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

" We are now on the threshold of an epoch of profound legal transformation. Our educational methods have to breed a race of lawyers able to utilize the spirit of law reform for the highest uses. They have to teach the importance at once of stability and change. To do so they must know not only how to grasp the philosophic foundation of those decisions. We must also turn out lawyers with a courage to criticize what is accepted, to construct what is necessary for new situations, new developments, and new duties both at home and abroad."

—LORD ATKIN.

Vol. X. Tuesday, January 23, 1934 No. 1

Our System of Legal Education Indicted.

SHOULD the aspirant to the legal profession in the Dominion be encouraged to seek the goddess of legal knowledge for her qualities of mind or heart, or solely for the dowry which her conquest will bring with it ? In other words, should the present prescribed preparation for admission to the Bar or to the profession of a solicitor be overhauled so as to provide for cultural as well as for technical subjects ? Or, should we be content with a system which provides the shortest possible cut, at a minimum of trouble, to admission to the profession ? This is the question which is discussed, and to which an answer is suggested, in a thesis which, in the form of a report of sixty-six pages, Professor R. M. Algie, Professor of Law at the Auckland University College, has presented to his College Council. It provides most interesting reading, both for the manner in which the systems of legal education in other countries are compared with ours in New Zealand which is pronounced archaic and unsatisfactory, and also for the constructive suggestions made for reform concluding with a proposal for an entirely new course for the LL.B. degree.

In another part of this number, Mr. H. F. von Haast deals with modern law school work in Canada and the United States, as observed by him recently : this paper was in print before Professor Algie's report was received by us. It will be seen that each of these experienced gentlenen approaches his subject from a different angle.

Professor Algie recently utilized a sabbatical year's leave of absence to make a full investigation into the systems of legal education in Australia, in Great Britain, and in European countries. He went further and obtained material dealing with such education in Canada and the United States of America. The report now under notice is the fruit of his researches and practical observation. Whether one agrees with or differs from the outspoken expression of his views, the legal profession is much indebted to him for his comprehensive and arresting report, which gives some idea of the modern views and practice in legal teaching and testing elsewhere. It is certain that it will—as is intended—provoke much comment and diversity of opinion on the criticisms and suggestions contained in it : which is all to the good.

We hope that members of the profession will favour us with expressions of their views of Professor Algie's strictures and constructive criticism. The JOURNAL will welcome such contributions, and will gladly provide an Open Forum wherein Professor Algie's supporters and critics may freely express their opinions. We can assure both our prospective contributors on the subject and our readers generally that no one will welcome battle more than Professor Algie who has thrown his gage into the arena. Those who know him will realise that is the very purpose for which he has entered the lists.

At the outset, after an indictment of the apathy of our Law Societies in regard to the manner and method of preparing students for the legal profession, Professor Algie expresses the view that the faults of our system lie not in the teaching, but in the conditions by which that teaching is determined. He asks,

> " Where else in the world is there a system which contains within itself a combination of factors of such far-reaching consequence as—Part-time students, the necessary emphasis of vocational training, the continual presence of the spectre of examinations, and the unrestricted authority of amateur, external examiners ? "

Here, he adds, there is ample scope for reform.

The first count of his indictment is that, unlike the Law Societies of other portions of the Empire and of the United States, up to a recent date our Law Societies have taken practically no part at all in the provision of formal instruction in the general and technical subjects of the legal curriculum. They delegate to the University of New Zealand the entire burden of legal education, and make no direct contribution whatever towards the defraying of the relatively heavy cost of such instruction. By consenting to the abolition of the system of articles, they relieved themselves of the only remaining method of providing formal instruction for those young persons who seek admission to the profession. Professor Algie implies, rather than states, that the result has been detrimental to the profession ; and he shows that it is not even necessary nowadays for a law student to attend lectures at a University College or have any practical training, as he may " obtain instruction in any part of the country and by any system of tuition he may choose."

Not as a complaint, but as a simple statement of fact, the Professor says :

> " Amongst lawyers generally, there are many indeed who feel it their duty to criticize with varying degrees of asperity the course of study and method of teaching followed in our several University Colleges : in reply, it is only fair to point out that our Colleges are striving to adapt themselves to the special conditions and necessities of the task handed over to them by the legal profession."

In the New Zealand system, the passing of an examination constitutes the primary qualification for admission ; and this may account for the dominating influence which examinations exert in the minds of intending candidates. While there is no country in the British dominions where the cost of legal education is so low as it is in New Zealand, Professor Algie is of opinion that examinations are not enough :

> "It is well for us to be able to say that the right to seek admission should be open to all; but, in the best interests of the public, it is our duty to see that we grant the privileges of practice to those, and to those only, who are fitted by character, by scholarship, and by training, to sustain adequately the difficult, complex, and responsible work which is the characteristic of the present day practice of law."

He deals with the criticism that the University is turning out too many lawyers, and shifts the blame to where he thinks it belongs, since the members of the legal profession bear the main responsibilities connected with selection, the function of the University being limited to the business of instruction.

In order to construct a system of legal education that would stimulate the pursuit of culture and at the same time command the respect of members of the legal profession, Professor Algie requires provision for leisure, and opportunity and inducement for the indulgence in wide reading, thus involving a recasting of the syllabus. A rearrangement must be made for cultural as well as for technical subjects, and for a more scientific grouping of the subjects of the whole course. Moreover, the ideal to be kept in view, by these aids, must ensure that the work done in one year shall form an indispensable basis for the work of the subsequent years. That this will involve sacrifices by legal practitioners, Professor Algie does not deny. It follows that law clerks must be allowed a certain number of hours during the day for attendance at University-College classes, and, in cities where there are law schools, that they should not be engaged by legal firms unless and until such clerks have had, say, two years as full-time students in a law school. Furthermore, the present system of external examiners should be replaced by one in which the teachers themselves shall act as examiners. By these means, Professor Algie considers it ought to be possible to construct a system that would stimulate the pursuit of culture and equip practical men for the tasks of their profession.

At present the system in New Zealand is deemed to be inadequate, and the teacher is cramped. His problem has been how best to give a sound training to part-time students who come to him for a few hours weekly, and whose minds are dominated by the necessity of passing, year after year, a series of external examinations. It would be unjust to the students, as well as unsound in principle, to apply to "Part-time law schools," such as ours, the methods and practices of the full-time Universities of overseas countries, such, for instance, as the Case-Book method which obtains in American law-schools.

Professor Algie is severe in his strictures of what he terms an "anachonism" and an "educational monstrosity"—namely, the external examination. This, he says, not merely encourages "cramming," but render it necessary. He selects some examination papers set by the "amateurs" of the examiner-class to illustrate his contention. He would substitute the "experts" for the "amateurs," in order to cure this evil and put the whole system of teaching on a sound basis. In these days, when we are so often confronted with various forms of educational bias, it is probably unnecessary to add that Professor Algie's examiner-experts are strictly confined to the ranks of the teachers of law.

So far we have indicated the lines of Professor Algie's main objections to the system in being. In our next issue, we shall summarize his constructive proposals for reform.

Summary of Recent Judgments.

JUDICIAL COMMITTEE
1933.
July 13, 14;
Oct. 12.
Lord Atkin.
Lord Tomlin.
Lord Macmillan.
Lord Wright.
Sir George Lowndes.

GOULD AND OTHERS
v.
COMMISSIONER OF STAMP DUTIES.

Revenue—Death Duty—Trust—Settlement—Gifts creating Charge in favour of Trustees thereof—"Debt"—Incurred by Deceased otherwise than for full Consideration in Money or Money's Worth wholly for his own Use and Benefit—Death Duties Act, 1921, ss. 2, 9 (2)—Amendment Act, 1925, s. 5.

