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"*The reputation of the British Courts of Justice rests not on speed—but on reliability—tests.*"
—MR. JUSTICE EVE.

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Our Court of Appeal and its Previous Judgments.

The question as to whether the Court of Appeal in New Zealand is irrevocably bound by its own previous decisions was in issue in the recently-decided case of *In re Rhodes, Barton v. Moorhouse*, p. 294, *post*. From time to time in legal history in this country the matter had come before the Court, but it was not previously decided in any definite manner, though indications have not been lacking that the Court, if occasion arose, would feel itself constrained to reverse a previous decision if considered to be *per incuriam*.

On the very will under consideration in the recent judgment of the full Court of Appeal, that of the late Hon. W. B. Rhodes, a case stated in 1879 by the Commissioner of Stamps for the opinion of the Supreme Court was removed into the Court of Appeal, where it was held, on the substantial question there involved, that the life interest of testator's daughter was postponed until the death of his widow: *Rhodes v. Rhodes*, (1879) O.B. & F. (C.A.) 16. A few months later, Prendergast, C.J., and Johnston and Williams, JJ., sitting as a Supreme Court, heard an action by testator's daughter claiming a declaration that she was entitled to an immediate life interest in portions of the estate, and their Honours held adversely to the plaintiff: *Rhodes v. Rhodes*, (1880) O.B. & F. (S.C.) 100. On appeal direct to the Privy Council from this decision, reported as *Rhodes v. Rhodes*, (1882) 7 App. Cas. 192, Lord Blackburn, in delivering their Lordships' judgment, said:

> "On the construction of this will three of the Judges against two held that the words referred to did postpone the vesting in possession of Miss Rhodes's estate until the death of the widow. This decision was not between the same parties, and is not in any way *res judicata*. But it was properly considered by the Judges in New Zealand as an authority binding on them."

In *Hutchison v. Ripeka Te Peehi*, [1919] N.Z.L.R. 373, four Judges sitting as a single Division of the Court of Appeal, had to consider a judgment of the Judges of the Supreme Court sitting together as the Court of Appeal at a time when there were no Divisions. Hosking, J., in delivering the judgment of the Court said, at p. 384:

> "We also think it as well clearly to say that, in so far as the decision of this Court in *Commissioner of Taxes v. Kauri Timber Co.* (17 N.Z.L.R. 696) is inconsistent with the principles established by the English authorities, it must be regarded as having been given *per incuriam*."

Again, in *The King v. Jackson*, [1919] N.Z.L.R. 607, the judgment of the Court of Appeal in *The King v. Lander, ibid.* 305, was called in question in argument. As the report says, "The Court intimated that it had no power to review the decision of the Court of Appeal in *Lander's* case"; but, in the judgment of the majority of the Court which was given later, it was held that the question then arising was not involved in the decision in *Lander's* case. In *The King v. Storey*, [1931] N.Z.L.R. 417, it was unnecessary to decide whether the Court consisting of both Divisions sitting together was bound by the decision of a former Court of Appeal consisting of four Judges, as the full Court of Appeal unanimously considered the former judgment, *R. v. Dawe*, (1911) 30 N.Z.L.R. 673, to have been correctly decided; but in *The King v. Storey* the question as to whether the Court of Appeal should hold itself bound by its own decisions was discussed, notably in the judgments of Reed and Kennedy, JJ.

In 1931, the Second Division of the Court of Appeal (Myers, C.J., and Reed, Adams, and Smith, JJ.) considered a case stated by the Commissioner of Stamp Duties for the opinion of the Court arising on the death of Captain Rhodes-Moorhouse, V.C., during the lifetime of his mother, the daughter of the Hon. W. B. Rhodes who appeared in the earlier litigation to which reference has been made. By the Court's decision, *Rhodes-Moorhouse v. Commissioner of Stamp Duties*, [1931] N.Z.L.R. 865, it was held that Captain Rhodes-Moorhouse had nothing more than a contingent remainder in the entailed land forming part of the estate of the late Hon. W. B. Rhodes, the contingency being the death of his mother during his lifetime; and, as he predeceased his mother, he took nothing and his estate was not liable for death duty.

Several questions arising out of the Rhodes will in relation to the infant son of Captain Rhodes-Moorhouse were the subject of proceedings brought last year by the Rhodes Estate trustees who claimed that the estate tail was vested in Captain Rhodes-Moorhouse prior to his death, and, consequently, on his death in his infant son. If the Court of Appeal should answer that claim favourably to the infant son, the prior decision, though between different parties, would obviously be in direct conflict. The question then had to be decided: "Is the Court of Appeal bound by its previous decisions?"

The argument in *In re Rhodes, Barton v. Moorhouse*, was taken before the two Divisions of the Court of Appeal, three members of the full Court so constituted having been parties to the previous decision of the Second Division in the revenue case of 1931. All three were agreed that the ground of that judgment was erroneous. In discussing whether the Court of Appeal should necessarily consider itself bound by its own previous judgment, the learned Chief Justice, after referring to *Kelly and Co. v. Kellond*, (1888) 20 Q.B.D. 569; *Smith's Case*, (1879) 11 Ch. D. 579; *Wynne-Finch v. Chaytor*, [1903] 2 Ch. 475; *Ex parte Stanford*, (1886) 17 Q.B.D. 259, and the practice of the Court of Appeal in England, considered the New Zealand cases on the point. After remarking that in the present case their Honours were all agreed that the ground which formed the basis of the decision in the recent revenue appeal was erroneous, and that the present Court included three of the four Judges who were parties to the previous decision, said:

"It would be deplorable if in such circumstances this Court were bound to follow a previous decision which all its members are agreed was erroneous, and thus compel a litigant to suffer the expense and delay of carrying his case by way of appeal to the Privy Council. I agree, of course, that before this Court refuses to follow its own previous decision it must be clearly shown that that previous decision is erroneous and not consistent with the current of authority by which this Court should consider itself bound. I agree also with the opinion expressed by *Reed*, J., in *The King v. Storey*, *supra* 457, that, so long as our present system of divisions of this Court remains, the course of declining to follow a previous decision should not be adopted except by the two Divisions of the Court sitting together. In the present case, for the reasons that I have expressed, in my opinion the proper course for this Court to take is to say that the ground of the decision in the revenue appeal is erroneous and contrary to English authority and should not be followed."

Mr. Justice Reed, after reviewing the English and other authorities, said that it was unnecessary in the present case to go so far as saying that one Court of Appeal can reverse the decision of a former Court. He added:

"We have the power to call both Divisions together and so constitute a full Court. That such full Court should exercise the power of reversing manifestly incorrect decisions of the Court of Appeal is, I think, beyond question. The power should be exercised sparingly and with extreme caution. In the present case we have seven Judges sitting, three of whom were members of the Court of Appeal of four that delivered the erroneous judgment, all of whom agree that the decision was given *per incuriam*. In these circumstances I think it is our clear duty to decline to be bound by that decision."

Mr. Justice MacGregor, after referring to the cases quoted, said that from those authorities it would appear to be their Honours' present duty to disregard the decision of the Court in the *Stamp Duties case*, if they were satisfied that that decision was erroneous as having been given *per incuriam*.

In his judgment, with which Mr. Justice Blair concurred, Mr. Justice Ostler said that the overruling by the Court of Appeal of its previous decision when it finds such to have been given *per incuriam* is a jurisdiction that should be exercised with extreme caution. And he proceeded to say:

"but where it plainly appears that *per incuriam* a decision has been given by the Court of Appeal which is erroneous in law, in my opinion that Court not only has the power but it has a duty to say so, and to refuse to treat its former decision as binding. Where a former decision falls to be reviewed by a Court consisting of both Divisions of the Court of Appeal (as in this case) that duty becomes both more clear and more easy of performance."

Mr. Justice Smith agreed with the view taken by the other members of the Court, as did Mr. Justice Kennedy, who referred to his own discussion of the question in *The King v. Storey* (*supra*), and then added:

"This case, in my view, comes within the exception that the full Court, composed of both Divisions sitting together, may reconsider, and, if necessary, decline to follow the decision of the Court composed of one Division only and that the more readily where, as here, a majority of the members of the Court, who were parties to the other decision, are agreed that it was not in accordance with authority. The observations of Lord Esher, M.R., in *Kelly and Co. v. Kellond* ((1888) 20 Q.B.D. 569, 572) and the decision in *Wynne-Finch v. Chaytor*, ([1903] 2 Ch. 475) support this course."

