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

"The tendency of modern legislation to restrict the liberty of the individual, more particularly in the practice of his profession and the carrying on of his business, should be resisted and curtailed."

—MR. JUSTICE EVE.

Vol. IX. Tuesday, December 5, 1933 No. 22

The Skidding of Motor-vehicles.

A great many people, including some lawyers, think that a skid is no evidence of negligence, and quote *Wing v. London General Omnibus Co.*, [1909] 2 K.B. 652, to support the proposition. It does not do so, as the *Law Journal* (London) pointed out editorially last month. In that case the plaintiff in the Court below abandoned so much of her case as rested on an assertion of negligent management, and based her claim only on the allegation that it was negligent, or even a nuisance, for operators of motor-cars to put omnibuses in the streets on days on which they might skid. The Court of Appeal rejected that contention, but left it open to any plaintiff in the future to allege, and prove if he can, that he has been injured by a skidding vehicle, and that a skid might be evidence of negligent driving or the result of it.

Without discussing the doctrine of *res ipsa loquitur* and its distinctions of application—for which see the judgment of Myers, C.J., in *Findlater v. Dwan*, [1932] N.Z.L.R. at p. 208 *et seq*—it is useful to note that when a motor-vehicle is in a place where it has no right to be, under conditions where it is not suggested that there are any conditions of skidding or that skidding was likely to cause the injury which occurs, the case comes within the principle of *Scott v. London and St. Katherine Dock Co.*, (1865) 34 L.J. Ex. 220, expressed as follows by Erle, C.J.,

> "There must be reasonable evidence of negligence; but where a thing is shown to be under the management of the defendant or his servants, and the accident is such as in the ordinary course does not happen if those who have the management use proper care, it affords reasonable evidence in the absence of explanation by the defendant, that the accident arose from want of care."

(Lord Dunedin comments: "I take notice of the word 'explanation'; it is not in absence of proof": *Ballard v. North British Railway Co.*, [1923] S.C. 43, 55, H.L.) This does not justify the withdrawal of the case from the jury on the authority of *Wing's* case.

In *McGowan v. Stott*, (1923) 99 L.J. K.B. 357*n.*, Bankes, L.J., throws useful light on *Wing's* case and shows it is still open to the plaintiff to show that he was injured by the defendant's skidding, and that the skid was due to some negligence on the part of the defendant. Slesser, L.J., agreed that the facts in *McGowan v. Stott* (*supra*), which excluded skidding as a cause of the accident, came within the principle of *Scott's* case, which was also followed in *Ellor v. Selfridge and Co.*, (1930) 46 T.L.R. 236, and applied in *Halliwell v. Venables*, (1930) 99 L.J.K.B. 354. In the last-mentioned case, Scrutton, L.J., said that, given the facts that a motor-car runs on to the pavement and that its driver gives no explanation as to why it ran on to the pavement, they require explanation by the person driving the motor-car; and, as they constitute an accident which would not usually happen with proper driving, in the absence of explanation by the driver they are in themselves evidence of negligence. The onus is thrown on the driver of the vehicle of explaining the occurrence and showing that it took place without any negligence on his part: *Corcoran v. West*, [1933] I.R. 210.

Where, however, the facts are consistent with a skid, and are so explained, the *res ipsa loquitur* rule does not apply: *Moffatt v. Bateman*, (1869) L.R. 3 P.C. 115; *Henderson v. Mair*, [1928] S.L.T. 16; and see the distinctions drawn by Lord Dunedin in *Ballard v. North British Railway Co.* (*supra*).

Scott's case is, therefore, distinguishable in accident cases arising from skidding and the like. As the Lord Justice Clerk said in *Henderson v. Mair* (*supra*):

> "One knows well that strange and unaccountable accidents happen to cars without any fault being suggested on the part of their drivers—*e.g.*, from a pot-hole, or a stone in the road, or the bursting of a tyre—and the onus on the defender, as has been distinctly laid down in the House of Lords, is not to prove that the accident happened through no fault of his, but to offer a reasonable explanation."

The law affecting skidding cars in accident cases has been dealt with in great detail in the American decisions, which are covered by *Loftus v. Pelletier*, (1915) 223 Mass. 63; *Klein v. Beeten*, (1915) 5 A.L.R. 1237; *Lambert v. Eastern Massachusetts Street Railway Co.*, (1920) 240 Mass. 495, 12 A.L.R. 1291; *Linden v. Miller*, (1920) 177 N.W. 909, 12 A.L.R. 665; and *Osborne v. Charbreau*, (1928) 64 A.L.R. 251; all of which go to show that the mere skidding of a car does not, alone and unexplained, furnish evidence of the negligent operation of that car.

In view of the authorities, the plaintiff, in an action for damages arising out of accident caused by a skidding motor-vehicle, should approach the matter as being the result of some negligence prior to the actual accident. In this way, the skid in itself is considered as an effect and not as a cause. For instance, a breach of a statutory regulation affecting motor-vehicles or heavy traffic vehicles may be material—*e.g.*, those affecting tyres and the inflation of tyres, since the undue wearing of the tread of a tyre, its insufficient inflation, or its being in a condition to render it likely to burst, are possible causes of a skidding that is otherwise unexplainable. Thus, the matter may be brought within the Motor-vehicles Regulations, 1928, Reg. 7 (8) of which is as follows:—

> "No person shall drive any motor-vehicle unless such motor-vehicle, including all its equipment, is in such a condition as not to cause or be likely to cause injury or damage to, or endanger the safety of, any person on the motor-vehicle, or any person, animal, property, or object on any road or other place."

And the condition of the tyres, etc., should be considered carefully, not as evidence of the cause of the accident, but as negligence leading to the skid itself. A mere breach by the defendant of this regulation does not give any cause of action to the plaintiff: *Black v. Macfarlane*, [1929] G.L.R. 524, 526. If, however, he can show that a breach of the regulation (apart from any proof of negligence on defendant's part) has been the cause of the skidding, this in itself will afford *prima facie* evidence of negligence causing the accident: *Wintle v. Bristol Tramways and Carriage Co., Ltd.*, (1916) 117 L.J. 238. In appropriate circumstances the breach is evidence of contributory negligence if there are present

the conditions explained by Salmond, J., in *Canning v. The King*, [1924] N.Z.L.R. 118.

So far, the skidding has, by way of example, been considered, as an effect of negligence arising from the breach of a statutory duty. If *prima facie* evidence of negligence is so established, the plaintiff to succeed must further show some nexus between the breach of the duty and the accident itself, so that he suffered damage, a nexus not being presumed: *Jones v. Canadian Pacific Railway Co.*, (1914) 110 L.J. 83; *Dominion Air Lines, Ltd. v. Strand*, [1933] N.Z.L.R. 1 (in particular the judgments of Myers, C.J., and of MacGregor and Kennedy, JJ.).

It is sometimes forgotten that there is no quasi-warranty of the fitness of a motor-vehicle in favour of the public: knowledge of defect or some negligent act or omission must be proved: *Hammack v. White*, (1862) 11 C.B. (N.S.) 588; *Holmes v. Mather*, (1875) L.R. 10 Ex. 261. There is such a thing as mischief such as reasonable care cannot avoid; or, as McCardie, J., said in *Phillips v. Britannia Hygienic Laundry Co.*, [1923] 1 K.B. 539, it is reasonably clear that just as no absolute duty at common law exists as against owners of horses, so no absolute duty exists with respect to motor-cars. (But see, also, the observation of Bankes, L.J., in *McGowan v. Stott* (*supra*) referring to "the exceptional case of a motor-vehicle, which is unlike a horse in that it is not liable to fits of uncontrollable temper.") In *Hall v. Brooklands Auto-Racing Club*, (1932) 101 L.J.K.B. 679, Slesser, L.J., said:

> "Whatever obligation there may be to guard against accident which may reasonably be assumed possibly to happen, there cannot be an obligation to guard against that which cannot reasonably be assumed to be likely to happen. *Nemo tenetur ad impossibilia.*"

This is another way of saying that if the danger is not of such a nature as the defendant ought to know of it, and no foresight could assume or guard against it, the liability does not extend to it; as Buckley, L.J., said in *Norman v. Great Western Railway Co.*, [1915] 1 K.B. at p. 592.

The complete defence is thus indicated by Lord Ormidale in *Henderson v. Mair*, [1928] S.L.T. at p. 19,

> "Assuming the doctrine of *res ipsa loquitur* applies to this case, and assuming the defender himself was responsible for the happening, the defender has very clearly established that there was nothing that he knew about affecting the reliability of the car; that there was nothing he ought to have known, and that, in point of fact, so far as the internal mechanism of the car was concerned, it was all in order. And he has, I think, buttressed up that proof that there was no negligence on his part by tendering more than one explanation of how the accident might have occurred without any fault on his part."

