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" All men have two ways of improvement, one arising from their own experience, one from the experiences of others."

—POLYBIUS.

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The Necessity for Periodical Revision of Wills.

We have all heard the story of the man who made a will, and two years afterwards rushed into his solicitor's office in a state of great excitement. " I have been thinking over that will you made for me, and I want to alter it," he said. " You have not even left me a three-legged stool to sit upon." Now, while the client's knowledge of law may have been at fault, still his mind worked along the right channel; as it would be well, both for the profession and their clients, if a periodical revision of wills were made. Consequently, solicitors should put before their clients the great importance of reconsidering periodically the terms of their wills in the light of changed circumstances, whether of family life, of economic conditions, or of altered legislation.

Let us, therefore, with Mr. Pickwick, get together and discuss the mutability of human affairs in their relation to the making of wills. It may, for this purpose, be convenient to review some examples of circumstances in which the review of wills has been deferred until the Courts have had to fill in the gaps left by the testator, " with costs of all parties to be paid out of the estate."

In the year 1835, Messrs. Hayes and Jarman lamented the notion that, while to the preparation of a deed learning and experience are essential, the disposition of a man's property may safely be confined to the minimum of legal knowledge. They add:

> " Hence, the conveyancer is rarely consulted, the solicitor is often dispensed with, and the schoolmaster too frequently called in; or, if the schoolmaster be not at hand, there is commonly to be found in every village a will-maker of equal courage and ignorance, the collector of exploded forms and phrases. This notion proceeds upon the two-fold error that wills are not expounded according to the rules of law, but according to the dictates of common sense—and that common sense is the same in all men. . . . A will is alone capable of exhausting the science and ingenuity of the most able conveyancer."

This is, no doubt, elementary; but revision of wills should begin with those of the " home-made " variety, a recent example of which was disclosed in *In re Jennings*, [1932] G.L.R. 5, where the Court held one trust too vague for enforcement and the restriction as to a temporary home inoperative as a trust, because it imposed no obligation to sell and was repugnant to the absolute gift. Then, in another such instrument, *Wallace v. Wallace and Others*, [1932] G.L.R. 333, the testator gave all his property to his wife " to be held on trust by her for the benefit of our children," she to " have control of the estate during her lifetime." It was held that the wife took no beneficial interest under the will, and did not impliedly take as a life tenant. The learned Judge suggested that her only remedy was under the Family Protection Act. Loss of time and money would have been saved if a proper revision of the will had been effected in this case as well as in the others to which we refer.

Revision of wills is necessary even when wills have been competently drawn. A revision of wills in the following cases would possibly have saved expensive litigation. In *In re De Castro*, [1932] G.L.R. 653, His Honour Mr. Justice Blair remarked in his judgment:

> " The wording of the will is peculiar. . . . It almost looks as if a line has been omitted by the typist who typed the will for execution. Be this as it may, I have to construe the will as executed by the testator."

In *In re Witherow*, [1932] N.Z.L.R. 1132, G.L.R. 191, there were two apparent contradictions in the will—namely, two irreconcilable gifts; and, also, property was given to one person absolutely and to another in the event of the former's death. *In re Fitton*, [1932] N.Z.L.R. 1508, G.L.R. 633, provides an example of draftsmanship that could have been improved on second thoughts. A gift was made to a daughter " in the event of any child of mine whether under the age of 21 years or not dying either before or after my decease." The daughter's death at some time was a certainty and not a contingency, but it required recourse to the Court to clarify the position. In *In re Syms*, [1932] N.Z.L.R. 332, G.L.R. 22, testatrix directed " if any of my children shall die in my lifetime " the children of such child should take their parent's share. It was held that the words used prevented the share of a daughter of the testatrix who had died prior to the execution of the will passing to the daughter's children. Had the testatrix revised her will during the eighteen months during which she lived after having executed it, she might have effected an equal sharing of her estate as she had probably intended to do, and the children of the daughter who had died before her mother's will was made would have taken their share.

Also among last year's many will cases, the Court was asked to say which of two persons bearing the same surname and both well-known to the testator was the object of his bounty. Neither answered both the Christian name and the description. Had the testator gone over his will in the five years which followed its making, the ambiguity may have been cleared up. Another variation of the unrevised will appeared in *In re Clifford*, [1932] N.Z.L.R. 390, G.L.R. 191, where the learned Judge states that the testator was disposing of a large estate, but did not seek the assistance of a skilled draftsman. The two codicils were prepared by a solicitor, but the testator did not allow the solicitor to see the will itself, and he apparently wished to keep the contents of the will secret. Considerable difficulty would have been saved the executors if the will had been revised or the codicils drawn with knowledge of it.

Examples of wills in which needed revision would have saved considerable heart-burning abound in the *Reports*, those to which we have referred being instances taken at random from last year's " crop " of will cases. A more practical consideration is to prevent, as far as possible, the possibility of posthumous difficulty arising from wills executed by living testators.

It is no use attempting to tell a Court what the testator intended, or in what circumstances he expected the provisions of his will to take effect, since such evidence is inadmissible. Take, for example, the death during his lifetime of members of a class of persons whom he intended to benefit. A reference to *Garrow's Law of Wills and Administration*, p. 183 *et seq.*, will show that failure to revise a will on the death of an intended beneficiary may totally defeat the testator's intention. The same work is full of material to warn testators of the folly of not revising their wills while yet there is time.

The intervention of changed economic conditions, with resultant lessening in values and reduction of income, has shown how extremely short-sighted are all human devices to forestall consequences. And, since no man can foretell the future, he must periodically revise his testamentary dispositions in the light of the present if his wishes are to become effective. In *In re Georgetti*, [1933] N.Z.L.R. s. 89, testator made his will and directed his trustees to pay to his wife during her lifetime an annuity of £1,000 payable out of income. He died when the depression was well advanced. Although his station-property was worth £71,000 and his stock £15,000, and his estate showed assets of £58,000 in excess of liabilities, the income was negligible and a sale at the present time would be disastrous. However, the Court exercised its overriding authority in order to save the estate for the benefit of the family as a whole, and authorised payment of the widow's annuity out of capital: "with the costs of all parties allowed after taxation out of the estate." In that will there was a trust for sale and conversion and for investment of the proceeds, a direction to pay the widow's annuity out of capital, and power to carry on testator's sheep-farming business. There was *no* trust for sale and conversion, but a direction to carry on a farm and pay the widow a stated annuity out of income, in the recent case of *In re Bassett*, [1933] N.Z.L.R. s. 166. His Honour the Chief Justice, after a careful consideration of *In re Douglas*, [1922] N.Z.L.R. 984, and *In re Georgetti* (*supra*), found that an order for payment of the widow's annuity out of capital could not be justified. The testator's estate showed a net value of £17,000 at his death in 1922, and income was ample for payment of the annuity until 1926 since when there had been a deficiency or no income at all. "The case is a very unfortunate one for the widow," His Honour remarked.

The re-reading of wills made in better times will show that present economic conditions have repercussions in a variety of ways. For example, since the possibilities are many, a testator may have provided by specific legacies as he thought adequately for his family, and left his residue to charity: the value of his estate, both as to capital and income, has been considerably reduced, with the result that without a revision of his will the charity will benefit out of proportion to testator's intentions relative to his family. Present conditions emphasise the necessity for provision, where farming operations are directed to be carried on, for the incidence of losses: unless such losses are specifically charged on capital, the widow life-tenant may remain destitute for the rest of her days.

Again, a man may have set up his children in life and considered such provision was so ample that he could dispose of his remaining estate for the benefit of others. Through no fault of their own, his children have lost their all. Surely the testator, who intends that they shall have a competence in any event, must revise his will in view of the altered circumstances.

A number of wills have made specific legacies of "War Bonds" and similarly-described securities: there is need to re-read wills in view of dispositions and variations of such investments since the will was made. The recent New Zealand Debt Conversion Act, 1932-33, in itself, is an argument for the overhaul of many wills, as no doubt practitioners have realised.

