleasant contrast to one of his predecessors, Sir Richard Muir. Although the prisoner invariably receives a fair trial, he would appear to get very little more conceded to him. One is struck by the provision in the Criminal Evidence Act, 1898, which prevents counsel from commenting on the fact that the accused has failed to give evidence, but by implication permits the Bench to do so. And the Bench seldom fails to comment! In the ordinary run of cases, where the onus is on the prosecution, why in strict logic should the Crown gather any makeweight from the fact that no evidence is called for the defence?

Another instance of the failure to give the prisoner a jot more than his just due was afforded a few years ago in the case against the two murderers of P. C. Gutteridge. One prisoner in his statement to the Police denied his presence at the scene of the crime, while the other admitted his presence but stated that to his surprise his co-accused pulled out a revolver and shot the unfortunate constable. Application for separate trials was refused. Though these cold-blooded scoundrels deserved their fates, one cannot help feeling that their several and conflicting defences hastened them to their doom. A jury may be hammered for a week that the confession of one accused is no evidence against the other, but, after all, how much notice does the layman take of legal refinements?

The writer recalls one prosecution in particular of two harmless-looking individuals for espionage. They had been caught in possession of certain military documents concerning peace-time manoeuvres on Salisbury Plain, and it had been discovered that they were despatching illicit information to Soviet Russia for valuable consideration. The Attorney-General of the day, Sir Douglas Hogg (now Lord Hailsham), made a brilliant closing speech for the Crown—caustic, vigorous, and convincing—but every phrase was

reminiscent of a right-wing Tory expatiating to a South Kensington audience on the insidious menace of Communism.

As for the defence, one is apt to wonder whether melodrama and fireworks died with Marshall Hall. The majority of the defending counsel are young men just learning to flesh their forensic spears, and, even if substantial justice is done, what do the central figures of the tableaux think about it in the solitude of Maidstone or of Dartmoor? I recall one young counsel whom the kindly presiding Judge charitably complimented on what would appear to be a most inartistic conduct of a murder case. He opened by pleading (*a*) not proven; (*b*) provocation; (*c*) suicide; and (*d*) insanity—in that order. When he failed to establish (*c*) and (*d*), he coyly abandoned them. One wonders why he did not have a long shot at *alibi*.

But when a case warrants the retention of a leading counsel, one sees and hears something worth while. Occasionally Mr. Norman Birkett or Sir Patrick Hastings are engaged for the defence. Birkett is suave, persuasive, and fluent; and, to the outsider at least, a tactician *par excellence*. Hastings is sarcastic, trenchant, and fierce—every inch a fighter.

Next to the central Criminal Court is the Court of the Recorder of London. The present holder of that ancient office is Sir Ernest Wild, who in his day attained a great reputation as a criminal advocate in the South Eastern Circuit. On one occasion he was defending a young sprig of the aristocracy on a serious charge against an idiot boy. The offence was proved up to the hilt and Wild, deciding that boldest measures were the surest, delivered one of the most succinct addresses on record:

"Gentlemen of the jury, the Crown actually have the audacity to ask you to believe that this gentleman committed . . . with that!"

So great was Wild's *mana* that the jury dared not.

The writer recalls a most amusing trial before the learned Recorder wherein two plausible rogues were defending themselves with a skill that suggested considerable past experience. The accused were alleged to have obtained money by a certain false pretence—to wit, that they were the authors of a certain history of the Counties of Berks., Bucks., and Oxon., which was then in actual course of preparation. Their system commenced with an interview of the lady of some ancient manor-house, after which they photographed her with her hounds on the terrace, and took an outline of the history of the place; then they would obtain from her £7 7s., being half the fee for the producing of the momentous volume. A complicating factor was the introduction of evidence showing a similar tour through Kent and Sussex; but the accused were not dismayed. Sir Ernest made rather short work of them in summing-up, and one feared that next morning the jury would bring in the inevitable verdict.

"**The Stone End of it**": In the Wellington Supreme Court, recently, Mr. E. F. Hadfield, for appellant, submitted that if what respondent had contended were correct, "It would mean the stone end of business dealings between New Zealand and English firms."

Mr. Justice MacGregor: "What is the precise meaning of 'stone end'?" Mr. Hadfield: "'The end' emphasised." Mr. Justice MacGregor: "Do not try and elicit it any further, or I shall not know where I am." And so the Bench as well as counsel reached "the stone end" of it.