It appears, therefore, that the *res ipsa loquitur* rule does not apply to accidents arising out of a skid where no specific defect is either suggested or discovered to account for the accident, and the occurrence is not of an unusual nature requiring explanation. In other words, the driver is not liable where the accident arose out of a circumstance which could not reasonably have been foreseen, or from a defect in the motor-vehicle or its equipment which could not reasonably be held to have put the defendant on his guard against the possibility of accident: *Parker v. London General Omnibus Co., Ltd.*, (1909) 101 L.T. 623; that is to say, out of an emergency in no way due to the negligence of the driver or to any faulty condition of his vehicle or its equipment. In brief, the skid calls for some explanation, since it is not a fact but a deduction from facts.

Summary of Recent Judgments.

COURT OF APPEAL
Wellington.
1933.
Oct. 18, 19.
Myers, C.J.
MacGregor, J.
Smith, J.

ST. MUNGO, LIMITED v. J. J. CRAIG, LIMITED.

National Expenditure Adjustment—Possible Mistake by Mortgagors' Liabilities Adjustment Commission in its Recommendation—Order of Court adopting such Recommendation—Order set aside and Matter referred back to Commission to be further dealt with—National Expenditure Adjustment Act, 1932, ss. 38, 40.

Appeal from an order made by His Honour Mr. Justice Herdman in adoption of a report and recommendation made by the Auckland City Mortgagors' Liabilities Adjustment Commission in respect of an application to fix the rent payable under a lease made under s. 32 of the National Expenditure Adjustment Act, 1932.

An application was made to the Supreme Court by a lessee to have the rent payable under its lease determined under s. 32 of the National Expenditure Adjustment Act, 1932. It was automatically referred, in terms of that Act, to an Adjustment Commission who heard various witnesses for the parties.

The report and recommendation made to the Court by the Commission stated, *inter alia*, "Mr. Jackson and Mr. T. B. "Arthur, both valuers of repute, were called to give evidence "of rental value of the premises for St. Mungo, Limited. They, "however, based their values on the state of the premises "in 1930 and for that reason the Commission disregards their "valuations." The Commission appeared to have disregarded the valuations on the ground that they were based on the state of the premises in 1930 and not as they existed in 1917, when the lease was granted, the relevant date, although it was said that both valuers had made deductions so that their valuations actually were of the rental of the premises in 1917.

The Commission's report and recommendation were adopted by the Supreme Court, and an order was made fixing the rent payable by the lessee at £2,120 per annum.

On appeal by the lessor from this order, on the ground that the Commission was not justified in disregarding the evidence referred to,

Barrowclough, for the appellant; **Stanton** and **Dyson,** for the respondent.

Held, 1. That this was an appeal arising out of a special proceeding initiated under special legislation, and it could not be said that the views expressed by an Adjustment Commission amounted to a judgment; it was not an appeal on a matter of fact from a decision of the Supreme Court in ordinary litigation, in which case it would have been dismissed if the appellant had not clearly shown that the order of the Court was wrong.

2. That, as the Commission may have made a mistake which may have had an important bearing on its recommendation to the Court, the proper course was to set aside the order appealed from in order to enable the matter to be further dealt with by the Commission, and to refer it back to the Commission for a further report.

Order set aside, and matter referred back to the Adjustment Commission for a further report.

Solicitors: McVeagh and Fleming, Auckland, for the appellant; **Morpeth, Gould, and Wilson,** Auckland, for the respondent.

NOTE:—For the National Expenditure Adjustment Act, 1932, see Kavanagh and Ball's *The New Rent and Interest Reductions and Mortgage Legislation*, p. 42.

SUPREME COURT
In Banco.
Napier.
1933.
Nov. 2, 4.
Ostler, J.

IN RE HEIFORD BROS., LIMITED (IN LIQUIDATION).

Companies—Liquidation—Rent in Arrear—All Assets charged by Debenture and being less in Value than Amount owing thereunder—Resolution to go into Liquidation—Appointment of Receiver—Whether Landlord has right subsequently to Distrain—Companies Act, 1908, ss. 226, 244.

Where a tenant company in liquidation has given a debenture over its assets, and the assets are of less value than the amount owing under the debenture, the landlord can distrain for arrears of rent on such of those assets as are distrainable.

Although those assets are legally the property of the company, the debenture-holder has equitable rights over them which make them unavailable to the liquidator for payment of the company's assets; and, as the reason for the prohibition contained in s. 244 of the Companies Act, 1908—namely, the protection of the general body of creditors—thus disappears, the landlord is entitled to distrain.

So held on the hearing of a summons by a landlord for leave to distrain for rent in arrear by a company which has gone into liquidation.

Bryson v. Bank of New South Wales, (1892) 12 N.Z.L.R. 712, applied.
In re New City Constitutional Club Co., Ex parte Purssell, (1886) 34 Ch. D. 646, and **In re Harpur's Cycle Fittings Co., Ltd.,** [1900] 2 Ch. 731, followed.
In re New Vogue, Ltd., Hope Gibbons, Ltd., v. Collins, [1932] N.Z.L.R. 1633, referred to.

Counsel: Mason, in support of summons; **Hallett** to oppose.

Solicitors: Mason and Dunn, Napier, for the plaintiff; **A. S. Tonkin,** Hastings, for the Receiver.

NOTE:—For the Companies Act, 1908, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, Vol. 1, title *Companies*, p. 827.

Case Annotation: *In re New City Constitutional Club Co., Ex parte Purssell*, see E. & E. Digest, Vol. 10. p. 759, para. 4742; *In re Harpur's Cycle Fittings Co., Ltd., ibid.* pp. 759-760, para. 4743.

COURT OF APPEAL
Wellington.
1933.
Sept. 28; Oct. 18.
Myers, C.J.
MacGregor, J.
Smith, J.

BOYES v. SMYTH.

Workers' Compensation—"Total Permanent Loss of the Sight of One Eye"—Loss of Binocular Vision—Not Schedule Injury—Question submitted for Opinion of Court of Appeal—As to the Principle on which Claimant entitled to Compensation and involving Construction of Schedule and its Application to Facts—Question of Law—Workers' Compensation Act, 1922, s. 8; Second Schedule.

Case stated by the Court of Arbitration for the opinion of the Court of Appeal.

Plaintiff, as the result of an accident, retained useful vision in his injured eye with the aid of a lens, but for industrial purposes he could not use the injured eye in conjunction with the uninjured eye. He could use only one eye at a time. If he lost the sight of his uninjured eye, he could still use the injured eye aided by a lens to just as good a purpose industrially as before the eye was injured.

In answer to a question submitted by the Court of Arbitration as to whether plaintiff had suffered "the total loss of the sight of one eye" within the meaning of the Second Schedule to the Workers' Compensation Act, 1922,

J. H. Dunn, for the plaintiff; **O'Leary,** for the defendant,

Held, 1. That, where the Court is asked a question as to the principle on which a claimant is entitled to compensation and the construction of the Second Schedule to the Workers' Compensation Act, 1922, and its application to the facts of the case are involved, the question is one of law.

Sparey v. Bath Rural District Council, (1931) 48 T.L.R. 87, 24 B.W.C.C. 414, and **J. and P. Hutchison v. M'Kinnon,** [1916] 1 A.C. 471, followed.
Inspector of Awards v. Fabian, [1923] N.Z.L.R. 109, distinguished.

2. That, in the above-stated circumstances, plaintiff had suffered not the permanent loss of the sight of one eye but the loss of binocular vison, which is not one of the injuries provided for in the Second Schedule to the Act.

Grace v. Auckland Gas Co., Ltd., (1913) 15 G.L.R. 442, and **Buchanan v. Brosnan,** [1929] G.L.R. 40, approved and applied.

Question answered accordingly.

Solicitors: J. C. Tole, Auckland, and **R. N. Moody,** Auckland, for the plaintiff; **W. R. Tuck,** Auckland, for the defendant.

NOTE:—For the Workers' Compensation Act, 1922, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, Vol. 5, title *Master and Servant*, p. 596.

Case Annotation: *Sparey v. Bath Rural District Council*, E. & E. Digest Supplement, No. 8, to Vol. 34, title *Master and Servant*, p. 20, para. 2355a; *J. and P. Hutchison v. McKinnon*, see E. & E. Digest, Vol. 34, p. 319, para. 2614.

SUPREME COURT
In Chambers.
Auckland.
Nov. 17, 23.
Smith, J.

E. GRIFFITHS HUGHES LTD.
v.
ALLEN SALINE CO. (N.Z.) LTD.

Practice—Pleading—Further Particulars—Alleged Passing-off—Other products and other manufacturers referred to in Statement of Defence—Particulars of names of products and addresses of manufacturers and details of get-up of their products to be delivered—Code of Civil Procedure, R. 136.