Consideration should be given to the effect of the protection afforded by s. 65 of the Life Insurance Act, 1908, and s. 66 as amended in 1925, particularly as regards the payment of an annuity. If testator's widow is given a life interest in residue, she will take the income of the proceeds of the policy or policies which form part of the residuary estate; but, if she is given an annuity only, she cannot receive any income of such proceeds, since an annuity is a legacy. In *In re Adeane*, [1933] N.Z.L.R. 489, G.L.R. 483, it was held that a general direction for the payment of debts does not render policy moneys available for payment of testator's debts; and, consequently, for payment of legacies which include annuities. Bearing that fact only in mind, there must be a large number of wills which could be reconsidered with advantage.

There remain the possibilities of changes in family circumstances. Apart from the matters of death, birth, and marriage to which later reference is made, divorce and adoption should be taken into consideration by a testator if either event has occurred since his will was made. For instance, if a man has provided a gift to his wife "so long as she continues unmarried," and he subsequently divorces her, then, if he does not alter his will, she will take as if she had remained his wife: *Knox v. Wells*, (1883) 48 L.T. 655; and see also *In re Morrieson, Hitchins v. Morrieson*, (1888) 40 Ch. D. 30, and *In re Kettlewell, Jones v. Kettlewell*, (1907) 98 L.T. 23.

It must never be forgotten that if an order of events contemplated by a testator fails to occur, many of the provisions of his will become unintelligible or impossible. If he has knowledge of such changed circumstances, it is clearly his duty to revise his will accordingly.

We have not attempted to exhaust the possibilities of wills working unintended post-mortem injustice or causing insuperable difficulty, due to lack of revision before the intervention of death renders alteration impossible and the testator's real intentions negligible. But this fact should be borne in mind: every birth, death, marriage or re-marriage of persons in any way affected by testamentary dispositions, after the execution of the will and before the testator's death, may render abortive the most judicious advice given at the time of such execution.

The average man does not like to be accused of short-sightedness or lack of prudence in business affairs. The Roman law centuries ago defined a will as "the legal expression of our will, concerning what we wish to be done after our death" (*Testamentum est voluntatis nostrae justa sententia de eo quod quis post mortem suam fieri vult*). It is worse than useless to leave a will which does not express clearly what is intended, and circumstances arising after execution may alter the best-intentioned dispositions. In addition, to use the words of writers of over a century ago, which are as true to-day as when they were penned: it is, to put it mildly, a foolish policy "which calculates the present fee, and disregards the ravages of a posthumous suit."

Summary of Recent Judgments.

JUDICIAL COMMITTEE
1933.
July 10, 11, 12; 28.
Lord Atkin
Lord Tomlin
Lord Macmillan
Lord Wright
Sir George Lowndes

BROOKER v. THOMAS BORTHWICK AND SONS (AUS.) LTD.
RYAN v. THOMAS BORTHWICK AND SONS (AUS.) LTD.
PRENDERGAST v. NELSON'S, LTD.
ASHWELL v. BRENNAN AND ANOR.

Workers' Compensation—Accident—Whether Injury caused by Accident as Result of Severe Earthquake arose "out of" the employment—Workers' Compensation Act, 1922, s. 3.

Appeal from the decision of the Court of Appeal of New Zealand, reported [1932] N.Z.L.R. 225; 8 N.Z.L.J. 18.

It had been agreed that the deaths and injuries were caused by "accident" and were in the course of employment.

Sir Stafford Cripps, K.C., *with him* **G. Granville Slack,** *for the* appellants; **Wilfred Greene, K.C.,** with him **W. H. Duckworth** and **H. P. Richmond,** for the respondents.

The judgment of the Board was delivered by LORD ATKIN, and was to the effect that the question—whether the deaths and injuries referred to in the Case on Appeal were caused by *an accident which arose* "out of" the employment—had been finally decided by the decision of the House of Lords in *Thom v. Sinclair*, [1917] A.C. 127. Their Lordships disagreed with respondents' contention that the passage in Lord Haldane's judgment at p. 136 in which he refers to a stroke of lightning was *obiter* and wrong, and they added that the illustration appeared to be of the essence of the noble and learned Lord's argument.

Their Lordships said:

"The accident must be connected with the employment: must arise out of it. If a workman is injured by some natural force such as lightning, the heat of the sun, or extreme cold, which in itself has no kind of connection with employment, he cannot recover unless he can sufficiently associate such injury with his employment. This he can do if he can show that the employment exposed him in a special degree to suffering such an injury. But if he is injured by contact physically with some part of the place where he works, then, apart from questions of his own misconduct, he at once associates the accident with his employment and nothing further need be considered. So that if the roof or walls fall upon him, or he slips upon the premises there is no need to make further inquiry as to why the accident happened."

After saying that the substance of the matter was that in every case the words of the section alone were to be considered, and it was unsatisfactory to speak of the proximate cause as determining the matter, their Lordships considered that it was sufficient for them to say that it appears to have been authoritatively decided that where a workman is injured by the falling upon him of the premises where he is employed, the accident necessarily arises out of the employment.

Brooker's, Ryan's, and **Prendergast's** cases decided accordingly; **Ashwell's** case held to be within the decisions as to street risks and giving rise to a claim for compensation.

Appeals allowed, with costs of appellants to be paid by respondents.

Simpson v. Sinclair, or **Thom v. Sinclair,** [1917] A.C. 127, followed.

Dennis v. A. J. White & Co., [1917] A.C. 479; **Upton v. G.C. Railway Company,** [1924] A.C. 302; **Lawrence v. Matthews,** [1929] 1 K.B. 1 referred to.

Andrew v. Failsworth, [1904] 2 K.B. 32; **Kelly v. Kerry County Council,** (1908) 1 B. W.C.C. 194; **Karemaker v. S.S. "Corsican,"** (1911) 4 B. W.C.C. 295; **Warner v. Couchman** [1912] A.C. 35 mentioned,

Dictum of Lord Wrenbury in **Allcock v. Rogers,** (1918) 11 B. W.C.C. 154, explained.

Judgment of the Court of Appeal reversed.

Solicitors: Wray, Smith, and Halford (London) for **P. J. O'Regan and Son** (Wellington) and **Luckie and Wiren** (Wellington); **William Hurd and Son** (London) for **Buddle, Richmond, and Buddle** (Auckland) and **Bell, Gully, Mackenzie, and O'Leary** Wellington).

SUPREME COURT
In Chambers.
Auckland.
Mar. 29, 30;
Aug. 16.
Herdman, J.

WONG DOO v. KANA BHANA.

Practice—Commission to Take Evidence of Virtual Plaintiffs—Strict Exercise of Court's Discretion—Code of Civil Procedure, R. 177.

Summons for an order to take evidence for the plaintiff on commission.

Leary, for the plaintiff; **Meredith,** for the defendant.

Held: The Court's discretion is strictly exercised where application is made for an order for the taking on commission of the evidence of witnesses who are virtual plaintiffs in an action to be heard before a jury, and where there is necessity for strict proof and for the careful cross-examination of such witnesses on vital issues.

Principle enunciated by Lord *Esher*, M.R., in **Coch v. Allcock,** (1888) 21 Q.B.D. 181, applied.

Summons dismissed.

Solicitors: Bamford, Brown, and Leary, Auckland, for the plaintiff; **Meredith and Hubble,** Auckland, for the defendant.

NOTE:—For the Code of Civil Procedure, R. 177, see *Stout and Sim's Supreme Court Practice*, 7th Ed., p. 154.

Case Annotation: *Coch v. Allcock*, E. & E. Digest, Vol. 22, p. 581, para. 6362.

SUPREME COURT
Wellington.
In Banco.
1933.
July 11, 21.
MacGregor, J.

JUDD v. JUDD.

Destitute Persons—Jurisdiction—Separation and Guardianship Orders—"Whether or not there is Jurisdiction to make a Maintenance Order"—Limits of Magistrate's Discretion—Destitute Persons Act, 1910, ss. 17, 18.

In a complaint and summons under the Destitute Persons Act, 1910, the ground alleged by a wife against her husband was his failure to provide her and her infant child with maintenance. The complainant prayed for a separation order, a guardianship order, and a maintenance order. The Magistrate granted a maintenance order only, holding on the facts that the wife was not a "destitute person" within s. 17 (6) of the Act, and that the failure to maintain was not "wilful and without reasonable cause" within the meaning of s. 18 (4) thereof. He declined to grant either a separation order or a guardianship order.