Accommodation Bills.

In *Erikssen v. Bunting and Louisson*, (1901), 4 G.L.R. 21, it was arranged to allow credit on a sale of goods subject to a guarantee for payment. The creditors handed the debtors a promissory note made out in their own favour which was dealt with as follows: (1) the debtors obtained the endorsement of the guarantors; (2) the debtors signed the note and returned it to the creditors; (3) the creditors endorsed it "without recourse" above the guarantor's endorsement. The guarantor resisted payment on the ground that the creditors were not holders in due course, because the note, not being endorsed by them prior to the guarantor's endorsement, was not complete and legal upon its face when delivered to them. Edwards, J., gave judgment against him, invoking s. 20 of the Bills of Exchange Act, 1883 (s. 20 of the Act of 1908), which provides that "when a bill is wanting in any material particular, the person in possession of it has a *prima facie* authority to fill up the omission in any way he thinks fit."

A similar conclusion was subsequently come to in England in respect of bills of exchange in the stricter sense, first by the Court of Appeal in *Glenie v. Bruce Smith*, [1908] 1 K.B. 263; next by the Court of Appeal in *In re Gooch*, [1921] 2 K.B. 593; and finally by the House of Lords in *MacDonald and Co. v. Nash and Co.*, [1924] A.C. 625, H.L.

A further difficulty arises when the parties not only depart from the logical order of time in filling up, signing, and endorsing, but also put the endorsements in the wrong order on the paper. In *Jenkins and Sons v. Coomber*, [1890] 2 Q.B. 169, the endorsement of the drawer was placed below that of the other endorser, and two Judges held the defect to be fatal. In *Glenie v. Bruce Smith* (*supra*) it was explained that *Jenkins and Sons v. Coomber* "was a case in which s. 20 was not cited or referred to either by counsel or by the Judge, and for a very good reason—namely, that s. 20 could have no application, because it was a case altogether outside that section."

A second case in which the reversal of signatures was fatal is *Shaw and Co. v. Holland*, [1913] 2 K.B. 15. Section 20 was expressly considered, but held by the Court of Appeal to be inapplicable. Its inapplicability in *Jenkins and Sons v. Coomber*, was thus further explained: "it is quite manifest that *Jenkins and Sons v. Coomber* was altogether outside s. 20, because, instead of being a case where a "simple" (or "single"—the Reports differ) "signature was delivered in order to be converted into a bill, it was a case in which the plaintiffs had drawn the draft in the usual form, signed it, sent it to the acceptor, and then in getting it back, instead of procuring the actual authority to complete it by endorsing it themselves so as to indicate to whom it was payable by their order, put their names below the name of the actual endorser under the impression that thereby they were making it a complete and regular bill, which in fact they were not doing."

There is, however, another line of decisions. In *Glenie v. Bruce Smith* (*supra*) one of the bills was endorsed in the wrong order, but this was not taken to make any difference in the liabilities of the parties. In *In re Gooch* (*supra*) the Court of Appeal was faced with the decisions in *Glenie's* case, and *Shaw's* case, each delivered in the Court of Appeal, which, if not

actually in conflict, justified the statement that "the position of the authorities is peculiar," and which one Judge admitted to be "contradictory decisions." *Glenie's* case was followed, and the final paragraph of the judgment of Scrutton, L.J., is worth noting: "While the case is a difficult one, by reason of the decisions, there is no business difficulty in it. The debtor, to get time, . . . presents an incomplete bill, and takes advantage of a possible error in filling it up to attempt to escape from liability for a sum for which he clearly intended to make himself liable, and which, from a business point of view, he ought to pay. I am pleased to decide the point against him."

In *Bernardi v. National Sales Corporation*, [1931] 2 K.B. 188, the High Court in England again regarded the misplacing of the endorsements as immaterial. In this case there was a particular excuse for the misplacement, in that the first endorser in point of time had signed his name so near the top of the paper that the endorsement of the payee could only be placed lower down.

Finally, in *McCall Bros. Ltd. v. Hargreaves*, [1932] W.N. 150, the bills were drawn by the plaintiffs to their own order on a company in which the defendant was interested, were then accepted by the company, next endorsed by the defendant, and were endorsed by the plaintiffs afterwards in point of time, and by an endorsement below the defendant's name. The High Court held that objections based on these irregularities were now disposed of by *McDonald and Co. v. Nash and Co.* (*supra*), and by *Bernardi's* case (*supra*). *Jenkin's* case (*supra*) is declared, on this point, to have been definitely overruled.