In a passing-off action plaintiff alleged that his own get-up was distinctive and he knew of no other get-up which was common to the trade. The defendant in addition to denying this allegation alleged that the particular get-up of plaintiff's product was in common use in the trade.

On a summons by plaintiff requiring the defendant to file a more explicit statement of defence, or, alternatively, to deliver further particulars, the defendant taking no objection that the application should be for interrogatories in lieu of particulars,

Richmond, for the plaintiff; **Barrowclough,** for the defendant,

Held, without requiring the filing of a new statement of defence, that in view of the defence that defendant proposed—viz., affirmative proof that the plaintiff's product and get-up was in common use in the trade—it was necessary that plaintiff should have the particulars sought in order to prepare for trial, as without them he could not know the real nature of defendant's case, and he was entitled to the particulars asked for even though the required names of the manufacturers might happen to be the names of defendant's witnesses. Defendant accordingly was ordered to deliver the particulars asked for.

National Starch Co. v. Robert Harper and Co. Ppty., Ltd., [1906] V.L.R. 8, applied and followed.
Schweppes, Ltd. v. Gibbens, (1904) 22 R.P.C. 113, **La Radiotechnique v. Weinbaum,** [1928] Ch. 1, and **Weinberger v. Inglis,** [1918] 1 Ch. 113, referred to.

Solicitors: Buddle, Richmond, and Buddle, Auckland, for the plaintiff; **C. S. Craig,** Newmarket, for the defendant.

Case Annotation: *Schweppes, Ltd. v. Gibbens*, E. & E. Digest, Practice Volume, p. 792, para. 3549; *La Radiotechnique v. Weinbaum, ibid*, Vol. 43, title *Trade Marks*, p. 318, para. 1390; *Weinberger v. Inglis, ibid*, Vol. 33, title *Malicious Prosecution*, p. 514, para. 586.

Legal Education.

The Requirements of Our Times.

By VISCOUNT SANKEY, Lord Chancellor.*

A country's laws and their due observance should be the concern of every citizen. Of law one of the greatest ecclesiastical writers has told us that "all things in heaven and earth do her homage, the very least as feeling her care, and the greatest as not exempted from her power."

Some elementary knowledge of the law, and, above all, of the duty of obeying it, should be part of the education of every citizen. Amid the shifting sands of politics and the clouds of rival economic theories, the law is a rock upon which a man in troublous times may set his foot and be safe. Its greatest task is to establish justice between man and man and to see that obligations, both private and public, whether between states or individuals, are ascertained and obeyed. One of the oldest codes commends the man who swears unto his neighbour and disappoints him not, though it is to his own hindrance. The life of a lawyer is to a very large extent devoted to securing that end. But we are sometimes apt to forget in our busy professional lives and in our struggle for the success of the moment, what lies behind the daily routine of the lawyer, and the daily decision of the Judge. A rather cynical opinion was recently expressed by a distinguished law lord that "the current law reports, concerned as they are to an increasing extent with questions of workmen's compensation, derating and the hundred and one problems of imperfectly drafted social legislation, would seem to indicate that the scope for the employment of legal scholarship is fast disappearing, and that the equipment now most essential to professional success is an index of the statutes of the past 20 years and a digest of the decisions pronounced upon them by an often bewildered court." It is not possible to deny that there is some truth in this pronouncement. We may accept the rebuke of the poet who refers to :—

> "The lawless science of our law,
> That codeless myriad of precedent,
> That wilderness of single instances."

But we can remember he was proud to live in

> "A land of just and old renown,
> Where Freedom slowly broadens down
> From precedent to precedent."

Indeed, it is because there is some truth in the criticism that I welcome and appreciate the value of this new Faculty at Bristol, so that a student may have the inestimable advantage of acquiring a knowledge of the history and science of the law, and that he can see the real meaning and reason for the statutes, decisions and maxims of our legal system. A lawyer equipped with such a knowledge brings a greater power and usefulness to his daily task, and every profession is ultimately judged by its contribution to the well-being of the community. For nearly every Statute and for nearly every decision some present reason can be found and it is only ignorance which prompts those who say "the law is an ass."

Our fathers were not the fools that some unlearned people are apt to consider them. I cannot, however, praise a code which never changes, which seeks to apply the principles and conditions of to-day. Some principles are eternal, others ephemeral, and law is a progressive science. Statutes and decided cases are meant for the times and they are only foolish when they remain on after the reasons and the need for them have ceased.

A shrewd political thinker has told us that "law, like life, has its periods of change, and its periods of conversation. It is not a closed system of general rules elevated above time and place." While, therefore, on the practical side, a study and a knowledge of the law as it is, is necessary for a lawyer to get a living, the merely practical lawyer, however able, is not enough. Something more is needed than a photographic memory for leading cases. To seek utility everywhere is by no means the way of free men with a sense of their own duty and dignity.

You will now have an opportunity of encouraging your young men to acquire something more than the technique necessary to conduct a case in the police court, the county court or the Assizes, but with that technique, coupled with a knowledge of the science and history of legal principles, he may become of real use, not only to the individual, but to the State itself. Our law is not perfect—no human law ever will be—but those entrusted with the care of its administration, or of assisting its administration, should always be thinking how to make it more useful to their fellow citizens. That is a duty incumbent on Judges, Advocates and Teachers. The object of the law being to ascertain the truth and to do justice between man and man, its practice and procedure should endeavour to achieve this end and at the smallest possible cost of time and money.

No one will underrate the value of precedent. The lawyer's regard for precedent has been one of the great stablising forces in the State. Yet lawyers should not be hide-bound by precedent, and averse to every change. They should reflect and consider how best from their experience they can assist in reforming and improving our legal system. We are on the threshold of an epoch of profound legal transformation. Our educational methods have to raise a race of lawyers able to utilise their powers for the highest purpose. Above all, the value of research cannot be over-estimated. Wise men learn from the experience of others. Fools from their own. Many so-called new problems are only old ones in disguise. We must therefore turn out lawyers with a courage to criticise the present and to construct what is necessary for new situations.

Finally, there is one subject to which I would draw your attention to-day. Bristol has for centuries been one of the windows from which England has looked out upon the outside world. Your great merchant adventurers were among the first to open up new routes and establish commercial dealings with other nations. Your sound is gone out into all lands. Probably no greater change in our relationship with peoples overseas has at any period been witnessed than that which has taken place within the last 20 years. The British Empire of 1933 is no longer the same as the British Empire of 1913. Acts of Parliament and engagements with foreign nations have entirely altered the position in which we stand, both with regard to our own colonial fellow subjects, and the citizens of foreign nations. Of the wisdom of this change this is

* Being an address delivered in inaugurating the new Faculty of Law at Bristol University recently.

not the time or place to speak, but the change has come and upon the necessity of appreciating it and providing for it opinion will not differ. The famous declaration of the Imperial Conference of 1926 and the recent Statute of Westminster have placed our relations with the Dominions upon an entirely different footing. The inauguration of the League of Nations, the Treaties of Locarno and the Pact of Paris, have brought us into closer relationship with our foreign rivals and committed us to obligations which Englishmen a generation ago never contemplated. Neither in law or in fact can Great Britain rely upon a glorious isolation any longer. For good, or for ill, a new path is being pursued. But this is a path with which the young lawyer ought to make himself familiar. Ignorance of international law and international obligations ought to be banished from the lawyer's life.

Among the chief bonds which hold our Empire together are the just administration of just laws, and the performance of our promises made to others, whether at home or abroad. These are the ideals which a Faculty of Law can stimulate and develop. This is a monument which will endure when our other triumphs have become an empty name. Supreme success in life is not given to all. It may come as the result of duty rather than of desire, but to all of us who are engaged in the practice or teaching of the law, when we draw towards our end, the best and most satisfying of all reflections will be that we have done a good day's work for England.

Proposed Medico-Legal Society.

At a recent specially convened meeting of prominent members of the Medical and Legal Professions at Wellington, it was decided to form a Medico-Legal Society in New Zealand with objects similar to those of the British Medico-Legal Society. It was further resolved to circularise members of the B.M.A. and the Law Society setting out the objects of the proposed Medico-Legal Society and inviting applications for membership. Other resolutions which were carried were that all members of the B.M.A. and the N.Z. Law Society be eligible for membership, that the annual subscription be fixed at 10/6, and that a committee be set up consisting of Dr. E. W. Giesen and Mr. C. A. L. Treadwell to draft the constitution and rules and that Dr. S. D. Rhind and Mr. Evan Parry were appointed as provisional joint-secretaries and treasurers.