On appeal from the Magistrate's refusal to grant a separation order and a guardianship order,

R. R. Scott, for the appellant; **C. R. Barrett,** for the respondent.

Held, dismissing the appeal, 1. That on a complaint under s. 17 of the Destitute Persons Act, 1910, the jurisdiction of a Magistrate to make a separation order or a guardianship order is defined in and circumscribed by the express terms of subs. 1 (*a*), (*b*), (*c*), and (*d*) of that section.

2. That in every case, whether the complaint be for maintenance alone, or for a maintenance order coupled with a separation order and/or a guardianship order, one or other of the several specific grounds of complaint set out in s. 17 (1) must be proved to the satisfaction of the Magistrate.

Ansley v. Ansley, [1931] N.Z.L.R. 1010, considered.

3. That the words in s. 18 (1), "and whether or not there is jurisdiction to make a maintenance order," mean that if the evidence does not prove failure to maintain but does prove, for example, persistent cruelty, on the part of the husband, the Magistrate may, if he thinks fit in all the circumstances of the case, make a separation order, but not a maintenance order.

Semble, Where in a complaint and summons under the Destitute Persons Act, 1910, the sole ground alleged by the wife against her husband was that "he failed and intends to fail to provide her and her infant child with maintenance," and the complainant went on to pray for a separation order, a

guardianship order, and a maintenance order, that, in itself, would have justified the Magistrate in refusing to make any order other than a maintenance order on the complaint in question.

Appeal dismissed.

Solicitors: **R. R. Scott,** Wellington, for the appellant; **Bunny and Barrett,** Wellington, for the respondent.

NOTE:—For the Destitute Persons Act, 1910, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, 1908-1931, Vol. 2, title *Destitute Persons*, p. 896.

SUPREME COURT
Palmerston North
1933.
Aug. 1, 15.
Myers, C.J.

IN RE BASSETT (DECEASED).

Trustee—Trust to carry on Farm and pay Annuity to Widow out of Income—No Trust for Sale and Conversion—Insufficiency of Income—Estate unlikely to be sufficient for Payment of Specific Legacies and Residuary Gifts—Order for Payment of Widow's Annuity out of Capital refused.

The testator had directed his trustees to carry on his farm and to pay his widow out of the income of his estate an annuity of £300. The income was insufficient for payment of the same, and it appeared that there would be no ultimate residue available for the residuary beneficiaries and insufficient in the estate to pay specific legacies to become payable on the widow's death.

Originating Summons by the trustees of Francis Bassett, deceased, to obtain *inter alia*, an order authorising the trustees generally when the net income is insufficient for the purpose to pay the widow's annuity out of capital.

A. M. Ongley, for plaintiffs; **Dorrington** and **H. R. Cooper,** for two groups of defendants.

Held: That an order to pay the widow's annuity or any deficiency in same out of capital could not be justified on the principle of *In re Douglas*, [1922] N.Z.L.R. 984, or *In re Georgetti*, [1933] N.Z.L.R. s. 89, where the trust was for sale and conversion with power to carry on a farming business.

In re Douglas, [1922] N.Z.L.R. 984, and **In re Georgetti,** [1933] N.Z.L.R. s. 89, explained and distinguished.

Solicitors: **Gifford Moore, Ongley, and Tremain,** Palmerston North, for plaintiffs; **P. W. Dorrington,** Dannevirke, and **Cooper, Rapley, and Rutherfurd,** Palmerston North, for defendants.

SUPREME COURT
Wellington.
1933.
Aug. 24, 26, 29.
Reed, J.

IN RE SIMMONDS (DECEASED), PUBLIC TRUSTEE v. STONE AND OTHERS.

Will—Construction—Bequests "To the Wounded and Disabled Soldiers of New Zealand" and "To a Home for Wounded Sailors of the British Empire"—Charitable Gifts—Scheme for Disposition.

Testatrix, by a will executed in 1921, directed her trustees to pay out of the moneys representing her net residuary estate, *inter alia*, "To the Wounded and Disabled Soldiers of New Zealand the sum of Four hundred pounds," and "To a Home for Wounded Sailors of the British Empire the sum of One hundred pounds." All parties agreed that the latter was a good charitable gift.

Answering the questions as to whether the said bequests were void for uncertainty; and, if not, what persons were respectively entitled and in what manner they were to be ascertained,

Broad, for the Public Trustee; **Young,** for the next of kin; **Smyth,** for "The Wounded and Disabled Soldiers of New Zealand; **F. W. Ongley,** for "The Wounded Sailors of the British Empire."

Held, 1. That, as the gift to "The Wounded and Disabled Soldiers of New Zealand" was not to individuals but to a section of the public, it was a charitable gift; and, although it was a gift direct, the absence of anything directly constituting a trust was immaterial as the Court could constitute the trust.

Verge v. Somerville, (1924) A.C. 496; **Attorney-General v. Clarke,** (1762) Amb. 422, 27 E.R. 282; **In re White, White v. White,** [1893] 2 Ch. 41; and **In re Buckley, Public Trustee v. Wellington Society for the Prevention of Cruelty to Animals (Inc.),** [1928] N.Z.L.R. 148, followed.

2. That the gift to "a Home for Wounded Sailors of the British Empire" disclosed a general intention in favour of charity, and did not fail because the object of such gift might be uncertain.

Keir v. Crum-Brown, [1908] A.C. 167, followed; **Verge v. Somerville,** [1924] A.C. 496, and **Public Trustee v. Denton,** [1917] N.Z.L.R. 263, referred to.

The Public Trustee was directed to submit a scheme for the disposition of each of the said bequests, such schemes to be submitted to the Attorney-General for his approval.

Solicitors: **Public Trust Office Solicitor,** Wellington, for the Public Trustee; **Young, White, and Courtney,** Wellington, for the next of kin; **R. P. Smyth,** Wellington, for "The Wounded and Disabled Soldiers of New Zealand"; **Ongley, O'Donovan, and Arndt,** Wellington, for "Wounded Sailors of the British Empire."

Case Annotation: *Verge v. Somerville*, E. & E. Digest, *Supplement* to Vol. 8, title *Charities*, para. 199*b*; *In re White, White v. White*, E. & E. Digest, p. 318, para. 996.

SUPREME COURT
Auckland.
1933.
June 19, 26.
Reed, J.

KEYS v. SAVAGE AND OTHERS.

Will—Testatrix, a Native declared to be a European—Failure of Contingency—Lapsed Legacy—"Dies Intestate"—Application—Native Land Act, 1931, s. 525 (5).

Originating Summons to determine several questions arising in respect of the will of Sarah Savage, deceased, who was a spinster and by birth a half-caste aboriginal Native of New Zealand, and, therefore, by birth a "Native" within the meaning of the Native Land Act, 1909, and the Native Land Act, 1931; but she was, pursuant to the provisions of s. 17 of the Native Land Amendment Act, 1912, by an Order in Council made on October 10, 1921, declared to be a European; and the said Order in Council remained in full force and effect at the date of her death (which occurred on July 4, 1932), the same never having been revoked. By her will she made provision at the date of her death for the entire distribution of her estate upon a certain contingency—viz., that her niece A. married a European. A. died five months after the death of testatrix, having never married, the contingency failed, and there was consequently a lapse of the legacy to A.

Section 525 (5) of the Native Land Act, 1931, provides that

"If any person declared to be a European dies intestate, the persons entitled to succeed to his property, real and personal, shall be such as would have been entitled to succeed thereto had he died a Native and as if his status had not been changed in his lifetime."

Lennard, for the trustee; **Drummond, C. C. Chalmers,** and **Kalman,** for various defendants.

Held, 1. That s. 525 (5) applies only to a complete intestacy.

2. That, on the facts, a complete intestacy did not exist, so that the devolution of the property undisposed of consequent on the failure of the contingency follows the ordinary rules applicable in the case of a lapsed legacy under a European will.

Public Trustee v. Sheath, [1918] N.Z.L.R. 129, and **In re Harrison,** [1916] N.Z.L.R. 1098, G.L.R. 816, *sub nom.* **Peat v. Mackie,** explained.

Solicitors: **Hodge, Keys,** and **Hookey,** Te Puke, for the plaintiff; **C. A. Suckling,** and **B. S. Barry,** Whakatane, for the defendants.

NOTE:—For the Native Land Act, 1931, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, 1908-1931, Vol. 6, title *Natives and Native Land*, p. 103.