After a remarkable conflict of appellate authority, the position may therefore be regarded as finally settled. Readers may find it useful to make a note of the most recent decisions, pending their incorporation in future editions of the text-books.

Bench and Bar.

Mr. Reginald Berkeley, who studied law at Auckland University College and was admitted as a solicitor in New Zealand in the year before the War, has achieved a triumph in his adaptation for the screen of Mr. Noel Coward's "Cavalcade" now showing in the Dominion.

His Honour Mr. Justice MacGregor recently admitted the following gentlemen as barristers and solicitors: Mr. K. Kirkcaldie, Associate to that learned Judge, on the motion of Mr. C. A. L. Treadwell; Mr. T. A. Cunningham, of Masterton, on the motion of Mr. A. R. Meek; and, as a barrister only, Mr. W. P. Coles, on the motion of Mr. G. Findlay.

The practice carried on by Messrs. J. R. Lemon and J. N. Smith, as Reid, Lemon, and Smith, has been dissolved; Mr. J. R. Lemon will continue to practice at the same address.

Mr. J. N. Smith, formerly of Messrs. Reid, Lemon, and Smith, Dunedin, has commenced practice on his own account at 161 Hereford Street, Christchurch.

Mr. A. H. Anthony, who was in partnership with Mr. T. G. Russell for over ten years, has re-commenced practice in Christchurch at the Union Steamship Company's Building.

Australian Notes.

By Wilfred Blacket, K.C.

Sir John M. Harvey, C.J. (N.S.W.).—The Stevens Government acted with customary weakness in promoting Sir John Harvey, C.J.E., to the Chief Justiceship, for although he is our most admirable citizen, and is much renowned in Equity, he has had merely a bowing acquaintance with the Common Law and Criminal Law Jurisdictions. This would not be of great consequence if he had time to explore those unfamiliar areas, but as he will have to retire at 70 he will have less than three years in which to do so. (Gregory Walker, J., a sound Equity lawyer, in earlier times, had to learn his in criminal law after his appointment to the Bench and he did this with quite remarkable celerity although he was apt always to refer to the indictment as the "statement of claim.") Harvey will only be "Acting" C.J. for the first six months, for the Government has granted Street, C.J., six months leave of absence (on full pay) from a position which by reason of his age he is not competent to fill—a sort of unintentional joke by means of which Street, C.J., will deservedly benefit.

The Wages of Skin.—Mr. Claud Luscombe-Newman, Managing Director of Riley Newman & Co. Ltd., skin and hide merchants was found as such director in possession of 1,561 opossum skins, and thereby became guilty of an offence, for this animal is protected throughout the State, the maximum penalty being £5 per skin. Following the usual rule of a reduction upon taking a quantity the magistrate assessed the penalty at £3 per skin, and let the Company off with a fine of £4,683. This is only the beginning of the Company's troubles for some thousands of similar skins are in transit to London and will be seized by the police on arrival. The skins in respect of which the fine was inflicted were packed in wool bales and had an outer covering of fox skins, so it was very clear that the Company was in the skin *and hide* business. It really is a very sad affair because Luscombe-Newman is a name of much renown in "Society," so the case could hardly have been more startling if Mr. Newman had been a practising churchwarden.

Chicago Rates for Crime.—Further details in the Lunyon and Quist matter mentioned in an earlier paragraph were revealed on Lunyon's trial at the General Sessions, Melbourne, on a charge of having incited Quist to burn down a house, owned but well insured and mortgaged by Lunyon. The prisoner was stated to have shown Quist a "Chicago Union" list of standard rates for crime. In this the charge for "lighting fires" was stated at £5. £10 was the charge for "knocking a man rotten," with 30/- extra for each arm broken. The rate for murder was £100, which seems exorbitant payment for such an incident in Chicago. One reason why Lunyon wanted to have his house burned was that his wife was living in it, and he apparently wanted to supply a new solution of the problem "why do wives leave home?" Lunyon who misconducted his own defence admitted that he had incited Quist to burn down the house, but complained bitterly because he had "gone back on his bargain," and so was necessarily convicted.