So that, in future, the Court of Appeal will substantially be bound to follow the practice of the English Court of Appeal, with due observance of the restrictions which appear from the judgments of their Honours as quoted above.

Summary of Recent Judgments.

COURT OF APPEAL
Wellington.
1933.
April 7, 10, 11;
Oct. 18.
Myers, C.J.
Reed, J.
MacGregor, J.
Ostler, J.
Blair, J.
Smith, J.
Kennedy, J.

IN RE RHODES (DECEASED), BARTON AND OTHERS v. MOORHOUSE AND OTHERS.

Will—Construction—From and after Decease of M. leaving issue Trustees to hold Lands specified in Trust for issue of M. in strict Entail—Rule in Shelley's Case—Non-operation thereof—Vesting of Estate Tail—Effect—Whether power to acquire Corpus of Proceeds of Sale of entailed lands by Disentailing Assurance—Power of full Court of Appeal to decline to follow a prior Decision of one Division—Conveyancing Ordinance, 1842, s. 36—Rhodes Trust Act, 1901, s. 5.

The full Court of Appeal, composed of both Divisions sitting together, may review and decline to follow a manifestly erroneous decision of a single Division of the Court of Appeal.

Kelly and Co. v. Kellond, (1888) 20 Q.B.D. 569, **Wynne-Finch v. Chaytor,** (1903) 2 Ch. 475, **The King v. Storey,** [1931] N.Z.L.R. 417, referred to.

Hutchison v. Ripeka te Peehi, [1919] N.Z.L.R. 373, followed.

Rex v. Jackson, [1919] N.Z.L.R. 607, distinguished.

Held, 1. That the material part of the will of the Hon. W. B. Rhodes (deceased) requiring consideration was not such as to bring the rule in *Shelley's case* and consequently s. 36 of the Conveyancing Ordinance, 1842, into operation, the words used not being used as a *nomen collectivum* to describe the whole heritable blood, but, on the contrary, the limitation was to designated persons.

Rhodes-Moorhouse v. Commissioner of Stamp Duties, [1931] N.Z.L.R. 865, overruled.

2. That the words in the said will, "and from and after the decease of my said natural daughter *leaving issue*," should be interpreted in the same way as the same words used in a similar context were construed by the Judicial Committee of the Privy Council in **Rhodes v. Rhodes,** (1882) 7 App. Cas. 192, so that "the estate tail in the unsold lands forming part of the Highland Park Estate is vested in William Henry Rhodes-Moorhouse, the son of William Barnard Rhodes-Moorhouse, deceased.

Rhodes v. Rhodes, (1882) 7 App. Cas. 192, followed.

Held, (*Ostler* and *Blair*, JJ., dissenting) That the moneys received on any sale are to be paid to the trustees to be invested by them in accordance with the trusts of the said will, but there is no implication in the Rhodes Trust Act, 1901, which brings the proceeds of same into the category of moneys subject to be invested in the purchase of lands to be settled, so that any person if the lands were purchased would have an estate tail therein. Hence, there is no power to acquire the corpus by disentailing assurance.

Held, per *Ostler* and *Blair*, JJ., That the Rhodes Trust Act, 1901, should be construed, if possible, in a manner which could not interfere with vested rights and that s. 5 indicated that the Legislature had no intention to create a perpetual statutory trust contrary to the terms of the will or of altering in any way the trusts of the will, and that the devolution of the part of the property sold has not been altered by its having been converted into money by the power of sale conferred by the Rhodes Trust Act, 1901, and that upon barring the entail the tenant in tail will become entitled to the corpus of the proceeds of the sales under the Act.

Counsel: **Hadfield** and **James,** for the trustees; **Levi, C. G. White, Cornish, Evans,** and **Tripe,** for the several classes of persons presumptively entitled under the will; **Solicitor-General, Fair, K.C.,** for the Crown.

Solicitors: **Hadfield and Peacock,** Wellington, for the trustees.

COURT OF APPEAL
Wellington.
1933.
April 11; Oct. 18.
Reed, J.
MacGregor, J.
Ostler, J.
Smith, J.

RHODES-MOORHOUSE
v.
COMMISSIONER OF STAMP DUTIES
(No. 2).

Practice—Appeal to Privy Council—Application for Leave—No Discretionary Power in Court to extend Prescribed Time—Right to apply direct to His Majesty in Council for Special Leave—Privy Council Rules, RR. 4, 28.

Application by the Crown for leave to appeal to the Judicial Committee of His Majesty's Privy Council from the judgment of the Court of Appeal delivered on May 22, 1931, and reported in [1931] N.Z.L.R. 865. The notice of motion for leave to appeal was filed on March 2, 1933.

The Court has no discretion to depart from the rules regulating appeals to His Majesty in Council, and is *functus officio* as regards granting leave to appeal when the time prescribed by the rules has expired. The only remedy of either the Crown or a subject who desires to appeal from a decision of the Court, but is out of time, is to apply to His Majesty in Council for special leave to appeal.

Counsel: Solicitor-General, Fair, K.C., for the Crown, in support; **Hadfield,** for the appellant, to oppose.

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

SUPREME COURT
Wellington.
In Chambers.
1933.
Aug. 23.
Myers, C.J.

COURT OF APPEAL.
Wellington.
Sept. 29;
Oct. 2, 20.
MacGregor, J.
Ostler, J.
Smith, J.

WELLINGTON CITY CORPORATION
v. LAMING.

Statute—Construction—Municipal Corporations—Notice of Action—"Reasonable Excuse"—Meaning—Principles of Decisions on Interpretation of "Reasonable Cause" in Workers' Compensation Acts applicable—Municipal Corporations Act, 1920, s. 353 (1), (2), (8)—Workers' Compensation Act, 1922, ss. 26, 27.

Appeal from the order of *Myers,* C.J., in the Supreme Court, waiving compliance with s. 353 of the Municipal Corporations Act, 1920.

The phrases "reasonable excuse" and "reasonable cause" are in effect synonymous, and the principles of the decisions under the Workers' Compensation Acts referring to "reasonable cause" are applicable to the interpretation of the term "reasonable excuse" in s. 353 of the Municipal Corporations Act, 1920.

Young v. Mayor, &c., of Christchurch, (1907) 27 N.Z.L.R. 729; **O'Connor v. City of Hamilton,** (1905) 10 O.L.R. 529, and **Wallace v. City of Windsor,** (1915) 36 O.L.R. 62, applied.

The question as to what facts amount to "reasonable cause" under the Workers' Compensation Act, 1922, or "reasonable excuse," under the Municipal Corporations Act, 1920, is a question of law, and therefore appealable.

Shotts Iron Co., Ltd. v. Fordyce, [1930] A.C. 503, followed.

To constitute "reasonable excuse" on the ground of incapacity caused by injury, the onus is on the plaintiff to show such sickness, either mental or physical, as to incapacitate him from commencing business affairs or from being able to give instructions for the notice.

Bissell v. Township of Rochester, (1930) 65 O.L.R. 310, and **Wilson v. Ramsay,** (1897) 16 O.L.R. 172, applied.
Maund v. Barton, (1924) 17 B.W.C.C. 131, distinguished.

So held by the Court of Appeal allowing the appeal from an order of *Myers,* C.J., in the Supreme Court waiving compliance with the requirements of s. 353 of the Municipal Corporations Act, 1920.

Counsel: Leicester, with him **T. P. McCarthy,** for the appellant; **E. P. Hay,** for the respondent.

Solicitors: Leicester, Jowett, and Rainey, Wellington, for the appellant; **Mazengarb, Hay, and Macalister,** Wellington, for the respondent.

NOTE:—For the Municipal Corporations Act, 1920, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, 1908-1931, Vol. 5, title *Municipal Corporations,* p. 7, for the Workers' Compensation Act, 1922, see *ibid,* title *Master and Servant,* p. 597.

COURT OF APPEAL
Wellington.
1933.
Oct. 10, 11, 12, 20.
Myers, C.J.
Reed, J.
MacGregor, J.
Ostler, J.
Smith, J.

CARROLL AND ANOTHER
v.
THE ATTORNEY-GENERAL.

Dairy Industry—Dairy Produce General Regulations, 1933, Reg. 55—Invalidity—Dairy Industry Act, 1908, s. 23; Amendment Act, 1924, s. 7.