The Old Story.—The average layman has always heard that lawyers are the proper persons to draw wills and his first thought is to follow suit. But he ponders this solemn thought for a day or two, and the next time he and his neighbour are in their respective gardens he broaches the question and discovers that, in his neighbour's opinion lawyers are an expensive luxury, but that he, the neighbour, knows of a firm of stationers who supply printed forms on which anybody can make out his own will, just as well as any lawyer. So the first chapter of the old story is written, and "costs out of the estate" again writes *Finis* to the sad story of beneficiaries once more mourning the demise not only of the testator but also of his estate.—*Fortnightly Law Journal, Canada.*

Newfoundland.

And the Proposed Suspension of Responsible Government.

By R. Hepburn, LL.M., B. Com.

It is indeed rather ironical that, while the British Commonwealth Relations Conference was actually in session, a report should be presented to the British Government by the Commission appointed to investigate the financial affairs of Newfoundland, recommending the suspension of responsible government of the Dominion for a time, and the temporary substitution of government by a Commission. The cabled report, though in very brief and summarised form, is sufficient to indicate an unprecedented departure from established constitutional practice, for responsible government, having once been granted by Great Britain to one of its colonies, has never, so far, been revoked.

It is a well-known constitutional convention, now too firmly established to be questioned, that the Imperial Parliament will not legislate in matters concerning the internal affairs of a self-governing Dominion, particularly in the matter of altering its constitution without its express request and consent. Nor will the Imperial Government, except with the consent and at the request of the Dominion concerned, legislate concerning its internal affairs or its constitution, through the medium of the Royal Prerogative; for example, by means of an Order in Council.

The last occasion on which the suggestion of revoking the Constitution of a self-governing Dominion was brought forward was one which arose in respect of Newfoundland itself, when the Bank failure of 1894 led to serious consideration of the temporary suppression of self-government. We have, however, moved far along the road of constitutional progress since then.

The proposal of 1894 in respect of Newfoundland was not proceeded with, and the suggestion that the constitution of a self-governing Dominion might be revoked has only once been raised between then and 1933. In 1916, the question was brought forward in purely hypothetical form by Professor A. B. Keith in a discussion on Martial law in relation to disturbances caused by strikes in the Union of South Africa. He suggested on that occasion that if the Government of a self-governing Dominion was unable to maintain order in its territory without calling in assistance from the Imperial Forces, the Dominion was not fit to be entrusted with powers of responsible government and should be deprived of such powers.

The revocation of the Constitution of Malta in 1930 can hardly be taken as a precedent, since the latter belongs to a small class of colony to which self-government has been in part accorded. It is, moreover, in a special position, and there is no prospect that it will acquire the status of a Dominion within a measureable time.

The position of Newfoundland, Britain's oldest Colony, is somewhat different from that of the other Dominions. First, it was granted responsible government under Letters Patent comprising a series of documents dating from 1832 to 1876, and although

there is one statute which gave the Crown certain additional powers and made other amendments to the Constitution, the Constitution itself has actually no statutory basis at all, but rests wholly on convention. Secondly, Newfoundland was not permitted by Great Britain to become a member of the League of Nations either in 1919 or since, and, although it is included among the self-governing Dominions mentioned in the Reports of the Imperial Conferences of 1926 and 1930, it was not until the passing of the Statute of Westminster, 1931, that the Colony was actually styled a Dominion.

Like New Zealand and Australia, Newfoundland is excluded at its own request from the provisions of ss. 2, 3, 4, 5, and 6 of the Statute of Westminster. Section 10 of that Act provides that none of those sections shall extend to the Commonwealth of Australia, the Dominion of New Zealand, and Newfoundland "as part of the law of that Dominion" unless that section is adopted by the Parliament of that Dominion.

A comparison with the other Dominions will make the position more clear. If it was proposed to deprive Canada of responsible government, such action would require an Act of the Imperial Parliament, and such Act would, in accordance with the provisions of s. 4 of the Statute of Westminster, not

> "extend or be deemed to extend to [Canada] as part of the law of that Dominion unless it is expressly declared in that Act that the Dominion has requested and consented to the enactment thereof."

If similar action were contemplated in regard to New Zealand, the Imperial Parliament would not be bound by s. 4 of the Statute of Westminster—which has not yet been adopted by the New Zealand Parliament. The matter would rest entirely on convention, but the convention in question has now been given statutory recognition, both as to its existence and extent (but not statutory force) by being incorporated in the preamble to the Statute of Westminster in the following words:

> "And whereas it is in accordance with the established constitutional position that no law hereafter made by the Parliament of the United Kingdom shall extend to any of the Dominions as part of the law of that Dominion otherwise than at the request and with the consent of that Dominion."

In the case of Newfoundland, the position is slightly different again, since a Statute of the Parliament of the United Kingdom would not be necessary—the constitution being revocable or capable of being suspended by executive Act—by Order in Council based on the Royal Prerogative. Presumably the British Government will follow the constitutional practice recited in the preamble to the Statute of Westminster and refuse to act "otherwise than at the request and with the consent of that Dominion."

The circumstances leading up to the report of the Commission will throw some light on the position. Newfoundland is a small island adjacent to the coast of Canada and resembling rather Tasmania in its relative position to Australia than a detached Dominion such as New Zealand. The island of Newfoundland is dependent mainly on the export of agricultural products and fish, its people are relatively poor, and its Parliament little more than a glorified County Council.

Recent economic troubles overtook the island, leading to a prospective default in the payment of its overseas interest, but the situation was saved temporarily by means of loans from the Governments of Great Britain and Canada, which provided the necessary finance to enable the interest to be met. The present Government of Newfoundland was elected at the last general election by an overwhelming majority as a protest against the policy of the former Prime Minister, Sir R. Squires, he, together with his wife, Lady Squires, and most of the Cabinet Ministers losing their seats.

Neither the preamble to the Statute of Westminster nor s. 4 (which, though it does not apply to Newfoundland, may be studied by way of analogy) definitely lay down whether the "request" and "consent" of the Dominion concerned mean the request and consent of the Dominion Parliament or the request and consent of the Dominion Government. In some cases a Dominion Government, not having the confidence of its Parliament, might apply to the Imperial Government for legislation contrary to the wishes of the Dominion Parliament; but in the present circumstances of Newfoundland this question does not arise, since any request made by the Newfoundland Government will inevitably be endorsed by the Dominion Parliament in which the Government party constitutes practically the whole of the membership. The consent of both Government and Parliament should be obtainable without any difficulty since there seems to be no other way out of the financial impasse except federation with Canada, and that is an alternative which every Newfoundlander regards with extreme distaste.

[Since the above article was written, it is reported by cable that the Legislature of Newfoundland has approved the recommendation that Newfoundland return to the status of a Crown Colony until it should again become self-supporting.—ED.].

Bench and Bar.

Mr. K. J. McMenamin, of Christchurch, has recently been admitted as a Barrister and Solicitor by Mr. Justice Reed on the motion of Mr. F. D. Sargent.

Mr. L. R. Simpson, Dunedin, has admitted Mr. John Gray Warrington into partnership with him. The new firm commenced as from December 1, under the name of Simpson and Warrington.

Mr. E. C. East, LL.M., who for the past nine years has been a member of the staff of Messrs. Thorne, Thorne, White, and Clark-Walker of Auckland, has taken over the practice of the late Mr. A. L. Arrowsmith at Opotiki. The practice to be carried on under the style of Arrowsmith and East.

On the completion of the business of the meeting of the Standing Committee of the New Zealand Law Society on November 24, the acting-Chairman (Mr. E. P. Hay) expressed the gratification of members at having with them once more Mr. P. Levi, who had been in hospital in Sydney for some weeks, but was now completely recovered. Mr. Levi suitably responded.

Mr. R. C. Hughes, New Plymouth, has admitted Mr. L. C. Hughes into partnership with him, and his practice will be carried on as Hughes and Hughes. Prior to going to New Plymouth, Mr. Leonard Hughes was in the office of the late Sir John Findlay, K.C., and was afterwards managing clerk for Mr. T. U. Ronayne, of Wellington.

London Letter.

Temple, London,

September 28th, 1933.

My dear N.Z.,

The Long Vacation is almost over and members of the Bar are flocking back to the Temple in preparation for the official commencement of the Term on October 2. Everyone must have had a good holiday this year, as it has been the most glorious summer probably within the memory of most of us. Nearly all the workmen who have been engaged on restoration work in the Temple during the past two months—and they have made a very good job of it—are gone, leaving only a ladder here and there and a few painters putting the finishing touches to windows and doors. Grey flannels and soft collars are giving place to dark suits and starch; King's Bench Walk is once again full of motor-cars; in short, things are returning to normal. What is more important is that solicitors' clerks may again be seen hurrying through the Temple delivering briefs. There is said to be a general increase of business in the Courts for this term, so we are encouraged.