False Reports of Crime.—D. K. Mackintosh of Albert Park, Melbourne, had in his charge £5/10/- of his brother's money and lost it by the easy and simple expedient of attending a two-up school. Then, fearing, possibly, that his brother's views on bailment might cause him some annoyance he made a circumstantial report to the police about a person unknown who had assaulted him in the dead of night and stolen the money. The police thereupon became quite busy, but ultimately Mackintosh admitted that the whole story was false, and he was then charged with an offence at Common Law. The charge recited the story of the robbery and its falsehood and then alleged that thereby "he did cause members of the Victorian police force, maintained at public expense for the public benefit, to devote their time and services to the investigation of false allegations, thereby temporarily depriving the public of the services of those public officers, and in so doing did unlawfully effect a public mischief." He pleaded guilty so there cannot be any authoritative decision on the matter, but still the case may be a useful precedent to police officers generally for it is notorious that false complaints of crime are frequent enough to justify many prosecutions of this kind.

Flogging Preferred.—John Barclay, of Melbourne, needed a flogging. He had been convicted of robbery under arms, the victim having been a girl and the sentence imposed being five years imprisonment. Of course any man who does a thing like that "wants" flogging, but Barclay so much "needed" it that he went to the Criminal Appeal Court to ask for a solid flogging in lieu of a portion of his term of imprisonment. "I appeal to you," he said to the Bench, "to give me a flogging. Not a small flogging of ten strokes or so, but a severe flogging of fifty strokes or more. I want you to realise that I am sincere. I am not making a heroic gesture. I know that flogging is a severe punishment. It has been described to me as little short of torture. I am only a young man, and by the time I come out of gaol I shall be at least thirty-six years of age." But the Court was hard-hearted. It refused to give him his flogging, and said that the trial Judge might well have given him a longer sentence. And I may mention that in the distinction I have drawn between "need" and "want" I have been guided by the accurate diction of a Melbourne waitress. A customer who had spoken rudely to her looked at the menu card and asked, "Now what do you think I want?" And she replied, "I don't know, Sir, what you 'need,' but what you 'want' is a push in the face with a rotten tomato."

A Strange Omission.—Mr. Radford, J.P., presiding at Adelaide Police Court spoke somewhat harshly to a Solicitor named C. J. Gun for, being much provoked, he said to him:

> "Unfortunately, Mr. Gun, you have a tongue that will let you in for serious trouble one of these days. A witness will meet you outside and give you the most unmerciful thrashing you have had in your life, and the sooner it comes the better. You have fallen foul of the Supreme Court and the Magistrates, and have been put out of Court. That sort of thing not only brings discredit on yourself but also on the legal profession."

An so on, but strangely wholly omitted to mention the fact that the Solicitor was, beyond all doubt or question, "the son of a Gun."

New Zealand Conveyancing.

By S. I. Goodall, LL.M.

Transmission—II. Precedents.

1. Application by Representative of Deceased.
2. Application by Official Assignee in Bankruptcy.
3. Application by Survivor of Joint Tenants.
4. Notice of Marriage.

1.—*Application for Transmission by Representative of Deceased.*

In the matter of the Land Transfer Act 1915

and

In the matter of X.Y. of etc., Deceased.

I, M.N. of etc. do solemnly and sincerely declare as follows:

1. I am the executor of the Will of the above-named X.Y. deceased by virtue of Probate thereof granted to me by the Supreme Court of New Zealand at on the day of 19 under Number 193 .

[OR 1. I am the administrator of the estate of the above-named X.Y. deceased by virtue of Letters of Administration thereof (with Will annexed) granted to me by the Supreme Court of New Zealand at on the day of 19 under Number 193].

2. The said deceased and the person (variously) named and described as X.P.Y. of etc. (and X.P.O.Y. of etc.) in the undermentioned Certificate of Title (and Memorandum of Mortgage and Memorandum of Lease) were (all) one and the same person.

3. The said deceased was at the time of his death the registered proprietor of:

(1) An estate in fee-simple in all that etc. (*subject etc.*).

(2) An estate as mortgagee under and by virtue of Memorandum of Mortgage Number in all that etc. (*subject etc.*).

(3) An estate for a term of years under and by virtue of Memorandum of Lease Number in all that etc. (*subject etc.*)

4. By his said Will the said Deceased (*inter alia*) gave devised and bequeathed etc. (*here set forth trusts reposed in the personal representative by virtue of the will*).

[OR 4. *Here set forth the successors upon the death of the registered proprietor intestate*].