Originating Summons removed into the Court of Appeal for the determination of the validity or otherwise of Reg. 55 of the Dairy Produce General Regulations, 1933, made under the Dairy Industry Act, 1908, which regulation is as follows:—

"No owner or manager of any cheese factory, creamery, or skimming station shall at any time during the period of ten months extending from the 1st day of August in any year till the 31st day of May in the next succeeding year purchase milk or cream produced in any supplying dairy if at any time previously during the same period milk or cream produced in such supplying dairy has been supplied to the owner of any other cheese factory, creamery, or skimming station."

G. P. Finlay and **Leary,** for the plaintiffs; **Solicitor-General, Fair, K.C.,** for the defendant.

Held, *per Curiam,* That the regulation was *ultra vires* and void.

Per *Ostler* and *Smith,* JJ.: That evidence of the object which the Governor-General intended to effect by the Regulation challenged is inadmissible.

Commonwealth and Postmaster-General v. Progress Advertising and Press Agency Co. Ppty., Ltd., (1910) 10 C.L.R. 457; **Park v. Minister of Education,** [1922] N.Z.L.R. 1208; **Kerridge v. Girling-Butcher,** *ante,* p. 163; **Municipal Corporation of Toronto v. Virgo,** [1896] A.C. 88 at 94, referred to.

Solicitors: G. P. Finlay, Auckland, for the plaintiffs; **Crown Law Office,** Wellington, for the defendant.

NOTE:—For the Dairy Industry Act, 1908, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, 1908-1931, Vol. 1, title *Agriculture,* p. 69; for the Amendment Act, 1924, *ibid.,* p. 96.

COURT OF APPEAL
Wellington.
1933.
Oct. 2, 3, 27.
Myers, C.J.
MacGregor, J.
Ostler, J.
Smith, J.

BOURKE v. JESSOP AND ANOTHER.

Negligence—Collision of two Unlighted Vehicles—*Causa sine qua non* the want of Lights—*Causa proxima* not ascertained—Position of Vehicles on Road, whether on correct or wrong side, not determined—Material to ascertainment of real and substantial Cause of Collision—Retrial.

Appeal from the judgment of *Reed,* J., reported, p. 197 *ante.*

Appellant, a pillion-rider on an unlighted motor-cycle driven by his brother, was injured in a collision on a dark night with an unlighted motor-car coming the opposite way. On the hearing of the action by appellant against the respondents for damages for negligence, no issue was put to the jury as to what was the real and substantial cause of the collision.

The jury found that the car was not at the moment of the collision being driven along the middle of the bitumen portion of the road but from the car's right-hand side (viz., wrong side) of the road towards the left side (viz., correct side). By agreement of the parties, the trial Judge was left to find all facts not found by the jury. Neither he nor the jury found as a fact whether or not the car was on the wrong side of the road. He gave judgment for defendants on the ground, *inter alia*, that the negligence of the driver must be imputed to the appellant because they were both engaged in a common purpose or joint enterprise, that the real and substantial cause of the accident was the unlighted condition of the two vehicles, and that the position of the car was immaterial.

On appeal from this judgment,

Chrystal, for the appellant; **P. B. Cooke** and **R. H. Quilliam,** for the respondents.

Held, That, although the unlighted condition of the vehicles was the *causa sine qua non* of the collision, in order to ascertain the *causa proxima* it was necessary to ascertain where the vehicles were and on what side of the road the collision took place: for, even as between the drivers of the two vehicles, a collision could have been avoided, despite the want of lights, if each had kept to his own side of the road. Therefore, the driver of the cycle would be entitled to succeed if the real cause of the collision was that the car, owing to the negligence of its driver, was on the wrong side of the road.

Woods v. Davison, [1930] N.I. 161, applied.

Appeal allowed; new trial ordered.

Solicitors: J. Hessell, Kaponga, for appellant; **Govett, Quilliam, and Hutchen,** New Plymouth, for the respondents.

COURT OF APPEAL
Wellington.
Oct. 9, 18.
Myers, C.J.
Reed, J.
MacGregor, J.
Ostler, J.
Smith, J.

WONG DOO v. KANA BHANA.

Practice—Evidence abroad—Commission to Court of British Colony—Discretion—Grant of Commission on Terms—Code of Civil Procedure, R. 177.

Appellant, executor of the will of a Chinaman killed by a motor-lorry owned and driven by respondent, sued as such executor and also on behalf of deceased's widow and her two infant children who had never lived in New Zealand claiming damages from respondent for alleged negligence. Appellant asked for a commission to examine the widow and others before the Registrar of the Supreme Court at Hong-Kong to prove that the widow had been married to the deceased in a form that the Courts in New Zealand would recognise as valid, that she remained his wife to the date of his death and that deceased was the father of her children.

On appeal from the order of *Herdman*, J., refusing the commission, reported p. 228 *ante*.,

Leary, for the appellant; **V. R. Meredith,** for the respondent,

Held, 1. That the cost of bringing the witnesses to New Zealand made such a course practically impossible.

2. That, as the commission asked for was to an official of a Supreme Court in a British Colony equipped with a Judiciary and a Bar trained in English law and procedure, fully competent to elicit the truth from Chinese witnesses and better qualified than the legal profession in New Zealand to investigate the validity of the marriage, the respondent would not be unduly prejudiced by the issue of the commission, which should be granted on terms as to appellant finding security for the costs thereof.

Order varied accordingly.

Solicitors: Bamford, Brown, and Leary, Auckland, for the appellant; **Meredith and Hubble,** Auckland, for the respondent.

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

Compensation for Automobile Accidents.

A Drastic Solution of a Difficult Problem Suggested by a Committee in the United States.

By H. F. VON HAAST, M.A., LL.B.

By the courtesy of the Committee to study Compensation for Automobile Accidents, I have received a copy of its report to the Columbia University Council for Research in the Social Sciences, under whose auspices the study was made.

This report deserves careful thought by the New Zealand Law Society, the Wellington Automobile Club, and the Motor-vehicles Thirty-party Pool. The Committee included Judges, Professors of Law, the Secretary of the Treasury of the United States, the Attorney-General of Pennsylvania, and prominent members of the American Bar (including Mr. Henry W. Taft). Its field of study was the problem of compensation for injuries caused by motor-vehicle accidents rather than that of accident prevention. It spent more than two years in a thorough investigation of every branch of the subject, making a study of the common law as to liability for such accidents, of the statutes of states showing the legislative attitude towards them and the provisions for compulsory insurance against liability, the constitutional problems that would be raised by the adoption of a compensation plan for injuries from such accidents without regard to fault, examining the statutes of European countries and the decisions of their Courts to find how their laws deal with the problem of compensation for such accidents, and having the co-operation of insurance companies, hospitals, police, coroners, and State Departments concerned with motor-vehicles. But the Committee went further and investigated 8,849 cases of actual injuries, of which 861 were fatal, 7,988 were non-fatal, enough to afford a reliable basis for drawing conclusions as to the effect of motor accidents upon the financial position of the injured and their families and the extent to which under the present system they are compensated in the cases of insurance or non-insurance.

The importance of the problem is shown by the fact that in 1930 33,000 persons were killed and over a million injured by motor-vehicles in the United States; during September, 1931, an average of 110 persons were killed every day, nearly five deaths for every hour of the day and night, the proportion of accidents to the population and the number of cars registered has been steadily increasing, until to-day deaths in motor-vehicle accidents form the largest single field of accidental deaths in the United States and represent 29 per cent. of all deaths due to accidental causes.

The Committee came to the conclusion that the problem of compensation for personal injuries was of much greater consequence than the problem with respect to property damage and determined to confine its attention to the former. It then examined the liability under existing law of owner and operator and the enforcement of liability, and calls attention to the difficulties of a person injured in a motor-vehicle accident or, if he is killed, of his relatives obtaining compensation under the present system, the cost and duration of litigation, and the slender chance of recovery in many cases in which a judgment is obtained.

The Committee then investigated the nature and operation of liability insurance and how the present system distributes losses. The cases studied by the Committee indicate that if there is no insurance the injured has about one chance in four of receiving some payment and that in most cases the payments received will not cover the losses sustained. If the offending motorist is insured, payment will be received in 85 per cent. of the cases and the insurance payments will cover the losses in three-fourths of the temporary disability cases, but will often fail to cover the full economic loss in fatal cases or in those resulting in a disability for life. Less than one-third of the registered automobiles in the United States are insured against public liability. It is clear, therefore, that in a large proportion of automobile accidents the victims receive inadequate or no compensation under existing law.