The Children's Charter.—The new Children and Young Persons Act, 1933, popularly called "the Children's Charter," comes into force on November 1 next. While it introduces no fundamental changes, it does represent a considerable advance in the law relating to children, more particularly as regards Juvenile Courts and as regards children needing care and attention. In some ways the provisions of the new Act approximate to the provisions of your Child Welfare Act, 1925, and its amending Act of 1927, though there is too much difference to make a strict comparison worth while. One of the principal changes in our new Act is the raising of the official age of a child or young person from sixteen to seventeen. Another less important change is the substitution of the term "approved schools" for what were formerly called reformatory and industrial schools. In general, the object of the new Act is to help those children who need training and guidance to become good citizens rather than to punish those who infringe the law.

The Law relating to Road Accidents.—There has been some talk recently of further amendments to the law relating to road accidents, more particularly with respect to injuries to persons other than motorists; and a Bill is under consideration to change the ordinary rules of the law of negligence in the case of injuries to such persons. The general idea is that where a pedestrian without negligence on his part is injured by a motorist, he should be entitled to damages whether the motorist is himself negligent or not. If there is contributory negligence on the part of the pedestrian, this should not disentitle him to compensation, but his negligence should be taken into account in computing the damages. The Bill provides that the increased liability of the motorist should be covered by increased third-party insurance. No doubt something ought to be done, since it seems that, in accidents to pedestrians, cyclists, and persons in horse-drawn vehicles during last year, no fewer than 3,619 persons were killed and 86,328 injured, and that in many cases no compensation was obtained.

Speaking as a motorist, however, I am all against any further increase in the expenses it is now necessary to incur in order to be able to run a motor-car in this country. My own opinion is that the chief remedy lies in enforcing the law with respect to dangerous driving far more strictly than it is enforced at present. One can hardly go a mile on any of the main roads of this country at a busy season without seeing at least one case of really dangerous driving, such as passing on a blind corner or at a cross-roads, or cutting-in when there is no room.

A swift and real (though unfortunately impracticable) cure for all these troubles, incidentally solving the unemployment problem at the same time, I heard suggested some while ago. It is to revive the provisions of the old Locomotives Act, 1865, which required every mechanically-propelled vehicle on the King's highway to be preceded by a man with a red flag. This old Act makes interesting reading now. Originally it contained numerous provisions restricting the use of mechanically-propelled vehicles on roads. At least three persons had to be employed to drive or conduct the vehicle, one of whom had to be the man with the red flag, and it was his duty to "warn the riders and drivers of horses of the approach of the locomotive and assist horses and carriages drawn by horses passing the same." If the locomotive had a whistle it must in no circumstances blow it, nor could it allow steam to escape out of its safety-valve. Yes, life would certainly be much more peaceful if that enactment were in force to-day.

The Progress of Law Reform.—The abolition of the grand jury, which took effect on September 12 last, has led to other reforms, particularly in connection with the preferring and drawing of indictments, and some of these are to be found in the Administration of Justice (Miscellaneous Provisions) Act, 1933. The Vexatious Indictments Act has been repealed and no one can now insist on being bound over to prosecute a charge, where justices have refused to commit. The new Act also introduces various other reforms, notably in allowing costs to be given against the Crown in civil proceedings.

It is interesting to note that it is still possible for a grand jury to be called in the counties of London and Middlesex in the case of certain offences; but as these offences only include such as treasons committed outside the King's Dominions, offences committed abroad under the Official Secrets Acts, and the offence of wilfully neglecting to deliver writs for the election of members of Parliament, a grand jury will in future be a rare sight. *Sic transit gloria.*

Yours ever,

H.A.P.

A Judgment that is merely a Justification of the Judge.—We all know the kind of Judge or Police Magistrate who says complacently about some educational or domestic problem, "Well, I was treated like that," or, "I, myself, went to that sort of school." And in the awful silence that follows, every prisoner, policeman, and spectator resists the overpowering impulse to point dramatically and say, "And behold the deplorable result!"—Mr. G. K. Chesterton, in *Sidelights.*

Case Law.

An Address by the late Mr. Justice McCardie.

(*Continued from page 300.*)

I cannot forbear to mention here a fact pointed out by our learned and distinguished chairman* in his admirable *Short History of English Law*. He tells us that the change of nearly two centuries ago from Latin to English was condemned emphatically by certain distinguished men. They formed the view that the transition might involve the collapse of many institutions—including the legal profession—and they also expressed in vigorous language their belief that the absence of mediaeval Latin from the records of the Court would gravely and permanently injure the study of the classical literature of Rome! I rejoice to feel that their forebodings of destruction have not, *as yet*, been fulfilled! And so, a strong and insular system of case law, which grew up with foreign languages as its early instruments of expression, became at last, as we proudly realise, the great inheritance of English-speaking peoples.

Insular, however, though that system was, yet you will observe its assimilative power over a continuous history of close upon 1,000 years. As Sir Frederick Pollock so justly says in his *Expansion of the Common Law*: "Perhaps the assimilation of new matter is a yet stricter test of vital power than tenacity on old ground or prevalence over enfeebled rivals." Doubtless we owe much, though perhaps less than is sometimes thought, to ancient Anglo-Saxon customs. In any event, a full measure of the old Anglo-Saxon outlook is still amongst us, and I can almost hear to-night the strong voice of William of Normandy, as he gave his oath, 860 years ago to preserve the Saxon Laws of England.

The Influence of Roman Law.

We should not fail, however, to notice the influence of Continental thought and practice for centuries after the Conquest. Yet we can also see the gradual emergence of the Common Law from its ecclesiastical fetters and we can watch it as it grew in its native vigour under the strong hands of judges who recognised and boldly declared that English Law was not to be repressed within the rules of Roman Jurisprudence. English Case Law has asserted its independent path. But, although we repudiated the dictatorship of the Roman Code and the Roman Jurist, it is well for us to acknowledge generously our debt to an ancient and splendid system of law. The influence of Roman Law on the growth of English Case Law is a factor never to be forgotten. True, indeed, it is that the learning and wisdom of Roman lawyers for the four centuries of the Roman occupation of Britain were submerged and almost obliterated by the Anglo-Saxon invasion. Men have almost forgotten, nowadays, the noble Assize Court which sat in York in the year A.D. 210, when Papinian, prince of Roman lawyers, was the presiding judge, and the famous Ulpian and the equally famous Paulus were his colleagues on the Bench. But the influence of Rome returned later and the lectures of Vacarius at Oxford in the middle of the 12th century served to awaken the more cultured minds of England to the great system of Roman Jurisprudence. The influence of Vacarius was felt by Bracton in the 13th century when he wrote his famous *Laws and Customs of England* and embodied in that work much of the law of personal property to be found in the Institutes of Justinian. Men of learning have thought that the influence of Roman Law in the formation of English Case Law was so great from Vacarius in the 12th century till the reign of Edward I (a period of over one hundred and fifty years) as to justify a description of that period as "The Roman epoch of English Legal History." Four hundred years after Bracton had passed away Sir Edward Coke, when writing his treatise on the Common Law, drew in striking fashion from Bracton's pages, and Blackstone more than a century later recognised as "amongst the sources of our own law the Rule of Roman Law either left here in the days of Papinian or imported by Vacarius and his followers." A striking example in modern times of the recognition we have given to the richness of Roman jurisprudence is to be found in the case of *Acton v. Blundell* (1843), reported in 12 Meeson & Welsby, p. 325. It is a leading decision on the question of property in subterranean water. Roman authorities were freely quoted by counsel in their arguments, and the influence of those authorities is shown in the judgment of a powerful Court.

Tindal, C.J., at p. 353, said:—

> "The Roman Law forms no rule, binding in itself, upon the subjects of these realms: but in deciding a case upon principle, where no direct authority can be cited from our books, it affords no small evidence of the soundness of the conclusion at which we have arrived, if it proves to be supported by that law, the fruit of the researches of the most learned men, the collective wisdom of the ages and the ground work of the Municipal Law of most of the countries of Europe."

May we not think of Roman Law in the spirit in which Talleyrand spoke of Bentham, and say:—

> "Though all the world borrow from it, it still remains rich."

Yes, our debt to the mighty system of Rome is great, and freely should we acknowledge it. But I like still to recall the striking words of Professor Trevelyan when he says:—

> "The Common Law has always appealed to the past of England and not to the past of the Roman Empire."

The Year Books.

