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" To be wholly devoted to some intellectual exercise is to have succeeded in life ; and perhaps only in law and the higher mathematics may this devotion be maintained, suffice to itself without reaction, and find continual rewards without excitement."

—R. L. STEVENSON, *Weir of Hermiston.*

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The Year now Closing.

Amid the changing fortunes of international affairs and the prevailing disturbed conditions of life generally, which have marked the present year, the uncertainty of the times in which we live has happily left the Law unaffected in so far as its administration in British countries has been concerned. This, of course, is as it should be. As Lord Collins, when Master of the Rolls, once observed :

> " Law must be sure and certain. The greatest public mischief is uncertainty, and the best means of guarding against that mischief is that Law must be administered not as a series of single instances, but as a system large, liberal, methodic, scientific, and according to well-ascertained principles, and that it should be administered by men trained to expound and apply it."

It is a pleasant reflection that our own Courts always measure up to that high standard This is admitted even in these times when criticism, both merited and unmerited, is the rule when almost every other form of public action is mentioned. And, it must be remembered, the power of the law is determined to a great degree by public confidence in the manner of its administration.

One remarkable, though very regrettable, feature of the last few months has been the seeming lack of appreciation on the part of those in high places of the laborious tasks that have to be borne by the members of our Supreme Court Bench. The result, in leaving unfilled the vacancy caused by the retirement in August last of Mr. Justice Adams, could have had serious results on Judges, counsel, and litigants generally. That there has been no denial of justice and no undue delay in the work of the Courts does not excuse those responsible for leaving the Bench at less than its normal strength, nor mitigate our regret at the seeming apathy and essential unfairness towards those whose difficult, and not over well-remunerated, duties are to a great extent performed remote from the public gaze and out of the limelight which beats on other forms of official service. There is no need to stress the point, except to express the hope that such a state of affairs will not re-occur. We do not need, in Hamlet's words, " to lay it on in sounding thoughts and learned words an inch thick," when referring, before an audience composed of members of the legal profession, to this most regrettable incident of the year. They *know.*

A very busy year in the Courts has resulted in some important additions to the Law Reports. First in general interest, though the subject of considerable criticism, was the decision of the Privy Council in the Workers' Compensation cases arising out of the Hawke's Bay earthquake, reversing the more practical solution put forward by our Court of Appeal. In each of the year's two other references to the Judicial Committee, the judgment of our own appellate tribunal was affirmed. The question of the application of *Russell v. Russell* to criminal proceedings came up for consideration for the first time in any Court of the British Commonwealth, and the consequent decision in *The King v. Seaton* is of far-reaching import. Of great interest to commercial circles were the decisions in *Perrott v. Newton King, Ltd.* (as to the effect of a discharge in bankruptcy of the mortgagor-principal on the liability of his surety under a deed of guarantee) and in *Dempsey v. The Traders' Finance Corporation, Ltd.* (as to the incidence of hire-purchase agreements on the title to the bailed chattels, and the effect of the registration of a debenture in so far as notice and constructive notice are concerned, though in this latter regard the new Companies Act has since changed the legal position established by the judgment). The full Court of Appeal made history in *In re Rhodes, Barton v. Moorhouse* in the manner recently commented upon in these columns, and also provided an important decision in regard to estates-tail in this country. Two other judgments of interest to the conveyancer were *In re Adeane (deceased), Guardian Trust v. Adeane* (settling the question of the non-availability of life-insurance moneys for payment of a testator's debts) and *In re Brown, Solicitor-General v. Bydder* (as to the essentials to constitute a charitable trust). Somewhat hasty and involved legislation came under notice in *Inspector of Awards v. R. and W. Hellaby, Ltd.*, and the resulting judgment shed needed light in dark places. Not without some satisfaction was it observed that legislation by Order in Council suffered severe reverses when under fire in *Kerridge v. Girling-Butcher* (Cinematograph Films Regulations, 1932) and *Carroll v. The Attorney-General* (Dairy Produce Regulations, 1933).

As in private lives, joys as well as sorrows have characterised our domestic life in the profession. The year opened with the conferring of the well-deserved honour of knighthood on the President of the New Zealand Law Society, which was unanimously acclaimed in the law-offices throughout the land. But Sir Alexander Gray was fated not long to enjoy the congratulations and affection of his fellow-practitioners, his unexpected and sudden death saddening the month of April, and reminding us that :

The Wine of Life keeps oozing drop by drop,
The Leaves of Life keep falling one by one.

The appointment of Mr. C. H. Treadwell as his successor was received with satisfaction and appreciation throughout the Dominion. When he, in turn, was replaced in the office of Vice-President by Mr. A. H. Johnstone, of Auckland, a new precedent was created in the selection from outside the Capital City of a holder of high office in the parent body of the Law Society. Death also claimed two respected Magistrates, Mr. P. H. Harper, S.M., Gisborne, and Mr. F. H. McNeill, S.M., Wellington. Their places were filled by two northern members of the profession in the persons of Messrs. E. Walton and W. F. Stillwell, who brought to their new office qualifications which have auspiciously launched them on what promise to be successful Magisterial careers.

The death of the Hon. Sir Thomas K. Sidey, M.L.C., removed from among us one whose term of office as Attorney-General was fruitful in its results to his professional brethren, and his loss is one that is deplored both by lawyers and by the country. Among others, highly respected senior practitioners, Mr. Alfred James, Dunedin, Mr. C. J. Schnauer, Auckland, and Mr. F. H. Cooke, of Palmerston North, were also lost to the profession by death.

In the world at large, the profession has been bereft of members, more notably among those whose fame rests almost solely on their literary and extra-legal activities, namely, Mr. John Galsworthy, Sir Antony Hope Hawkins, and the Rt. Hon. Augustine Birrell, K.C. The Courts of the Empire, too, suffered a great loss with the passing of Mr. Justice McCardie.

To turn to organised professional activities: While a forward move has been made in instituting the Medico-Legal Society, which should prove of advantage to both professions in frank discussion of their common problems, little has been heard of those official bodies, the Council of Legal Education and the Rules Committee which both appear eager to hide their light under many bushels. A re-organisation of the constitution of the New Zealand Law Society has been mentioned, and more may be heard of this progressive reform in the coming year.

The placing on the Statute-book of the new Companies Act is the noteworthy achievement of the Parliamentary year, and it is hoped that the relative Rules will not be long in making their appearance. The complex variations that the Legislature has for the past two years played upon the theme of Mortgagors' and Tenants' Relief were produced as a symphony in consolidated form before the curtain was rung down on the final Session of 1933; but there were no encores.

The centenary of the Privy Council as the highest appellate tribunal of the British Empire was celebrated during the month of August. Earlier in the year we had the pleasure of welcoming to New Zealand a "white heron" in the person of a member of that august body, the Rt. Hon. Lord Salvesen.

The long vacation approaches,—the time in which no one of the law may work. Now that the ups and downs of the year are behind us, we feel we have all earned a rest after a somewhat strenuous twelve months of sustained endeavour. To all our readers who have borne with us, who have so willingly assisted us, and whose encouragement has heartened us at all times, we wish nothing but happy days in the coming weeks of relaxation. Until the end of January, this JOURNAL will not even come to remind them of the cares that infest the days of active work. The present number, in seeking lightheartedly to pave the way to the Christmas season, is an earnest of our hopeful anticipation that all our readers may enjoy a care-free holiday.

To one and all, from their Honours of our highest Courts to the humble (but not always so very humble) members of the profession, we offer the Season's Greetings, coupled with sincere wishes for a happy and increasingly prosperous time during the coming twelve months. And, in accord with professional traditions, we echo the words of a great statesman, who was greater as a member of the Bar, when we express the hope that the year 1934, now about to dawn, may witness in our ranks an even closer binding of "the ties of a comradeship for which you would look in vain in any other arena of the ambitions and rivalries of men."

Summary of Recent Judgments.

SUPREME COURT Christchurch. 1933. Nov. 1, 23. *Reed, J.*

HOPKINS v. HOPKINS (SOLICITOR-GENERAL INTERVENING).

Divorce—Practice—Innocent Concealment by Petitioner of his Adultery since the Separation on which Decree *Nisi* based—"Material Facts"—Intervention by Solicitor-General—Discretion of the Court as to whether Decree should be rescinded—No Jurisdiction to award Costs to Solicitor-General except when intervening on ground of Collusion—Divorce and Matrimonial Causes Act, 1928, s. 24.

Intervention by the Solicitor-General for the purpose of showing cause against a decree absolute, acting upon information volunteered to him by the respondent, in an undefended suit for dissolution of marriage wherein a decree *nisi* was made on May 24, 1933. The ground alleged was that material facts were not brought to the knowledge of the Court—*i.e.*, that the petitioner had committed adultery since the separation upon which the decree *nisi* was based.

A. W. Brown, for the Solicitor-General; **Twyneham,** for the petitioner.

Held: 1. That the fact that a petitioner has committed adultery is a material fact which should be brought to the attention of the Court; and a petitioner seeking relief who wilfully conceals a material fact which the Court ought to know, is guilty of contempt of Court and may be punished accordingly, and the decree *nisi* may, in the discretion of the Court, be rescinded.

Apted v. Apted and Bliss, [1930] P. 246, applied.

2. That when the Solicitor-General intervenes, not on the ground of collusion, but "by reason of material facts not having been brought before the Court," he does so as one of the public only and not in his capacity as Solicitor-General. Though it is his duty so to intervene upon the information being communicated to him, there is no jurisdiction in New Zealand to order the petitioner to pay the costs of such an intervention as the Solicitor-General is not, as Solicitor-General, entitled to costs, and, regarded as one of the public, is not a party to the proceedings.

Lautour v. Her Majesty's Proctor, (1864) 10 H.L. Cas. 685, followed.

Jobson v. Jobson, (1910) 30 N.Z.L.R. 48, referred to.

Hyman v. Hyman and Goldman, [1904] P. 403, explained and distinguished.

3. That adultery since the separation on which the decree *nisi* was based, with nothing more than non-disclosure to the Court by the petitioner through ignorance of his duty to do so, was insufficient to cause the Court to exercise its discretion adversely to him.

The learned Judge drew attention to the fact that the law in New Zealand in respect to intervention by the Solicitor-General is practically identical with that which was in force in England prior to 1878, and it has not been altered as has the law in England, which is now contained in ss. 181 and 182 of the Supreme Court of Judicature (Consolidation) Act, 1925.

Intervention rejected.

Solicitors: R. Twyneham, Christchurch, for the petitioner; **Crown Solicitor,** Christchurch, for the Solicitor-General.