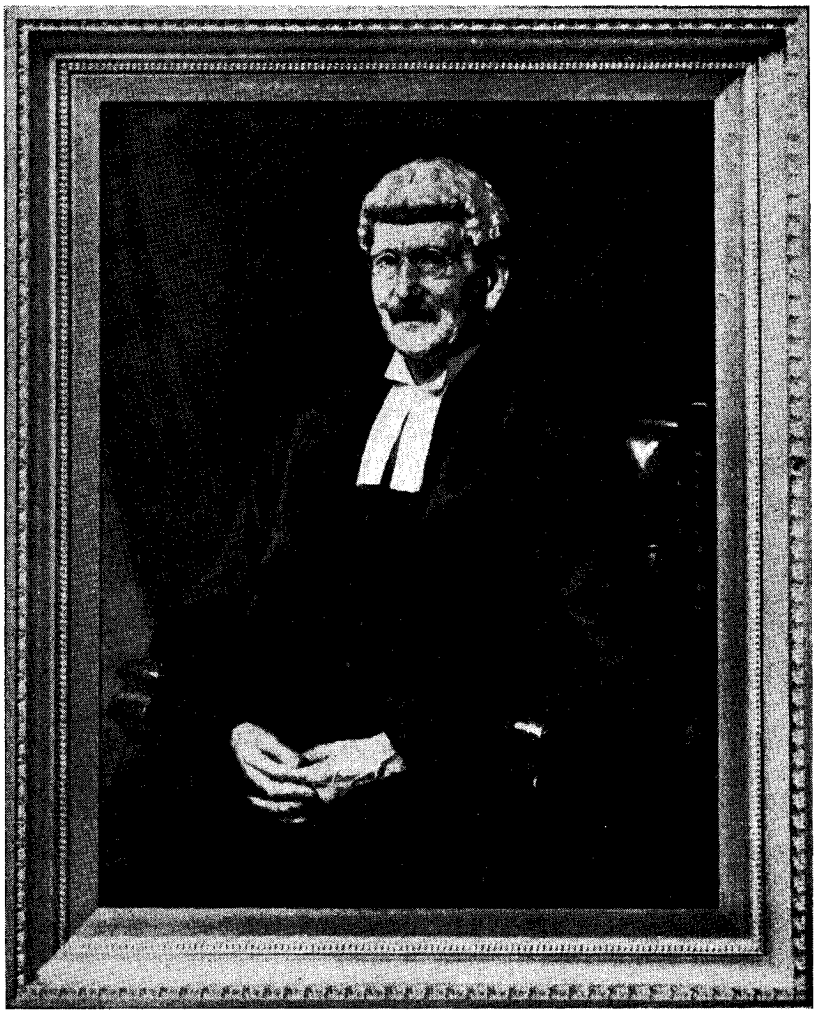
His Honour Mr. Justice Adams Retires.

CANTERBURY LAW SOCIETY'S TRIBUTE AND PRESENTATION.

His Honour Mr. Justice Adams sat on the Bench for the last time on August 3, after having been resident Judge in Christchurch for twelve years. A gathering was held in the Supreme Court on that day to bid him an official farewell on his retirement. There was a large attendance, fully representative of those whose work brought them in touch with the Court.

Those present included members of the Christchurch Bar, Mr. H. A. Young, S.M., and Mr. H. P. Lawry, S.M., Messrs. F. B. and H. S. Adams (sons of Mr. Justice Adams), representing the Otago Law Society; Mr. J. A. Wicks, representing the Canterbury College Law Students' Society, of which Mr. Justice Adams is patron, and officers and members of the Canterbury Justices of the Peace Association, and the senior Police officers.

Mr. R. Twyneham, President of the Canterbury Law Society, addressed His Honour before unveiling a portrait of the retiring Judge painted by Mr. A. F. Nicoll, which is to hang in the Supreme Court in company with that of Mr. Justice Denniston.



A. F. Nicoll.

His Honour Mr. Justice Adams: Presentation Portrait.

"My task," said Mr. Twyneham, "is difficult for two reasons: first, because upon me lies the onus of saying the things that we have often wanted to say and have never dared, and, second, because 'good-bye' is such a painfully final word to utter. However, the pain is alleviated to some extent by the pleasure of being able to tell your Honour of the regard and affection which we feel towards you."

The speaker went on to say that His Honour had won the regard of the members of the Bar, and he had gained their affection too.

"Now," continued Mr. Twyneham, "I come to that part of my duty which I face with sincere regret—to say good-bye to Your Honour as a Judge of the Supreme Court. Our regret comes not only from our lips, but from our hearts. You go from us without leaving an enemy behind you. You leave us with the satisfaction of knowing that in your hands the highest traditions associated with the New Zealand Judiciary have been fully upheld.

"We wish you peace and happiness in your years of leisure, and, in conclusion, I would say that although we have always addressed you as 'Your Honour,' we have always felt that you were 'our learned friend.'"

Mr. Twyneham then unveiled the portrait.

Mr. Justice Adams, in reply, said he had listened to Mr. Twyneham's remarks with interest, surprise, and pleasure, but found himself unable to believe that he had done anything to merit the kind things that he had said.

"It is, however," he said, "a great satisfaction to know that throughout the long period of about twelve years during which I have presided in this Court, the relations between Bench and Bar have been such as to permit the business of the Court to proceed without friction and in an atmosphere favourable to the administration of justice.

"I wish, however, to say that this happy result has been, and in the very nature of things must always be, largely brought about by the co-operation of Judge and counsel engaged in the cases which came before the Court, and especially the example of experienced counsel, who were frequently engaged in the more important cases. I am glad, therefore, to take this opportunity of saying that I have at all times received most valuable assistance from counsel. Without this assistance the work of a Judge would be very much more arduous and uncertain.

"Mr. Twyneham has been good enough to say that as occasion has arisen I have been of some assistance to practitioners in their work out of Court. This is no doubt true of every Judge. Barristers and solicitors

(*Concluded on page 231.*)

Suits By or Against Government Departments.

The Draft Bill Considered.*

By R. L. ZIMAN.

With a view to elucidating the provisions of the draft Bill it will be advisable in the first instance to outline some of the outstanding defects in the present law intended to be remedied by the Bill.†

I.—PRIVILEGES OF THE CROWN AS LITIGANT.

When considering actions by or against the Crown, we find the Crown in a privileged position in both cases. In actions brought by the Crown, it may be said generally that the Crown has all the rights of an ordinary plaintiff and certain privileges in addition. One such privilege of vast importance is that no counterclaim can be lodged in an action by the Crown (*Secretary of State for War v. Easdale*, (1893) 27 I.L.T. 70, which has been followed in New Zealand). The leverage this gives to the Government Department is clearly enormous. The Department has a ready means of enforcing its claim, but the opposite party, although he may have a perfectly just counter-claim, has only the imperfect remedy of petition of right to enforce it; and, as will be shown later, there is no obligation on the Crown to obey the judgment on a petition of right. The position stands thus: that the Crown can enforce its claim but cannot be compelled to pay a just counter-claim. The Crown Suits Act, 1908, also confers on the Crown, in many cases, certain special methods of securing and recovering debts due to the Crown.

Coming now to actions against the Crown, we find at the outset that the classes of cases in which proceedings can be brought is limited. The only procedure in ordinary cases is by petition of right, and the Crown Suits Amendment Act, 1910, defines clearly the causes of action available against the Crown on a petition of right, namely:—

(1) Breach of contract, express or implied.

(2) Any cause of action in respect of which a petition of right will lie against His Majesty at Common Law.

(This may be defined briefly to extend to claims for property wrongfully taken or withheld or the value thereof and to claims for damages, liquidated or unliquidated, for breach of contract).

(3) Any wrong or injury which is independent of contract and for which an action for damages would lie if the defendant were a subject of His Majesty; *but* no claim lies against the Crown in respect of assault, false imprisonment, malicious prosecution, or erroneous judicial process, *or* libel or slander, *or* any cause of action in which malicious motive is an essential element.