I have ventured to pay a tribute to a great and inspiring body of ancient law. But the student, I feel, should ever remember that the chief aim of his reading and thought is not Roman Law but English Law. He must use his knowledge of Roman Law as an instrument for a fuller and richer understanding of the Law of England. Doubtless he will recall the warning implied in the humorous comment of the gentle Lord Bowen when told by a brother judge that he (the colleague) did not know what a "jurist" meant. "Ah," said Lord Bowen, "A jurist is a person who knows a little about the laws of every country except his own." But whatever a jurist may be, no one who would understand the sources and changes of English legal history, must fail to give a portion, small though it may be, of his thought and reading to the part which has been played by our "Year Books." Extending over the period from Edward I down to the reign of King Henry VIII they form a national and legal treasure which cannot be over valued. In them we find the origins of modern Case Law and in them we find also the seeds of the great modern principles of "precedents." The late Professor Maitland, who, together with Sir Frederick Pollock, has rendered such noble service to English legal history, brought the

* Professor Edward Jenks, D.C.L., LL.B., M.A.

wealth of his knowledge to bear upon them in his Introduction to the 3rd volume of the Year Book Series of the Selden Society. The Year Books, as we now know, are not the work of Official Reporters. They are not the dry record of technicalities, but are vivid and human descriptions of life and litigation from the 13th to the 16th century. As the late Professor Bolland says in his delightful lectures on the "Year Books":—

> "There is nothing in the whole world like these old year books of ours. . . . In them we can hear the actual colloquial phrases and idioms used by the cultured classes of England as they went about their daily business over 600 years ago. . . . From no other source can we get direct information in regard to the French spoken in England in the Middle Ages. . . . In these reports they are absolutely unique. There is nothing like them anywhere else."

Equally ample is the tribute paid to them in a further aspect by Professor Holdsworth in his *History of English Law* (Vol. 2. p. 545):—

> "There are," he says, "many mediaeval records of various kinds which record contemporary events. There are not other mediaeval records except the Year Books which photograph the actual words and actions and idiosyncrasies of the actors as they were bringing these events to pass. . . . When we read the Year Books we think of a human reporter mainly interested, it is true, in law, but for all that keenly alive to the exciting incidents of the trial which is proceeding before his eyes—to judicial wit and criticism and temper, to the shifts and turns of counsel, to the skilful move or bungling omission, even to the repartee and exclamations which the heat of a hardly contested fight evokes. . . . We see not only the things done—we see also the men at work doing them, the way these men did them, and how they came to be done in that particular way. It is for that reason that the Year Books are valuable documents, not only to the historian of English Law, but also to the historian of all parts of English life. They create for us the personal element, the human atmosphere which make the things recorded live again before our eyes."

That is a great tribute to the Year Books by a great master of our English legal history.

Sir Frederick Pollock and Professor Maitland have well said in their *History of English Law*:—

> "The Year Books should be our glory, for no other country has anything like them."

(To be concluded.)

New Zealand Law Society.

Meeting of Standing Committee.

The Standing Committee of the Council of the New Zealand Law Society met on Friday, November 24, in the Supreme Court Buildings, Wellington.

Present: Gisborne, represented by Mr. C. A. L. Treadwell; Hawke's Bay, Mr. E. F. Hadfield; Otago, Mr. R. H. Webb; Southland, Mr. S. A. Wiren; Wellington, Messrs. E. P. Hay and G. G. G. Watson.

The Treasurer (Mr. P. Levi) was also present.

Apologies for absence were received from the President (Mr. C. H. Treadwell) who was out of town, and from Messrs. A. M. Cousins, H. F. Johnston, K.C., and H. F. O'Leary, who were engaged in Court. Mr. E. P. Hay occupied the Chair.

Requests for Assistance: (*a*) *Marlborough District Law Society.*—It was reported that the President, to avoid delay, had already authorised payment to the Marlborough District Law Society of the amount requested by that Society.

The President's action was approved and confirmed.

(*b*) *Gisborne District Law Society.*—The Secretary reported that an offer had been made to the Gisborne District Law Society of £35 towards payment of striking-off expenses of £51 17s. 6d. That Society had now replied, stating that it was exceedingly difficult for them to find any sum at all, as it would probably be necessary in any event to make a levy to pay current expenses.

It was decided that, in the special circumstances disclosed, the whole amount of £51 17s. 6d. should be paid to the Gisborne Society.

Bills Before Parliament.—A letter from the Statutes Revision Committee of Parliament was received, inviting comments from the Society on the following Bills, on which the Society's Examiner of Bills (Mr. N. A. Foden) had already reported, Mr. Foden's reports being before the meeting:—

(*a*) *Fire Insurance Companies Liability Bill.*—Considerable discussion took place in connection with this Bill, and it was finally unanimously decided that the Statutes Revision Committee should be informed by letter approved by Messrs. E. P. Hay and G. G. G. Watson that in the opinion of the New Zealand Law Society the relationship of insurer and insured is a matter of private contract between the parties, and that such contract should not be interfered with by Statute: that the proposed Bill infringes the whole principle of indemnity: and that obvious difficulties would arise in the practical application of the proposed Bill to the cases of stock-in-trade and motor-cars.

(*b*) *Trustee Amendment Bill.*—It was decided to inform the Statutes Revision Committee that in the opinion of the Society this Bill is desirable.

(*c*) *Law of Libel Amendment Bill.*—Mr. Foden's report on this Bill was as follows:—

> "The Explanatory Memorandum to this Bill states that it is to protect persons who in good faith and without malice publish in newspapers, etc., reports of the proceedings and findings of domestic tribunals established by the controlling authorities of sports organisations.
>
> "The section thus confers qualified privilege in respect of the publication of proceedings or findings of enquiries held pursuant to the rules of any organisation, society, or body of persons established for the control of any sport, game, or athletic exercise.
>
> "This proposal is something not *ejusdem generis* with the other matters of statutory qualified privilege and constitutes such a new departure as to be open to question. The other matters in the principal Act are clearly of public interest and of an official or public nature. The matter of enquiries by clubs, societies, and the like are, as the explanatory note says, 'domestic' and it is very questionable whether the protection of qualified privilege should be conferred. As is well known, the proceedings and findings by clubs, etc., are not always conducted and reached with a meticulous regard for the principles of justice and it is conceivable that the publication of such proceedings and findings would work harm to an individual and leave him without redress. There does not seem to be on the face of the matter any strong reason for the innovation."

It was decided to reply to the Statutes Revision Committee in accordance with the foregoing report.

(*d*) *Judicial Proceedings (Regulation of Reports) Bill.*—All members expressed approval of this Bill, and it was decided to notify the Statutes Revision Committee accordingly.

Reports of Examiner of Bills.—Reports were received on the following Bills: (*a*) Distress and Replevin Amendment Bill; (*b*) Juries Amendment Bill; and (*c*) Land Agents Amendment Bill.

It was decided to write to the Statutes Revision Committee and inform them that, though the Society had not been asked to express an opinion on these Bills, grave objections could be raised to each of them, and that the Society would therefore welcome the opportunity of placing its views, if so desired, before the Committee.

New Zealand Conveyancing.

Wills.

By S. I. GOODALL, LL.M.

The law of wills in New Zealand is substantially based upon the Wills Act, 1837, and the Wills Act Amendment Act, 1852 (Imp.). A will is the expression of one's intention as to the disposition of one's property after death, and, apart from the ancient special privileges still afforded to wills made by sailors and soldiers on service, has since January 1, 1838, been required to be reduced to writing, appropriately signed and attested, not only in respect of immovables but of movables also.

As an instrument to be drawn by the conveyancer a will presents more difficulties than most others; its interpretation depends on canons differing from those applicable to instruments operating *inter vivos*. The terms of the finished writing will depend on the station in life of the testator, his responsibilities in claims, legal and moral, and the property available for distribution. A knowledge of these may be already in the possession of the solicitor, or else must be obtained from instructions, enlarged if necessary by further inquiry and answer.

It is not remarkable that wills have no set form even in draftsman's circles, although in ordinary cases the following sequence after the leading is not unusual in New Zealand :—

1. Revocation of former wills.
2. Appointment of executors and trustees.
3. Appointment of guardians of infant children, if any.
4. Legacies : (*a*) Specific ; (*b*) Demonstrative ; (*c*) General.
5. Devises : (*a*) Specific ; (*b*) General.
6. Residuary devise and bequest with trusts, settled legacies, and settlements of land.
7. Powers of trustees : (*a*) Of sale, lease, and management ; (*b*) Of postponement of conversion ; (*c*) Of investment (if special) ; (*d*) Of maintenance and advancement.
8. Testimonium and date.
9. Attestation.