Appeal (No. 12 of 1933) from the judgment of the Supreme Court (*Myers*, C.J., and *Herdman*, *Adams*, *MacGregor*, and *Blair*, JJ.) on the questions of law and fact arising out of an appeal by way of case stated following the assessment of death duty by the Commissioner of Stamp Duties and reported in [1932] N.Z.L.R. 1464.

M. J. Gresson and **J. H. Stamp**, for the appellants; **Wilfred Greene**, K.C., and **Blanco White**, for the respondent.

On the facts appearing in their Lordship's judgment,

Held, 1. That it was not admissible upon the material available to draw the inference that the testator declared himself a trustee of any money or fund.

2. That the settlements themselves being *bona fide* transactions, the gifts which they were intended to effect were not gifts perfected either by transfer of property or declaration of trust, but that by the conduct of the parties there was created a charge upon the funds managed by the company in favour of the trustees of the settlement for the sums which the settlor had affected to settle, but such a charge is a debt within the meaning of the definition of "debt" in s. 2 of the Death Duties Act, 1921, and, being a debt made otherwise than for full consideration in money or money's worth wholly for the settlor's own use or benefit, no allowance can be made for it having regard to s. 9 (2) of the Act.

Judgment of the Supreme Court, [1932] N.Z.L.R. 1464, affirmed, but for reasons not identical with those preferred by the Judges of that Court.

Solicitors: Blyth, Dutton, and Co., London, agents for **Wilding and Acland**, Christchurch, for the appellants; **Mackrell, Maton, Godlee, and Quincy**, London, agents for **The Crown Law Office**, Wellington, and **Raymond, Stringer, Hamilton, and Donnelly**, Christchurch, for the respondent.

NOTE:—For the Death Duties Act, 1921, and the Death Duties Amendment Act, 1925, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, 1908-1931, Vol. 7, title *Public Revenue and Expenditure*, p. 354.

COURT OF APPEAL.
Wellington.
1933.
Oct. 16; Dec. 19.
Myers, C.J.
Reed, J.
MacGregor, J.

THE KING v. HABGOOD.

Criminal Law—False Declaration—Variation from Statutory Form by addition of Words—Whether "slight deviation" from Prescribed Form—Absence of Exhibit Note—Identification by Internal Evidence—Whether Identification by Evidence *aliunde* admissible—Justices of the Peace Act, 1927, s. 300—Acts Interpretation Act, 1924, s. 5 (i).

Case stated under s. 442 of the Crimes Act, 1908, for the opinion of the Court of Appeal.

Accused made a declaration consisting of (*a*) a statutory declaration, to the form of which no exception was taken, and which contained the words "The attached statement 'A' sets out to my best knowledge and belief all circumstances

regarding the said fire and the accident which preceded the said fire"; and (*b*) a typewritten statement of facts annexed and headed "A" on which there was no exhibit note, and which commenced "Albert Edward Habgood states," was recorded in the first person, gave his narrative of the accident and fire and other information relating thereto, and concluded thus: "I do hereby solemnly and sincerely declare that the preceding statement is a true and faithful account of the loss sustained by me on the occasion of the late fire which occurred at Waihua Valley on April 29, 1933. . . . And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of an Act of the General Assembly of New Zealand entitled the Justices of the Peace Act, 1927, or any amendments thereof, rendering persons making a false declaration punishable for perjury. Taken and declared at Wairoa this the 4th day of May in the year of our Lord, One thousand nine hundred and thirty-three, before me: V. E. Winter, J.P., Merchant, Wairoa. *Signature*: A. E. Habgood.";

Accused signed both documents before the same Justice of the Peace, who completed and signed the jurats to both, which bore the same date. Accused acknowledged his signature and handwriting and declared the contents to be true, the Justice adding "So help you God!"

Accused was found guilty of making a false declaration.

L. K. Wilson, for the prisoner; **Solicitor-General, Fair, K.C.,** for the Crown.

Held, *per Curiam,* That the absence of an exhibit note was not fatal, but that statement "A" was produced as part of the declaration and identified by internal evidence as being the statement "A" therein referred to.

Semble, Statement "A" could be identified by evidence *aliunde* as the statement referred to in the declaration.

As to the question whether, if the Crown had to rely solely upon statement "A" as the declaration forming the basis of the charge, the conviction could stand,

Semble, *per Myers,* C.J., The addition of the words "or any amendments thereof rendering persons making a false declaration punishable for perjury" states erroneously the effect of the Act by virtue of which the declaration is made and invalidates the declaration in which they occur.

R. v. Haynes and Haynes, [1916] N.Z.L.R. 407, followed.

Semble, *per Reed* and *MacGregor,* JJ., The added words are only slight deviations from the prescribed form, are to the same effect, and not calculated to mislead. The challenged declaration did not omit the words "by virtue of the Justices of the Peace Act, 1927," which omission was the substantial objection of the declarations in *R. v. Smith,* (1909) 29 N.Z.L.R. 244, and *R. v. Haynes and Haynes,* [1916] N.Z.L.R. 407 (and which cases were therefore distinguished), but added a warning, which might be treated as surplusage having no effect and by virtue of s. 5 (*i*) of the Acts Interpretation Act, 1924, not vitiating the document as a statutory declaration.

Conviction affirmed.

Solicitors: Burnard and Bull, Gisborne, for the accused; **Crown Solicitor,** Napier, for the Crown.

NOTE:—For the Justices of the Peace Act, 1927, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, 1908-1931, Vol. 2, title *Criminal Law,* p. 173; for Acts Interpretation Act, 1924, see *ibid.* Vol. 8, title *Statutes,* p. 555.

SUPREME COURT
Christchurch.
1933.
Dec. 7, 13.
Ostler, J.

PRATT ESTATE COMPANY, LIMITED v. COMMISSIONER OF TAXES.

Revenue—Income-tax—Company formed pursuant to Directions of Will and to carry out Trusts thereof—Additional Objects in Memorandum ancillary to Main Object—Company not assessable as separate Entity and ordinary Commercial Company but as Agent of Beneficiaries—Land and Income Tax Act, 1923, s. 102 (a).

Case stated under s. 35 of the Land and Income Tax Act, 1923, for the opinion of the Court.

Section 102 (*a*) of the Land and Income Tax Act, 1923, is as follows:—

(*a*) If and so far as the income of the trustee is also income derived by a beneficiary entitled in possession to the receipt thereof under the trust during the same income year, the trustee shall in respect thereof be deemed to be the agent of that beneficiary, and shall be assessable and liable for income-tax thereon accordingly, and all the provisions of this Act as to agents shall, so far as applicable, apply accordingly."

W.P. by his will empowered the trustees thereof at their option to form a limited company for the carrying out of the trusts of the will, and the will directed what the capital of the company was to be, upon what trusts the shares were to be held, and declared the trusts in respect of dividends and corpus.

In 1926, after some twenty years' administration without the formation of a company, the trustees formed and incorporated the appellant company substantially on the lines authorized by the will, but the memorandum contained a number of additional powers such as to acquire other lands, to construct buildings of all kinds, to acquire, carry on, and dispose of any business, to advance money to builders and tenants willing to improve any property of the company, to lend and borrow money, to let or sell its property in various ways. Since the formation of the company the income of the estate was distributed in the same manner as that in which it was distributed by the trustees during the twenty years before the formation of the company.

Wilding, for the appellant; **Donnelly,** for the respondent.

Held, 1. That these powers were all ancillary to the main object of the company, which was to carry out the trusts of the will, and that the intention was to give the beneficiaries the controlling voice in the decision as to their exercise.

2. That section 102 (*a*) of the Land and Income Tax Act, 1923, applied, as the company was merely a trustee for the beneficiaries under the will, and that the company must be deemed to be merely the agent for the beneficiaries and assessable accordingly, and not as a separate entity and ordinary commercial company.

Appeal allowed.

Solicitors: Wilding and Acland, Christchurch, for the appellant; **Crown Law Office,** Wellington, for the respondent.