The Committee after an investigation of financial responsibility laws, such as provisions that if a defendant motorist fails to pay a final judgment he shall be deprived of his road privileges until he does pay and also requiring him to give security for future accidents, comes to the conclusion that such laws have done little to correct the injustice at which they were aimed.

Compulsory liability insurance in Europe and the United States next comes under review, the law of Massachusetts, the most advanced in the United States of America, receiving special consideration. It does not give the victim an absolute right to compensation, but only assures him, in most instances, of a responsible defendant in case he recovers a judgment. While the insurance companies are inclined to settle small claims, they generally contest large claims except where the claimant's right to damages is clear and easily provable. The result was that in two years after the adoption of the Massachusetts law in 1927 automobile accident litigation in that state had increased 97 per cent., and the congestion of judicial business had also been increased. This is said to be the natural result of assuring a financially responsible defendant to almost everyone injured in a motor-vehicle accident. The Committee concluded that neither the actual nor the recorded annual numbers of accidents within a state affords reliable evidence of changes affected by a compulsory liability insurance law or by a financial responsibility law or by any other single factor affecting highway safety.

Compulsory insurance under the present system not proving a solution of the problem, and the Committee believing that the principle of liability for fault only is a principle of social expediency and that it is not founded on any immutable basis of right, the Committee comes to the conclusion that the best plan for meeting the defects of existing systems of securing redress for injuries caused by motor-vehicles is the plan of compensation analogous to workmen's compensation. This would eliminate the principle of fault and through a requirement of insurance and the use of a statutory scale would make it reasonably certain that all persons with appreciable injuries would receive some compensation. It is claimed that by this plan the compensation would bear a fair and constant relation to the loss sustained; that it would be obtained at small expense and with reasonable promptness; and that the Courts would be relieved of a mass of unsatisfactory litigation.

The plan outlined by the Committee is as follows:—

(*a*) *Liability to pay Compensation.* There is imposed on the owners of motor-vehicles a limited liability, *without regard to fault*, for personal injury or death caused by the operation of their motor-vehicles. The liability to pay rests primarily on the owner of the motor-vehicle and the plan provides security for this liability by requiring every registered motor-vehicle to be covered by compensation insurance. The owner of any motor-vehicle which causes injury or death must pay compensation if the motor-vehicle at the time of the accident was driven by him or by another with his consent.

(*b*) *Cause the basis of liability.* The compensation law should use the word "cause" of injury or death, allowing the administrative board and the courts to apply accepted legal principles in the process of interpretation.

(*c*) *Incidence of Liability.* Where a pedestrian is struck by a motor-vehicle the owner of the motor-vehicle must pay compensation. Where two motor-vehicles collide, each owner shall compensate the occupants of his own motor-vehicle, except the owner himself, who will look to the owner of the other motor-vehicle for compensation.

A pedestrian or other person outside of a motor-vehicle whose injury is caused by more than one motor-vehicle will be entitled to recover compensation from all the motor-vehicle owners jointly.

(*d*) *Subrogation.* If the accident has been caused by the negligence of some one not concerned in it as the occupant or owner of a motor-vehicle or as a person injured, the owner or insurance carrier who has been obliged to pay compensation will be entitled to recoup by an action of damages against the negligent person.

(*e*) *Who receives Compensation.* Compensation is to be paid in respect of any injury or death caused by the operation of a motor-vehicle unless the person injured or killed wilfully intended to cause injury to himself or another.

Injuries to owners and operators of motor-vehicles should be excluded unless they are caused by another motor-vehicle, otherwise the door would be opened to fraud.

(*f*) *Scale of Benefits.* The Committee has drafted a schedule of benefits based on the workmen's compensation laws of New York and Massachusetts.

(*g*) *Insurance.* No motor-vehicle can be registered unless the owner presents a certificate showing that he has procured insurance against liability to pay compensation.

(*h*) *Exclusiveness of Remedy.* The compensation is in lieu of all other compensation or damages for personal injury or death caused by the operation of a motor-vehicle, except as to cases expressly excluded from the operation of the Act—*e.g.*, an operator who strikes a train, who would still have his action against the railroad company based on the law of negligence.

(*i*) *Administration.* The compensation plan is to be administered by a special Board created for that purpose, with the assistance of such referees and clerks as may be required. Procedure will follow that now in effect under workmen's compensation.

(*j*) *Reports.* Owners and operators involved in accidents will be required to report within a prescribed time to the Commissioner of Motor-vehicles, and persons injured will be required within a prescribed time to give notice to the Compensation Board and to the insured motorist stating the extent of the injury and the name and address of the attending physician.

The significant features of the scale of benefits are—

(1) The cost of medical care is paid in all cases regardless of the duration of the disability.

(2) No compensation is paid for the first week of disability other than medical expenses.

(3) No compensation is paid in any case, however serious, for pain and suffering.

(4) In cases of total disability extending beyond one week, the victim receives two-thirds of his weekly wages or earnings, with a certain maximum per week. For business and professional men profits take the place of wages in the calculation. In persons temporarily unemployed, wages or earnings are calculated by reference to the last period of steady employment. For housewives, wages are assumed to be those paid for similar work at the time and place of their occupation. For permanently unemployed persons, for unemployed minors of nineteen and under, and for students of over nineteen, a certain minimum wage is assumed.

(5) For serious facial or head disfigurement or other disfigurement impairing the earning power of the injured person, he receives an amount to be determined by the Commission not to exceed a certain sum.

(6) In case of death certain funeral expenses are paid. In addition dependents, &c., receive practically the same compensation as provided by the Workers' Compensation Act.

This compensation plan has, however, been severely criticised, apart from its constitutional aspect, which would not concern us in New Zealand, by two writers in a symposium on the subject.

Young B. Smith, of the Columbia Law School, while of the opinion that the probable results, taken as a whole, would be preferable to the existing law in all states with the single possible exception of Massachusetts, considers that the suggested scale of compensation is the most vulnerable part of the plan. A scale of compensation, reasonably fair and adequate in the cases of injuries to the classes of persons covered by Workmen's Compensation Acts might be quite unfair and inadequate in the classes of persons affected by automobile accidents, and in fact, it is admitted that, with the exception of the fatal cases where the victim is an earner with dependents, the compensation under the suggested schedule would be less than that at present received under the Massachusetts plan of compulsory liability insurance. The critic's impression was that the Committee was intimidated by the fear that to propose a more adequate schedule of compensation would raise the insurance costs to such a point that the adoption of the plan might be frustrated. As it is, the Committee estimates that the scale could be put into effect with an increase of 48 to 61 per cent. in the present insurance rates paid by the motorists for public liability insurance. He suggests that a possible solution of the problem might be found in a graduated scale of premiums depending upon the type of automobile insured, which would tend to distribute the insurance costs among motorists in proportion to their abilities to pay.

Austin J. Tilly, of Baltimore, considers the proposal a social and economic resolution that imposes a liability upon the person causing the accident, regardless of his fault, and operates to deprive the victim of the right secured to him by the present law to recover the full or a substantial measure of his damages.

Fifty per cent. or more of the victims do not come within the wage-earning field and yet they are to be subjected to the limits and standards of Workmen's Compensation. The two cases he submits are not at all analogous. The influence of the desire to return to the job in the latter has a salutary effect upon the return to work, speed, accuracy and fairness of investigators, development and establishment of proof, reducing to a minimum fraud, collusion, and malingering. There is approximate equality of application of the principles and standards of workmen's compensation to those affected by it. On the whole, the graded limited scale of payments serves roughly the purposes of equalisation and is not essentially unfair. Such a scale, however, when applied to the whole body of people, in disregard of every difference in condition, age, financial standing, and responsibility, in disregard of the ordinary pertinent standards of right and wrong, develops, the critic believes, the vices both of inadequacy and excessiveness.

He considers with fear and trembling the "imponderables" left out of consideration and their effect, recovery allowed despite gross negligence on the part of the victim, the increased period of disability upon injuries to children, aged and infirm, lack of economic incentive to return to work, the play allowed to neurasthenia, self interest and cupidity, the increase of medical costs, the sheer necessity of actively investigating thousands of individual cases which under existing laws can now be safely pigeonholed pending developments.

He admits that the problem is difficult but finds the proposed solution too drastic.

Whatever one thinks of the scheme, it is well worth consideration by our motorists, pedestrians, lawyers, and legislators.