5. The said estate in fee-simple in the land first above described is subject also to an unregistered Memorandum of Lease etc.

6. Except as above set forth no person holds or is entitled to any estate or interest at law in equity affecting the said land mortgage and lease respectively of which the said deceased was so registered as proprietor.

7. I verily believe myself to be entitled by virtue of the said Probate (Letters of Administration) to be registered as proprietor of the said land mortgage and lease subject as aforesaid respectively and I do hereby apply to be registered as proprietor of the said land

mortgage and lease subject as aforesaid respectively by virtue of the said Probate (Letters of Administration).

AND I MAKE this solemn declaration conscientiously believing the same to be true and by virtue of the Justices of the Peace Act 1927.

DECLARED MADE AND SUBSCRIBED etc.

Correct etc.

2.—*Application for Transmission by Official Assignee in Bankruptcy of Property of Bankrupt.*

IN THE MATTER of the Land Transfer Act 1915
AND
IN THE MATTER of the Bankruptcy Act 1908
AND
IN THE MATTER of A.B. of etc. a bankrupt.

The Official Assignee in Bankruptcy of the Property of A.B. of etc. a bankrupt DOTH HEREBY APPLY to be registered as proprietor of all the estate(s) and interest(s) of the said bankrupt in the (respective) land(s) more particularly described in the subjoined declaration upon the grounds therein set forth.

DATED at this day of 19

EXECUTED by the Official Assignee in Bankruptcy of the property of A.B. by signing his private name over his official name and affixing hereto his seal of office in the presence of :

I, M.N. of etc. Civil Servant do solemnly and sincerely declare as follows :

1. I AM the Official Assignee in Bankruptcy at .

2. ON the day of 19 the above-named A.B. (hereinafter called "the Bankrupt") was adjudicated a bankrupt in the Supreme Court of New Zealand sitting at in the Judicial District pursuant to and within the meaning of the Bankruptcy Act 1908 notice whereof is published in the New Zealand Gazette Number of the day of 19 at page .

3. ON the day of such adjudication the Bankrupt was registered as proprietor of an estate or interest etc.

4. THE said estate is subject to the following encumbrances that is to say :
(1) Etc.
(2) Etc.

5. To the best of my knowledge information and belief except as above set forth no person holds or is entitled to any estate or interest at law or in equity affecting the said estate(s) or interest(s) of which the Bankrupt was so registered as proprietor.

6. I VERILY believe myself to be entitled by virtue of such adjudication to be registered as proprietor of the said estate(s) or interest(s) of which the bankrupt was so registered as proprietor subject as aforesaid.

AND I MAKE this solemn declaration conscientiously believing the same to be true and by virtue of the Justices of the Peace Act 1927.

DECLARED etc.

Correct, etc.

(To be concluded.)

Legal Literature.

Land and Income Tax Law and Practice, by H. A. Cunningham, LL.D., A.I.A.N.Z., Barrister and Solicitor, with a Section **Income Tax Practice,** by C. E. Dowland, A.R.A.N.Z., Commissioner of Taxes. Pp. xli ; 436. Butterworth and Co. (Aus.) Ltd.

A REVIEW BY PROFESSOR R. M. ALGIE, PROFESSOR OF LAW, AUCKLAND UNIVERSITY COLLEGE.

Solicitors throughout the Dominion will welcome the news that at last we have an authoritative treatise upon that most difficult branch of our work : the law relating to Land and Income Tax. The word "authoritative" is properly applied to the book recently published over the names of Dr. Cunningham and Mr. Dowland and bearing the title "Land and Income Tax Law and Practice." A glance at the Table of Contents reveals the fact that the learned authors have applied to their subject the same method of division as that to which in by-gone days "All Gaul" was subjected : they have divided their topic into three parts, the two first of which have been allotted to Dr. Cunningham, while the third is the share of the Commissioner of Taxes, Mr. C. E. Dowland. Fondly might the taxpayer hope that the "tax payable" would be divisible in a similar manner and that the share of the Department would dwindle to one only of the three resultant parts. But the subject of taxation is ill-suited to this apparent levity. Let me say, then, that I have read through this book from cover to cover, and I am left with the conclusion that it supplies a long felt want, and supplies it adequately ; it must find an immediate place amongst those books which are regarded as necessities in a solicitor's library. If I were in practice, I would not be without it : one could hardly say more. Practising accountants, banking, and commercial men ought to find such a book as this absolutely invaluable. In writing in this manner, I hope I am performing a useful and reliable service for my fellow members of the profession. I may point out, too, that the major portion of this book constituted the thesis which Dr. Cunningham presented to the University of New Zealand, and the University may well feel proud of the fact that it has set the seal of its Doctorate upon so complete and so able a work. I cannot claim to have had much experience in matters relating to the law governing taxation, but I can say that upon two occasions recently my work would have been greatly lightened had this book been within reach.