The leading of "THIS is the last WILL of me A.B. of etc." seems to be in more common use than that of "I A.B. of etc. DO DECLARE this to be my last WILL," while the use of the old word "testament" has been sacrificed to the modern tendency to brevity, and the word "will" used in respect of a disposition not only of land but also of chattels, and indeed property of any kind. "Devise," "bequest," and "legacy," however, still retain their technical use and meanings. The revocation clause disposes of all questions of revocation by implication and clears the way for the better construction of one and only one paper. Even in a short will the revocation clause and the appointment of executors seem more suitably placed near the beginning rather than towards the end of the will. The use of the words "last will" or "last and only" does not avoid the necessity of a revocation clause if there is a prior will in existence : *Simpson v. Foxon*, [1907] P. 54.

The same persons may conveniently be appointed trustees as well as executors except in the special cases where separate sets of trustees are required for different trusts. Two reasons may be given : First, the assets vest in the executors upon the trusts of the will ; and, secondly, no clear line of demarcation can universally be drawn between the executors' duty of "clearing the estate,"—that is to say, getting in the assets and paying the debts and legacies, and the trustees' duty of administering the surplus assets. For brevity the appointees together with their successors in office may be defined as "my trustees" and so referred to throughout the later part of the will.

The law governing the dispositive part of the will is a subject in itself, but mention may be made of a few cardinal points. The rule against perpetuities as it is commonly called has probably wrecked more wills than any other ; only by the most deliberate consideration does the draftsman avoid breach of its provisions. The rule under discussion extends beyond the phase of remoteness of vesting ; the failure of a general restraint upon anticipation to attach to a gift to a female child unborn at the death of the testator often passes unnoticed (see *In re Game, Game v. Tennent*, [1907] 1 Ch. 276) ; while many an intending testator gives instructions for an indefeasible gift and then seeks to fetter it as was sought to be done in *In re Johnston, Mills v. Johnston*, [1894] 3 Ch. 204. Apart from the forms of restraint upon anticipation by a married woman and the usual "spendthrift son" clause, s. 24 of the Property Law Act, 1908, provides an invaluable method of restriction on alienation where the relationship of parent and child or grandparent and grandchild exists between the testator and the beneficiary. The section may be utilised in whole or in part : *Kidd v. Davies*, [1920] N.Z.L.R. 486.

The possibility of the testator and the beneficiary dying in the one accident, or within a short time of each other, is still worthy of consideration. The old rule in *Wing v. Angrave*, (1860) 8 H.L.Cas. 183, 11 E.R. 397, as exemplified in *Reid v. Reid*, (1909) 29 N.Z.L.R. 124, has been abrogated by the Property Law Act, 1927, which directs the presumption for all purposes affecting the title to property that the younger of two commorientes shall have survived the elder. Apart from that the possibility of payment of successive death duties on the same assets in two separate estates within a short time may well be guarded against. If the estate of a testator be left absolutely to another, and that other die within ever so short a period after the original testator's death, no rebate or remission of death duties upon that other's estate is allowed in respect of assets therein which have already borne duty in the estate of the original testator, whether or not the parties are in any way related, and whether or not those assets meanwhile ultimately find their way into the hands of the wife, husband, or child or other issue of the original testator. If the original testator's estate be of sufficient worth the gift of a life tenancy therein to the other may avoid the expense of double death duties on the corpus. Alternatively the gift may comprise the corpus of the estate or specific property, and may be made contingent upon the beneficiaries' survivorship over the testator for a reasonably short period. The expense referred to is not so great where the original testator and the beneficiary are husband and wife of each other by reason of the special exemption from liability for duties, but even in the case of parent and child or other issue the expedient is worthy of consideration.

The incidence of duties between tenant for life and remainderman, and the primary liability of a devise for payment of a mortgage debt charged thereon have each been earlier dealt with in these columns. The provisions of s. 33 of the Family Protection Act, 1908, and the mass of cases in which that section is now embedded are also of prime importance in framing a will.

Special powers to be conferred upon the trustees depend chiefly upon the nature of the property and the terms of the trust, and to a lesser extent the status of the beneficiary. The implied power of maintenance of an infant beneficiary may usually be relied upon, but a power of advancement should where intended be expressed. The probability of delay and difficulty in the realisation of the assets calls for a wide discretion in postponement of conversion, ample powers of management, and carrying on of the testator's business meanwhile, and the careful definition of the mode of apportionment and allocation of income as contrasted with capital.

Practice Precedents.

Judgment against a Married Woman.

(*a*) In respect of a Post-nuptial Debt.
(*b*) In respect of Contract.
(*c*) As Executrix.

The following forms are in respect of a Judgment in the Magistrate's Court and removed into the Supreme Court.

A person obtaining Judgment in the Magistrate's Court may file a Certificate of such Judgment in the *nearest* Supreme Court, *and thereupon* without any previous process *may sign final Judgment* in such Supreme Court for the sum mentioned in such Certificate to be unpaid *together with interest* at the rate of six pounds per centum per annum from the day named in such Certificate until the date of the said Final Judgment, *and the fees* paid for the said certificate to the Clerk of the Magistrate's Court *as well as* all prescribed fees paid in the Supreme Court in respect of or in connection with the signing of the said Final Judgment.

See s. 156 (4) of the Magistrates' Courts Act, 1928.

(*a*) Post-Nuptial Debt.

See *Scott v. Morley*, (1887) 20 Q.B.D. 120.

IN THE SUPREME COURT OF NEW ZEALAND.

.....District.
.....Registry.

Between A.B. etc. Plaintiff
and
C.D. wife of Clerk (sued in respect of her separate estate).

day the day of 19 .

A.B. of etc. by his Solicitor sues C.D. etc. for that on the day of 19 in the Magistrate's Court at the said A.B. obtained and had a Judgment against the said C.D. for the sum of £ [*words and figures*] as by the Certificate of the Clerk of the said Magistrate's Court now remaining on record in this Court appears and the whole of the said sum still remains unpaid according to such Certificate together with the sum of £ for Interest to the day of the date hereof. THEREFORE IT IS THIS DAY ADJUDGED that the said A.B. recover against the said C.D. the sum of £ and £ for interest and £ for costs and charges of the said Certificate and of this Judgment which several sums of money amount altogether to the sum of pounds such sum to be payable out of her separate property as hereinbefore mentioned and not otherwise AND IT IS ORDERED that execution hereon be limited to the separate property of the said C.D. not subject to any restriction against anticipation UNLESS by reason of s. 25 of the Married Women's Property Act 1908 the property shall be liable to such execution notwithstanding such restriction.

Registrar.

(*b*) Contract.

See *Barnett v. Howard*, [1900] 2 Q.B. 784.

(*Same heading.*)

day the day of 19 .

A.B. etc. by his Solicitor sues C.D. etc. for that on the day of 19 in the Magistrate's Court at the plaintiff obtained and had a Judgment against the defendant for the sum of £ [*words and figures*] as by the Certificate of the said Magistrate's Court now remaining on record in this Court appears and the whole of the said sum still remains unpaid according to such Certificate TOGETHER with the sum of £ for interest to the day of the date thereof THEREFORE IT IS THIS DAY ADJUDGED that the plaintiff recover against the defendant the sum of £ and £ for interest and [*18s.*] for the costs and charges of the said Certificate and of this Judgment which several sums of money amount to [*pounds*] such sum to be payable out of her separate property as hereinafter mentioned and not otherwise AND IT IS ORDERED that execution hereon be limited to the separate property of the defendant not subject to any restriction against anticipation unless by reason of s. 25 of the Married Women's Property Act 1908 the property shall be liable to such execution notwithstanding such restriction and to any property which she may after the day of 19 (being the date on which she entered into the contract sued on) while discovert be possessed of or entitled to provided that nothing in this Judgment contained shall render available to satisfy the said sum or any part thereof any separate property which at the said time of entering into the said contract or thereafter she was or may be restrained from anticipating.

Registrar.

(*c*) As Executrix.

When the Judgment is obtained against a married woman as executrix the real and personal estate of the testator becomes liable and execution against testator's estate may be levied.

The form following assumes that Judgment is obtained against the "assets" only. If it is obtained against defendant in addition then the form would be varied in manner hereunder such sum of money (and costs) to be payable out of the estate of the above-named testator ("A") come to the hands of the defendant as executrix of his will but if such estate should not be sufficient for the payment of such sum and costs in full the balance is to be payable out of then follow *Scott v. Morley* or *Barnett v. Howard* as the case may be.

See *Cockle v. Treacy*, [1896] 2 I.R. 267.

See Seton's Judgments and Orders, 7th Ed., Vol. II, pp. 848-9.

IN THE SUPREME COURT ETC.

BETWEEN A.B. etc. Plaintiff
and
C.D. wife of J.O. of Clerk, executrix of the will of deceased.

day the day of 19 .