Mr. John Buchan, and the Law; and the Devil.—The popular novelist, Mr. John Buchan, M.P., recently disclosed to the provincial meeting of the English Law Society, held at Oxford, his association with the legal profession. He said:

"In a way I am one of yourselves. In my time I have been a lawyer—in the words of the Roman poet, I also have lived in Arcady. It is true I belonged to a different branch of the profession, but before I was called to the Bar I had the inestimable advantage of spending a good many months in a solicitor's office. Alas! many years ago I forsook the Bar, and nowadays, in my dealings with courts of justice I have to be content with the cold discomfort of the witness-box. The garish and fleeting notoriety of the Bar is not for me. Nevertheless, once a lawyer always a lawyer, and at any rate I shall always be a warm admirer of a great profession.

"The popular man has always regarded our profession as a fitting target for jests. In my own country, Scotland, there is a saying that runs something like this: 'Home is home however humble, as the Devil said when he found himself in the Court of Session.' Still, hypocrisy is the tribute which vice pays to virtue, and that bit of popular ribaldry should be regarded as a tribute which folly pays to wisdom."

Case Law.

An Address by the late Mr. Justice McCardie.

Several readers of the JOURNAL *have asked us to give in extenso an example of the late Mr. Justice McCardie's style in one of the public addresses for which he had so deserved a reputation. The following is the text of an address delivered by him in December, 1927, to the law students of University College, London, in the presence of a distinguished gathering of members of the Bar.*—ED.

At Harvard University, some 40 years ago, Mr. Justice Wendell Holmes uttered a memorable phrase. "The law," he said, "is the calling of thinkers." It is in the spirit of those words that I would speak to you to-day on the subject of "Case Law."

The profession of the law has two aspects. It may be regarded as a pursuit which yields to the successful a full financial reward. But I rejoice to feel that it is also a vocation which gives the joy of intellectual achievement, which calls for the guardianship of learning and tradition, and which imposes upon all who follow it the duty of unswerving honour. Happy are the students and practitioners who resolve that the latter aspect of the profession shall be to them as vital as the former.

I speak to you to-day as a fellow student. Though a third of a century has gone since I was called to the Bar, yet I feel that you and I are alike in the need for an ever wider grasp of the law and an ever deeper insight into the working of legal principles.

The subject of "Case Law," it will be agreed, is of supreme interest, not only to those who practice their profession in the Courts, but to all others of citizen mind, who regard the fabric and the spirit of our law as a matter of grave moment to the social and economic life of our country. In those two words "Case Law," moreover, there dwell the charm of legal history and the springs of national character and growth.

Cicero once said of his friend Sulpicius Rufus that he approached the law "with the hand and mind of an artist." Fortunate shall we be if we can pursue the activities of professional life in the spirit of Cicero's friend, and if we can retain through our busy years the zeal of students and the outlook of searchers for truth.

The very words "Case Law" are significant when we recall that the word "Case" springs from the Latin, whilst the word "law" comes down to us from our Danish ancestors. Here, indeed, is history on the very threshold of our subject. Let us step together into a great Law library. Around us there repose several thousand volumes of Law Reports. Some are fresh with the binding of yesterday. Many are dark with the shadows of the centuries. They are almost grim in the solidity of their binding and in the amplitude of their cubical contents. But what do those volumes represent? What lies behind that vast aggregate of decisions? What living essence can be distilled from the serried lines of Reports? Surely an answer can be given to these questions by those who love the law and who recognise its noble part in the life and ideals of our nation. Shall we then revive together to-day the memories of our past reading, survey together some broad features of the far-stretching legal landscape, and, above all, shall we renew our vision of the spirit, the foundations and the purpose of the case law of England?

Now, no one, of course, can hope to grapple with the whole of our case law. The task would defy the most laborious. The ablest and the most zealous amongst us must be content with such learning as time and effort permit. I remember that someone once quoted to Professor Huxley the line of Pope :—

"*A little learning is a dangerous thing.*"

"Ah," said the professor reflectively, "If those words of Pope are true, how many of us are in peril at the present moment?"

I well recall my earliest visit with some friends to the Middle Temple Library. It was then that I realised for the first time the magnitude of the legal material that lay around me. I stood as it were on the shore of a broad ocean of learning. I have since grown to understand that the first great task of the younger, as of the older student, must be to get at the *heart* of our case law, to grasp with clearness the main outlines of its history, to lay hold of its main principles, and, above all, to realise its spirit, its working, and its significance. That task calls not only for industry—not only for zeal—not only for courage, but also for the cultivation of that vision which enables us to realise that a great collection of Law Reports represents the *intellectual wealth of many generations of lawyers.* If he gains that vision he may say even of the Law Reports :—

"*My never failing friends are they*
With whom I converse day by day."

Yes—the ocean of legal learning is indeed wide, but it is well worth the voyage if we can gain the shore of adequate knowledge and understanding. In what I say to you to-day, my thoughts go mainly to the Common Law with which I have lived so long. In the Common Law are to be found in conspicuous degree those elements of history, of broadening freedom, of commercial expansion, and of practical wisdom which give life and fascination to the whole range of English Law.

THE LAW IN HISTORY.

The Temple, the chief home of the Common Law, stood always, you will observe, where it stands now, midway between the old Palace of Westminster and the great commercial city of London. The Revolution of 1688 was, as Professor Trevelyan has pointed out in his *History of England*, the triumph of the Common Law and of the principles of Coke and Selden. From the closing decade of the 17th century the actions of the executive have been subject to the test of legality in the courts of law. The case law of England is, indeed, aflame with interest. It is interwoven with every change and movement in our history and social life. Hence, a knowledge of its past is essential to a grasp of its significance. In his treatise, *The Common Law*, Mr. Justice Wendell Holmes has said :—

> "The law embodies the story of a nation's development through many centuries. . . ." "In order to know what the law is we must know what it has been and what it tends to become."

There is, perhaps, no more striking example of a judge who possessed the outlook and vision of a historian than the late Lord Bowen. In 1884 he was President of the Birmingham Law Students' Society, and in the course of his presidential address he urged the importance of historical method as applied to the study of law. He referred to the boundless and unknown land which "presents itself to the pilgrim steps of the law student," and then he said :—

"Law is the application of certain rules to a subject-matter which is constantly shifting. What is it? It is English life, English business, England in movement—advancing from a continuous past to a continuous future—national life, national business like every other product of human intelligence and culture is a growth . . . begins far away in the dim past and advances slowly, shaping and forming itself by the operation of purely natural causes."

A little later he said :—

"Mere legal terminology may seem to you to be a dead thing. Mix history with it and it clothes itself with life. You have not even to travel far to find the history to mix. Look for it in the legal material itself and the history, like water in a fertile soil, is ready there at hand and will well up into a spring. There before your eyes in the decisions of the Law Courts and in the glossaries of commentators you will see consecutive chapters of the narrative of the progress of the human race."

Those words, I feel, are an inspiration to each one of us who rejoices to be a student. May I then quote one final passage from the address of that great and beloved judge? It is this :—

"A study of the law so executed will become one full of interest. Its effect will be to make that study a living thing, to put life into dead bones, to illuminate with sunshine dusty books. I am astonished when I hear at times the suggestion that our profession must be dull. The truer view would be that our work is inordinately engrossing. Time runs by the lawyer far too like the race in a mill stream. . . ." "Is our occupation narrowing to the mind? *Can it ever be narrowing to the mind to learn to perfection the story of human life*? Will it tend to narrow or to enlarge the mind, if we construct for ourselves in a connected form the knowledge of human life as Englishmen have pursued it since the memory of English justice. Science or Art—I care not which it be that challenges us. I unhesitatingly aver that, if followed on the lines I have endeavoured to sketch out, there is not a study in the world more exact, more liberal, or more entertaining."

The words of Lord Bowen seem to me to be a rich expansion of the truth uttered by the lawyer Baudouin nearly 400 years ago :

"*Sine historia caecam esse jurisprudentiam.*"

How true that is. And how significant the words of Moutesquieu when he said :

"To know modern times we must know antiquity—each law must be followed in the spirit of all the ages."

Do I not rightly summarise the matter if I say that a chapter of history is often worth a volume of logic?

The Change from Latin to English.

There is a strange and romantic feature of that robust and essentially English Case Law which is embodied to-day in such distinctively English phrasing. How mysterious are the colours and changes of history. For the men who fostered the Common Law and gave its first vigorous period of development in the stretch of time, from Henry II to Edward III, were lawyers who thought and pleaded in French and who made their records in Latin! It was not until 1356 (*i.e.*, a few years after the battle of Poitiers was fought) that it was enacted by Parliament that English should be the language spoken in the Courts. Even after that momentous legislation the records were still kept in Latin and (apart from the brief period of the Commonwealth) it was not until 1731 (by the effect of 4 Geo. 2, c. 26) that writs and the records of judicial decisions were worded in the English language.