NOTE:—For the Land and Income Tax Act, 1923, see Vol. 7, title *Public Revenue and Expenditure,* p. 337.

COMPENSATION COURT
Wellington.
1933.
Oct. 16; Nov. 4.
Blair, J.

RYAN v. MINISTER OF PUBLIC WORKS.

Public Works—Compensation—Value of Land taken to be assessed when "first entered upon for the Purpose of constructing or carrying out a Public Work thereon"—Entry for Construction as distinct from mere Design—Public Works Act, 1928, s. 80.

Claim under the Public Works Act, 1928, in respect of the taking of certain land for the purpose of what is known as the Tawa Flat Deviation. The Compensation Court comprised Mr. Justice Blair, President, and Mr. W. Perry, as assessor for the claimant, and Mr. E. Bold, as assessor for the respondent. The preliminary question of law arising under s. 80 of the Public Works Act, 1928, was argued, and, at the request of the parties, His Honour, as President of the Court, determined it.

Section 80 of the Public Works Act, 1928, provides:

"The value of land taken or injuriously affected shall be assessed for the purpose of ascertaining the amount of compensation, if any, at its value at the time when it was first entered upon for the purpose of constructing or carrying out a public work thereon."

Kirkcaldie, and **F. W. Ongley,** for the claimant; **Currie,** for the Crown.

Held: That to satisfy that section there must be an entry on the land, and such entry must be for the purpose of construction as distinct from mere design.

Therefore, the entry of the Department's engineers upon land for the purpose of pegging out a railway-line subsequent to the issue of a "middle-line" Proclamation under s. 216 of the Public Works Act, 1928, is not an entry for the purpose of constructing or carrying out a public work within the meaning of those words in s. 80 of that Act.

Mayor, &c. of New Plymouth v. Minister of Public Works, (1914) 33 N.Z.L.R. 1537, distinguished.

Solicitors: Buddle, Anderson, Kirkcaldie, and Parry, Wellington, for the claimant; **Crown Law Office,** Wellington, for the respondent.

NOTE:—For the Public Works Act, 1928, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, 1908-1931, Vol. 7, title *Public Works*, p. 619.

SUPREME COURT
In Chambers.
Auckland.
1933.
June 28; Nov. 9.
Smith, J.

IN RE THE HARTLEY AND RILEY CONSOLIDATED GOLD-DREDGING COMPANY, LIMITED (IN LIQUIDATION) (No. 3).

Company—Mining Company—Resolution purporting to rescind Valid Call ineffective—Shares "absolutely forfeited"—Failure of Directors to sell forfeited Shares by Auction—Return by them of Moneys paid as Call—Money had and received to use of Company—Liability of Shareholders whose Shares Forfeited—Remedies of Liquidator—Companies Act, 1908, Part XII, ss. 353 to 361, ss. 226, 199 (b).

Motion by liquidator of a mining company for an order under s. 226 of the Companies Act, 1908.

The terms of payment for shares set out in the prospectus of a mining company were threepence on application, threepence on allotment, threepence in six months after first allotment meeting, and threepence in twelve months after first allotment meeting. The articles of association adopted Arts. 1 and 3 of Table A.

The management of the company purported to make a call of threepence a share on April 30, 1928, payable on May 15, 1928. Then, discovering the provisions as to forfeiture contained in ss. 353 to 361 of the Companies Act, 1908, affected the company, the management on the last day for payment of the purported call rescinded it. The rescission, however, was not generally communicated to the shareholders, many of whom paid the call while others paid up in full. In a few cases the money received from persons who paid the "call" was returned to them by the company. The company was in liquidation and the Court was asked by the liquidator under s. 226 of the Companies Act, 1908, to determine certain questions.

After the decision of *Smith*, J., reported [1933] N.Z.L.J. 64, it was virtually admitted that it is *ultra vires* of a mining company with limited liability to issue shares upon the terms that the share-capital, other than the application and allotment moneys, should be paid by fixed instalments which excluded the right of the directors to make calls; and, therefore, that the payments for shares, other than the application and allotment moneys, had to be rendered payable by call.

Leary, for the liquidator; **Barrowclough,** for the fully-paid shareholders; **Drummond,** for the shareholders paid to ninepence per share; **Haigh,** for the shareholders paid to sixpence and threepence per share; **Stanton,** for G. G. Marriott, a director.

Held, 1. That, except to the extent to which the terms of the prospectus limited the liability of a shareholder to pay more than threepence before the expiration of the specific periods, the directors had the right to call up these limited amounts within the specific periods or to call up the whole balance or any part thereof after the expiration of those periods, and that a call was necessary to fix the date for payment of any part of the share capital.

2. That the call of April 30 was valid, and the resolution purporting to rescind such call was *ultra vires* of the directors and had no effect.

3. That the shares of all shareholders who had not paid the amount of the call by midnight on June 5 were thereupon "absolutely forfeited" by the operation of the provisions of s. 353 of the Companies Act, 1908.

4. That, as the directors did not cause such forfeited shares to be offered for sale as required by s. 356, ss. 355 to 361 could not be applied in respect of the forfeited shares, and therefore the shareholders whose shares had been forfeited and who were members by virtue only of such shares and ceased to be members of the company and could not redeem their shares, and had ceased to be liable for the call and any other call subsequently made; but by s. 354 the holders of the shares continued to be subject to the provisions of s. 66 relating to the liability of present and past members in the event of winding up.

The King's Birthday Quartz Gold Mining Co., Ltd. v. Jack, (1885) 11 V.L.R. 197, approved and applied.

Quaere, Whether the company had a remedy against the directors for breach of duty.

5. That with regard to the shareholdings in respect of which the money paid on the call was returned, the directors had returned capital of the company to certain persons without authority, and thus reduced the capital unlawfully, and the money so returned was owing to the company as money had and received to the use of the company.

Quaere, Whether the liquidator might have remedies against the directors in respect of the return of such moneys.

6. That the non-observance by the directors of ss. 353 to 361 did not enable the liquidator to undertake the observance of these sections.

Questions answered accordingly.

Solicitors: Bamford, Brown, and Leary, Auckland, for the liquidator; **Russell, McVeagh, Macky, and Barrowclough,** Auckland, for the fully-paid shareholders; **Stewart, Johnston, Hough, and Campbell,** Auckland, for the shareholders paid to ninepence per share; **F. H. Haigh,** Auckland, for the shareholders paid to sixpence and threepence per share; **Stanton and Johnstone,** Auckland, for G. G. Marriott.

NOTE:—For the Companies Act, 1908, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, 1908-1931, Vol. 1, title *Companies*, p. 825.

SUPREME COURT
Wellington.
1933.
Nov. 29; Dec. 5.
Myers, C.J.

WELLINGTON CITY CORPORATION v. WELLINGTON FIRE BOARD.

Motor-vehicle—Fire-escape and Fire-pump Vehicles—"Heavy Motor-vehicles" or "Private Motor-cars"—Motor-vehicles Act, 1924, s. 2; Motor-vehicles Amendment Act, 1927, s. 2 (b); Heavy Motor-vehicle Regulations, 1932, Reg. 9 (9).

Action to recover the sum of £280 14s. 6d., being the total heavy-traffic license fees claimed to be payable by the defendant in respect of certain motor-vehicles owned and operated by the defendant in the City of Wellington during the years commencing June 1, 1932, and June 1, 1933.

O'Shea, with him **Lockie,** for the plaintiff; **Watson** and **James,** for the defendant.

Held, That the Tilling-Stevens fire-escape and the fire-pump vehicles of the Wellington Fire Board are "heavy motor-vehicles" within the meaning of the Heavy Motor-vehicle Regulations, 1932, and liable to the license fees prescribed to be paid in respect of such vehicles.

Solicitors: John O'Shea, Wellington, for the plaintiff; **Chapman, Tripp, Cooke, and Watson,** Wellington, for the defendant.