Case Annotation: *Lautour v. Her Majesty's Proctor,* E. & E. Digest, title *Husband and Wife,* Vol. 27, p. 367, para. 3533; *Hyman v. Hyman and Goldman, ibid,* p. 342, para. 3227; *Apted v. Apted and Bliss, Supplement,* title *Husband and Wife,* Vol. 27, para. 3449 *b.*

NOTE:—For the Divorce and Matrimonial Causes Act, 1928, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, 1908-1931, title *Husband and Wife,* Vol. 3, p. 865.

SUPREME COURT
Napier.
1933.
Nov. 3, 4.
Ostler, J.

LUSK v. PUKEPUKE TANGIORA.

Unemployment Relief—Emergency Unemployment Charge—"Every Person"—"Every Woman"—Native Woman deriving Income from Sources other than Salary or Wages—Not Liable for Payment—Unemployment Amendment Act, 1931, ss. 13, 14—Amendment Act, 1932, s. 11.

Appeal by the Crown on a point of law from a decision of Mr. A. M. Mowlem, S.M., dismissing an information laid against the respondent, an aboriginal Native woman, for making default for more than one month in payment of the emergency unemployment charge made payable by the Unemployment Amendment Acts, 1931 and 1932.

H. B. Lusk, Crown Solicitor, the appellant, in person; **Bate,** for the respondent.

Held, That Native women, within the meaning of the Native Land Act, 1931, are not liable for the payment of the emergency unemployment charge levied by the Unemployment Amendment Act, 1931, as amended in 1932, on income derived from sources other than salary or wages.

Appeal dismissed.

Solicitors: **H. B. Lusk,** Crown Solicitor, Napier, for the appellant; **Simpson and Bate,** Hastings, for the respondent.

SUPREME COURT
In Banco.
Wellington.
1933.
Dec. 1, 5.
Myers, C.J.

F. v. MOWLEM AND ANOTHER.

Mortgagors and Tenants Relief Acts—Distress Warrant—Lessor with Judgment against Lessee for arrears of Rent—Relief granted on Terms that certain Moneys payable to Lessee be paid to Lessor—Such Moneys paid less Deduction of Lessee's Solicitor's Costs—Balance remaining owing under Judgment—Distress Warrant for Amount representing deducted Costs only—Issued without further Order of Court—Part of Balance of Judgment basis of issue of Distress Warrant, and not whole Amount owing thereunder—Mortgagors and Tenants Relief Act, 1932, s. 6 (6)—Amendment Act, 1932-33, s. 4.

Judgment for arrears of rent amounting to £178 15s. 6d. and £13 10s. costs, or £192 5s. 6d. in all, was obtained by defendant R. against F., the lessee. At this time F. was entitled to receive from the New Zealand Law Society the sum of £144 2s. 11d. He applied for relief under the Mortgagors and Tenants Relief Act, 1932, and, on the recommendation of the Adjustment Commission coming before the Court, the defendant, Mr. A. M. Mowlem, S.M., made the following order:

"I do order that such amount as is received from the Law Society be paid in reduction of the arrears, and the balance then owing after such payment be held over free of interest for two years."

The Law Society paid over to F.'s solicitors the sum of £144 2s. 11d., less £19 which had been allowed to it as costs; and F.'s solicitors, after deducting their costs against F. in relation to the action against the Law Society which amounted to £44 2s. 11d., paid over the balance to the lessor who demanded the amount so deducted, as being also payable to him in terms of the Court's order. On this being refused, the lessor applied to the Magistrate, in his ordinary jurisdiction, to issue a distress warrant for the sum of £44 2s. 11d. upon his judgment for £192 5s. 6d., and a distress warrant was issued. The balance owing under the judgment at that time was £90 3s. 6d.

On action brought to prohibit the defendants from proceeding with the execution of the warrant,

W. H. Cunningham, for the plaintiff; **L. A. Rogers,** for the second defendant.

Held, 1. That the lessor should have applied to the Court for a further order under the Mortgagors and Tenants Relief Act, 1932, s. 6 (6), as amended by s. 4 of the Mortgagors and Tenants Relief Amendment Act, 1923 33, if he thought that the Court's order had not been complied with.

2. That the effect of the legislation referred to is to suspend the landlord's remedies and to prohibit the issue of a distress warrant without the prior order of the Court under the Mortgagors and Tenants Relief Acts.

3. That, if by reason of the plaintiff's non-compliance with the Court's order, the second defendant had been entitled to issue a distress warrant, it should have been for the whole amount unpaid under the judgment, and not for part of it.

Forster v. Baker, [1910] 2 K.B. 636, **Rothschild v. Fisher,** [1920] 2 K.B. 243, **Hayes v. Mitchell,** [1926] N.Z.L.R. 262, applied.

An order was accordingly made for the writ of prohibition to issue.

Solicitors: **Mason and Dunn,** Napier, for the plaintiff; **Rogers, Helleur, and Le Pine,** Napier, for second defendant.

SUPREME COURT
In Banco
Auckland.
1933.
Nov. 13, 20.
Smith, J.

H. v. HEWITT AND ANOTHER.

Mortgagors and Tenants Relief Acts—Jurisdiction—Powers of Mortgage not exercised "after the expiration of three months from the date of the order"—Vested Right of Mortgagor to apply for leave to make Application for Further Relief—Mortgagee's Ability to exercise such Powers or not within Three Months' Period immaterial—Mortgagors and Tenants Relief Amendment Act, 1932-33, s. 2.

A mortgagor has a vested right to apply for the leave of the Court to make an application for further relief under s. 2 of the Mortgagors and Tenants Relief Amendment Act, 1932-33, where the mortgagee has received authority from the Court to exercise his powers without further reference to the Court, whether such an order be made pursuant to s. 8 (1) of the Mortgagors Relief Act, 1931, or s. 2 (2) of the Mortgagors and Tenants Relief Act, 1932, or by consent of the parties, and such powers have not in fact been exercised for a period of three months from the date of the order. The mortgagor has this right, whether or not the mortgagee could have exercised the said powers within the period of three months from the date of the order.

So held on a motion for Prohibition against J. G. L. Hewitt, Esq., S.M., and Writ of Injunction against the defendant mortgagor.

Counsel: **Barrowclough** for the mortgagee; **Finlay,** for the mortgagor.

Solicitors: **Russell, McVeagh, Macky, and Barrowclough,** Auckland, for the mortgagee; **Ball and Wilkin,** Auckland, for the mortgagor.

SUPREME COURT
In Chambers.
Wanganui.
1933.
Nov. 9, 21.
Reed, J.

IN RE B, A LESSEE.

Mortgagors and Tenants Relief Acts—Jurisdiction—Lessee holding over after Expiry of Lease created by Written Instrument—Tenant from Month to Month not a "Lessee under a lease"—No Jurisdiction to grant Relief—Mortgagors and Tenants Relief Act, 1932, s. 6.

The Court has no jurisdiction to grant relief to a lessee who is holding over after the expiration of his lease, whether he is bound by the terms of the expired lease or not, as the lease contemplated by s. 6 of the Mortgagors and Tenants Relief Act, 1932, is an instrument creating a lease for a term of years.

Bartlett v. Bain, [1922] N.Z.L.R. 790, referred to.

Counsel: **Hussey,** for the lessors; **Maclean,** for the lessee.

Solicitors: **Maclean and Kincaid,** Taihape, for the lessee; **J. M. Hussey,** Wanganui, for the lessors.

Some Juries.

As a Source of Innocent Merriment.

By Wilfred Blacket, K.C.

It has been many times said in various similar words that one main purpose of the British Constitution is to put twelve honest and independent citizens into a jury-box: *cf*, Magna Charta *passim*. Eulogy of the system and of the jurors cannot now be indulged in, for I desire only to deal mainly with instances in which the jury-box has contributed its quota to the innocent merriment of the people.

"Independent"—why certainly almost too much so sometimes. Mr. Justice Windeyer, an Australian lawyer of the highest renown, was trying an indictment charging obstruction of a highway. The jury brought in a verdict of acquittal. The Judge who was thereby considerably astounded, as indeed he had cause to be, commented severely when he heard the news. "Well, your Honour," said the foreman, "the fact was that we none of us agreed with your Honour's definition of a 'highway.'"

An equally sturdy jury tried the case of "the barque *Strathearn*." It was really a matter for assessment of damages for the barque was at anchor in a proper place, and an outgoing steamer wandered out of the fairway and collided with her, some interesting by-products resulting from the meeting of the immovable with the irresistible, but His Honour displayed an intense and manifest fondness for the defendant's case. A verdict for the plaintiff for £1,500 greatly aroused his wrath. "For the plaintiff," he exclaimed in much anger, "why I thought the evidence was all one way," and the foreman placidly replied, "So it was, your Honour."

The same Judge when presiding at a criminal trial was somewhat annoyed because the jury had been out for some hours, and had not brought in the verdict of "Guilty" which he thought necessary to the needs of justice. Therefore he called the jurors in, and seeing at once who was the odd man out, with forceful persuasion endeavoured to teach him some home truths about the wisdom of eleven to one majorities. The juror stood it for some time and then indignantly blurted out, "But, your Honour, I am the only one on your Honour's side."

Judge Windeyer was regarded as a "strong Judge" and is credited with having said that "ninety-nine out of a hundred prisoners are guilty and ought to be convicted": he in fact made that statement to me, but I being then a junior did not think it prudent to deliver the dissenting judgment which I hereby desire to record.

Occasionally one comes across verdicts which are so strange as to appear foolish. For instance an elderly lady in Sydney sued for damage resulting from negligence of a tram-driver. Her injuries included a fractured pelvis, and a broken leg, and necessitated three months cure and treatment. The jury gave her a verdict for "one farthing"! Was this because they thought there was no negligence but wanted to save her from having to pay defendant's costs? Or was it because they had a poor opinion of women? I know not.

At Stanthorpe, Queensland, the charge was indecent assault with intent at Stanthorpe. The defence was an *alibi* several witnesses being called to prove that on the day in question the accused was at Warwick, fifty miles away. The jury returned a verdict of guilty with a strong recommendation to mercy on the ground that "the accused was not at Stanthorpe at the time of the occurrence."

In *Hill v. Lyne*, N.S.W., an astounding verdict in a resumption case was due to a mere clerical error committed by a juror who knew everything. As soon as the jury retired, he, having once before been on a resumption jury, was able to act as master of the ceremonies. He first made a list of the amounts which the various jurors thought adequate, added these up, and divided the total by four as his formula required, but omitted to observe that he was one of a jury not of four but of twelve, and so it was that the plaintiff received three times as much as the jury desired to give.

It must be admitted that although jurors are invariably good men and true some of them in the earlier days in country districts in New South Wales were a little inclined to be, shall we say, "neighbourly," to men engaged in the same occupation as themselves. "Occupation" too is a good word. I give the strongest illustration that I know of my meaning. Forty years ago, at a country court of Quarter Sessions, Tom O'Mara was defending four prisoners charged with sheep-stealing, and the attorney instructing used the thirty-two challenges to which the prisoners were entitled with such effect that Tom in addressing for the defence was able to promise that he would not speak at great length, "For," he said, "I am sure you all of you know a great deal more about sheep-stealing than I do."