(To be continued.)

Australian Notes.

By Wilfred Blacket, K.C.

In Re Gent, One or More.—Fresh impetus has been given in New South Wales to the demand for legislation to protect trust funds in the hands of solicitors by the revelations regarding the affairs of A. B. Davies who committed suicide a few months ago. He had been in business for thirty-six years, and the high esteem in which he was always held had enabled him to acquire a very large practice in trustee and investment matters, but now it is found that his estate shows a deficiency of £50,000 of which £18,000 consists of trust funds, the total assets being about £1,100, and no books of account of trust moneys were ever kept, the butts of cheque books being the only evidence of trust transactions, and these merely show amounts without any other particulars. The accountant's report is that his estate was in bankrupt condition for the last seventeen years at least. His chief clerk was a Miss Tattersall, but despite this fact he never touched horse-racing. In the state named a solicitor is under no statutory compulsion to keep any accounts of trust funds, but in South Australia, one, E. P. G. Little, having failed to proceed with an audit of his trust accounts as ordered by the Supreme Court in June last has now been committed to gaol under the Solicitors Trust Accounts Act until that order shall have been obeyed.

At Adelaide also, Mrs. Polkinghorne, *cor.* Sir George Murray, C.J., obtained a verdict of £4,000 against G. H. Holland, solicitor, formerly a member of the firm of Holland and Whittington, and R. Turner, stockbroker, and for £6,000 against Holland alone, with £1,600 for interest, the cause of action being that the plaintiff had been negligently advised and defrauded. G. H. Holland had been concerned in the promotion of companies in which Mrs. Polkinghorne was induced by the persuasion of the defendants to invest with disastrous results. Sir George spread himself considerably in this case, for his judgment covered sixty-one pages of foolscap and occupied three hours in its reading.

Again Adelaide. Mr. A. J. Rudford, the honorary Justice who as mentioned earlier spoke very roughly to Mr. C. T. Gun, solicitor, and very unkindly concerning lawyers generally was thereafter requested by Jeffries, A.G., S.A., to resign his commission and in reply thereto Mr. Rudford refused to do so. Further happenings in connection with this meeting of the irresistible and the immovable should be interesting.

Ballistics.—The Criminal Investigation Branch of the New South Wales Police Department has for some time been engaged upon the study of ballistics, and a graduate of this branch of science has had the honour of introducing the subject to a Criminal Court. It is asserted that every revolver marks the cartridge cases that it has discharged in a certain way. It leaves its own finger-prints on the case, so to speak, and so by comparison of these markings it is possible to ascertain whether the shot was or was not fired from a certain weapon. In the case of *Police v. Taplin* an empty cartridge case was picked up in the street, and Constable Brown, the graduate referred to, upon being handed the shell, photographed the markings at its base, and then fired another charge from the prisoner's revolver

and, on this shell, markings identical with those on the first shell were found. He gave a short lecture to the Bench on the elements of the science of forensic ballistics and the two shells were then admitted in evidence. It is further claimed that every bullet fired from any revolver bears the finger-print of the weapon from which it has been discharged, but as to this I think it better to wait till the matter is put upon affidavit before asking *Journal* readers to believe it, which indeed may be another illustration of the truth of the epigram that we always have contempt for the things that we do not understand.

Beware of Underwear.—I confess that I greatly dislike the majority decision of the High Court in *Australian Knitting Mills, Ltd., and another v. Grant*. The respondent, Dr. R. T. Grant, of Adelaide, purchased at the shop of Martin and Co. two suits of underwear. He wore one pair of underpants and noticed some irritation on his shins. He had the garment washed, wore the other pair, and then changed to the first pair again, but an inflammatory condition of the skin developed into acute dermatitis and he suffered severe loss therefrom. His skin was in normal condition, but the garments contained sodium bisulphate in sufficient quantity to cause the injury he had sustained. He sued the Knitting Mills and Martin & Co. for damages, alleging negligence in manufacture against the former, and breach of contract against the latter defendant, and upon trial before Sir George Murray, C.J., obtained a verdict for £2,450. The defendants appealed and the High Court by majority set aside the verdict and entered judgment for the defendants. The points involved cannot be discussed in the space available to me, but on its facts the case seems to be an authority for the broad proposition that prejudicial underpants may be freely sold in Australia.

Varia.—At Broken Hill, Judge Coyle suspended a sentence of twelve months for bigamy on condition that the prisoner married the lady whom he had bigamised within that term. But he can't marry her until the lawful wife gets a divorce. It is true, as the Judge was informed, that she has applied for it, and should be able to get the divorce absolute within twelve months and she, no doubt, is a very reliable and dependable lady. But it would not be safe to make such an order in some other cases, because—well you know what some of these women would do to spite another woman! —but yet the prisoner seems to be on a good wicket for he is out on good behaviour and can't be expected to marry the bigamised lady until it is lawful for him to do so, and if the lawful does not hurry up with her divorce suit he may still be lawfully married to her. That is the fly in his amber, for if he is still married to the first wife, and can only obey the law by marrying the other girl, it may be—who can tell—that he would rather have done the twelve months than be or remain married to either of them. For he seems not to have been constant in his affections.

Mrs. A. B. Edols, Sydney, filed accounts showing that she outpaced the Prodigal Son inasmuch as she went through £56,000 in five years. Of this total £21,000 was paid for bets on the course and S.P., but she had not much cause to grieve over this amount for her winnings amounted to £4,471, so that she really only lost something over £16,000. And, in fact, she did not lose it herself, for most of this money was received from friends for investment in business ventures of such confidential nature that she could not mention particulars to the lenders. She did not even say that she could not tell till she went out to the course. Frocks cost £4,000, but this item of expenditure has not recently been large for they do not dress for dinner at Long Bay.

Husbands must not "Spank."—The ever memorable "Jackson Case" is the Magna Charta of a wife's freedom, for it decides that no man has the right to imprison his wife in a gaol called "home," or at all, and it also casts serious doubt upon the theory of old-time Merry Englanders that a husband may beat his wife with a stick that is not thicker than his thumb. *Martin v. Martin* cor. Boyce, J., N.S.W., extends "this freedom," for it asserts in terms that shall never be questioned that a wife is not compellable to live with a husband who "spanks" her. Thomas Martin and Evelyn his wife did not live together quite happily for he claimed to exercise this indecent and shameful procedure as incidental to his conjugal rights. That this assault was not by way of endearment is clear, for the doctor's evidence proved that the wife "had bruises and abrasions on her body, one of them,"—*mirabile dictu!*—"showing the outline of a hand." One shudders to think that such marks were upon a lady having the soft sweet name of "Evelyn." It may be that in her infantile days parental correction extended to smacking, but even so it is quite clear that her husband's smackings were "not like mother's," and so Mrs. Martin left the home with its incidental annoyances provided for her by him. Then an extraordinary thing happened for her husband who was apparently anxious, and certainly willing, that the world should know that he possessed the wife-spanking complex, sued for restitution of "conjugal rights," which although not specified clearly included the "right" to make more hand prints and abrasions; but the Judge in Divorce, strongly disapproving of hand printing in the home, dismissed the suit.

The suit recalls a pre-war incident. Two suffragettes were digging up a putting green when two golfers arrived. The niblick seemed to be the club required, but the golfers contented themselves with spanking—*vi et armis*—the two ladies, who at once went to the nearest police station to start prosecutions for assault. They could not describe their assailants for they were not looking towards them at the time of the occurrence. But the police sergeant was a resourceful man. "I can fix them," he said, "come into the next room and I'll get their finger prints." Then the proceedings crashed.

The English Judges and the Salary Cuts.—At the banquet given to the English Law Society members at Oxford, Lord Atkin said that when he had been at the Bar twenty years ago, it had been one of the boasts of the Profession that the standard and quality of the Bench was at least equal to the standard and quality of the leading members of the Bar. He was afraid that, unless some change were made, that position, on which the fame of British justice was based, would disappear. He could not believe that the best men would continue to accept judicial appointments, and as better Judges were promoted to appellate work the Judges of first instance would be drawn only from those who were prepared to accept the present judicial salary.