NOTE:—For the Motor-vehicles Act, 1924, and the Motor-vehicles Amendment Act, 1927, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, 1908-1931, Vol. 8, title *Transport*, p. 795.

SUPREME COURT
In Chambers.
Wellington.
1933.
Dec. 1, 6.
MacGregor, J.

RE BODDIE, EX PARTE H. ODELL AND SON, LTD. (IN LIQUIDATION).

Bankruptcy—Adjudication—Creditor's Petition—Act of Bankruptcy—*Nulla Bona*—Distress Warrant addressed to one Bailiff and executed by Another—No Act of Bankruptcy proved—Bankruptcy Act, 1908, s. 26 (j).

Creditor's petition in bankruptcy.

McCormick, for the petitioning creditor; **Cousins,** for the debtor.

Where a petition is based on an act of bankruptcy, alleged to be a return of *nulla bona* on an execution against the debtor, and it is proved that the distress warrant was issued and addressed to one bailiff who made no return but that the return was made by another bailiff and there is no explanation on the warrant itself why a return was not made by the bailiff to whom the warrant was addressed, the distress is irregular and no act of bankruptcy is proved. The creditor's petition must accordingly be dismissed.

McCutcheon v. Campbell, (1894) 12 N.Z.L.R. 615, applied.

Petition dismissed, with costs £7 7s. and disbursements. Order made that the Court fees already paid on this petition may be remitted on any subsequent application by the same petitioner.

Solicitors: McCormick and Tracy, Wellington, for the petitioner; **Menteath, Ward, Macassey, and Evans-Scott,** Wellington, for the debtor.

NOTE:—For the Bankruptcy Act, 1908, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, 1908-1931, Vol. 1, title *Bankruptcy*, p. 465.

SUPREME COURT
Christchurch.
1933.
Nov. 27; Dec. 8.
Ostler, J.

CHRISTCHURCH CITY CORPORATION v. CANTERBURY EDUCATION BOARD.

Prerogatives of the Crown—Education Board—Whether Servant or Statutory Agent of the Crown, and so not bound by Statute unless so provided therein—Education Act, 1914, s. 24—Motor-vehicles Act, 1924, s. 24—Heavy Motor-vehicles Regulations, 1932.

An Education Board is not a Department of State, a servant or statutory agent of the Crown, or *in consimili casu*, and so is not entitled to the prerogatives of the Crown, including the prerogative of not being bound by a statute unless so provided in the statute.

The obligations created by the Heavy Motor-vehicles Regulations, 1932, apply to an Education Board and to the heavy motor-vehicles owned or used by it.

McCullum v. Official Assignee of Sagar and Lusty, [1928] N.Z.L.R. 292, followed; **Southland Boys' and Girls' High Schools Board v. Invercargill City Corporation,** [1931] N.Z.L.R. 881, and **Bainbridge v. The Postmaster-General,** [1906] 1 K.B. 178, referred to; **New Zealand Educational Institute v. Marlborough Education Board,** (1909) 28 N.Z.L.R. 1091, discussed and distinguished.

Counsel: Loughnan, for the plaintiff; **Lascelles,** for the defendant.

Judgment for plaintiff.

Solicitors: Izard and Loughnan, Christchurch, for the plaintiff; **Weston, Ward, and Lascelles,** Christchurch, for the defendant Board.

Case Annotation: *Bainbridge v. The Postmaster-General*, E. & E. Digest, Vol. 37, p. 369, para. 1.

NOTE:—For the Education Act, 1914, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, 1908-1931, Vol. 2, title *Education*, p. 1003; for the Motor-vehicles Act, 1924, see *ibid.* Vol. 8, title *Transport*, p. 795.

SUPREME COURT
Blenheim.
1933.
Nov. 23; Dec. 11
Reed, J.

R. v. R.

National Expenditure Adjustment—"Rents payable in respect of Land or of any "Interest in Land"—Annuity secured by Mortgage with Right to Distrain on non-payment but not making Annuity payable out of Rents and Profits—Personal Annuity not Rent-charge—Not subject to Statutory Reduction—National Expenditure Adjustment Act, 1932, s. 31.

Originating summons to determine whether or not an annuity or yearly sum of £1,000 secured on mortgage was affected by the National Expenditure Adjustment Act, 1932.

Fletcher, for the plaintiff; **Macnab,** for the defendant.

Held, That an annuity secured by mortgage of land which does not make the annuity payable out of the rents and profits of such land (the latter being resorted to only in default of payment) but which gives the mortgagee the remedies described in s. 110 of the Property Law Act, 1908, including that to enter into and distrain upon the land charged in case of non-payment of the annuity, is not a rent-charge coming within the words "rents payable in respect of land" in s. 31 of the National Expenditure Adjustment Act, 1932, as such an annuity is a mere personal annuity not payable out of the rents and profits of the land mortgaged, and the power to distrain is merely ancillary to the personal liability and its inclusion (if the proviso referring to the section granting it is not surplusage) does not convert a personal annuity into a rent-charge. Section 31, therefore, does not apply so as to make such an annuity liable to the reduction provided therein.

In re Trenchard, Trenchard v. Trenchard, [1905] 1 Ch. 82, applied; **Paget v. Huish,** (1863) 1 H. & M. 663; 71 E.R. 291, and **John Bates and Co. Ltd. v. Inwood,** [1933] N.Z.L.R. s. 65, referred to.

Solicitors: Pitt and Moore, Nelson, for the plaintiff; **A. A. Macnab,** Blenheim, for the defendant.

Case Annotation: *In re Trenchard, Trenchard v. Trenchard*, E. & E. Digest, Vol. 39, p. 110, para. 23; *Paget v. Huish, ibid.*, p. 170, para. 662.

SUPREME COURT
Christchurch.
1933.
Dec. 13, 14.
Ostler, J.

RE KIMBER (A DEBTOR), EX PARTE MAW BROTHERS.

Bankruptcy—Adjudication—Where Order would result in useless Expense of Proceedings and Deprivation of General Body of Creditors of Sole Asset—Discretion of Court to dismiss Petition—Bankruptcy Act, 1908, s. 40.

Creditor's petition for an order adjudicating the debtor a bankrupt.

Nicholls, for the petitioning creditors; **Lyons,** for the debtor.

Held: That the Court may exercise its discretion under s. 40 of the Bankruptcy Act, 1908, to dismiss a petition, if the only effect of the making of an order would be at once to sanction the useless expense of bankruptcy proceedings and to deprive the general body of creditors of the fruit of a solitary but substantial asset.

Dictum of Jessel, M.R., in **Ex parte Robinson, In re Robinson,** (1883) 22 Ch.D. 816, 818, applied.

Petition dismissed.

Solicitors: A. S. Nicholls, Leeston, for the petitioning creditors; **A. S. Lyons,** Leeston, for the debtors.

Case Annotation: *Ex parte Robinson, In re Robinson*, E. & E. Digest, Vol. 4, p. 46, para. 389.

NOTE:—For the Bankruptcy Act, 1908, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, 1908-1931, Vol. 1, title *Bankruptcy*, p. 465.

SUPREME COURT
Auckland.
1933.
Nov. 23, 27;
Dec. 8.
Smith, J.

McLEAN v. MURCH.

Gaming—"Multiplication Bureau"—Distribution of Cash Commissions dependent on Chance—Lottery—Gaming Act, 1908, s. 41 (c).

Appeal from a conviction under s. 41 (*c*) of the Gaming Act, 1908, on a charge of managing a lottery known as the Multiplication Bureau. It was not disputed that appellant was the manager of the Bureau, and the only question was whether the Bureau was a lottery.

The facts sufficiently appear from the judgment.

Beckerleg, with him **Henry,** for the appellant; **Meredith,** with him **McCarthy,** for the respondent.