In another district a man whom I will call Jim Barron for the real man may not be dead, though, if so, forty years must have rolled over his sinful head, had had several narrow escapes from conviction, but at length had to answer an absolutely clear charge, for he had been found at midnight with the branding-irons in actual use upon twenty head of stolen cattle. And yet he was acquitted! The foreman of the jury explained the event later on. "You see," he said, "Jim had splendid grass on his forty acre and not a hoof on it, so he just went out and scruffed a few calves. So when we went out we waited a bit so that we would not be called on the next jury. Then I up and said 'Well, boys, what do you think—shall we give Jim another flutter?' and they thought they would, so we went in and acquitted him." That was *very* neighbourly.

In another case in the North, "Jack"—his other name doesn't matter—had to face absolutely conclusive evidence on a charge of cattle-stealing, a crime with which he had previously been charged and acquitted more than once. In the present case he had handed in a number of certificates of character signed by Justices of the Peace, clergymen, and others, and to the horror of Meymott, J., presiding, was again acquitted. Meymott received the verdict without comment, and then while the jury stood in their places, with meticulous care, compared them with his notes, pinned them together in their proper order, and handing them down to the prisoner, said, "You had better keep these very carefully for you cannot tell how soon you may want them again. Now, you are discharged, so is your jury." Jack never did want them again for deafness limited his activities with cattle. "He's got so deaf," said his wife, "that if I want to tell him anything partic'lar I have to take him up to the top end of the horse-paddick," for Jack was no "scholard."

I have written of acquittals but there is one conviction that has been a sad memory to me for forty-three years. At Bourke, New South Wales, in 1890, I defended Cy. Huxley on a charge of riot. The evidence against him was of the flimsiest description and I confidently applied to Fitzhardinge, J., to rule that there was no case against him. "Fitz" said there was no evidence upon which the jury should convict and he would so direct. Therefore, I addressed very shortly and the direction to the jury was as promised—but the jury convicted. The sentence was nine months and as there was no Appeal Court there was no remedy. Down town that night one of the jurors explained matters to me. He said, "Of course it was all right as you and old Fitz said—there really wasn't any evidence against him—maybe he wasn't there at all, but you didn't know Cy. Huxley, and we did, and we knew that if he did not do that he'd done a lot of things that were a ———— sight worse, and he was better in there than out here anyhow." Cy. did his time and on the night of his release garroted two men in the main street of Bourke and was sent along for ten years p.s. That may have proved what a bad man he was but I always think that it was the flagrant injustice of the first conviction that had driven him to serious crime, and had made him a criminal for life. And I do hope that the men he garroted were two of the jurors who had so cruelly wronged him.

Unauthorised Autobiography.

Court Criers I Have Known.

"When I was passing through Wellington, New Zealand, on my way from San Francisco to Sydney, I had an opportunity of seeing the High Court at work. The ability shown by the learned gentlemen on the Bench was most marked. There was an air of quiet dignity about the proceedings. The silence was broken merely by the voice of counsel addressing the Court. I was struck by the uninterrupted hearing given to the gentlemen of the Bar, no time being wasted by irrelevant remarks or interpolated questions from the Bench disturbing the even flow of forensic eloquence. The only other sound to break the silence was the cooing of doves in the Court-house eaves.

"According to my practice, I made friends with the Court Crier. I remarked to him:

"They seem to be getting through the business very quickly here."

"'Ye-e-es,' he solemnly replied. 'Their Honours dispense with justice very rapidly indeed.'

"While, *dubitante*, I pondered his reply, he was called away. The Court was about to rise. To my great relief, I was immediately reassured that all would soon be well with the administration of justice in our distant Dominion. The Court Crier, evidently taking up a remark of the presiding Judge, announced in apologetic tones,

"'The Court will *reform* in a few minutes!'"

—From A Law Lord Looks At The World.
(Horrockes, London).

Case Law.

An Address by the late Mr. Justice McCardie.

(*Concluded from page 313.*)

I have glanced at several of the features of our legal past so that we might broaden our vision and quicken our sense of growth and destiny. The history of our Case Law is indeed a fascinating pageant to all who love the law and the realm of England. Even the technicalities which have passed away have played their part, as we can see how in the great work of development. Pregnant with meaning to the thoughtful student are the words of Maitland when he says: "The forms of action we have indeed buried, but they still rule us from their graves." Many of the fictions which, though fictions, yet assisted the growth of effective law and justice in earlier days have long been abolished. Amongst them are the well-known litigants "Mr. John Doe" and "Mr. Richard Roe." There are perhaps some amongst us who will appreciate the verses quoted in the 9th volume of Professor Holdsworth's great work. Two of the verses are these:—

"*When plaintiffs oft were sore perplexed*
In term time or vacation,
For want of names to be annexed
Beneath the declaration.
Then Doe and Roe upheld the suit,
Like staunchest friends of thine,
And pledges gave to prosecute
For auld lang syne.

"*Now Doe and Roe—'tis grief to tell,*
For Law Reform ye die,
And as I bid you both farewell,
A tear bedims my eye.
Ye were my friends in life's first stage,
But no one can divine
The use in this enlightened age
Of auld lang syne."

Decisions as Precedents.

May I now step over the centuries from the early Year Books to our own generation?

What of the Case Law as it stands to-day? Over 100 years ago, Bentham, the vigorous critic and reformer, wrote a passage on "Case Law" as it stood then. I ventured to quote his words in May last in the course of a "Reading" at the Middle Temple. May I quote them again to-day to you?

"Traverse," said he, "the whole continent of Europe, ransack all the libraries belonging to the jurisprudential system of the several political states, add the contents all together, you would not be able to compose a collection of cases equal in variety, in amplitude, in clearness of statement, in a word, all points taken together, of instructiveness, to that which may be seen to be afforded by the collection of English reports of adjudged cases."

If Bentham were alive now, I think he would pay the like tribute to our Case Law as it stands at the present time.

Lord Bowen once said, and I believe rightly, that the Common Law was an arsenal of common sense principles. If we regard the whole range of the social, industrial and

commercial life of the nation, a life almost inconceivable in its complexity and detail, we shall find that there is scarcely one aspect of it which is not covered, explained, and illuminated by the decisions in our Law Reports.

Are we not entitled to say that the body of our Case Law is one of the *most stupendous products of the human mind*? I do not under-estimate the extent or weight of Parliamentary enactment. Nor do I fail to observe the wide range of departmental legislation, which operates by rules and regulations framed in government offices, which imposes its tentacles in subtle fashion on so many branches of national activity, which lessens year by year the area of freedom and initiative, and which slowly but surely cuts down to a degree not yet perceived by the public or by Parliament itself the jurisdiction of our public Courts of Justice. But even so, there is still the broad and vital fact pointed out so clearly in Lecture XI of Dicey's "Law and Public Opinion," that nine-tenths of the law of contracts and almost the whole of the law of torts is not to be discovered in the statute book, but in the decisions. Several Acts of Parliament, moreover, as you will recall, such as the Bills of Exchange Act, 1882, and the Sale of Goods Act, 1893, are but little more than the enunciation in statutory form of the rules originally established by the Courts. Thus we see that century after century the judges have been working out adjustments and rules for our community—have been constructing them publicly and after full argument—in those great laboratories of the law which we call the Royal Courts of Justice.

Each decision has advisedly been left free to professional comment and to public discussion. Now there is one paramount feature of our Case Law I should like to consider. It is a feature the full significance of which we do not always grasp. I refer to our great rule of "Precedents"—a rule which, when considered in all its bearings, enables us to claim that the Case Law of England has many of the features of an inductive science. We are apt at times to assume that our rule of "Precedents" is as natural as the ebb and flow of the tides. But "precedent" as understood by English lawyers to-day was not recognised in the Roman Empire, nor is the principle of binding precedent, as we know it, accepted in the present legal system of France. The doctrine of "binding precedent" is peculiar to English law.

As the late Professor Gray, in his *Nature and Sources of the Law* has truly remarked: "The cause of this distinction between the English and Continental law is one of the unsolved problems of comparative jurisprudence." What does a "precedent" mean? It means, as Sir Frederick Pollock so picturesquely points out, "that a judgment looks forward as well as backward. It not only ends the strife between the parties, but lays down the law for similar cases in the future." Not only is this rule of "precedent" peculiar to English Law, but, strangely enough, it is a somewhat late development of our legal system. As Mr. Allen shows clearly in his recent and most learned volume called *Law in the Making*, the growth of the authority of precedent is the result of a slow evolution. True it is that now and again we find earlier decisions to be cited by Bench or Bar in the cases reported in the "Year Books," and they seem to be treated with consideration. The seeds of "precedents" are there. Thus, in 1311, as shown by an anonymous case in Year Book 4th Edward II, ss. VI, 168, we find the following conversation recorded in the French tongue:

Mr. Justice Stanton: "Where have you seen a guardian vouch on a writ of dower?"

Mr. Miggeley (of counsel): "Sir, in Trinity term last past and of that I vouch the record."

Mr. Justice Stanton: "If you find it I will give you my hat!"

There is no information as to whether the learned 14th-century judge was called on to fulfil his promise!

But the actual word "precedent" seems to have been first mentioned in a case reported in Dyer in 1557, and the first actual recognition of the theory or principle of binding precedent occurs in the reports of Chief Justice Vaughan at the close of the 17th century.

In the 18th century, precedents, as you will find, were freely quoted as such, and Blackstone, in the first book of his *Commentaries* (published in 1765) pronounces the duty of the judge to adhere to them. Judges, however, before Blackstone's day, had in *some* respects at least become alive to the principle, and also to the importance of accuracy in the Law Reports which contained the earlier decisions. Thus in 1704 Holt, C.J., in *Slater v. May*, reported in 2 Lord Raymond, p. 1072, exclaimed when referring to a certain volume of Reports: "See the inconvenience of these scrambling Reports; they will make us appear to posterity for a parcel of blockheads!" Even after Blackstone, however, it will be seen that Lord Mansfield in *Jones v. Randall* (1774) 8 Cowp., p. 37, took a view of precedents far less rigorous than exists to-day, and probably it was not until the latter part of the 19th century that our present doctrine of strict adherence to prior decision was fully established.