Sir Dennis Herbert, M.P., said that the Bench was the pride of the Profession and the country alike, and both might well be proud that men were to be found fit for the work of the Bench and prepared to undertake the work at great financial sacrifice. The complaint was occasionally made that high fees were charged by certain members of the Bar, but unless counsel could make a fortune at the Bar they could never afford to retire to the Bench under present conditions.

New Zealand Conveyancing.

By S. I. GOODALL, LL.M.

Common Clauses in Leases and Agreements for Lease.
(*Continued.*)

I.—COVENANTS BY LESSEE.

1.—*To farm Land.*

THE LESSEE shall and will at all times during the said term use farm cultivate and manage the said lands in good proper and husbandlike manner and shall not nor will not impoverish or waste the soil thereof and will also lay down in good permanent English grasses of good quality and in appropriate mixture with proper quantities of clean seed and suitable fertilizers all such parts thereof as shall be broken up for tillage.

2.—*To clear Noxious Weeds.*

THE LESSEE shall and will at all times and from time to time during the said term clear and keep clear the said lands from all noxious weeds rabbits and vermin and will in particular duly and faithfully comply in all respects concerning the demised premises with the provisions of the Noxious Weeds Act 1928 and the Rabbit Nuisance Act 1928 and the Orchard and Garden Diseases Act 1928 and all amendments thereto and all notices or demands lawfully given or made by any person in pursuance thereof.

3.—*To Fence.*

THE LESSEE will within (*six*) calendar months from the day of the date hereof erect and put up on and along all the boundaries (OR the road or northern boundary) of the said land a good and substantial non-rabbit-proof (OR rabbit-proof) fence according to the specification contained in the 5th (OR 2nd) clause of Part I (OR II) of the Second Schedule to the Fencing Act 1908.

4.—*Not to carry on Share-milking.*

THE LESSEE shall not nor will during the said term carry on or permit to be carried on share-milking upon the demised premises whether alone or in conjunction with any other premises.

II.—COVENANTS BY LESSOR.

1.—*To pay Head Rent etc. (in case of Sub-lease).*

THE LESSOR shall and will duly and punctually throughout the said term pay the rent reserved by and perform and observe all the covenants and provisions expressed or implied in the hereinbefore recited head-lease and shall not nor will do or suffer any act or omission whereby the powers of distress or re-entry into possession or any of the subsidiary or incidental powers of the head-lessor thereunder shall or may become exerciseable.

2.—*To effect External Repairs.*

THE LESSOR shall and will forthwith repair the roof of and the veranda covering adjoining the demised premises inclusive of the replacement of the corrugated iron thereof and the fitting of adequate skylights and ventilation therein AND throughout the said term will repair and keep in good repair and weatherproof condition the said roof and veranda covering and also the external walls doors and windows of the said building.

III.—PROVISOES AND MUTUAL STIPULATIONS.

1.—*Right of Renewal of Term.*

IF THE LESSEE shall have paid the rent hereby reserved and observed and performed the covenants and provisions hereof then the Lessee shall have the right or option (to be exercised on or before the day of 19 by notice in writing to the Lessor) to take and accept a renewal of the term hereby created for a further period of (*five*) years from the expiration of the term hereby created at the same rental as that hereby reserved (OR at a rental to be agreed upon between the parties or failing agreement to be settled by arbitration in accordance with the Arbitration Act 1908 but not in any case to exceed the rent hereby reserved by more than £10 per centum thereof) and upon and subject to the like covenants conditions and restrictions as are herein contained excepting this present right or option of renewal.

2.—*Option of Purchase.*

IF THE LESSEE shall have duly observed and performed all his covenants and obligations hereunder then he shall have the option at or prior to the (*7th*) day of (*July*) 19(*36*) (to be exercised by giving to the Lessor not less than one calendar month's notice in writing of his desire to acquire the said land) of purchasing the said land on the terms following:—

(1) The option may be exercised in the name of the Lessee alone or the Lessee and A.B. (the guarantor of this Lease) as tenants in common.

(2) The purchase price is £ payable as to £ in cash at the expiration of the said period of one calendar month (time being essential) and as to the balance of £ within (*Three*) years with interest payable quarterly meantime at per centum per annum.

(3) An agreement for sale and purchase shall be drawn up by the solicitors to the Lessor at the cost of the Lessee incorporating the provisions of this Lease as to the sale and incidental matters and generally containing such other provisions as are usually inserted in agreements for sale and purchase of farm properties by solicitors practising at (*Wellington*).

3.—*Right of Removal of Fixtures.*

IF THE LESSEE shall have paid the rent hereby reserved and observed the covenants and provisions hereof then the Lessee shall at the expiration of the said term or within one day thereafter have the right of removal from the demised premises of all fixtures and appliances heretofore or hereafter installed or used therein by the Lessee PROVIDED that the Lessee shall make good and repair any damage caused to the demised premises by any such removal.

4.—*Right of Re-entry on Default.*

IF THE RENT hereby reserved or any part thereof shall be in arrear and unpaid for the space of (*fourteen days*) then whether the same shall have been legally or formally demanded or not or if and whenever there shall be any breach or non-observance or non-performance of any covenant condition or provision herein on the part of the Lessee contained or implied or if the Lessee shall become bankrupt or shall make any assignment for the benefit of or enter into any composition with his creditors or if any assign of the Lessee being a corporation shall be dissolved or shall go into liquida-

tion or if the estate or interest of the Lessee hereunder shall be seized or taken in execution under any writ of seizure or sale it shall be lawful for the Lessor forthwith without making any demand or giving any notice or doing or seeing to the doing of any act deed matter or thing whatsoever to re-enter upon and take possession of the demised premises or any part thereof in the name of the whole whereupon the said term and all the interest of the Lessee hereunder shall absolutely cease and determine and that without releasing the Lessee from liability for any rent due or accruing due hereunder or from liability for any antecedent breach of agreement condition or provision hereof.

The Purchaser without Notice.

An Examination-room Effort.

One of the examiners of the New Zealand University was recently astonished to find answered in verse—not, perhaps, of so much merit as of originality—the intimation: "Write a note on purchaser for value without notice." The name of the writer is unknown, but the fact of the inclusion of the following stanzas in his examination-book is unquestionable:

The honesty of Smith
Is totally a myth,
He shall not have my protection, my guidance or affection,
And in Court I'll show him quickly who the goat is.
But to you my worthy friend
On admiring knees I bend;
Let your features be not pallid for your dealings shall be valid,
You Purchaser for value *minus* notice!

In bankruptcy proceedings
I will listen to your pleadings,
That you thought that he was "Oke" and you didn't know him broke,
And bought his chattels honestly and *bona fide*.
The contract it shall stand
For you're honoured in the land,
And you have the Court's protection by the eighty-second section;
We compliment you on your mind so clean and tidy.

Now be careful what you do
In your dealings with the Jew,
For it's absolutely vital that you cannot get a title
To stolen goods that have been put with him in pawn.
But when you're buying chattels
Such as boots or baby's rattles,
You are safe for all futurity e'en though a good security
Exists, but was unregister'd ere that dawn.

Your honesty's so peerless
That you need not be but fearless,
In being chiefest actor in a contract with a factor
Who's selling goods he really doesn't own.
Never let your half-a-crown's tumbling
Lead you to eventual stumbling,
By skipping hippy-hoppity and buying stolen property—
That for such there is no title's widely known.

Go with God you honest man
With elation and elan,
For we can't be ever stressing that you have a legal blessing:
If you stand for Mayor you'll know just where our vote is!
Best of luck and happy hunting;
Keep off beer and girls and punting,
You're all right in all your dealings and you touch our tender feelings,
You Purchaser for Value *minus* Notice!

—"2717B."

Practice Precedents.

Certiorari—(*continued*).

NOTICE OF MOTION (WITH WRIT).

In New Zealand reported cases appear in the NEW ZEALAND LAW REPORTS and in the GAZETTE LAW REPORTS under "Practice."

We have already referred to R. 465 of the Code of Civil Procedure (see previous issue of this JOURNAL) and would stress the fact that the affidavit in support of the application for removal should *disclose* the *material facts* of the case in order that the Court may see what terms ought to be imposed. The documents in this mode of procedure should be intituled IN THE MATTER of an Order etc. or Between (*Plaintiff*) and (*Defendant*). This procedent (the second mode) assumes that a *Warden* has exceeded his jurisdiction in the Warden's Court.

NOTICE OF MOTION FOR WRIT OF CERTIORARI.

IN THE SUPREME COURT OF NEW ZEALAND.