On the purely mechanical side, this new work has a very great many points of outstanding merit. I have tested the Index and have found it to be full and serviceable. The plan adopted of numbering the paragraphs in the text is an excellent one : reference is thereby made much easier and a simple means is provided whereby practitioners may easily annotate their copy and keep it up to date. I have checked at random quite a number of the case references and have found them to be accurate. Finally, I am bound to say that I consider that the learned authors have treated their respective portions of the text in a detailed yet thoroughly lucid manner. The pages devoted to Forms ought to prove very useful indeed. Altogether, I am convinced that the authors have rendered us a signal service in the publication of this work, and I am satisfied that this book should have a conspicuous place amongst those works which deal with special branches of our New Zealand legislation.

Practice Precedents.

Grant of Letters of Administration to a Stranger.

Section 3 of the Administration Act, 1908, provides that the Court shall have jurisdiction to grant Administration *of the estate of any* deceased person leaving estate in New Zealand. Note s. 16 of the Judicature Act, 1908; and see Rule 517 *et seq* and the notes thereto. See also the notes prior to Rule 517 of the Code of Civil Procedure, *Stout and Sim's Supreme Court Practice*, 7th Ed., 324-327.

As to grant to a stranger see *Garrow on the Law of Wills and Administration*, 605 *et seq.*, and *Mortimer on Probate Law and Procedure*, 2nd Ed. 402 *et seq.*

From a perusal of the foregoing it will be seen that s. 73 of the Court of Probate Act, 1857 (Imp.), *Halsbury's Statutes of England*, Vol. 8, 287, applies and that in special circumstances a grant will be made to a stranger. Section 73 of that Act was repealed by the Administration of Estates Act, 1925 (Imp.), s. 56 and Sch. 11, but only so far as it applies to death occurring after the commencement of that Act—*i.e.*, January, 1926. It has been ruled in our Courts in New Zealand that this latter enactment does not affect the position in New Zealand, and that s. 73 aforesaid is still operative in the Dominion. *In re Hunter* [1932] N.Z.L.R. 911, 916; [1932] G.L.R. 317, 530.

Section 73 sets out the special circumstances which entitle a stranger to apply for a grant: see *Garrow on the Law of Wills and Administration*, 610-617, and *In re Armour*, decd. (1909) 28 N.Z.L.R. 556; 11 G.L.R. 378; and note *In re Fisher* [1916] G.L.R. 676, where administration was granted to the widow and a stranger.

The Court has a discretion but there must be special circumstances and mere consent of next of kin does not give jurisdiction: Rule 531J of the Code of Civil Procedure, *Stout and Sim's Supreme Court Practice*, 7th Ed. 336.

In these precedents it is assumed there is a widow and one infant son and no other next of kin.

A Bond for the due administration must be entered into together with two approved sureties. In lieu of individual sureties an approved Insurance Company may be accepted. For General information a List of Approved Insurance Companies is given at the end hereof.

MOTION FOR GRANT OF LETTER OF ADMINISTRATION.

IN THE SUPREME COURT OF NEW ZEALAND.

.....District.

.....Registry.

IN THE ESTATE of of in the Dominion of New Zealand deceased.

Mr. of Counsel for of the City of Secretary TO MOVE before the Right Honourable Chief Justice of New Zealand at his Chambers, Supreme Court House on day the day of 19 or so soon thereafter as Counsel can be heard FOR AN ORDER that Letters of Administration of the estate effects and credits of the above-named deceased be granted to the said UPON THE GROUNDS that the next of kin of the said deceased consents to such grant AND UPON THE FURTHER GROUNDS that there are Special Circumstances for such grant as appears in the affidavits filed in support hereof.

Dated at this day of 19 .

Counsel moving.

Certified pursuant to Rules of Court to be correct.

Counsel moving.

References: (A memorandum should be attached calling attention to the special circumstances—see introduction hereto.)