Held, That the scheme known as "The Multiplication Bureau" is to be regarded, in substance, as one in which the main source of the cash commissions is the indirect enrolments and the receipt of commissions arising from such enrolments, or any of them, depends purely on chance so far as the receiving-member is concerned; and the scheme is accordingly a lottery.

Barnes v. Strathern, [1929] S.C. (J.) 41, followed; **Minty v. Sylvester,** (1915) 84 L.J.K.B. 1982, **International Investment Co., Ltd. v. Andrews,** (1912) N.Z.L.R. 606, **Wallingford v. The Mutual Society,** (1880) 5 App. Cas. 685, **Mutual Loan Agency, Ltd. v. Attorney-General of New South Wales,** (1909) 9 C.L.R. 73, referred to.

Appeal dismissed.

Solicitors: B. Beckerleg, Auckland, for the appellant; **V. R. S. Meredith, Crown Solicitor,** Auckland, for the respondent.

Case Annotation: *Barnes v. Strathern,* E. & E. Digest Supplement No. 8 to Vol. 25, title *Gaming and Wagering,* p. 25, para. note n i; *Minty v. Sylvester,* E. & E. Digest, Vol. 25, p. 455, para. 448; *Wallingford v. The Mutual Society, ibid,* p. 453, para. 431; *Mutual Loan Agency Ltd. v. Attorney-General of New South Wales, ibid,* p. 453, para. note l.

NOTE:—For the Gaming Act, 1908, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, 1908-1931, Vol. 3, title *Gaming and Wagering,* p. 513.

SUPREME COURT
Christchurch.
1933.
Dec. 8, 14.
Ostler, J.

IN RE CHRISTCHURCH GROCERS' ASSISTANTS' INDUSTRIAL UNION OF WORKERS, SELF-HELP CO-OPERATIVE, LIMITED, AND OTHERS v. RITCHIE AND OTHERS.

Industrial Conciliation and Arbitration—"Settlement of an Industrial Dispute"—Appointment of Assessors while Dissentient Employers were Parties without consideration of Assessors nominated by them—Dissentient Employers subsequently struck out but later joined again—Whether Council of Conciliation properly constituted—Whether agreement by Parties to Dispute—Industrial Conciliation and Arbitration Act, 1925, ss. 41 (5) (e) and (f), 43, 46; Amendment Act, 1933, ss. 3 (1), 5, 6, 7.

There were separate disputes in the grocery trade between a union of workers and an association of employers on the one hand, and the union of workers and a union of employers on the other. The Conciliation Commissioner, who declined to allow the hearing of the latter dispute, appointed the association's assessors to represent the employers and the union of workers' assessors to represent the workers, and refused to appoint any of the assessors from the persons nominated by the union of employers. He afterwards struck out, at their request, the members of the union of employers who had been joined as parties, but, subsequently, on the Court of Arbitration ruling in *In re Forbes and the Canterbury Grocers' Assistants' Industrial Union of Workers,* [1933] N.Z.L.R. 621, that the striking out was illegal, joined again the parties struck out. The union of employers, after making a proposal (without prejudice to their right to challenge the validity of the whole proceedings) that at least one of the assessors nominated by the association should retire from the proceedings in favour of a representative of the firms of the union of employers joined as parties, handed in a set of proposals on behalf of the latter union (in accordance with the ruling of the Court of Arbitration in *Forbes's* case) which were rejected except on minor points; whereupon the secretary withdrew after making a final protest and objecting to the terms of the settlement. An agreement on its face purporting to be an agreement between the assessors was concluded and signed by them, the members of the union of employers who were parties being among the names of the employers bound by the agreement, which was filed with the Clerk of Awards.

Stevenson, for the plaintiffs; **Archer,** for the defendants other than Ritchie and Parker.

On a motion for certiorari to quash the agreement,

Held, That, as the Commissioner had not considered the assessors nominated by the union of employers in the selection of assessors for the respondent but had appointed the assessors while the dissentient employers were parties to the dispute and before they were struck out, the assessors were not properly appointed, the Council was not validly constituted, and therefore could not make a valid agreement.

Held, further, on the facts, That the dissentient employers had not consented to the agreement, so as to make it an agreement of the parties to the dispute who were present or represented at the inquiry, and that the agreement which purported to bind them was invalid.

Inspector of Awards v. R. and W. Hellaby, Ltd., [1933] N.Z.L.R. 938, applied.

Agreement declared invalid.

Solicitors: Izard, Weston, Stevenson, and Castle, Wellington, for the plaintiffs; **K. G. Archer,** Christchurch, for the defendants.

NOTE:—For the Industrial Conciliation and Arbitration Act, 1925, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, 1908-1931, Vol. 3, title *Industrial Disputes,* p. 937.

SUPREME COURT
Christchurch.
1933.
Sept. 19; Nov. 17
Kennedy, J.

BENGER v. QUARTERMAIN AND ANOTHER.

Fixtures—Roll-bending Machinery attached to Freehold—Right of Removal—Fixture or Chattel—Mortgage of Foundry and Engineering Works—"Improvements" not to be removed from Mortgaged Premises.

A mortgagee applied for an injunction to restrain the trustees of a deed of assignment from the mortgagors for the benefit of their creditors from removing, from the mortgaged premises, foundry, and engineering works, certain roll-bending machinery. There was fixed to a concrete base, sunk in the ground, the roll-bending machine claimed by the plaintiff. This machine was of substantial construction, weighing over five tons. Both the machine itself and an electric motor which formed part of it are attached in a permanent way to girders. The electric motor was protected by a special housing affixed to the girders. The girders were fixed by bolts and nuts to the concrete floor or base adapted to receive it and situated below the surface. Some soil covered the concrete immediately below the machinery. The machine was installed for the better equipment of the engineering works, and was worked by electric power. It was fastened down to its concrete bed by bolts and nuts; the bolts were firmly fixed into the concrete bed and passed through and projected beyond girders to which the machine was fixed. The nuts were screwed to the ends of the bolts, which projected, and the machine was thus held fast. By unscrewing the nuts the machine, though heavy, could be raised up and moved without injury being done to the concrete bed and the bolts embedded in it.

Sargent, for the plaintiff; **Gee,** for the defendant.

Held, 1. That the machine was sufficiently annexed to the land to become a fixture.

2. That it was an "improvement" in terms of the following covenant in the mortgage: "During the continuance of this security repair and keep in good order all buildings gates

fences and other improvements erected on the said land and will not remove any such buildings or improvements from the said land whether affixed to the freehold or not."

Hobson v. Gorringe, [1897] 1 Ch. 182, and **Reynolds v. Ashby and Son,** [1904] A.C. 466, followed.

Pukuweka Sawmills, Ltd. v. Winger, [1917] N.Z.L.R. 81, and **Johnston v. International Harvester Co. of New Zealand, Ltd.,** [1925] N.Z.L.R. 529, distinguished.

Injunction granted.

Solicitors: **G. P. Purnell,** Christchurch, for the plaintiff; **L. W. Gee,** Christchurch, for the defendant.

Case Annotation: *Hobson v. Gorringe,* E. & E. Digest, Vol. 35, p. 309, para. 563; *Reynolds v. Ashby and Son, ibid,* Vol. 35, p. 309, para. 565.

COURT OF ARBITRATION
Napier.
1933.
Dec. 15, 19.
Frazer, J.

EVANS v. NEW MASONIC COMPANY, LIMITED.

Workers' Compensation—"Out of and in the Course of the Employment"—Earthquake—Worker employed within Building—Killed by Falling Building outside of such Building while escaping therefrom—Compensation payable—Workers' Compensation Act, 1922, s. 3.

E. was employed as a barman at the Masonic Hotel, Napier, and, when the earthquake of February 3, 1931, began, he was attending to his work in the bar. He ran from the bar and out of the street door. The whole front of the building fell on to the pavement, and E. was killed, his body being found on the footpath buried beneath the hotel veranda and the fallen front portion of the building.