.....District.

.....Registry.

IN THE MATTER of an Order made by in the Warden's Court held at on the day of 19 whereby the Warden purported to cancel a Special Alluvial Claim License Number in respect of acres of land situated in the Survey District.

TAKE NOTICE that Mr. of Counsel for a company duly registered under the Companies Act 1908 having its registered Office in the City of WILL MOVE THIS HONOURABLE COURT on Wednesday the day of 19 at 10.30 o'clock in the forenoon or so soon thereafter as Counsel can be heard for an order that a Writ of Certiorari do issue addressed to [*Warden and Receiver*] for the purpose of removing into this Honourable Court an order made by the said [*Warden*] at on the day of 19 purporting to cancel Special Alluvial Claim License No. in order that the said order may be quashed AND WHY if an order shall pursuant to this motion be made for the issue of the said Writ of Certiorari the said order shall not direct and determine that the aforesaid order of the Warden's Court should be quashed on return of the said Writ without further order AND WHY this Court should not make such order as it deems proper as to the costs of and incidental to this application UPON THE GROUNDS that the said order was made without Jurisdiction and ought to be quashed for the reason that the said License was vested in AND upon the further grounds appearing in the affidavit filed in support hereof.

Dated at this day of 19 .

Solicitor for Applicant.

To the Registrar of this Court and to Warden and Receiver of etc. at the Warden's Court at .

This Notice of Motion is filed by Solicitor for the said of whose address for service is at the office of the said solicitor.

AFFIDAVIT IN SUPPORT OF MOTION.

(*Heading*).

I of Company Secretary make oath and say as follows:—

1. That I am the Secretary of , a company duly incorporated etc. and having its registered office at in the City of .

2. That the said on the day of 19 had transferred to it a Mining License number dated the day of 19 in respect of acres of land situated in the Survey District.

3. That the assignment of the said License was registered in the office of the Mining Registrar at on the day of 19 .

4. That by deed dated the day of 19 (copy of which is hereunto annexed and marked "A") the said assigned to the said License on the day of 19 to secure repayment of moneys advanced to the said and the said assignment was registered in the office of the Mining Registrar at on the day of 19 .

5. That the moneys secured by the said assignment have not been repaid and the said is still the registered holder of the said License No. .

6. That the rentals payable under the said License were not paid for the half-year ending 19 .

7. That a summons for payment of such rentals and for cancellation of the said License was issued out of the Warden's Court at on the day of 19 .

8. That upon receipt of such summons I caused to be forwarded to the amount claimed to be paid to the Clerk of the Warden's Court at .

9. That through inadvertence the said moneys were not paid and an order was made cancelling the said License.

10. That NO NOTICE WAS GIVEN to or any one on its behalf that the said rentals were in arrear and that a summons had been issued therefor and for the cancellation of the said License.

11. That immediately I learned that the said License had been cancelled I informed the said of such cancellation.

Sworn etc.

AFFIDAVIT OF SERVICE.

(*Heading.*)

I of Law Clerk make oath and say as follows:—

1. That I am a Law Clerk in the employ of Solicitor to etc.

2. That on the day of 19 I served and with a Copy of Motion for Writ of Certiorari and with a copy of affidavit of by delivering the same to each of them personally.

3. That hereunto annexed and marked "A" and "B" are true copies of the said Motion and affidavit. .

Sworn etc.

ORDER FOR WRIT.

(*Heading.*)

day the day of 19 .

Before the Hon. Mr. Justice .

UPON READING the Motion for a Writ of Certiorari filed herein and the affidavit of and of filed in support thereof AND UPON HEARING Mr. of Counsel for the said and Mr. of Counsel for THIS COURT DOTH ORDER that a Writ of Certiorari be issued addressed to in the said Mining District of and to of for the purpose of removing into this Court an order made on the day of 19 by (*Warden*) at the Warden's Court at cancelling Special Alluvial Claim License numbered in respect of acres of land situated in the Survey District in order that the said order may be quashed AND IT IS FURTHER ORDERED that the said order of the said Warden's Court shall be quashed on the return of the said Writ without further order.

By the Court,

Registrar.

WRIT OF CERTIORARI.

(*Heading.*)

GEORGE THE FIFTH etc.

GREETING:

To .

WE being willing for certain reasons that a certain order made by (*Warden*) at the Warden's Court at on the day of 19 in the Mining District of WHEREBY IT WAS ORDERED that Special Alluvial Claim License numbered in respect of acres of land situate in the Survey District of be sent by you before us DO COMMAND YOU to send forthwith under your seal before us in the Surpeme Court of New Zealand at the said order with all things touching the same as fully and perfectly as it may have been made by you and now remain in your custody or power together with this our Writ.

Witness the Right Hon. Sir Chief Justice of New Zealand at this day of in the year of Our Lord etc.

(SEAL.)

Registrar.

NOTE: The Registrar of the Supreme Court endorses the Writ on return, to the effect that execution of the within Writ appears by the Schedule or endorsement hereunto annexed.

The schedule or endorsement is made, usually on the back of the Writ, and returned, signed, to the Registrar of the Supreme Court.

Bills Before Parliament.

Coinage. (RIGHT HON. MR. COATES.) Cl. 2.—Interpretation. Cl. 3.—Standard weight and fineness of coins. Cl. 4.—Minister of Finance may arrange for issue of silver and other coins. Cl. 5.—Legal tender. Cl. 6.—Prohibition of other than official coins. Cl. 7.—Contracts, &c., to be made in currency. Cl. 8.—Power to regulate coinage by Proclamation. Cl. 9.—Regulations. Cl. 10.—Proclamations and Orders in Council to be laid before Parliament. Cl. 11.—Repeal of s. 8 of the Finance Act, 1932-33 (No. 2). Cl. 12.—Application of Act to Cook Islands.—Schedule.

Scenery Preservation Amendment. (HON. MR. RANSOM.) Cl. 2.—Section 2 of Amendment Act, 1926, amended. Cl. 3.—Damage by fire from adjoining land. Repeal of s. 14, *ibid.* Cl. 4.—Offences. Consequential repeals. Cl. 5.—Time within which information may be laid. Cl. 6.—Provision for declaration of private scenic reserves.

Juries Amendment. (MR. SCHRAMM.) Cl. 2.—A jury of four may be had where the amount in issue does not exceed £500. Cl. 3.—A jury of twelve where amount in issue exceeds £500. Cl. 4.—Special jury in certain cases. Cl. 5.—Principal Act and code of civil procedure modified.

Family Allowances Amendment. (MR. BARNARD.) Cl. 2.—Section 3 of principal Act amended by adding the words "or mother" after the word "father."

British Nationality and Status of Aliens (in New Zealand) Amendment. (MR. FRASER.) Cl. 2.—National status of married women. Cl. 3.—Grant of certificate of naturalisation to a married woman. Cl. 4.—Loss of British nationality of a married woman. Cl. 5.—Consequential amendments.

Rules and Regulations.

Fisheries Act, 1908. The Taupo Trout-fishing Regulations, Amendment No. 4.—*Gazette* No. 69, October 5, 1933.

Shipping and Seamen Act, 1908. Amended Rules for the Examination of Engineers.—*Gazette* No 69, October, 5, 1933.

Extradition Treaty with Portugal amended.—*Gazette* No. 69, October 5, 1933.

Discharged Soldiers' Settlement Act, 1915. Amended Regulations.—*Gazette* No. 71, October 12, 1933.

Education Act, 1914. Regulations for Special Appointments in Public Schools.—*Gazette* No. 71, October 12, 1933.

Land and Income Tax Act, 1923; Land and Income Tax (Annual) Act, 1933. Order in Council fixing the Date and Place for the Payment of Land-tax and Income-tax under the Land and Income Tax Act, 1923, and the Land and Income Tax (Annual) Act, 1933.—*Gazette* No. 72, October 10, 1933.

Fisheries Act, 1908. Amended Regulations for Whitebait Fishing.—*Gazette* No. 72, October 10, 1933.

Board of Trade Act, 1919. Revoking certain Regulations deemed to be Board of Trade Regulations.—*Gazette* No. 72, October 19, 1933.

Board of Trade Act, 1919; Board of Trade Amendment Act, 1923. Revoking certain Board of Trade Regulations.—*Gazette* No. 72, October 19, 1933.

Judicature Act, 1908. Order in Council fixing Sittings of the Court of Appeal for the Year 1934.—*Gazette* No. 74, November 2, 1933.