In 1833 we find a judgment of great importance which indicates, though not to its fullest extent, the now existing doctrine. It is the judgment of Parke, J., and it shows the basic rule of convenience underlying the broad principle of "precedents." You will find the passage in *Mirehouse v. Ronnell* (1833), 1 Clark and Finnelly, 527, at p. 546:

> "Our Common Law system consists in the applying to new combinations of circumstances those rules of law which we derive from legal principles and judicial precedents; and for the sake of attaining uniformity, consistency and certainty—we must apply those rules, *where they are not plainly unreasonable and inconvenient*, to all cases which arise: and we are not at liberty to reject them, and to abandon all analogy to them, in those to which they have not yet been judicially applied, because we think that the rules are not as convenient and reasonable as we ourselves could have devised. It appears to me to be of great importance to keep this principle of decision steadily in view, not merely for the determination of the particular cases, but for the interest of law as a science."

You will observe the significant words of Parke, J., "not plainly unreasonable and inconvenient." But if we read later decisions by the House of Lords and the Court of Appeal, we shall see how decisively the doctrine of binding precedent has advanced since 1833. The movement has been well indicated by Sir Frederick Pollock in Chapter 6 of the second part of his *First Book of Jurisprudence*. Suffice it to say that the House of Lords (differing herein from the United States Supreme Court) seems now to deem itself conclusively bound by its own earlier decisions, even though, if free from the fetters of those decisions, the opinion of the House would to-day be to the opposite effect.

Growth in the Law.

The like view is now taken by the Court of Appeal as to its own prior rulings. Yet the world of life and

affairs is ever changing! New and unexpected conditions are ever springing into existence. A transformation of business and economic circumstances is slowly taking place amongst us. It is, therefore, legitimate to ask whether an ever-broadening area of unchangeable crystallisation may not lead ere long to a *paralysis of that great quality of growth* which is essential to a living, pervading, and adaptable body of Common Law? I realise fully the need for an adequate measure of certainty—but I realise also, and with equal strength, the need of vitality and expansion. Unless appellate tribunals admit the principle of growth and change, little can be done by judges of first instance.

Now and again the principle of growth has been recognised by distinguished judges. It was recognised and applied to 1762 by Pratt, C.J., in *Chapman's Case*, 2 Wilson, p. 145, when, in repelling the plea of novelty, he observed:

> "It is said that this action was never brought—and so it was said in *Ashby v. White*. I wish never to hear this objection again. Torts are infinitely more various."

It was welcomed and applied by Lord Mansfield throughout the great period of his office as Lord Chief Justice from 1756 to 1788. It was applied during the 19th century in several branches of the law with which students may be familiar. It was asserted by Mr. Justice Bigham in *Edelstein v. Schuler* [1902] 2 K.B. 155. It was declared by Lord Justice Bankes in *Rex v. The Electric Commissioners* [1924] 1 K.B. 192, when he said:

> "It has always been the boast of our Common Law that it will, whenever possible, and where necessary, apply existing principles to new sets of circumstances."

And yet, *and yet*, as I reflect upon certain important decisions in recent years, I wonder if the need for growth, for adaptability, and even for important change, has been realised to an adequate degree. Wisely did Professor Pound say:

> "The law must be stable and yet it cannot stand still."

How far-seeing that sentence is; and how far-reaching its implications to every thoughtful follower of the law. Precedent, after all, is not an end in itself, and we cannot remind ourselves too often of two vital considerations. First, that the general object of all law is the welfare of society; and, secondly, that the great merit of the Common Law has hitherto been that it has never finally frozen into the rigour of code formulation.

I like to recall to you the words of Lord Coleridge, L.C.J., in *Reg. v. Ramsey* (1883), 1 Cababé and Ellis, 135, where he said:

> "The Law grows, and though the principles of law remain unchanged, yet (and it is one of the advantages of the Common Law), *their application is to be changed with the changing circumstances of the times.* Some persons call this retrogression, but I call it the progression of human opinion."

Here, indeed, are words which stir the springs of thought!

But time is merciless in its flight, even though my subject be the "Case Law of England."

My address to you, the students of London University, must now reach its close. The future is before you with all its possibilities, with all its adventures of thought, of effort, of ideal. You are trustees for legal posterity. And so I say to each one of you as I end:

Be of good heart. Hold fast to the spirit of English Law—and—above all, keep ever aloft, with firm and loyal hands, the torch of high endeavour.

Chapters from Unpublished Text-books.

Jurisprudence for Beginners.

By Frank C. Hall, of Vancouver.

Introduction.

Everyone is presumed to know the Law, so it really needs no introduction. And further, since no one ever reads an introduction to a book anyway, suppose we don't bother with one, what? I mean, these cosy, informal chats are really so much nicer.

Chapter I.

The History of Law in a General Way.

We legal writers owe it to posterity to at least say something about the historical background of our subject, but since no one ever remembers anything they read about the history of law you'd perhaps do as well to skip this section. Candidly, it is rather pointless (1).

Law began with the Ten Commandments, but it is unnecessary to remember what these were as they have all been overruled by subsequent decisions (2).

Next we come to Rome. Take Rome, they had a lot of laws, and where did it get them? They went into a Decline, as everybody knows, so as a matter of good taste I have decided not to deal with Roman Law.

After Rome, people forgot about law for a long time, and were accordingly known as Medieval although they were probably as good as you or I, actually.

Magna Charta, which became law somewhere around 1066, marks the re-birth of an interest in law. This must not be confused with the Renaissance, which is another story altogether and has absolutely not a thing to do with law. The purpose of Magna Charta was to give the lawyers something to work with. It has, therefore, long since been overruled by subsequent decisions and become obsolete. But this is a criticism that can be levelled against practically all ancient law: it's nearly all obsolete. Magna Charta is simply no better nor worse than the rest of the law at that time, so it must not be condemned too strongly (3).

The only law of any importance in these days was the law respecting land. This was probably because the absolute ownership of all land was vested in the Crown, by whom the law was administered. I mean, there you are (4).

The law of England grew up in two separate branches: Common Law and Equity. Equity seems to be due to the Earl of Nottingham, who was known as the "Father of Equity." For this notable service to his country he was given the Bar Sinister, which also appears to be the origin of the word "Bar." Equity

(1) In this connection see the dicta of *Pipp*, J., in *Snatcher v. The Aldermen of Withersnam*, (1901) 47 L.J.K.B. 409, wherein the learned trial Judge took exception to a pointed remark directed at the Court.

(2) And see *Mozley v. Blinker*, (1933) 10 Mag. Cas. 601, where Bump, S.M., said: "Precedents are nonsense. I always overrule them."

(3) See *Phipps v. Whigglebaum*, (1785) 10 T.L.R. 482, where *Mule*, L.J., said: "Magna Charta is great fun!" But *semble*: Why?

(4) See the *Rubaiyat of Omar Khayyam*, where he said "Ah, take the cash and let the credit go."

was known as the "sweet sister of the law," probably because it was in constant conflict with the Common Law. An example of this conflict is the fact that although the Earl of Nottingham was regarded as being the "father of Equity," and Equity was looked upon as "the sister of the law," nevertheless the Earl was never recognised at any time as being also the father of the law. The reason for this has never been satisfactorily settled (5).

The Judicature Act is a Statute that you really ought to remember. It unified the two separate systems of Law and Equity by making them one and an awful mess. We had better skip over this in silent sympathy, letting bygones be bygones. After all, its none of our business, really (6).

The Judicature Act is a landmark: if you know this you know as much as any decent person should.

This brings us up to the present day, so in the next lesson we shall consider the law as it is.

Recommended Books for Collateral reading:

Vanity Fair. Thackeray.
Pilgrim's Progress. Bunyan.
Gulliver's Travels. Swift.
Decameron. Boccaccio.

EXAMINATION PAPER: TEST QUESTIONS.

(1) What has absolutely nothing to do with the law?

(2) Why do you say that?

(3) What Commandments have been overruled? Are you glad? Give reasons.

(4) Do all roads lead to Rome? What has this got to do with your answer?

(5) Why don't you know anything about Magna Charta? Don't try to be respectable when answering this question.

Sir Henry Dickens

And a Blatant Youngster.

The Courts of the Common Sergeant and of the Recorder of London enjoy, roughly speaking, concurrent jurisdiction with the Central Criminal Court. The Common Sergeant until last December was Sir Henry Dickens, son of the famous novelist. Woe betide the counsel who endeavoured to impose on Sir Henry's eighty-odd years of wisdom and experience. A blatant young barrister was bullying a Crown witness until the prosecutor jumped up and protested against his friend's improper conduct. "Your Lordship knows I would never be guilty of improper conduct at any time" interposed the blatant one. "I know nothing of the kind," retorted the Bench; and the blatant one proceeded with ill-assumed good manners.

(5) In *Cutts v. Napper*, (1872) 29 L.J.Q.B. 34, *Sump*, J., said: "The law on this point is in an unsettled state." The learned Judge was dealing with contributory negligence at the time, but his words may readily be applied, by analogy, to the matter in discussion.

(6) See *Barley v. Meal*, (1811) 16 East 293; 105 E.R. 2693. On p. 356 *Pipp*, J., says: "Equity is just as bad as the common law." And see also *Snatcher v. Mump*, (1932) 28 L.J. Ch. 291, where *Napp*, L.J., said: "It's six of one and half-a-dozen of the other."

Australian Notes.

By WILFRED BLACKET, K.C.

Exeunt Bailiffs.—Victoria leads the way in the abolition of a landlord's power to distrain for arrears of rent. Mr. Blackburn introduced the Bill effecting this change, and no one had a word to say against it. The Ministry "had no official view" regarding it, but Mr. Menzies, Attorney-General, spoke and voted in its favour. The main arguments in support of the measure were based on the ground that such a power to seize the property of a tenant should not be allowed without the order of some judicial authority, and that it was an injustice to other creditors to give this preference to a landlord. A faintly murmured suggestion was made in debate that the abolition of distraint might properly be accompanied by a grant of right of summary ejectment but it was clearly not the landlord's night out, and so the tenant will continue to enjoy the benefit of the prevailing rule that the landlord's house is the tenant's castle to the same extent as heretofore. It was noticeable in debate that enthusiastic applause always greeted the assertion that distraint was a "relic of feudal ages," so also is Magna Charta.

A Trip and Two Trippers.—Alfred Reginald Barstow Woodiness—a splendid name for space-writers—was at Melbourne fined £10 with the usual giblets of costs for making a misleading statement in an application for a passport. The defendant frankly admitted to departmental officers that his real wife lived in Tasmania where she was duly supported by him, and that the lady whom he described as his wife on the application had been acting as *locum tenens* so to speak for quite a long time. It also was stated that the neighbours believed that the wifelet was really his wife and that the photograph attached was an excellent one, but in spite of these things Mr. Freeman, P.M., while asserting that he was "not a court of morals," imposed the penalty directed by the Act. I may add that as a J.P. I have frequently certified that a person desiring to go abroad is in the quaint phrasing of the Act "a proper person to leave the Commonwealth of Australia," and in some instances have even been able to do so with quite a considerable degree of enthusiasm.