C. W. Nash, for the plaintiff; **H. F. O'Leary,** with him **M. R. Grant,** for the defendant.

Held, 1. That the death of deceased took place "in the course of" his employment, and his death in the circumstances outlined above arose "out of the employment."

Brooker v. Thomas Borthwick and Sons (Australasia), Ltd., [1933] N.Z.L.R. 1118, P.C., followed.

2. That a worker, who in the discharge of his duty to seek safety attempts to leave the building in which he is employed, is within the protection of the Act until he arrives at a place where he is reasonably safe from being injured through the collapse of such building; the ambit or scope of his duty being impliedly extended to cover the danger-area in respect of that building and its curtilages.

Dicta of Lord Loreburn in **Kitchenham v. Owners of s.s. "Johannesburg,"** [1911] A.C. 417; of Lord Finlay, L.C., and Lord Dunedin in **Charles R. Davidson and Co. v. McRobb or Officer,** [1918] A.C. 304, 314, 321, 10 B.W.C.C. 673, 683, 691; of Lord Atkinson in **St. Helens Colliery Co., Ltd. v. Hewitson,** [1924] A.C. 59, 71, 16 B.W.C.C. 230; and of Lord Warrington in **Fearnley v. Bates and Northcliffe, Ltd.,** (1917) 86 L.J.K.B. 1000, 1004, 10 B.W.C.C. 308, 313, applied.

Aliter, if a worker, having reached a place of safety, returns to his place of employment out of mere curiosity and is injured by a fall of brickwork resulting from one of the aftershocks of an earthquake.

Judgment for plaintiff.

Solicitors: **C. W. Nash,** Napier, for the plaintiff: **Sainsbury, Logan, and Williams,** Napier, for the defendant.

Case Annotation: *Kitchenham v. Owners of s.s. "Johannesburg,"* E. & E. Digest, Vol. 34, p. 309, para. 2548; *Charles R. Davidson and Co. v. McRobb or Officer, ibid,* Vol. 34, p. 276, para. 2339; *St. Helens Colliery Co. Ltd. v. Hewitson, ibid,* Vol. 34, p. 280, para. 2364; *Fearnley v. Bates and Northcliffe Ltd., ibid,* Vol. 34, p. 320, para. 2623.

NOTE:—For the Workers' Compensation Act, 1922, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, 1908-1931, Vol. 5, title *Master and Servant,* p. 555.

The Study of Law as a Social Science.

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

In the leading article on Modern Law School Work in the *N.Z. Law Journal* of August, 1933 (p. 193), the necessity was stressed of the integration of law with the social sciences, and the report of the Dean of the School of Law of Columbia University for the academic year ending June 30, 1932, was summarized in order to give readers some idea of the modern views of a great American Law School. On a recent visit to the Law School at Harvard, in the course of which I attended four lectures of the school one morning and discussed the system there with some of the law professors, I found that that school, taking only students who had already graduated in arts, tends rather to confine itself to the study of law pure and simple, if law can ever be so described, to what the Dean of the Columbia Law School has called "the intellectual in-breeding of legal teaching" and does not attempt to cross law with the social sciences and so obtain a new breed of lawyers.

The great Canadian University of Toronto, however, which has successfully federated Universities of different religions and creeds and in the centre of whose physical and intellectual activities, Hart House, we held the British Commonwealth Relations Conference last October, is whole-heartedly with Columbia University in teaching the study of law as a social institution. The course of the Honour School of Law in the University of Toronto was formed, so Professor W. P. M. Kennedy, M.A., LL.B., Litt.D., Professor of Law and author of the classic work on the Constitution of Canada, informs us in the *Journal of the Society of Public Teachers of Law,* 1933 (Butterworth & Co. Ltd.), deliberately to follow the end thus outlined by Lord Atkin:

> "The merely practical lawyer to-day, however able, is not enough. The Courts are becoming more and more concerned with great social experiments. Law joins hands as never before with problems in economics, problems in political science, problems in the technique of administration. It is important that the curricula of our law schools shall send out lawyers trained to appreciate the meaning of these relationships. They must shape the mind to a critical understanding of the foundations of jurisprudence. . . . We are now on the threshold of an epoch of profound legal transformation. Our educational methods have to breed a race of lawyers able to utilize the spirit of law reform for the highest uses. They have to teach the importance at once of stability and change. To do so, they must know not only how to grasp the philosophic foundation of those discussions. We must also turn out lawyers with a courage to criticize what is accepted, to construct what is necessary for new situations, new developments and new duties, both at home and abroad."

This then was the aim of the founders of the Honour Law School at Toronto, which has no professional or vocational aims, considering that its members enter not merely the practice of law, but the civil and diplomatic sciences, administrative and academic appointments, commercial and public life, and the graduate schools of Canada, England, and the United States.

Entrants must have passed complete Pass and Honour Matriculation, including Latin, French, Mathematics, History, English, a science, and frequently German, which is advised. The four-years course is thus divided and the purpose of the courses, in the actual drafting of which Lord Haldane lent his constructive skill, is thus explained by Professor Kennedy, who was a prominent figure at the British Commonwealth Relations Conference.

First year: (*a*) Greek and Roman History, to form the background for the study of Roman and Civil Law. (*b*) Economics to provide such knowledge as will fit into a study of legal science. (*c*) Philosophy. (*d*) Introduction to Legal Science to provide a general view of the ends and purposes of law, and to counteract a dangerous tendency among students to see law as a study of unrelated rights and duties. (*e*) History of the Judicial system. (*f*) The principles of the Law of Contract, not only the learning or deduction of principles, but also a criticism of the social ends which the Law of Contract ought to serve.

Second year: (*a*) Canadian Constitutional History. (*g*) The development of International Law, to constitute the necessary background for the Constitutional and International Law of subsequent years. (*b*) Philosophy covering the developments of modern philosophical thought in relation to the history of civilisation and to social, legal, and political theory. (*c*) The principles of the Law of Tort. (*d*) Criminal Law. (*e*) The Land Law. (*f*) Roman and Comparative Civil Law, studied specially for its contribution to modern legal systems which, especially the Quebec Civil Code, are included for purposes of comparative study.

Third year: (*a*) Political Science, covering the theory of the State from Hobbes to Mill and running parallel with the beginning of the study of Public Law. (*b*) Philosophy, beginning the subject of Modern Philosophy with reference to its social and legal aspects. (*c*) History of English Law. (*d*) English Constitutional and Administrative Law. (*e*) Administrative Law. (*f*) Private International Law.

Fourth year: (*a*) Political Science. (*b*) Philosophy. (*c*) Canadian Constitutional Law. (*d*) Comparative Constitutional and Administrative Law of the United States and the Dominions. (*e*) Industrial Law. (*f*) Municipal Law. (*g*) Public International Law. And, lastly, (*h*) Jurisprudence, the culminating point, in which the knowledge of Common Law, of Civil Law, of Public Law, and of International Law is submitted to philosophical and juristic criticism. The previous courses are gathered together and studied in the light of the demands of society. Analytical and historical jurisprudence makes way for sociological jurisprudence as expounded by the modern French, German, and American jurists.

"The *raison d'etre* of the School is the study of law as a social science, a process of social engineering, in which the knowledge of practical work—to which bi-monthly Courts, attended by practising lawyers, contribute—is deepened by an educational purpose, by an inquiry into the social worth of legal decisions, and by a critical attempt to find out if law in its various aspects is in reality serving the ends of society."

There is no uniform standardized technique in the method of teaching, which is seldom by lectures, but rather by the employment of tutorial classes and the case-method in all subjects. Each student is personally interviewed and advised as to his adaptability for the course and is *guided* not taught, for students are accepted who wish to work at some serious and worth-while legal problem. "We completely avoid," concludes Professor Kennedy, "all the mechanical and depressing burden of a 'time-table,' which too frequently turns graduate work into a glorified continuation of undergraduate courses, in order to encourage individual research, self-confidence in judgment and form, and, above all, a realization that the problems of law are problems not primarily of the Law Courts but most profoundly of organized community life, of which law is at once the condition, the product, and the servant."