AFFIDAVIT OF

(*Same heading.*)

I of the City of in the Dominion of New Zealand make oath and say as follows:—

1. That I knew of the above-mentioned deceased when alive and that the said deceased was resident or domiciled at within this Judicial District and the nearest Registry Office of this Court to the place where the said resided is at .

2. That the said deceased died at on or about the day of 19 as I am able to depose from having seen his dead body after death.

3. That the said deceased was my brother-in-law and that deceased left him surviving his lawful widow and an infant son aged years.

4. That the said deceased was married to my sister the widow of deceased on or about the day of 19 .

5. That to the best of my knowledge information and belief deceased had not been married prior to that date of marriage.

6. That since the death of the said deceased I have had access to his papers and repositories and that I have searched diligently therein for any will or testamentary writing made or signed by the said deceased and I have been unable to find any such will or testamentary writing.

7. That I have made inquiries of the solicitors who acted for the said deceased during his lifetime and of the bankers with whom he banked and of all persons likely to know if the said deceased had made or signed any will or testamentary writing and I have been unable to learn that the said deceased ever made or signed any such will or testamentary writing.

8. That I do verily believe the said deceased died intestate.

Sworn, etc.

AFFIDAVIT OF IN SUPPORT.

(*Same heading.*)

I of in the Dominion of New Zealand [*occupation*] make oath and say as follows:—

1. That the above-named deceased was my brother-in-law.

2. That one Secretary of Limited consulted me on the day of 19 concerning the granting of Letters of Administration to the widow of the said deceased.

3. That prior to that date and subsequently I consulted the said (widow) and also her medical adviser Dr. .

4. That the said Dr. advised me that (widow) was in a very highly nervous condition and he further advised me that the death of her late husband had had a serious effect on her health and that she was not in a fit state to administer the estate of deceased or to assist in winding up the affairs of Limited a company in which deceased was the principal shareholder.

5. That to the best of my knowledge information and belief the said deceased had not at the time of his death or at any other time any relatives or next of kin other than his widow and child resident or domiciled in New Zealand.

6. That I am of opinion that having regard to the circumstances of the estate and to the state of health and the inexperience of the widow of deceased, the estate will be more expeditiously and conveniently managed and wound up by of Secretary.

Sworn, etc.

AFFIDAVIT OF

(*Same heading.*)

I, of the City of in the Dominion of New Zealand, Secretary, make oath and say as follows:—

1. That I am the Secretary of Limited a company duly incorporated under the Companies Act, 1908, and carrying on business in the City of as Hotel Brokers.

2. That the said company was registered as a private company with a capital of £ divided into shares of £1 each of which shares were held by (deceased) and shares by his wife.

4. That I am informed and verily believe the said died intestate.

5. That I am familiar with the affairs of the said company and immediately on the death of the deceased I prepared a Statement of Assets and Liabilities of the company a copy of which is attached hereto and marked "A."

6. That the affairs of the company are complicated and involve amongst other things calling in of moneys renewal of mortgages and leases and all such other acts relating to the business of hotel brokers.

7. That it is in the interests of creditors and others concerned that the said company be carried on until such time as it may be satisfactorily wound up.

8. That I have been requested by the widow of the said deceased to apply for Letters of Administration.

9. That I know the widow of deceased is in a highly nervous condition and I am informed by her medical adviser that it would be detrimental to her health to undertake the administration of deceased's affairs.

10. That to the best of my knowledge information and belief the estate effects and credits of the said deceased to be administered are under the value of £ .

11. That I will exhibit unto this Court a true full and perfect inventory of all the estate effects and credits of the said deceased within three calendar months after the grant of Letters of Administration to me and that I will file a true account of my administration within twelve months after the grant of Letters of Administration to me.

Sworn, etc.

AFFIDAVIT OF
(*Same heading.*)

I, of the City of in the Dominion of New Zealand, widow, make oath and say as follows:—

1. That I am the widow of the above-named deceased who died at on or about the day of 19 leaving him surviving me this deponent and one child named aged years.

2. That the above-named deceased had no relatives or next of kin other than myself and my said infant son resident or domiciled in New Zealand.

3. That I consent to the grant by this Court of Letters of Administration of the estate effects and credits of the said deceased to of Secretary.

Sworn, etc.

LETTERS OF ADMINISTRATION.
(*Same heading.*)

To of Secretary.