These exemptions are clearly of great importance; for instance, if a State Department in one of its publications libel a person, who may thereby be ruined, no action lies against the Department. The Deaths by Accidents Compensation Act is made applicable against the Crown, as also are the provisions of the Workers' Compensation Act relating to common employment; but there is the very important limitation that no claim for a larger sum than £2,000 can be made in respect of the death of any person or in respect of personal injuries suffered by any person. The significance of this is obvious. If an innocent third party suffer death or injury by the wrongful act of an ordinary trading company, the amount of damages which may be awarded is unlimited. In a case against a Government Department under exactly similar circumstances, the limit of such damages is £2,000.

Coming now to the remedies available against a Government Department, there are some exceptional cases in which a mandamus to compel an officer to carry out a duty imposed on him by statute lies; but in nearly all cases the remedy is confined to a claim for damages or for restitution of property in the hands of the Crown by means of the proceeding known as a "petition of right." How unsatisfactory that proceeding is can be clearly seen by tracing the course of a claim by way of petition of right.

A Government Department is committing a wrongful act and refuses to desist or pay compensation. The injured party wishes to obtain redress. He must, in the first instance, give one month's notice in writing to a Law Officer stating explicitly the claim or demand and the nature of the relief sought. This is a more serious matter than may at first appear. In the preliminary stages of an action it is not infrequently found that the original statement of the claim or demand and of the nature of the relief sought turns out to be inaccurate or that it is desirable to make an alteration therein; and the Courts, as a matter of justice, allow, in ordinary actions, very liberal rights of amendment. For instance, it is well settled that a plaintiff in an ordinary action may substitute for the original cause of action an alternative cause of action by which he claims to recover the same sum as was originally claimed, or he may introduce an alternative cause of action founded on the same circumstances in addition to the original cause of action (*Stout and Sim*, notes to R. 144). None of these amendments is available in a claim against the Crown by way of petition of right. The petitioner is tied down to the statement of his claim and the nature of the relief sought, as set forth in the notice: *Official Assignee v. The King*, [1922] N.Z.L.R. 265.

Having given his notice of action the claimant must, within twelve months after the claim or demand arose, file his petition and send a copy to a Law Officer. This limitation of time may result in serious hardship; for example, in a case of a concealed fraud or other wrong of which the injured party does not become aware until after the twelve months has expired, he will be left without remedy.

In many cases it is found that a plaintiff may not obtain adequate redress without joining a co-defendant; but no co-defendant can be joined in a claim against the Crown: *Zimmerman v. The King* [1927] N.Z.L.R. 115.

Except by special consent of a Law Officer, the action cannot be brought in the Magistrates' Court, but must be in the Supreme Court, however small the amount may be.

After service of the petition, the next step is for a Law Officer to file a defence. In an ordinary action, after the filing of the defence, it is usual to obtain

* Written for the N.Z. LAW JOURNAL at the request of the Council of the N.Z. Law Society.

† A copy of the proposed Bill will appear in the next issue of the JOURNAL.

discovery of documents, and not infrequently interrogatories are administered. All practitioners know how useful these processes are. Many a time has the truth been unveiled by means of the documents which a party has been compelled to disclose under an order of discovery. It may be that the Department has many documents not covered by State privilege ; but, through the mere technicality of the inaccessibility of the Crown, no order of discovery can be made against a Government Department: *Thomas v. The Queen* (1874) L.R. 10 Q.B. 44 recently applied in New Zealand in *Rayner v. The King* [1929] N.Z.L.R. 805. Such orders are, of course, readily made and enforced against ordinary trading companies ; and the Crown itself has the right to obtain discovery of documents from the plaintiff: *Tomline v. The Queen* (1879) 4 Ex. D. 252. For the same technical reason that an order of discovery of documents cannot be made against the Crown, the petitioner is also unable to administer interrogatories.

Coming then to the trial, with these and other incidental disadvantages, the petitioner may or may not succeed in obtaining a judgment. Assuming he does, his troubles are by no means over. The Crown, if the matter is of sufficient moment, can appeal to the Court of Appeal, and again from the Court of Appeal to the Privy Council, and thus hold the petitioner at bay and put him to great further expense. If in the end judgment goes in favour of the petitioner, all he receives is a mere certificate as to the amount awarded. The judgment does not carry interest, even if payment, by reason of appeals or other means, be delayed for years: *Broad v. The King*, [1916] N.Z.L.R. 609. The same case decided also that there is no obligation on the Crown to pay, as is made clear by s. 32 of the Crown Suits Act, 1908, which reads :—

> " On receipt of such certificate the Governor-General may cause to be paid, out of any money specially appropriated by Parliament to that purpose, such damages as are awarded to the petitioner, together with any costs allowed him by the Court, and may also perform any decree or order pronounced or made by the Court."

It is to the credit of Government Departments that they do usually pay the amounts awarded against them by the Courts, although this not infrequently happens only after they have exhausted all legal means of defence ; but the fact that a judgment against the Crown does not carry interest and does not oblige the Crown to pay is clearly a serious detriment to the injured party. It places him in the position of having no security for the redress to which he is entitled, and also gives the Department an undue advantage in any negotiations for settlement.

(To be continued.)

Mr. Justice Adams Retires—Concluded from p. 229.

are officers of the Court, with great privileges and duties, and the Court looks to them for all the assistance they can give. It is a pleasure to the Judge to assist counsel in every proper way. Whatever I may have done in the way of assistance I have regarded both as a pleasure and a duty.

" I appreciate beyond words the honour which the Canterbury Law Society has conferred upon me in having my portrait painted by Mr. Nicoll and placed in the Court. It is a most graceful and enduring reminder of the esteem and kindness which you have expressed and always shown towards me. I retire from the Bench with the happy knowledge that the members of the Canterbury Law Society are my friends."

Told by the Examiners.

By Wilfred Blacket, K.C.

Professor " Tommy " Butler, of Sydney, was in attendance at some social function when a youthful guest with superb cheek and rudeness came up and said : " Oh, Professor Butler, you are examiner in the classic examination next week and I am a candidate, and as I have not read any of *De Officiis* I thought you might be able to tell me whether the examiners are likely to set any questions on that book." And Tommy, beaming graciously on the bounder, replied : " My dear young friend when you are as old as I am you will know that you can never tell what ungentlemanly questions an examiner will not ask ? "

There was also once a candidate who tried to get before-hand notice of the results of an examination and called upon an examiner and asked as a great favour that he should tell him whether he had passed. (These pronouns are quite all right : each one you will see relates to the last-preceding antecedent.) Now this examiner was one who always treated himself to a large and liquid lunch, and the candidate had made an afternoon call, and so to the question asked the examiner replied briefly : " Hic ! No you're plucked." Whereupon the grieved querist said : " Oh, I am very sorry ! Am I plucked in more than one subject." " Hic ! plucked in all of them." Some days afterwards, and in the afternoon, the candidate again called upon the examiner. " Oh Sir," he said, " I find you were right about that examination, but as I find that some of my papers had not been read then, I wondered how you knew I was plucked in all subjects." " Hic ! Looked at yer ! " was the rude reply.

Frank Rogers, K.C. (renowned alike for his learning, his courtesy, and his wit), when an examiner for the solicitors' final once set a question which raised some difficult points of law arising out of some very complex facts and concluded by asking " what advice would you give to A. as to his legal rights ? " And one candidate answered " I would advise him to obtain the opinion of eminent counsel." " He sent in a very poor paper," said Frank, " but of course I had to pass him because the answer showed quite clearly that he would make an excellent attorney." One of Frank's sons, also a member of the legal profession, was similarly famed for humorous speech. " I can't somehow remember the phrase indicating an unborn child, what is it ? " to him one day said a brother barrister who was drafting an opinion. " Oh you mean *in loco parentis*," mischievously said Rogers Junior, and to the astonishment of the consulting solicitor that phrase had its place in the opinion received.

I, myself, received an unintentionally humorous reply from a candidate, the question set being " State the circumstances under which a wife will be acquitted of crime on the ground of duress." One candidate answered : " She will be excused when the crime is a felony committed in the presence of her husband, and also in some cases of misdemeanour, but not when the misdemeanour is in the ordinary course of a wife's duties—*e.g.*, keeping a disorderly house." I ascertained later that the candidate was a young man of irreproachable conduct. He probably was unaware of the highly improper conduct that in law distinguishes a

disorderly house. I am tempted to quote from J. A. Strahan's admirable book, *The Bench and Bar of England*, wherein he, at page 137, states that J. H. Carson, K.C., once set the question "For what acts of a co-partner is a partner liable?" and from one candidate received the astonishing answer, "A partner is liable for his co-partner's contracts (*e.g.*, fraud) and torts (*e.g.*, murder) if done in the ordinary course of the partnership business." This story would not be credible without the additional statement that the student who had such liberal views as to "the ordinary course of partnership business" came from Malay.