It will be seen from Professor Kennedy's summary of the courses of this Honour School of Law how admirably it equips not only counsel and Judges, but all those who serve the State in Parliamentary, municipal, administrative, diplomatic, and educational capacities. Comparison of our own course for the Degree of Master of Laws and Honours in Law indicates that we have so far made no attempt to avoid "the intellectual in-breeding of legal teaching" and instead, as Lord Atkin puts it, to "breed a race of lawyers able to utilize the spirit of law reform for the highest uses." The Council of Legal Education has a great opportunity before it to initiate the reform and broadening of our whole system of legal education, so that our lawyers may appreciate the relationship of law to economics, political science, and the whole structure of our modern society.

Judicial Nomenclature.

The Hon. Sir Frederick Chapman replies to "Outer Templar."

SIR,—In his excellent article on "Judicial Nomenclature" your contributor, "Outer Templar," assumes if he does not actually assert that the title "Mr. Justice" is not recognized as the actual title of Supreme Court Judges, who are referred to only as Judges throughout the Judicature Act. This is a mistake.

I have not made exhaustive search, but I find that, in the one place where a form of address is prescribed, the term "Mr. Justice" is used. I refer your contributor to the forms in the First Schedule to the Code of Civil Procedure, which is as much part of the Judicature Act as any other provision within or under it. Form 23 runs:

> "Before His Honour Mr. Justice ."

Form 24 has the same wording, which further occurs in other places. Thus, the form of Summons for Committal runs:

> "Let the above-named defendant attend before His Honour Mr. Justice at his Chambers, Supreme Court House."

Again, Form 33 D refers to an unfortunate as

> "now in the gaol of upon an order of His Honour Mr. Justice ."

I have little doubt that other evidence could be found—not necessarily in Statutes but probably in Judgments of the Privy Council—which show that the title "Mr. Justice " is not a mere courtesy title.

I am, etc.,

FREDK. R. CHAPMAN.

Wellington,
December 22, 1933.

The Fidelity Guarantee Fund.

A Suggestion to Lighten the Burden.

By Selwyn Preston.

All the members of our profession must be gravely concerned with the cases of defalcations by practising solicitors, which continue to be given the greatest publicity by the newspapers, and of which there has been a recent epidemic. The establishment of the Solicitors' Fidelity Guarantee Fund has certainly gone a long way towards easing the public mind, but there is undoubtedly a strong rankle among all members of the profession that the honest members should have to contribute towards the defalcations of the dishonest members.

It is a question as to whether the present contributions will be sufficient to meet all claims. There is also the fact that the present Act provides that contributions by any member of the profession shall cease when he has contributed a total of £50, and it will not be many years before the great body of the members will have contributed this amount.

We should therefore explore every avenue that might possibly relieve practitioners from contributing directly to the Solicitors' Fidelity Guarantee Fund out of their own pockets, and also assure a permanent source from which such fund can be maintained.

Now, with regard to Solicitors' Trust Funds, we are compelled to keep a credit account with one of the banks, and the amount lying to the credit of Solicitors' Trust Funds in New Zealand with the various banks from time to time must amount to a very large sum.

The prudent business man or trustee of an individual Trust Fund does not allow large sums of money to lie at credit with his commercial bank unless there is some special reason for doing so, and he can thus protect himself against loss on large sums of money lying at credit earning no interest.

However, with regard to Trust Accounts such as Solicitors', Land Agents' and Auctioneers' Trust Accounts, in respect of which there is statutory provision requiring a Trust Account to be kept, it does not seem to be equitable that the banks alone should benefit by large sums of money being held by them without payment of interest.

Assuming the banks agreed or were compelled by statute to pay interest on credit balances in Solicitors' Trust Accounts, it is admitted that the solicitor himself should not receive any benefit from his Trust Account, and it would not be practical to attempt to apportion any interest earned among the various clients whose money is lying in trust from time to time. However, if the bank paid a small rate of interest of say 1 per cent. on the amount of the daily credit balance of such Trust Account, and, at the end of each half year, the amount of interest earned was credited to the account, such interest could be remitted either by the bank direct or by the solicitor concerned to the credit of the Solicitors' Fidelity Guarantee Fund.

No doubt the banks would not voluntarily agree to such an arrangement, but the matter could be dealt with by legislation, and as it is a matter not involving any appropriation of public moneys, it could be introduced by a private member's Bill.

If all funds at the credit of Solicitors' Trust Accounts bore a low rate of interest of even 1 per cent. and this amount was credited each half year and paid into the Solicitors' Fidelity Guarantee Fund, this would probably provide an ample Fund to meet all defalcations, and would have the following advantages :—

(*a*) It would provide a permanent source to maintain a sufficient Fidelity Guarantee Fund.

(*b*) It would remove the objectionable system of honest solicitors having to pay for the defalcations of dishonest solicitors.

(*c*) It would be in the nature of an insurance premium paid by the various clients whilst their respective moneys are held in trust by solicitors to ensure the safety of such moneys. At the present time the client receives no benefit while his moneys are lying in credit in a Solicitor's Trust Account, but if a small rate of interest was allowed the client would, in effect, be receiving such interest and applying same by way of payment of a small premium while his moneys remain in trust.

(*d*) The carrying-out of the scheme would be simplicity itself owing to the fact that the respective banks at their half-yearly balance dates would remit the amount of interest earned to the credit if the Law Guarantee Trust Fund or the solicitor would himself remit the amount.

(*e*) It would remove the hardship placed on smaller practitioners and in particular on young practitioners commencing practice who have to contribute £5 5s. per year towards the Fidelity Guarantee Fund, even though they may put only £500 through their Trust Accounts in a year, while well established members of the profession who may be putting many thousands of pounds through their Trust Accounts in a year contribute the same amount.

(*f*) As the solicitor does not personally benefit in any way there would be no reason for him to hold moneys in trust any longer than would be necessary.

(*g*) The banks would make a very small payment for the use of such trust money.

No doubt there would be very strong opposition from the banks to this proposal. It does not seem equitable that the banks and the banks alone should make a handsome profit out of Trust Funds and not pay some small rate of interest for this wonderful benefit which is bestowed on them by legislation from time to time by the creation of compulsory Trust Accounts.

In view of the fact that solicitors now have to furnish monthly returns showing their trust balances, it would be a simple matter for the New Zealand Law Society to arrive at the average amount held in trust by solicitors throughout New Zealand each year, and the minimum rate of interest that would be required to maintain a sufficient Fidelity Guarantee Fund.

This seems to me a thoroughly practical and equitable scheme if the principle of the banks paying a small rate of interest on credit balances in such Trust Accounts could be established. If you see fit to publish my views in your *Journal*, no doubt it will bring forth valuable comment and suggestions from other members of the profession, and some benefit may result to the profession along the lines indicated, or in some other direction.

London Letter.

Temple, London,
October 28th, 1933.

My dear N.Z.,—

Thanks to the shortening of the Long Vacation this year we are now through nearly one-third of the Michaelmas Term. This term is, of course, the first in the legal year and was opened with customary pomp and solemnity on October 2. It is an impressive sight to see the Judges headed by the Lord Chancellor walking in procession into the Law Courts and through the Central Hall attired in full-bottomed wigs and full robes of office. The Lord Chancellor, the Lords Justices of Appeal, and the President of the Probates, Divorce, and Admiralty Division wear black gowns laced with gold. The Lord Chief Justice and the Judges of the Chancery, King's Bench and Probate, Divorce, and Admiralty Divisions wear scarlet and ermine. The procession is headed by the Tipstaff carrying an ebony staff bound with silver and surmounted by a crown of silver gilt, and the Judges follow in order of seniority. After them come the Law Officers of the Crown, County Court Judges, and King's Counsel. A figure whose absence was noticeable this year was that of Mr. Justice Avory, who was unwell at the time. He has since quite recovered, however, and is now carrying out his judicial duties as usual.