WHEREAS the said deceased departed this life on or about the day of 19 intestate AND WHEREAS it appears to this Court to be convenient by reason of the special circumstances in this matter to appoint you to be the Administrator of the estate effects and credits of the said deceased who but for the provisions of section 73 of the Act of the Imperial Parliament of Great Britain and Ireland 20 and 21 Victoria C. 77 would not have been entitled to apply for such grant of Administration YOU ARE THEREFORE fully empowered and authorised by these presents to administer the estate effects and credits of the said deceased and to demand and recover whatever debts may belong to his estate and pay whatever debts the said deceased did owe so far as such estate effects and credits extend: you having been already sworn well and faithfully to administer the same and to exhibit a true and perfect inventory of all the estate effects and credits unto this Court on or before the day of 19 next, and also to file a true account of your administration thereof on or before the day of 19 AND YOU ARE THEREFORE by these presents constituted administrator of all the estate effects and credits of the said deceased.

Given under the seal of the said Supreme Court of New Zealand at this day of 19 .

Registrar.

BOND (BY APPROVED INSURANCE COMPANY) AS SURETY.
(*Same heading.*)

KNOW ALL MEN BY THESE PRESENTS that we of the City of Secretary AND THE (*company*) a company duly incorporated in New Zealand and having its registered office at Street in the City of are held and firmly bound unto Registrar of the Supreme Court for the said District at in the sum of £ for which payment well and truly to be made to the said (Registrar) or to such Registrar for the time being at WE DO AND EACH OF US DOTH BIND OURSELVES and each of us and the executors and administrators and successors of us and each of us jointly and severally firmly by these presents.

WHEREAS by Order of this Court of the day of 19 IT IS ORDERED that Letters of Administration of the estate effects and credits of late of : : be granted to the said (Secretary) on his giving security for the due administration thereof AND WHEREAS the said (Secretary) has sworn that to the best of his knowledge information and belief the said estate effects and credits are under the value of £ NOW THE CONDITION of the above-written Bond is that if the above-bounden (Secretary) exhibits unto this Court a true and perfect inventory of all the estate effects and credits of the said deceased which shall come into his possession or any other person by his order or for his use on or before the day of 19 and well and truly administers the same according to law and renders to this Court a true and just account of his said administratorship on or before the day of 19 then this Bond shall be void and of none effect but otherwise shall remain in full force.

Dated at this day of 19 .

Signed, etc., in the presence of .

Administrator.

The common seal of, etc., was hereto put and affixed, etc., in the presence of .

[Seal.]

INSURANCE AND OTHER COMPANIES.

APPROVED AS SURETIES UNDER THE ADMINISTRATION ACT, 1908.

Alliance Assurance Co., Ltd.
British Dominions General Insurance Co., Ltd.
Commercial Union Assurance Co., Ltd.
Dalgety and Company, Ltd.
Eagle, Star, and British Dominions Insurance Co., Ltd.
General Accident, Fire, and Life Assurance Corporation, Ltd.
Insurance Office of Australia, Ltd.
Liverpool & London & Globe Insurance Co., Ltd.
London Assurance Company.
London and Lancashire Fire Insurance Co., Ltd.
Mercantile and General Insurance Co., Ltd.
National Insurance Company of New Zealand, Ltd.
New Zealand Insurance Company, Ltd.
North British and Mercantile Insurance Co., Ltd.
Northern Assurance Co., Ltd.
Norwich and London Accident Insurance Co., Ltd.
Norwich Union Fire Insurance Society, Ltd.
Ocean Accident and Guarantee Corporation, Ltd.
Phoenix Assurance Co., Ltd.
Prudential Assurance Company, Ltd.
Pyne, Gould, Guiness, Ltd.
Queensland Insurance Co., Ltd.
Royal Insurance Co., Ltd.
South British Insurance Company, Ltd.
Southern Union General Insurance Co. of Australasia, Ltd.
Standard Insurance Co., Ltd.
Sun Insurance Office.
Union Assurance Society, Ltd.
United Insurance Co., Ltd.
Victoria Insurance Co., Ltd.
Yorkshire Insurance Co., Ltd.

Wellington Law Students' Annual Ball.—The Wellington Law Students' Society and the Victoria University Law Faculty Club are holding their annual ball in the Mayfair Cabaret, on 25th inst., at 8.30 p.m. They announce themselves as "Contributors to the Law Clerks' Enjoyment Guarantee Fund."