The Touch of a Vanished Hand.—In New South Wales there has been a small splash anent the question whether there should be "finger-prints from the hands of crime" —as Longfellow almost said—only, or whether persons acquitted, or others convicted of minor offences should also have these records held against them. In contrast with these views the suggestion was made by one member who is reputed to have very close knowledge of his constituents that "it would not do any harm if everybody had his finger-prints taken." Perhaps it would not "do any harm" but it would cause a distinct gleam of gaiety to lighten a depressed world if residence in New South Wales should now entail such a penalty. The questions raised are invested with importance by reason of the fact that the Supreme Court of this State has held that a finger-print is sufficient evidence to support a conviction for felony. As to preserving finger-prints in case of an acquittal, this would seem to be of no more than sentimental objection except in the case of a man who feared that he might not be so lucky next time.

The Cursed Golf.—The worst of long engagements is that they are not generally long enough to last till the wedding. Kathleen Brown, cake-manufacturer of Sydney, was engaged to Charles Shearston for twenty-two years. During that time he came round to supper every night ($22 \times 365 = 8030$). At the end of that time he took to golf and "chucked up his mash for the mashie," so to speak. Then she brought an action for breach of promise of marriage and the jury gave her a verdict for £300 which might be for her loss in being deprived of the advantage of being married to him – "married on to him" is I think the Scottish view of the matter—or may be the value of 8,000 cake suppers at ninepence. The plaintiff unfortunately had abundant reason to believe that "men were deceivers ever" for she had had to divorce her husband for his inconstancy, and after that met the defendant. In the meantime she had become engaged to another man of much wealth, but broke this engagement upon persuasion of the defendant, which may indeed go to prove that Woman is Man's equal in everything. Yet, with all the sympathy that one must have with the plaintiff, I confess that when I think of those suppers for twenty-two years I am somehow reminded of the complaint of the lady that her lover had not come along to be married on the appointed Wednesday. "It can't be his clothes this time," she said, "for I bought him a pair of trousers on Tuesday."

Prefers Communism.—Lady Simpson, widow of Sir G. B. Simpson, J., N.S.W., left an estate of £90,000, and of this sum one-third was to be held in trust for the benefit of a granddaughter, Mrs. Nora Brown, and her children, but a discretion as to its application is vested in the trustees who have to prevent its use for the propagation of the Communistic views held by Mrs. Brown. This might seem to impose a very difficult task on the trustees but a statement purporting to have been made by the lady is to the effect that she will not accept any money from the Estate and will go full speed ahead on every propeller in her advocacy of the faith she has adopted. This may be an extreme instance of devotion to the cause but it illustrates the force of the revolutionary movement for true it is that every convinced Communist becomes an enthusiastic advocate and missioner of Marxian Misrule.

Of and Concerning Dogs.—Acting Judge Nield, N.S.W., stated in delivering judgment in *Bradstock v. Baxter* awarding the plaintiff £75 for his proved damages resulting from a dog-bite, called attention to what he declares to be a defect in the law. He said that "this is the day of the big dog" and that the power to award punitive damages against the big dog's owner should be given to legal tribunals. His view is that "where a person is attacked without lawful excuse by a savage dog the matter should be in the same category as an assault by a wanton aggressor." Nothing is likely to be done in the matter here, but the suggestion may be thought worthy of consideration in the Dominion.

An unusual action was brought in Sydney by Ruth Rutherford who claimed damages from a lorry-driver who had run over her fox terrier with the usual consequences. She was awarded £30, so in future *Cave canem* will have to be the motto of drivers of motor-vehicles. It does not seem likely, however, that this precedent will be of much benefit to the junior bar for the canine habit of barking at the front wheels of cars and lorries is so well established that being run over by a car would seem to be death from natural causes in the case of a dog. I confess I have been disappointed to find that with so many cars on the roads there are any dogs left.

A Mining Partnership.—J. I. Folks of Melbourne by paying £10 became a member of a mining syndicate. Twelve other persons came in on the same terms. Then as more money was needed several levies were made on the members and of these Folks paid all but the last in respect of which he was in default to the extent of £3. The other members then by resolution expelled him from the syndicate and forfeited his share. He applied to the Court for an injunction and other relief. For the plaintiff it was contended that the syndicate was a partnership and that he could not be expelled because no right to take this action had been provided by any partnership agreement or by any later agreement by the parties. For the defendants it was contended that the syndicate was not a partnership but merely an association for business purposes whose members could govern their own affairs by any agreements that were not forbidden by law. Lowe, J., held that there was a partnership and that no right of forfeiture or expulsion for non-payment of the levies had ever been agreed to and granted the relief claimed. In New South Wales a Mining Partnership Act has been in force for more than fifty years, but although it contains complete provisions for determining the powers of syndicates registered in accordance with its provisions I doubt whether fifty syndicates have ever obtained such registration.

Divorce.—New South Wales which already provides six grounds for divorce is gently agitated by a proposal to add two other grounds. One is insanity during three years, and the other separation from any cause for seven years. After seven years separation there is not much call for sentiment, but it does seem a cruel thing to authorise a husband to disown his wife after mental affliction has come to her. It would be a cruel law enacted by legislators of the same general description, and yet would not be of much effect for one can hardly imagine anyone brutal enough to take advantage of it for as *Rubinadrath Tagore* says "men are brutal but man is kind."

Under the Constitution, power is given to the Commonwealth to pass laws relating to marriage and divorce, but it is too late now to expect uniformity of divorce laws. Two of the States steadfastly refuse to sanction more than one ground for divorce, and no Ministry would endanger its life by endeavouring to impose the New South Wales facilities upon citizens of the Commonwealth.

A Wounded Ghost.—Harold McNeill of Melbourne claimed Workers' Compensation from Ralph Chefalo, "Magician," under remarkable circumstances. He said that he was employed by Chefalo to volunteer from among the audience to assist in the performance. His role was to enter a cabinet where his coat was to be taken off by an alleged ghost, and he then, having himself removed his coat, had to leap out of the cabinet in terror and go back to his seat. On one occasion while descending from the stage to the floor in the haste necessary to an artistic performance, he misjudged the distance and injured his foot. The "magician" was ordered to pay £8 6s. 8d. and £7 10s. costs. If he is genuine he ought to be able to get it out of his hat.

A.G. v. Evatt.—The judgment in *Attorney-General v. Evatt*, N.S.W., has, after a month's consideration, been delivered by the Court and will probably be regarded as very satisfactory by Mr. Evatt. He had appeared for the defendants upon trial at Quarter Sessions in what is known as the "Tighe's Hill Case." There were several defendants and the charges in the indictment related to a disturbance that took place in the course of the eviction of a tenant under order of a Court. The defendants resisted the police and it was alleged that they assaulted them. The case was first tried at Newcastle, and after a disagreement there the venue was changed to Singleton. The case was fairly simple but the proceedings on each hearing were exceedingly lengthy. The Ministry for some unknown reason, but possibly because it was said that the defendants were Communists, and therefore deserved exceptionally favourable treatment, agreed to pay the whole costs of the defence, and so it was that Mr. Evatt received £720 and the solicitors £229 from the Treasury.

While Mr. Evatt was still in the course of his 119 hour address for the defence he—perhaps as a diversion to soften the asperities of his major task—spoke at a political meeting at Newcastle and as the Supreme Court has now held "asserted that the A.G. in the conduct of the prosecution had resorted to unfair methods," and that he had "removed the trial to Singleton in order to get a prejudiced jury." "Railroaded the Tighe's Hill boys to Singleton," was one of the phrases alleged to have been used. Proceedings for contempt were taken against him and the *Newcastle Herald*, the newspaper reporting the speech, and the newspaper proprietors humbly apologised and submitted to the Court's order. Mr. Evatt denied that he had made the statements as reported and gave no indication of any regret for anything said by him. And after the full consideration already stated the Court finding that what Mr. Evatt had said and done constituted a contempt of Court and was calculated to prejudice the fair trial of the case "thought it sufficient to order that the respondents should pay the costs of the present proceedings," the order being so drawn that the newspaper proprietors will be liable for more than half the amount. "The dogs bark but the caravan moves on," and Mr. Evatt having expressed his opinion on the administration of Justice the Court proceeds to the consideration of other matters.

Legislators and Law.—The Victorian United Country Party has heard that Mr. Latham, the Federal Attorney-General, is to be presently appointed as Chief Justice of the High Court and by formal resolution "emphatically protests against the suggested elevation of a political nominee"—the said Latham—"over the heads of several well-tried and well-qualified Judges" now on the Bench, and asserts that this "proposed action will unsettle and discourage Judges who do not indulge in politics." There does seem to be some weight in the objections thus made, for it does not seem quite right that politicians should help themselves to judgeships with the same liberality as they recently showed in voting themselves an increase of £75 a year in salary, but as the Federal Ministry at the instance of the Country Party has since the passing of the resolution made generous resolve to present the farmers with £3,000,000 it is quite possible that insistence on this resolution will not be vehement.

Serving the Summons

On Maori and Pakeha.

By James Cowan.

A summons by any other name is just as distasteful, and I should imagine is doubly obnoxious when it takes the form of a registered letter—a method which seems calculated to impair the recipient's faith in mankind and the Postal Department. Some time ago a news paragraph from Wanganui told of the Maori objection to receive summonses so despatched, and of a bright suggestion that the regulations should be amended so that a postmaster could attach a weight to a registered letter with a piece of red or pink tape and throw it at any Maori who refused to accept it.

The idea seemed to remind me of something I had read, and at last I had it. It was the Spanish-South American method of capturing animals and human foes by hurling at them, lasso-fashion, a bolas, consisting of a short rope with a leaden ball at each end, which entangled and effectually hobbled and halted the object of the chase.

The delivery of a summons is naturally a task in which the delinquent public, whether pakeha or Maori, is disinclined to render the Law any very enthusiastic co-operation. I once witnessed a Court official's service of the blue document on an ancient Maori warrior on the Little Barrier Island, in the Hauraki Gulf, in the days when a small section of a tribe lived on that mountain-isle, now a sanctuary for native birds. The Government had bought the island, but a few of the die-hards, although they had been persuaded to sign the deed, were very loath to shift to the mainland, and Paratene was one of them. The tattooed relic of the cannibal era would not touch the "hamene," so it was laid on the ground at his feet, and he danced feebly round it, using a manuka stick as a spear, and jabbed at it. "Take that!" he yelled, "and that! You Government hamene, hamene, hamene! If you were a man I'd fight you!"