When Dr. Brissenden, K.C., of Sydney, was an examiner in Contracts for the solicitors' final, a large percentage of candidates passed. This may have arisen from the fact that "Briss." although learned in the law was but a poor hand at simple addition. "Of course I know that I can't add up very well," he explained after he had retired from his post, "so to guard against any mistake harmful to the candidate I first of all added up the marks I had allowed from top to bottom and put down that total, and then added them up from bottom to top and put down that total and then to make the thing certain I added them up a third time and put down that total and then allowed the candidate the highest of the three totals, and somehow or another they nearly all got through." Dear old "Briss."—he was so kind-hearted that I sometimes wonder whether the whole performance was not an elaborate device intended to avert the necessity of plucking some of the students who worthily deserved to be plucked.

Bench and Bar.

Mr. G. A. Wylie, LL.B., has been admitted as a partner to the firm of Messrs. Wylie and Wiren as from August 1. The firm-name will remain unchanged.

Mr. T. V. Fitzpatrick was recently admitted at Auckland as a Barrister and Solicitor by Mr. Justice Herdman, on the motion of Mr. D. W. Mason.

Mr. H. W. Dowling, was admitted as a barrister and solicitor on August 18 by His Honour the Chief Justice, on the motion of Mr. E. P. Hay.

Mr. E. G. Rhodes, Deputy Registrar of the Supreme Court at Wellington, whose left eye was seriously injured by a flying splinter at the end of last month, has made an excellent recovery and has resumed his duties. The many friends of this capable and courteous officer will be glad to hear that though for a time it was thought Mr. Rhodes might lose the sight of the eye, fortunately the sight is very little affected.

The Hon. W. Downie Stewart, M.P., sometime Attorney-General of the Dominion, and Mr. H. F. von Haast, the Editor of the *New Zealand Law Reports*, have been representing New Zealand at the Conferenc of the Institute of Pacific Relations at Banff, in the Canadian Rockies. They will next attend the meeting of the British Commonwealth Relations Conference at Toronto. At the latter Conference, they will be joined by Mr. H. P. Richmond, of Auckland, who has been in London on Privy Council appeals.

London Letter.

Temple, London,
28th June, 1933.

My dear N.Z.,

I had the great pleasure the other day of entertaining a member of the legal profession from New Zealand who is on a visit to England, and showing him some of the places where we, of the legal profession over here, conduct our business. We lunched in "Hall" and walked in the garden afterwards, as is our daily custom (weather permitting as to the garden), and then we went "over the road" (as crossing Fleet Street is called) to the Law Courts. It is not until one comes to show some one else round our Courts that one realises what strange inconsistencies there are there. We go through the main entrance into a vast and lofty stone-paved hall which is never used, except for the passage through it of the procession of Judges and King's Counsel at the annual opening of the Courts. We take one of many stone stairs leading to the first floor, where we find ourselves in a long passage—there is one such passage on each side of the main Hall—off which lie the Courts. We inspect the Lord Chief Justice's Court, where the Court of Criminal Appeal sits. There is a Court called the Criminal Appeal Court, but the Court of Criminal Appeal never sits there, it being too small for the purpose. Branson, J., is there dealing with commercial summonses. Passing a number of Chancery Courts we come to the Lord Chancellor's Court where Bennett, J., is disposing of numerous petitions under the Companies Act. The Lord Chancellor is never to be found there, since he now never sits as a judge of a court of first instance. Then there are the King's Bench Courts, where actions are proceeding, some with juries and some without, and the two Appeal Courts, where we actually find the Court of Appeal presided over by the Master of the Rolls in one Court, and Lord Justice Scrutton in the other. Finally, we reach the four Courts in the new wing which form the home of the Probate, Divorce, and Admiralty Division—itself an absurdity, combining as it does in one Division of the High Court three matters which bear no relation one to another. No wonder we are sometimes accused of muddling through!

Judicial opinions on juries.—That the proposed abolition of Grand Juries and restriction of the use of Common Juries do not altogether find favour in legal circles is evidenced by the recent remarks of two High Court Judges. Mr. Justice Avory, in addressing the Grand Jury at the last Hertfordshire Assizes, regretted that it would probably be the last time he would address a Grand Jury of that County, and stated that, in his opinion, the time and money, which it was suggested would be saved by the abolition of Grand Juries, would not compensate for the loss of the safeguard of the liberty of the subject. They were, he said, to be sacrificed upon the altar of economy. Speaking of common juries, Mr. Justice Horridge remarked the other day that it was with very great regret that he viewed the suggestions of limiting the right to trial by jury, and that it was his experience that decisions by juries were nearly always right.

Two interesting points of Law.—An interesting case, *Newton v. Hardy*, has just been concluded before Mr. Justice Swift, in which a wife claimed damages from a

married woman and her husband for the alleged enticing away of the plaintiff's husband by the woman defendant. It was argued that such an action would not lie at all, but Swift, J., held that it would, although on the facts of the present case he held that it failed for want of proof that Mrs. Hardy had in fact procured or enticed Mr. Newton to leave his wife.

Apparently there has been only one precedent of such an action in the English Courts, namely the case of *Gray v. Gee*, 39 T.L.R. 429, in which Darling, J., held that the action would lie, though that view is supported by *obita dicta* by the Court of Appeal in *Place v. Searle* [1932] 2 K.B. 497, and by Sir John Salmond in his book on Torts. On the other hand in *Butterworth v. Butterworth*, [1920] P. 126, Mr. Justice McCardie expressed the opinion that such an action would not lie, and so did the High Court of Australia in *Wright v. Cedzich*, 43 Commonwealth L.R. 493. It seems unlikely that we shall have an authoritative decision by a higher court in the present case; and, until we get such a decision, the law on this point must, it seems, remain at least somewhat uncertain.

Another novel point arose in an action before Du Parcq, J., on the last day of last month, for which I do not think you have any precedent in New Zealand. *Fairholm v. Thomas Firth and John Brown, Ltd.*, was an action for damages for wrongful dismissal. Liability was admitted and damages agreed at £18,000, and the only point before the Court was whether income tax should be deducted from that sum before payment to the plaintiff. The defendants contended that tax should be deducted since the damages were by way of compensation for lost salary which would have been liable to tax, and that, therefore, what the plaintiff had lost was not £18,000, but £18,000 less the tax he would have had to pay. Du Parcq, J., held that the question of tax was between the Crown and the employee and had nothing to do with the employer, and that, therefore, tax could not be deducted.

Damages for a London Magistrate.—Mr. Barrington Ward, the London Police Court Magistrate, who, at the end of January last, was injured in an accident in which a taxi in which he was riding collided with a motor fire pump, recovered £1,351 damages last term against the London County Council in an action for negligence. Swift, J., held that the accident was caused by the over-keeness of the fire-pump to reach its destination with consequent lack of attention to other vehicles on the road. Mr. Barrington Ward, who suffered a fractured thumb, a broken nose, and other injuries, and was unable to attend his Court for three months, is now largely recovered and about his business as usual.

A Record Trial.—What is expected to be a record trial, in point of length, is about to commence at the Old Bailey. It is the insurance fraud case in which sixteen men and one woman are charged with conspiring to defraud insurance companies by setting fire to premises and making false claims. The taking of the evidence for the prosecution at Bow Street Police Court lasted twenty-five days, and it is unlikely that the trial can be concluded in less than six weeks, while it may take two months. In any event it seems that it will necessitate the Court sitting at the Old Bailey in August—a most unusual event. No need to curtail the Long Vacation for those engaged in this case!

Yours ever,

THE SCRIBE.

New Zealand Law Society.

Deputation to the Acting Prime Minister.