A.B. etc. by his solicitor sues C.D. etc. executrix of the will of deceased for that on the day of 19 in the Magistrate's Court at the plaintiff obtained and had a Judgment against the defendant for the sum of £ [*words and figures*] as by the certificate of the Clerk of the said Magistrate's Court now remaining on record in this Court appears and the whole of the said sum still remains unpaid according to such certificate TOGETHER with the sum of £ for interest thereon to the day of the date hereof THEREFORE IT IS THIS DAY ADJUDGED that the plaintiff recover against the real and personal estate of the said "A" deceased in the hands of the defendant C.D. wife of etc. the sum of £ [*words and figures*] and £ for interest and also the sum of [*18s.*] for costs and charges of the said certificate and of this Judgment which several sums of money amount to the sum of £ .

Registrar.

Acts Passed, 1933.

1. Land and Income Tax. (October 11.)
2. National Art Gallery and Dominion Museum Amendment. (October 28.)
3. Judicature Amendment. (October 28.)
4. Arbitration Clauses (Proctocol) and Arbitration (Foreign Awards). (October 28.)
5. Marriage Amendment. (October 28.)
6. Imprest Supply. (October 28.)
7. Rent Restriction. (October 28.)
8. Trade Agreement (New Zealand and Australia) Ratification. (November 27.)
9. Reserve Bank of New Zealand. (November 27.)
10. Coinage. (November 27.)

Bills Before Parliament.

Money-lenders Amendment. (Hon. Mr. Cobbe.) Cl. 2.—Annual license fee payable by money-lender. Cl. 3.—Duration of registration of money-lender. Repeal of s. 2 (5) of the principal Act. Cl. 4.—Grounds for refusal of registration of money-lender. Cl. 5.—Suspension or cancellation of registration of money-lender. Cl. 6.—Section 4 of principal Act amended. Cl. 7.—Restrictions on money-lending advertisements, &c. Cl. 8.—Form of money-lenders' contracts. Cl. 9.—Prohibition of compound interest and provision as to defaults. Cl. 10.—Appropriation between principal and interest in certain cases of moneys payable to money-lender. Cl. 11.—Obligation of money-lender to supply information as to state of loan and copies of documents relating thereto. Repeal of s. 4 (1) (*d*) of principal Act. Cl. 12.—Section 3 of principal Act amended. Cl. 13.—Section 3 of principal Act extended. Cl. 14.—Section 3 of principal Act further extended. Cl. 15.—Regulations. Schedule.

Post and Telegraph Amendment. (Hon. Mr. Hamilton.) Cl. 2.—Section 17 of principal Act amended. Cl. 3.—Time for return of unclaimed postal packets at hotels, &c. Cl. 4.—Recovery of Government property from postal packets. Cl. 5.—Section 41 of principal Act (as to return of postal packets) amended. Cl. 6.—Repeal of ss. 52 to 59 of the principal Act. Cl. 7.—Establishment of Post Office Savings-bank offices, and receipt of deposits. Repeal. Consequential amendments. Cl. 8.—Section 74 of principal Act (requiring statutory declarations by all depositors) amended. Repeals. Cl. 9.—Section 75 (3) of principal Act (as to entry of deposits) amended. Cl. 10.—Section 76 of principal Act (as to withdrawal of deposits) amended. Cl. 11.—Section 84 of principal Act (as to investments) amended. Cl. 12.—Section 91 of principal Act (as to annual accounts) amended). Cl. 13.—Summary proceedings for offences against sections 116-119 and section 123 of principal Act. Cl. 14.—Regulations for control of electrical apparatus interfering with wireless communications. Cl. 15.—Section 205 of principal Act (as to regulations as to wireless telegraphy in territorial waters) amended. Cl. 16.—Section 215 of principal Act (as to damage to electric lines) amended. Cl. 17.—Officers to be appointed by the Governor-General. Repeal. Cl. 18.—Divisions of Department, and salaries and allowances. Repeals. Cl. 19.—Modifying restrictions on transfer of officers to and from other Departments. Cl. 20.—Section 230 of principal Act (as to regulations) amended. Cl. 21.—Section 234 of principal Act (as to Promotion Board) amended.

Royal Society of New Zealand. (Right Hon. Mr. Forbes.) Cl. 2.—New Zealand Institute abolished and Royal Society of New Zealand constituted as successor thereto. Cl. 3.—Membership of Society. Cl. 4.—Council. Cl. 5.—Term of office of appointed members of Council. Cl. 6.—Vacancies. Cl. 7.—Patron, President, and Vice-President. Cl. 8.—Meetings of Society and Council. Cl. 9.—Powers of Council. Cl. 10.—Fellowships, honorary membership, and awards. Cl. 11.—Rules. Cl. 12.—Endowment of Society. Cl. 13.—Property, &c., of New Zealand Institute to vest in Society. Cl. 14.—Rules and transactions to be laid before Parliament. Cl. 15.—Repeals and savings.

Local Authorities Interest Reduction and Loans Conversion Amendment. (Right Hon. Mr. Coates.) Cl. 2.—For purposes of principal Act, the term "securities" extended to include mortgages of land and other charges. Cl. 3.—Restricting application of principal Act with respect to securities sold in the United Kingdom. Cl. 4.—Reduction effected by principal Act not to apply to interest accrued before April 1, 1933. Cl. 5.—Fixing 4¼ per cent. as the maximum rate of interest on loans that may hereafter be raised by local authorities. Cl. 6.—Local authority may convert securities for which it has assumed liability. Cl. 7.—Matters that may be provided for under section 13 of principal Act. Cl. 8.—Order in Council under principal Act to be conclusive of authority to borrow in accordance therewith. Cl. 9.—Application to loans made to local authorities by Main Highways Board of provisions of principal Act as to reduction of interest rates.

Rules and Regulations.

Exhibitions Act, 1910. Order in Council suspending the operation of certain statutes in connection with the Canterbury Metropolitan Show.—*Gazette* No. 74, November 2, 1933.

Judicature Act, 1908. Notice as to Sittings of the Supreme Court, 1934.—*Gazette* No. 74, November 2, 1933.

Trade Agreement (New Zealand and Canada) Ratification Act, 1932. Extension of Trade Agreement between the Dominion of Canada and the Dominion of New Zealand.—*Gazette* No. 75, November 9, 1933.

Health Act, 1920. Regulations as to quarantine.—*Gazette* No. 75, November 9, 1933.

Health Act, 1920. Wood-pulping and flax-pulping declared to be offensive trades under the Act.—*Gazette* No. 75, November 9, 1933.

Weights and Measures Act, 1925—Weights and Measures Regulations, 1926, Amendment No. 4.—*Gazette* No. 76, November 16, 1933.

Board of Trade Act, 1919. Amended Regulations for the Licensing of Dealers in Gold Coins.—*Gazette* No. 76, November 16, 1933.

Chattels Transfer Act, 1924. Order in Council adding certain Chattels to the Seventh Schedule to the Act.—*Gazette* No. 76, November 16, 1933.

Post and Telegraph Act, 1928. Gratuities for Conveyance of Mails by Passenger Coaches or other Vehicles.—*Gazette* No. 76, November 16, 1933.

Education Act, 1914. Regulations fixing Terms and Holidays to be observed in Public, Secondary, Technical, and Combined Schools.—*Gazette* No. 76, November 16, 1933.

Education Act, 1914. Order in Council amending Training College Regulations.—*Gazette* No. 76, November 16, 1933.

Customs Act, 1913. List of Medicines permitted to be made with Methylated Spirits.—*Gazette* No. 76, November 16, 1933.

New Books and Publications.

Notable British Trials—Trial of Jack Sheppard. Edited by Horace Bleackley and S.M. Ellis. (Butterworth & Co. (Pub.) Ltd.). Price 11/-.

A Handbook of Procedure. By J. A. Balfour. Being a Students' Guide to Dr. Blake Odgers "Principles of Pleading Practice in Civil Actions." (Stevens & Sons). Price 10/6d.

Ensor's Courts and Judges in France, Germany, and England. (Oxford University Press). Price 8/6d.

Functions of Law in the International Community. By H. Lauterpacht. (Oxford Press). Price 34/-.

The Injured Workman. By G. F. Walker, M.D., M.R.C.P. (Wright & Son). Price 8/6d.

Constitutional Law. By Wade Phillips. First Edition, Revised to 1932. (Longmans Green). Price 28/-.

A.B.C. of Income Tax Return Making Sur-Tax and Land Tax. By Harrop Mosley. (Harrop Mosley.) Price, Cloth 8/- ; Paper 7/-.

The Statute of Westminster, 1931. By K. C. Wheare. Price 8/6.

Gibson's Practice of the Courts. By A. Weldon, and R. L. Mosse. Fifteenth Edition, 1933.