One way of avoiding the objectionable piece of paper in the home of the Maori is to change one's name every now and again. All that Mr. Flash-of-Lightning or Mr. Red Blanket has to do is to inform his friends that henceforth he is to be known as Mr. Pull-the-Trigger or Mr. Washbasin, and that the person of the old name no longer exists. This is calculated to delay indefinitely service of the summons. There is also an admirable system whereby the whole community professes blank ignorance of the wanted person's whereabouts. At Taumarunui once I was on the trail of one of Te Kooti's old warriors whom I had known in former years and wished to question on matters of history. But all inquiries in the kainga were useless; no one knew anything about Peita; perhaps he was dead, perhaps he was in the Urewera Country. In the end I found him at Taringamutu, a few miles away. When I asked a Taumarunui Maori why he was dumb about the veteran he laughed and said: "We thought you might be a policeman with a summons, and Peita is our kinsman."

Peita, of course, although he had had a hand in the Poverty Bay massacre and other tomahawk affairs, had not done anything in the past half-century or so that

was likely to bring him into conflict with the law; but the Maori attitude is that one can never tell what tricks that same law may be up to.

An Irish lady, in Hawke's Bay, whose birthplace was Tipperary, once told me some charming anecdotes, some of them quite in the Maori vein, about police and populace in her county. A friend of the family in the old home parts was a magistrate who, extraordinary though it may seem, was very popular in the district among all classes. He was also rather convivial and extravagant and given to running up debts on his holiday visits to Dublin, and debts were followed up by duns with papers. One day a stranger arrived in the village by train and inquired the way to the magistrate's home, which was some miles away. Somehow he could obtain neither information nor conveyance, and he had not been in the place an hour before he fell foul of the inhabitants and presently was suffering a painful beating-up administered by one of the local patriots. The stranger made no further attempt to visit the magistrate, but when he found the constable he took out a summons against the man who had given him the black eyes and the damaged nose.

Next day the case was heard in the Court, before the R.M. The assaulted one went into the witness-box and described the argument with the inhabitants. The Bench inquired the cause of the dispute.

"Well, your Honour," said the man, "when the people heard that I came from Dublin and wanted to see your Honour, they all tried to prevent me. They found out that I had a summons for you and they conspired to stop me from serving it. But I've got the better of them, I have, and your Honour may as well take it now." He pulled a blue paper out of his pocket and stepping nimbly from the box handed the summons to the magistrate.

New Zealand Law Society.

Meeting of Standing Committee.

A meeting of the Standing Committee of the Council of the New Zealand Law Society was held on December 4, 1933, at 11 a.m.

Present:—Canterbury, represented by Mr. H. F. O'Leary; Hawke's Bay, Mr. E. F. Hadfield; Marlborough, Mr. H. F. Johnston, K.C.; Westland, Mr. A. M. Cousins; and Wellington, Mr. E. P. Hay.

The Treasurer (Mr. P. Levi) also attended, and was elected Chairman of the meeting.

Before dealing with the business, reference was made to the death of Mrs. H. B. Lusk, of Napier, Mr. Lusk being a regular attendant at the meetings of the Council as the representative of the Hawke's Bay District Law Society. It was resolved to send a telegram to Mr. Lusk expressing the sympathy of the Society in his bereavement.

Trustee Amendment Bill.—The Committee considered two suggested additions to the above Bill which had been referred to the Society by the Statutes Revision Committee for comment, the Bill having previously been before the Standing Committee in its original form on November 24, 1933, and approved same subject to amendment.

Law of Libel Amendment Bill.—The Statutes Revision Committee referred for the comments of the Society a proposed amendment to cl. 2 of this Bill.

It was decided to approve of the proposed amendment.

Illegal Opinions.

In re Adam.

By Iulius.

Was the conviction of the original first offender valid; would an appeal lie against it, or would such an appeal be barred by lapse of time?

The authorised report of Adam's alleged offence ((1) 3 *Genesis*, 6 *et seq.*,) gives not more than a brief summary; it reports the offence in very few words, there is no report of the argument, and no reasons are given for the judgment. The reporter, moreover, appears to have been biassed.

Fortunately, however, there is available in *Milton's Reports* (9 P.L. 846 *et seq.*) a full report of the whole proceedings with all the psycho-analytical details beloved of the Newspaper Criminologist and the Georgian post-war Novelist. Not that Mr. Milton was a criminologist or even a novelist; on the contrary he was an artist. But Justice and Poetry for once had something in common, Mr. Milton also being blind.

The facts are simple: the accused, yclept Adam, a very primitive criminal without an alias, a garment, or a parent, was charged and found guilty of eating an apple. Whatever variety the apple was—probably, as other circumstances indicate, a Ribston Pippin—it had the astonishing effect of giving Adam what no man has since acquired; the knowledge of all evil and all good. (The rush of modern life makes it difficult to achieve any satisfactory knowledge of all evil and renders almost valueless the knowledge of good.) The penalty imposed for the offence was banishment from the Garden of Eden, which, like the island where the Swiss Family Robinson found themselves, provided all the necessities of life except a tin opener.

Was the conviction valid? There is the obvious objection that there is nothing to show that the Court was properly constituted, but this is a technical objection, anachronistic under the circumstances, the subtleties of the law, necessary as they are to-day, being after all a consequence of Adam's apple. A more substantial objection is that the requirements of natural justice were not observed. Natural Justice is that theoretical quality which is the foundation of all legal systems; there are few modern legal systems in which the foundation is not well buried. Natural justice then, demands that Adam must receive a proper trial; the gravity of the punishment compared with the veniality of the crime suggests that he did not; there is here a substantial argument in favour of a new trial.

But there appears to be an unanswerable argument upon which an appeal should be based—viz., that the crime was committed under duress. Duress in this case may be briefly defined as the legal forerunner of Sex Appeal, for it appears that one of Adam's own ribs had by a process of evolution fully understood only in Tennessee (see *People v. Scopes*) become a flaunting female and had induced, beguiled, forced, and compelled the aforesaid Adam to break the existing gastronomic ordinance and to eat a pre-Newtonian apple. The result of the duress was the ready-made suit trade, one of the most serious crimes ever devised, for Adam immediately learnt that nakedness was made to be covered and made the first recorded demand for a ready-made suit. Eve, transmogrified rib aforesaid, also covered herself. Evolution has continued what was here begun by bringing it about that man should

be more and more covered, thus differing from woman who is more or less. This is what is known as Darwin's Descent of Man.

From the foregoing it seems clear not only that an appeal would result in the acquittal of Adam because he acted under duress, but that it would bring about very properly the conviction of Eve, which is unfortunate for the modern Eve who has no convictions.

Would, however, an appeal be barred by lapse of time? An elementary knowledge of arithmetic—and here the accountant is called in to the aid of the lawyer—makes it obvious that to show what time has elapsed since the offence, we must know the date (if any) upon which it was committed. In the absence of evidence as to this date (if any) it would be impossible to prove that an appeal would be statute barred. Furthermore a bar of this kind, or indeed of any kind, was unknown in the Garden of Eden.

Some may ask whether a successful appeal would be of any material benefit. If competent counsel were instructed to conduct the appeal, there would be this benefit, that he would see to it that his fee was paid in advance. After all, even if the client is dead, the lawyer must live—although even on that point there are cynics who ask, *Why*?

Legal Literature.

Rating Appeals.

Butterworth's Rating Appeals, 1926-1931, being Reports of Rating Appeals heard before the London and Other Quarter Sessions, the King's Bench Division, the Court of Appeal, and the House of Lords: by His Honour Judge Hildesley, K.C. Two Volumes: pp. 966, xlv, with Index.

These reports continue a good work long existing and well known; the earlier series were edited, it will be remembered, as follows: 1871 to 1893, by Mr. Ryde alone; 1894-1904 by Mr. Ryde and Mr. Konstam; from 1904-1908 by Mr. Konstam alone; 1908-1912 by Mr. Konstam, assisted by Mr. Harold R. Ward; 1913-1925 by Mr. E. Gibbs Kimber. Upon an examination of a series of reported cases, discussing many and varied points of rating law, Judge Hildesley is worthy of his inheritance and qualified to succeed his predecessors. It would be too frivolous to pause upon a digression as to the personal figure, complexion, features, manner, and character which the learned editor, as he visualises him, assigns to that old, old friend, "the hypothetical tenant," who plays such a part in these volumes. We must content ourselves with suggesting the opportunity afforded for a thesis on that august personality. He has been intimately discussed in very many of the cases reported in the present series which covers a period noted for its outburst of legislative activity. Some of the most recent cases of importance deal with the difficult subject of the rating of sporting rights, and in *Consett Iron Co., Ltd. v. Durham County Assessment Committee,* [1931] A.C. 396, the assessment of a coal-mine has been exhaustively dealt with. These subjects, taken at random, show the comprehensiveness of the work. For the rest, the whole reports, whose value given the efficiency of their editing, is obvious, and whose fitness for handling and use, as to size, shape, weight, print, and get-up, can be confidently recommended to all persons dealing with the law of rating.

Judicial Nomenclature.*

The Editor,
NEW ZEALAND LAW JOURNAL.

Sir,—Two short articles in a recent issue under the headings of "Correct Nomenclature" and "Correct Reference" raise the thought that perhaps all has not been said on this topic.

One wonders how far it is strictly correct to call a Judge of the Supreme Court "Mr. Justice ———." According to the Judicature Act, there is only one Justice—the Chief Justice. His puisnes are styled "Judges." In England it is distinctly laid down by statute that "the puisne judges of the High Court shall be styled 'Justices of the High Court.'" There is no such provision in New Zealand law.

Prior to 1877 the style "Justice" was, it is understood, enjoyed by a Judge of a superior court in England (other than a Baron of the Exchequer) because his name was included (as it still is) in the Commission of the Peace for every county. He therefore shared the title "Justice" with Justice Shallow, Justice Slender, and other Justices of the Peace; in regard to whom the title seems at some time after Shakespeare's day to have fallen out of general use. As a matter of fact it is, I believe, not so very rare for a High Court Justice to be found, during vacation or on other special occasion, sitting with his fellow Justices of the county to discharge the judicial functions of a Justice of the Peace. According to *Stroud*, modern statutory phraseology in England still frequently uses the term "Justice" defining it to mean a Justice of the Peace.

According to one of the law dictionaries, before the *aula regis* was divided, the members of it were called neither "Judge" nor "Justice," but (in English) "judiciary." After that division, titles varied; so that a Judge would speak of "Mr. Justice Blackburn" (of the Court of Queen's Bench), "Mr. Justice Erle" (of the Court of Common Pleas), "Mr. Baron Parke" (of the Court of Exchequer—not, by the way, plain "Baron Parke"), or "my brother Wilde;" (I am quoting from reported judgments where these titles are used by members of the Bench). The term "learned Judges" was available as a collective description for all of them. It is true that indiscriminate use of the terms "Judge" and "Justice" in English writings, ancient and modern, makes it a matter of difficulty to say how far the latter term is being employed as a piece of regular legal nomenclature, either definitely laid down or of prescriptive use, and how far as only a courtesy title.