The President of the New Zealand Law Society, Mr. C. H. Treadwell, and Mr. H. F. Johnston, K.C., waited on the Acting Prime Minister (Rt. Hon. J. G. Coates) on August 24, as a committee of the New Zealand Law Society appointed to ask that consideration be given to amend the Valuation of Land Act so that an appeal from the valuation of the Valuer-General in the case of a valuation made for purposes of Death Duty to the Supreme Court should be obtained. The contentions in support of the amendment to the Act, contained in the letter of Mr. H. R. Kirker to the Society (p. 174, *ante*) were adopted by the President. Mr. Coates promised consideration.

On the same day a deputation consisting of the President, Mr. C. H. Treadwell, Mr. H. F. Johnston, K.C., representing the Marlborough District Law Society, Mr. C. A. L. Treadwell, representing the Gisborne Society, and Mr. A. M. Cousins, representing the Westland Society, waited on Mr. Coates in reference to recommendations of the Economy Commission relative to the closing down of Stamp and Land Transfer Offices in certain Provincial Districts where they are at present established. Before the case for the Districts concerned was put forward, Mr. Murray, Commissioner of Stamp Duties and Secretary for Land and Deeds, who was present, explained that the only recommendation from his Department had been in reference to two Districts, and this had been not to disturb the existing system. Mr. Coates said that it appeared that the recommendations of the Economy Commission in this matter were not at present likely to be adopted, and, therefore, it did not seem necessary to at present discuss it further.

A further question raised by Mr. C. H. Treadwell was the question of the insertion in the Finance Act of amendments to the General Statutes, the inconvenience caused to practitioners thereby, and the general undesirableness thereof. Mr. Coates expressed himself as quite in agreement with the views expressed, and said that the Government Departments had been circulated to the effect that the practice was bad and should be discontinued as far as possible. That recommendation would be carried out; but, in some cases where urgent amendments were required, and the state of the Session precluded further separate Bills, it might in certain cases and in certain circumstances be necessary, though it would be avoided as much as possible.

History in Popular Form.—Although the title "Romance of the Rail" naturally leads a reader to expect much interesting matter, probably the anticipation will be exceeded in the two books issued by the Railways Department, covering the Main Trunk lines of the North and South Islands. Mr. James Cowan, a valued occasional contributor to the JOURNAL, and a leading writer on pioneering and scenic subjects in New Zealand, has done some of his best work in these publications. The life and colour of the old days, Maori legends, the meaning of Maori place names, and other features are brightly given. Contour maps and pictures complete the contents of the books, which must add to the interest of travel on the main railway routes.

New Zealand Conveyancing.

By S. I. GOODALL, LL.M.

Transmission—II. Precedents.

(*Concluded from p. 222.*)

3.—*Application for Transmission by Survivor of Two Joint Tenants.*

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. THE above-named X.Y. of etc. died at on the day of 19 and annexed hereto and marked "A" is a duly certified copy of the Entry of his death in the Register of Deaths at .

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 said Certificate of Death and the undermentioned Certificates of Title Memoranda of Mortgage and Memoranda of Lease respectively were (all) one and the same person.

3. AT the time of his death the said deceased and I this declarant were registered as the proprietors as joint tenants and not as tenants in common of FIRST an estate in fee-simple in the several pieces of land more particularly described in the first part of the Schedule hereto SECONDLY an estate or interest as mortgagees by virtue of the several memoranda of mortgage in the respective pieces of land described opposite the appropriate numbers of the said mortgages in the second part of the said Schedule and THIRDLY an estate or interest of leasehold by virtue of the several memoranda of lease in the respective pieces of land described opposite the appropriate numbers of the said leases in the third part of the said Schedule.

4. THE said estates or interests are subject to the encumbrances respectively set opposite thereto in the said Schedule.

5. THE said deceased and I were so registered as proprietors of the said estates or interests as executors of the will of one P.Q. by virtue of Probate thereof granted to us by the Supreme Court of New Zealand at on the day of 19 under Number /193 and the said estates or interest are further subject to the trusts by the said Will reposed in respect thereof in the said deceased and me this declarant.

[OR 5. THE said deceased and I were so registered as proprietors of the said estates or interests in our own right and free from all trusts or equities whatsoever].

6. EXCEPT as above set forth no person holds or is entitled to any estate or interest at law or in equity affecting the said lands mortgages and leases respectively of which the said deceased and I were so registered as proprietors.

7. I VERILY believe myself to be entitled by virtue of my survivorship of the said deceased to be registered as proprietor of the said lands mortgages and leases subject as aforesaid respectively.

AND I do hereby apply to be registered as proprietor of the said lands mortgages and leases subject as aforesaid respectively by virtue of my said survivorship.

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

SCHEDULE.

FIRST PART.

Estates in Fee-Simple.

Area			Lot No.	Dep'd Plan No.	Section or allotment No.	District or Parish	Certificate of title		Encumbrance (if any)
A.	R.	P.					Vol.	Fol.	

SECOND PART.

Estates or Interests as Mortgagees.

Mortgage No.	Area			Lot No.	Dep'd Plan No.	Section or allotment No.	District or Parish	Certificate of title		Encumbrance (if any)
	A.	R.	P.					Vol.	Fol.	

THIRD PART.

Estates or Interests of Leasehold.

Lease No.	Area			Lot No.	Dep'd Plan No.	Section or allotment No.	District or Parish	Certificate of title		Encumbrance (if any)
	A.	R.	P.					Vol.	Fol.	

DECLARED MADE AND SUBSCRIBED etc.
Correct etc.

4.—*Notice of Marriage.*

IN THE MATTER of the Land Transfer Act, 1915.

I, E.B. wife of F.B. of etc. do solemnly and sincerely declare as follows:

1. THAT I am under my maiden name and description of E.X. of etc. registered as proprietor of an estate in fee-simple in all THAT etc. and being all the land comprised in Certificate of Title Volume Folio , Registry.

2. THAT I was on the day of 19 at married to the above-named F.B. of etc. and the Certificate of Marriage annexed hereto and marked "A" is a copy of the Entry of such marriage in the Marriage Register at .

3. THAT I this declarant am the same person as that named and described in both the said Certificate of

Title and the said Certificate of Marriage as E.X. of etc. AND I HEREBY APPLY to have the particulars of such marriage entered in the Register-book accordingly.
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.

Legal Literature.

Trial of Jack Sheppard, by HORACE BLEACKLEY, M.A., F.S.A. With an Epilogue on Jack Sheppard in Literature and Drama, a Bibliography, a Note of Jonathan Wild, and a Memoir of Horace Bleackley, by S. M. ELLIS. Notable British Trials Series, pp. 260, Butterworth & Co., (Pub.) Ltd.

The extent to which Jack Sheppard, the most famous prison-breaker known to history, has figured in literature—biography, drama, verse, and fiction—both in England and in European countries, is shown in the surprising bibliography which forms part of this memoir and in brevier type occupies ten of its pages. Many have heard or seen references to Sheppard's career, but this volume brings together an amazing variety of information about him. There was nothing remarkable in his crimes or his trials. He was a house-breaker and a thief. But his pluck and perseverance in often breaking out of custody have stirred the imagination for the past hundred years. His second escape from Newgate, for instance, is a record of freeing himself from both handcuffs and fetters, breaking-out of a cell that was specially constructed to resist strength, his successful egress by way of a chimney after removal of an iron bar across it, the picking of the locks or forcing of no less than six prison-doors, with eventual freedom by way of the roof and an adjoining building.

An interesting incident in Jack Sheppard's story is his being taken after recapture before Mr. Justice Powys in the Court of the King's Bench at Westminster for purposes of identification with the person sentenced to death by that Judge at the Old Bailey some months earlier. A strange interlude was his being subsequently summoned, after sentence of death, to the Chancery Bar in order that the Lord Chancellor (Lord Macclesfield) might satisfy his curiosity by seeing and conversing with the notorious felon. Lord Macclesfield's pending impeachment and conviction soon afterwards gave play to the wits of the time in associating the criminal and the venous Judge. Many of the resulting lampoons are reproduced.

The whole book is an interesting and highly entertaining addition to the *Notable British Trials Series*, not so much in its relation of Jack Sheppard's trial as for the insight it affords into the criminal procedure and the popular mind of a bygone period. From its remarkable literary interest the *Trial of Jack Sheppard* should have a large sale both within and without legal circles. As a contribution to history and national biography, in spite of its subject, it is a very notable production which must have caused an immense amount of research to its authors. They have done well, and the copious illustrations add further interest to their well-compiled text.