The point is, however, that in New Zealand Judges of the Supreme Court are not Justices of the Peace. It is suggested therefore that in New Zealand "Mr. Justice" applied to puisne Judges of the Supreme Court is a mere courtesy title, of which, of course, nobody would wish to deprive them. On the other hand, the Judges of the Native Land Court really are Justices of the Peace. It may be therefore that they have a legal right to the style of "Justice" which the Judges of the Supreme Court do not enjoy. While the rules of courtesy permit, or even enjoin, in many instances, the use of a title not enjoyed as of right, it is difficult to see that they can be looked upon as

*The views expressed by correspondents are not necessarily shared by the Editor.

justifying the withholding of a legal title from persons possessing it.

As to whether "justiciarius" or "justitia" be the original Latin for "justice," Brown and Tomlin differ. It is however clear that certain of the Judges of the superior courts in England have from old time enjoyed the title of "Lord" while in office, and that all of them are, by right or courtesy, addressed as "my Lord." But this is no reason for saying that in New Zealand "His Lordship" instead of "His Honour" would be a correct form of reference, or "Your Lordship" a respectful form of direct address. (Of course any one of them who was a member of the Judicial Committee of the Privy Council would properly be addressed as "Your Lordship" when sitting in that tribunal).

All this indicates that English usage is not much to go upon in New Zealand. Indeed, if terms of this kind are meant to carry any real meaning, it may be suggested that "His Honour" is considerably more honorific to the person indicated than most of the other terms available. The English have two sayings: "as sober as a Judge," and "as drunk as a Lord." When it is considered that in many cases the same person is in himself both Judge and Lord, the two sayings appear difficult to reconcile. Perhaps they can be harmonised on some theory of duple personality, as of Dr. Jekyll and Mr. Hyde. (It is no doubt immaterial to observe that nobody ever says "as sober as a Justice").

The matter of initials is quite a separate question. "J." may stand equally for "Judge," or "Justice," or for any Latin term now or heretofore taken to be a translation of either of these. So with "C.J." Groups of initials mean whatever one means them to mean. Cases of ambiguity must be resolved, if at all, according to the context. "I.C.S." stands correctly and (lacking a context) impartially for either "Indian Civil Service" or "International Correspondence Schools." Members of the Royal Navy (or of certain grades therein) and nurses duly enrolled under the Nurses and Midwives Registration Act are alike entitled to (and do) add to their names the letters "R.N." Sometimes a change of one letter indicates a complete difference in the meaning of others: "R.A.O.B." means "Royal Antediluvian Order of Buffaloes"; but "R.A.O.U." is said to refer not (as analogy might suggest) to Unicorns similar and similarly situated, but to the "Royal Australasian Ornithologists' Union"—a fact that few people would know if they had not been taught. So "C.J." and "J." conveniently serve, according to the context, to indicate either "Chief Justice" and "Justice" or "Chief Judge" and "Judge."

As to the reading aloud of a report in which initial letters are used, this is yet another matter. It would surely be utter pedantry to extend "———— M.A." into "———— Master of Arts." Is there any better reason for extending (in reading) "———— K.C." to "———— King's Counsel," or (to use the most exact phrase) to "———— One of His Majesty's Counsel learned in the Law"? In fact the dictionary says, using some phonetic orthography, that "K.C." is pronounced "kei-si." Then where lies the justification for reading out what is not in the book before one, and turning "———— C.J." into "———— Chief Justice," or "———— J." into "———— Judge"? The person who starts to paraphrase, be it ever so little, from the printed word that he purports to be reading, may be targumizing before he has done.

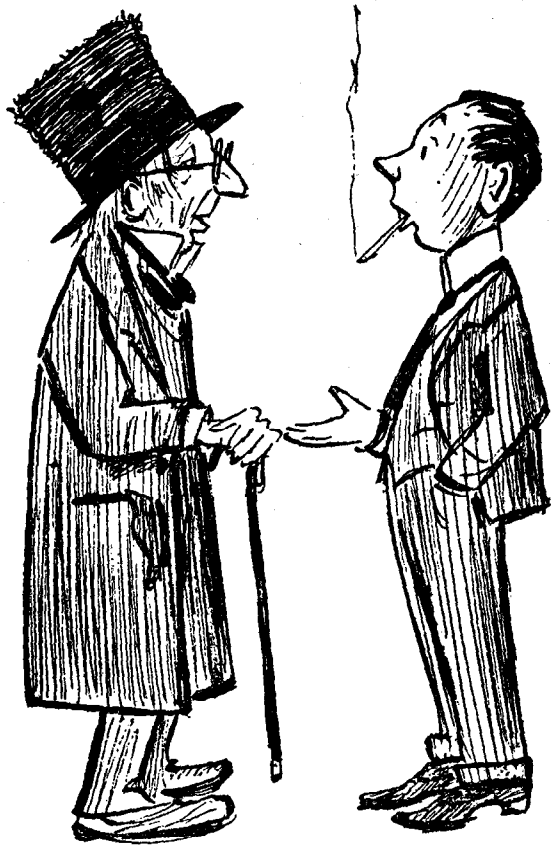
One final thought occurs: If the usages of courtesy were logical, then since (first) a Chief Justice with the title of "Lord" is called "Lord Chief Justice"; and (second) a Justice with the title of "Lord" is called "Lord Justice"; and (third) a Justice who is not a Lord is called "Mr. Justice"; then a Chief Justice who is not a Lord would be called "Mr. Chief Justice." But we know it is not so.

Yours, etc., "OUTER TEMPLAR."

Forensic Fables.

THE TWO CLERKS WHO EXCHANGED EXPERIENCES.

An Aged and Retired Clerk, Revisiting the Glimpses of the Moon, Fell into Conversation with a Youthful Member of his Species. "Remember," said the Aged Clerk, "that you are a Person of no Little Importance to your Employer. I myself was Clerk to a Barrister who, but for my Exertions, would never have been Heard of. He was, I Grieve to Say, Idle, Unbusiness-like and Ignorant, but by Dint of Unremitting Toil and Unfailing Tact I was Able to Seat him on the Woolsack." "Sir," Replied the Youthful Clerk, "What



you tell me Matches my Relatively Short Experience. I am Junior Clerk to a City Solicitor of Considerable Eminence. His Success in the Profession is to me a Mystery, for he is Coarse in his Manners, and entirely Devoid of Intelligence. Indeed, Were it not for my Alertness and Devotion, the Whole Blinking Show would Bust Up." The Youthful Clerk then Hurried Away to Put Half a Crown on *Bumboat* for the Three-Thirty; and the Aged Clerk Looked at his Watch to See Whether the Houses of Entertainment were Still Closed.

MORAL: *Keep your Eye on Him.*

New Zealand Conveyancing.

By S. I. Goodall, LL.M.

Wills.

1.—Will Leaving Estate to Wife.

This is the last will of me A.B. of etc.

1. I Revoke all wills and testamentary dispositions at whatsoever time heretofore made by me.

2. I give devise bequeath and appoint all the estate both real and personal of whatsoever kind and wheresoever situate of which I shall be possessed to which I shall be entitled or over which I shall have any disposing power at my death unto my wife C.B. absolutely.

3. I appoint my said wife sole executrix of this my will.

In witness etc.

Signed etc.

2.—Will of Husband or Wife in Other's Favour with further Provision for Adult Children in event of Death of both Spouses in Common Accident or of One within short Period of Other.

This is the last will of me A.B. of etc.

1. I revoke all wills and testamentary dispositions at whatsoever time heretofore made by me.

2. (1) If my husband (wife) C.B. shall survive me for the period of one calendar month then but not otherwise I appoint my said husband (wife) sole executor (executrix) of this my will but

(2) If my said husband (wife) shall not so survive me for the period of one calendar month then I appoint all my children to be executors of this my will.

3. (1) If my said husband (wife) shall survive me for the period of one calendar month then but not otherwise I give devise bequeath and appoint all the estate real and personal of whatsoever kind and wheresoever situate of which I shall be possessed to which I shall be entitled or over which I shall have any disposing power at my death unto my said husband (wife) absolutely but

2. If my said husband (wife) shall not so survive me foi the period of one calendar month then I give devise bequeath and appoint all the said estate unto and among all my children in equal shares and if there shall be only one such child then to that child absolutely.

4. I declare that if any child of mine shall predecease me leaving issue which shall survive me then such issue shall take *per stirpes* and if more than one in equal degree equally between them within that degree the share hereunder to which his her or their parent would have been entitled had he or she survived me.

In witness etc.

Signed etc.

3.—Will of Married Man with Infant Family.

This is the last will of me A.B. of etc.

1. I revoke all wills and testamentary dispositions at whatsoever time heretofore made by me.

2. I appoint F.S. and J.N. both of etc. (hereinafter together with the survivor of them the executors of such survivor or other the trustee or trustees hereof for the time being called " my Trustees ") to be executors and trustees of this my will.

3. I give and bequeath the following legacies namely :—

(1) To each of my Trustees the sum of £ as an acknowledgment of their trouble in undertaking such office.

(2) To my manager E.F. if he shall continue in my service until my death and be not under notice of dismissal the sum of £ .

(3) To the Orphanage at the sum of £ And I declare that the receipt of the Secretary or the Treasurer for the time being of such Orphanage shall be a sufficient discharge to my Trustees thereof.

4. I give devise bequeath and appoint all the rest residue and remainder of the estate real and personal of whatsoever kind and wheresoever situate of which I shall be possessed to which I shall be entitled or over which I shall have any disposing power at my death unto my Trustees upon trust to sell call in and convert the same into money with power nevertheless to postpone the sale calling in and conversion of any part or parts of my said residuary estate for so long as they shall in their absolute discretion think fit notwithstanding that the same may be of a speculative terminable or reversionary nature and to invest the proceeds of such sale calling in and conversion into money and such part of my said residuary estate as shall already consist of money (hereinafter collectively called " the residuary trust fund ") in securities for the time being authorised by law for the investment of trust funds in New Zealand.

5. I direct my Trustees to pay the income arising from the residuary trust fund or from any part of my said residuary estate for the time being remaining unconverted to my wife X.B. for her life and from and after her death to hold the residuary trust fund and the investments representing the same as well the capital as the income accruing therefrom upon trust for all or such one or more exclusively of my children or remoter issue in such shares at such times for such interests and generally in such manner as my wife shall by deed with or without a power of revocation or will appoint and in default of and in so far as any such appointment shall not extend upon trust for all my children living at my death who being sons shall attain the age of twenty-one years or being daughters shall attain that age or previously marry in equal shares.

6. I declare that if any child of mine shall die in my lifetime leaving children living at my death who being male shall attain the age of twenty-one years or being female shall attain that age or previously marry then subject to any contrary appointment by my said wife such children shall take equally between them the share which their parent would have taken had he or she survived me and lived to attain a vested interest.

7. I further direct that no child or grandchild of mine in favour of whom or any of whose issue an appointment shall have been made shall in default of express appointment to the contrary participate in the unappointed portion of the residuary trust fund without bringing the benefit of such appointment into hotchpot and accounting for the same accordingly.

8. I direct that all legacies trust bequests and gifts hereby bequeathed made and given shall be paid and made free of all duty and that all debts funeral and testamentary expenses fees and duties (whether estate or succession) shall be paid and discharged out of the capital of my said estate without allocation of any part thereof to income.

9. I EMPOWER my trustees with the consent in writing of my wife during her life and after her death at their own sole discretion to raise any part or parts not exceeding in the whole one-half of the capital of the then expectant or presumptive share of any child or other issue of mine under this my will and apply the same for his or her advancement or preferment in life.

IN WITNESS etc.

SIGNED etc.

Practice Precedents.

Advancement for Children out of Estate.

In any case where no provision or no sufficient provision is made in a will or trust deed for paying moneys for the maintenance and education in life of the beneficiaries, a Judge, on an application made to him in Chambers in a summary way by a trustee, may order such sum out of the estate, as the Judge thinks fit, to be paid and applied from time to time for the maintenance or advancement in life of any beneficiary under age.

Any payment so made in accordance with the Judge's order shall, in the event of such beneficiary attaining the age of twenty-one years, be deemed to be in full or in part satisfaction, as the case may be, of the moneys to which he would then become entitled, and shall, in so far as such Judge's order extends, bar all claims of other persons who but for this enactment would have been entitled to the whole or to a distributive share of such estate: see s. 93 of the Trustee Act, 1908, *Reprint of the Public Acts of New Zealand*, Vol. 8, 907. As to the definition of "Trustee" in that section, see s. 108 of the Trustee Act, 1908, *ibid*, p. 915. Refer also to *In re Nutt, Nutt v. Gordon*, (1902) 4 G.L.R. 412; *Durand v. Durand*, [1920] N.Z.L.R. 487, [1920] G.L.R. 269, and see s. 46 of the Finance Act, 1931 (No. 2), *Reprint of the Public Acts of New Zealand*, Vol. 8, 921, and the Trustee Amendment Act, 1924, *ibid*, 919, and *Garrow on Trusts and Trustees*, 186–188.

MOTION.

(*Same heading.*)

Mr. of counsel for the petitioner herein to move before the Right Hon. Sir Chief Justice of New Zealand at his Chambers, Supreme Courthouse on day the day of 19 at o'clock in the forenoon or so soon thereafter as counsel can be heard for an Order in terms of the prayer of the petition filed herein authorising the said to expend up to the sum of £ each out of the interest of A.B. and C.D. infant beneficiaries in the estate of deceased AND FOR A FURTHER ORDER for the payment to the said petitioner of the costs of and incidental to this application out of the estate of the above-mentioned deceased UPON THE GROUNDS appearing in the said petition and the affidavit filed in support thereof.

Dated at this day of 19 .

Certified correct pursuant to rules of Court.

Counsel for petitioner.

IN THE SUPREME COURT OF NEW ZEALAND.

.....District.

.....Registry.

IN THE MATTER of the Trustee Act, Etc.

AND

IN THE MATTER of the Will of of deceased.

To the Right Hon. Sir , Chief Justice of New Zealand.

(*Date*).

THE HUMBLE PETITION of of in the Provincial District of in the Dominion of New Zealand sheweth as follows:

1. The above-mentioned deceased died on or about the day of 19 leaving a will probate whereof was duly granted to your petitioner the executor and Trustee therein named on the day of 19 by this Honourable Court at .

2. That by his said will the deceased bequeathed the whole of his residuary estate to your petitioner UPON TRUST for all his nephews living at the time of his decease who shall attain the age of twenty-one years in equal shares absolutely.

3. Two of the said nephews of whom there were four of the said deceased contingently entitled under his will are A.B. son of of and C.D. son of of born respectively on the day of 19 and the day of 19 .

4. That on the day of 19 the net capital account of the estate of the above deceased amounted to £ .

5. That the said sum is represented by the following assets namely:—

6. That the income earned on the above investments for the year ending the day of 19 after deducting all fees charges and taxes was £ and as the nature of the said investments has not altered since that date it is not anticipated there will be any change in income for the current year.

7. That C.D. above referred to attained the age of years on the day of 19 : The said C.D. is your petitioner's son.

8. That as there is no secondary school near the home of the said C.D. he has been enrolled as a boarder at College in the City of where the fees amount to £ per term.

9. That although the balance-sheet of your petition for the period ending the day of 19 showed a surplus of assets over liabilities of £ your petitioner's net trading loss for the same year amounted to £ and your petitioner's total deficit for the period amounted to £ .

10. That there is a first mortgage on your petitioner's farm interest thereon, and your petitioner is in arrear with payment of to one of to secure the sum of £ and interest due to the extent of £ .

11. That the above-mentioned A.B. attained the age of years on the day of 19 and that he is a boarder at College aforesaid and pays the same fees as the said C.D.

12. That although the balance-sheet of his father the said for the period ending 19 showed a surplus of assets over liabilities of £ his loss for the same financial year amounted to £ .

13. That neither the said nor your petitioner anticipates that the respective financial positions will improve during the present year owing to the poor prices received for primary products. Neither the said nor your petitioner is able to obtain further advances from any source except for carrying on farming operations.

14. That neither the said nor your petitioner is able to defray the expenses of the education of the said A.B. and C.D. and are desirous that they should remain at college for the remainder of the present year.

15. That it is desired that the said A.B. and C.D. proceed to the University of New Zealand when they complete their present course at College.

WHEREFORE YOUR PETITIONER PRAYS:

(*a*) That an order may be made that your petitioner may expend up to the sum of £ out of the interest of the said A.B. and the sum of £ out of the interest of C.D. in the estate of the above-mentioned deceased for their respective maintenance and advancement during the year 19 .

(*b*) For an order that the costs of this application be paid out of the estate of the above-mentioned deceased.

(*c*) For such further and other relief in the premises as to this Honourable Court may seem just.

Petitioner.

Witness:

AFFIDAVIT VERIFYING PETITION.

I of [*occupation*] make oath and say as follows:—

That so much of the foregoing petition as relates to my own acts and deeds is true and so much thereof as relates to the acts and deeds of any other person I believe to be true.

Sworn &c.

AFFIDAVIT OF IN SUPPORT OF PETITION.

(*Same heading.*)

I of [*occupation*] make oath and say as follows:—

1. That I am the father of A.B. who is a beneficiary under the Will of the above-named deceased as set forth in the petition filed herein.

2. That my said son attained the age of years on the day of 19 .

3. That my said son has been for the past three and a-half years a boarder at College at the City of and is at present enrolled as a boarder at the said College the fees for his board and lodging and tuition amounting to the sum of £ per term.

4. That the said A.B. desires to proceed to the University of New Zealand at when he leaves his present college with the object of qualifying as a barrister and solicitor.

5. That annexed hereto and marked "A" is a true copy of a statement of my assets and liabilities as at the day of 19 .

6. That the said statement sets forth correctly my present financial position wherein it shows a deficit of £ .

7. That the current rates on my farm property still remain unpaid and last year I was not able to meet more than half the interest due on the mortgage on my said farm property.

8. That I shall enjoy no further income from the said property before the day of 19 as all my surplus stock has been credited to my stock account with Messrs. of Merchants and the value of my wool for the current season has been shown as assets in the said statement.

9. That I do not anticipate that my financial position will improve during the present financial year owing to the poor prices received for primary products.

10. That I have no other source of income and I am unable to obtain further advances from any source except for the carrying on of my farm.

11. That I am unable from my own means to defray the expenses of the education of my child the said A.B.

12. That I am desirous that the said A.B. should remain at college for the remainder of the year.

Signature:

Sworn &c.

ORDER.

(*Same heading.*)

day the day of 19 .

UPON READING THE PETITION OF filed herein and the Motion and Affidavits filed in support thereof and UPON HEARING Mr. of counsel for the said I DO ORDER that the said DO HAVE LEAVE TO EXPEND out of the interest of A.B. and C.D. infant beneficiaries in the estate of the above-mentioned deceased the sum of £ each for their respective maintenance and advancement during the year ending 19 such sums to be deducted respectively from the share that the said A.B. and C.D. would otherwise be entitled to receive out of the said estate on attaining the age of twenty-one years AND I DO FURTHER ORDER that the said [*petitioner*] be paid the costs of and incidental to this application out of the estate of the above-mentioned deceased such costs to be taxed by the Registrar of this Court at .

Judge.

Rules and Regulations.

Law Practitioners Act, 1931 (Solicitors' Fidelity Guarantee Fund). The New Zealand Law Society's Additional Rule under Part III of the Act.—*Gazette* No. 81, November 30, 1933.

Coinage Act, 1933. Order in Council notifying the Date of coming into Operation of the Act.—*Gazette* No. 81, November 30, 1933.

Trade Agreement (N.Z. and Australia) Ratification Act, 1933. Notification of Commencement of Trade Agreement between the Commonwealth of Australia and the Dominion of New Zealand.—*Gazette* No. 81, November 30, 1933.

Thames Harbour Board Loans Adjustment Act, 1932-33. Order in Council extending Time preventing Persons from applying for Receiver, &c., for Thames Harbour Board Loans.—*Gazette* No. 81, November 30, 1933.

Sales Tax Act, 1932-33. Certain Goods exempted from Sales Tax.—*Gazette* No. 81, November 30, 1933.

Education Act, 1914. Amended Regulations relating to Teachers' Incorporation and Court of Appeal.—*Gazette* No. 81, November 30, 1933.

Sharebrokers Act, 1908. Amendments to Rules of the Stock Exchange Association of New Zealand.—*Gazette* No. 81, November 30, 1933.

Sharebrokers Act, 1908. Amendments to the Rules of the Stock Exchange Corporation of New Zealand.—*Gazette* No. 81, November 30, 1933.

Magistrates' Courts Act, 1928. Amending scale of fees for Magistrates' Courts.—*Gazette* No. 82, December 7, 1933.

Education Act, 1914. Amending Secondary Schools Regulations.—*Gazette* No. 82, December 7, 1933.

Education Act, 1914. Amending Manual and Technical Instruction Regulations.—*Gazette* No. 82, December 7, 1933.

Administration Act, 1908. Approval of Incorporated Company under section 22 of the Act.—*Gazette* No. 82, December 7, 1933.

Customs Acts Amendment Act, 1932-33. Gold Duty Act, 1908. Exempting certain articles of Gold Plate from Gold Duty.—*Gazette* No. 82, December 7, 1933.

Shipping and Seamen Act, 1908. Additional Regulation for Carriage of Deck Cargo.—*Gazette* No. 82, December 7, 1933.

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