Practice Precedents.

Administration where Universal Beneficiary and Executor Predeceases Testator.

A person who survives his universal legatee and executor or executrix must be treated as having died intestate, and administration will be granted as on an intestacy. The Letters of Administration should be drawn up so as to recite the fact that the above-mentioned deceased died on a date (*to be recited*) having made a will on (*date to be given*). The will should be set out in the words and figures thereof, and the fact that the universal legatee died on (*a date prior to the testator's death*) should be recited. The fact that applicants are executors of the universal legatee's will should also be recited: *In re Vogel, deceased*, (1910) 13 G.L.R. 117.

The Letters of Administration should then proceed according to Form 40 in the Schedule to the Code of Civil Procedure. The case of *Toomer v. Sobinska*, [1907] P. 106, is an authority for adopting this form.

As to universal legatee generally, see *Garrow on Wills and Administration*, p. 553. Where there are more next-of-kin than one, regard should be had to R. 531D.

For Form of Bond, see *Stout and Sim's Supreme Court Practice*, 7th Ed., p. 414.

MOTION FOR LETTERS OF ADMINISTRATION AND TO DISPENSE WITH SURETIES.

IN THE SUPREME COURT OF NEW ZEALAND
.....District.
.....Registry.
IN THE ESTATE of A.B. of , Farmer deceased, intestate.

Mr of Counsel for to move before The Right Honourable Chief Justice of New Zealand at his Chambers Supreme Courthouse on day the day of at 10 o'clock in the forenoon or so soon thereafter as Counsel can be heard FOR AN ORDER granting Letters of Administration of the estate effects and credits of of deceased intestate to of and that sureties to the administration bond be dispensed with UPON THE GROUNDS:—

(1) That the said deceased died leaving a will whereof who predeceased the testator was the universal legatee.

(2) That the said is the only next-of-kin of the said deceased.

AND UPON THE FURTHER GROUNDS appearing in the affidavit of the said sworn and filed herein.

Dated at this day of 19 .
Certified pursuant to the Rules of Court to be correct.
Counsel Moving.

His Honour is respectfully referred to *In re Vogel*, (1910) 13 G.L.R. 117.

AFFIDAVIT IN SUPPORT OF MOTION.
(*Same heading.*)

I, C.B. of Clerk make oath and say as follows:—

(1) That I knew of A.B. of Farmer now deceased when alive and that the said A.B. was resident or was domiciled at within this Judicial District and that the nearest Registry Office of this Court to the place where the said A.B. resided or was domiciled is at .

(2) That the said A.B. died at on or about the day of 19 , as I am able to depose from having seen him die.

(3) That the deceased was my natural and lawful father and that I am the only child and am over the age of twenty-one years.

(4) That my father the said deceased was married only once and that his wife my mother predeceased him.

(5) That I believe the paper-writing now produced to me and marked with the letter "A" to be the last will and testament of the said deceased and that my mother was the sole beneficiary thereunder and the executrix thereof.

(6) That my said mother died on or about the day of 19 .

(7) 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 other than the one referred to in Paragraph 5 hereof or signed by the said deceased and that I have been unable to find any such will or testamentary writing.

(8) That I have made enquiry of the Solicitor 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.

(9) That I do verily believe that the said deceased died intestate, and that I am the only next-of-kin of the deceased.

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

(11) That the only debt left by deceased was £ for funeral expenses which amount has been paid by me.

(12) 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 thereof to me and that I will file a true account of my administratorship within twelve calendar months after the grant of such Letters.

Sworn etc.

LETTERS OF ADMINISTRATION.

(*Same heading.*)

To C.B. of Clerk the only next-of-kin of the above-named A.B. deceased.

WHEREAS the said A.B. departed this life on or about the day of 19 having on the day of 19 made a will the words and figures whereof are as follows:—

WILL.

(*Here set out Will.*)

AND WHEREAS the universal legatee and executor appointed by the said will died on or about the day of 19 NOW THEREFORE you the said C.B. are 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 will 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 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 etc.

Rules and Regulations.

Customs Act, 1913. Amendments to Customs Regulations.—*Gazette* No. 50, July 13, 1933.

Orchard and Garden Diseases Act, 1928. Amended Regulations in regard to the Importation of Fruit or Plants into New Zealand.—*Gazette* No. 50, July 13, 1933.

Post and Telegraph Act, 1928. Post Office Savings Bank. Amended Rates of Interest Payable on Deposits.—*Gazette* No. 50, July 13, 1933.

Notification by Comptroller of Customs re Exportation of Goods to China. Marks of origin required.—*Gazette* No. 56, August 10, 1933.

Defence Act, 1908. Amended Regulations *re* Decorations and Medals.—*Gazette* No. 59, August 17, 1933.

Extradition Treaty with Portugal.—*Gazette* No. 59, August 17, 1933.

Law Students' Annual Ball.

Largely-attended and Enjoyable Gatherings.

Wellington.

The well-established popularity of the annual ball of the Wellington Law Students' Society and the Victoria University College Law Faculty Club attracted a very large attendance to the Mayfair Cabaret, on August 25. The function was a very enjoyable one, the excellent arrangements reflecting credit on the committee.

Mr. and Mrs. W. Perry were the official host and hostess, and Mr. E. P. Hay, President of the Wellington District Law Society, Mr. H. F. Johnston, K.C., and Professor H. H. Cornish were among the members of the profession present.

During the evening exhibition dances were given by Miss Maida Wilson and Mr. B. Cross, and the dance programme included a number of waltzes and other dances of another generation, which were well received. Supper was served in the Cabaret's Italian room.

The Committee, which comprised Miss Geraldine Gallagher and Messrs. M. G. Neal, J. H. B. Scholefield, J. C. White, W. M. Wills, and M. R. Jackson, organising secretary, was warmly congratulated on the success it attained.

Auckland.

"One of the outstanding social events of the year," is the description given by one of the Auckland dailies to the Sixteenth Annual Ball of the Auckland University College Law Students' Society, which was held at Dixieland, on August 10. Dancing was enjoyed by several hundred guests, and the gay lighting effects and detailed arrangements contributed to a very jolly gathering.

Professor and Mrs. Algie were the official host and hostess, and the committee had the privilege of entertaining His Honour Mr. Justice Herdman, and His Honour Mr. Justice Smith and Mrs. Smith. In addition, official guests included Mr. A. M. Goulding, the President of the Auckland District Law Society, and Mesdames G. P. Finlay, R. P. Towle, E. H. Northcroft, J. B. Johnston, S. I. Goodall, and L. K. Munro. Mr. Wyvern Wilson, the Senior Magistrate, and Mrs. Wilson were present, as were most of the members of the Council of the Law Society and many of the senior Bar.

The committee in charge of the Ball consisted of Professor Algie, and Messrs. W. M. Milliken, S. G. White, W. B. Sutherland, K. P. Wilson, C. P. Richmond, J. A. Stubbs, hon. treasurer, and G. F. R. Keith, hon. secretary. All who were present were agreed that these gentlemen had achieved a splendid success in this year's function.

New Books and Publications.

Yearly Digest, 1932. Edited by W. S. Goddard, M.A. (Butterworth & Co. (Pub.) Ltd.). Price 25/-.

Butterworth's Twentieth Century Statutes, 1932. Vol. XXIX. (Butterworth & Co. (Pub.) Ltd.). Price 37/-.

Law Relating to the Blind. By Philip F. Skottowe, LL.B., with a foreword by Captain Ian Fraser, C.B.E., M.P. (Butterworth & Co. (Pub.) Ltd.). Price 9/6d.

Sweet and Maxwell's Guide to the Legal Profession, (Barristers and Solicitors). With suggested courses of reading. (Sweet & Maxwell). Price 5/-.

Leading Cases in a Nutshell. The Students' Case Book. By S. Stewart Fay, B.A. (Sweet & Maxwell). Price 6/6.

John Marshall in Diplomacy and in Law. By The Lord Craigmyle, formerly Lord Shaw of Dunfermline. With an introduction by Nicholas Murray Butler. (Col. Univer.). (Chas. Scribner's Sons). Price 10/6d.

The Law of Town and Country Planning. 3rd Edition. By A. Safford. (Haddon Best). Price 32/-.