Legal Appointments.—The new term has seen quite a crop of new legal appointments. First of all, we have a new President of the Probate, Divorce, and Admiralty Division. Lord Merrivale has retired after holding that office for fourteen years, and Sir Boyd Merriman, the late Solicitor-General, takes his place. Lord Merrivale, was, of course, formerly Sir Henry Duke and has had a long and distinguished legal career. Called to the Bar in 1885 he took silk in 1899, and was appointed a Lord Justice of Appeal in 1918 and President of the Probate, Divorce, and Admiralty Division in 1919. He was created Lord Merrivale in 1925. Sitting, as he has done for so long, as a Divorce Judge he is well known not only to all members of the legal profession, but also to the public, and his deep voice booming across the Court will be long remembered by all those who have attended before him.

Sir Boyd Merriman, who is fifty-three years of age, was called to the Bar in 1904 and practised at first in Manchester until 1919 when he took silk and came to London. He quickly acquired a large practice as a silk and became Solicitor-General in 1928. He had to relinquish that appointment on the downfall of the Government in 1929, but was again appointed Solicitor-General in 1932. He has not previously, I believe, had more than ordinary experience of the Division of the High Court of which he is now President, but no one doubts that with his known capability he will fulfill with distinction the duties that he is now called upon to perform.

The vacancy in the office of Solicitor-General caused by the appointment of Sir Boyd Merriman to the Probate, Divorce, and Admiralty Division has been filled by Donald (now Sir Donald) Somervell. Sir Donald has experienced an unusually rapid rise in his profession. He was called to the Bar in 1916 and owing to the war, in which he served, only commenced to practise in 1919. He is a most popular member of the profession and should do well in his new post.

New appointments have also been made in Scotland. There is a new Scottish Judge, Lord Aitchison, formerly Mr. Craigie Aitchison, K.C., Lord Advocate; a new Lord Advocate, Mr. W. G. Normand, K.C.; and a new Solicitor-General for Scotland, Mr. Douglas Jamieson.

Other new appointments include Carrol Romer who has succeeded Sir Leonard Kershaw as King's Coroner and Attorney, Master of the Crown Office, and Registrar of the Court of Criminal Appeal, and A. H. King who takes Romer's place as Assistant-Registrar for the Court of Criminal Appeal.

From my Case Book.—A case the decision in which may have far-reaching results in respect of broadcasting came before the Court of Appeal during the first week in this term. The Performing Rights Society, Ltd., brought an action against Hammard's Bradford Brewery Co., Ltd., claiming an injunction to restrain them, their servants, or agents from infringing the plaintiffs' copyright in certain musical works by performing them at any hotel of which they were proprietors. A performance was alleged to have been given by means of a loud speaker, whereby musical works, which were being broadcast by the British Broadcasting Company, were made audible to guests staying in or visiting an hotel known as the George Hotel at Huddersfield. The case originally came before Mr. Justice Maugham, who held that the reproduction of a musical work by means of a radio-receiving set constituted a performance, and that the defendants had been guilty of an infringement of copyright; and this finding was unanimously upheld by the Court of Appeal. In this case the musical works were actually being performed in a cinema and were transmitted by the British Broadcasting Company under an agreement with the plaintiffs which authorised the British Broadcasting Company to broadcast copyright musical works within the repertoire of the plaintiffs for domestic and private use only. So it seems that while I could listen to one of these copyright tunes through my own radio it would be wrong for me to listen to the same tune through the radio set of an hotel. If confusion is not to arise in future, either hotels will have to cease providing their guests with music by means of radio sets or else the B.B.C. will have to restrict their broadcasts to non-copyright items.

Is business looking up ?—A general sense of optimism is noticeable over here and the Bar Barometer (as usual following the trade barometer) is rising, although the state of business in the Courts at the commencement of the present term does not actually indicate any increase. There were then set down for hearing 155 appeals as against 131 a year ago, and 280 Chancery cases as against 209 a year ago; but cases in the King's Bench Division numbered 149 less than at the same time last year, and cases in the Probate, Divorce, and Admiralty Division 157 less. Most of the latter, however, is accounted for by a heavy drop in undefended divorces. A formidable attack was made during the first fortnight of this term on the arrears of the King's Bench Division by posting nearly all the Chancery Judges as additional Judges of the King's Bench Division. The result has been most successful and much delay in getting actions brought to trial will be saved in the near future.

Yours ever, H. A. P.

Practice Precedents.

Admission as Barrister and Solicitor.

As to qualification and admission of Barristers and Solicitors, see preliminary note to *Law Practitioners* in *The Public Acts of New Zealand* (*Reprint*) 1908-1931, Vol. 4, 1057, *et seq*; and see *New Zealand Gazette* No. 26 (April 26, 1926) concerning Rules and Regulations for admissions. (Note Rule XVIII (4) whereby every candidate for admission as Barrister and Solicitor must give to the Registrar of the Supreme Court at the place where he intends to apply for admission not less than *Two Months' Notice* of his intention to apply. Every such notice must be in duplicate, and must state the qualifications in respect of which the application is intended to be made.)

As to application by an *alien* for admission, and *notice of application before applicant possessed of necessary qualifications*, see *In re Heyting*, [1928] N.Z.L.R. 233, G.L.R. 174.

The fees *payable to the District Law Society* are as follows: Barrister and Solicitor, £26 5s. 0d.; Solicitor only, £21; Barrister only, £5 5s. 0d. Court disbursements are payable to the Registrar as follows: Motion, 5s.; Affidavits, 5s. each; Orders, 15s. on originals and 10s. on duplicates.

In most Courts, though there is one application for admission as Barrister and Solicitor, two separate orders are taken out—*i.e.*, one for Solicitor and one for Barrister.

The *forms* hereunder assume an applicant desires to be admitted as a Barrister and Solicitor.

NOTICE OF INTENTION TO APPLY FOR ADMISSION AS BARRISTER AND SOLICITOR.

IN THE SUPREME COURT OF NEW ZEALAND.

.....District.

.....Registry.

IN THE MATTER of the Law Practitioners' Act, 1931, and the Rules and Regulations thereunder

AND

IN THE MATTER of of Law Clerk.

I of the City of Law Clerk HEREBY GIVE NOTICE that I intend after the expiration of two calendar months from the date of service of this notice to apply to this Honourable Court for admission as a Barrister and Solicitor UPON THE GROUNDS

1. That I am over the age of twenty-one years.

2. That I have passed the examinations prescribed by law in that behalf.

3. That I am a fit and proper person to be so admitted.

Dated at this day of 19 .

(*Signature.*)

To the Registrar of the Supreme Court of New Zealand at .

To the Secretary of the District Law Society at .

MOTION FOR ADMISSION AS BARRISTER AND SOLICITOR.

(*Same heading.*)

Mr. of counsel for to move in Chambers on day the day of 19 at 10.30 o'clock in the forenoon or so soon thereafter as Counsel may be heard FOR AN ORDER that the above-named be admitted as a Barrister and Solicitor of this Honourable Court and that his name be enrolled accordingly UPON THE GROUNDS that the said has passed the examinations in General Knowledge and Law prescribed by the said Act and by the Rules and Regulations thereunder and is qualified and entitled to be enrolled accordingly AND UPON THE FURTHER GROUNDS set forth in the affidavits filed herein.

Dated at this day of 19 .

Certified pursuant to the Rules of Court to be correct.

Counsel moving.

AFFIDAVIT IN SUPPORT.

(*Same heading.*)

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

1. THAT I am and have always been a British subject and am over the age of twenty-one years as appears from the Certificate of Birth hereunto annexed and marked "A."

2. THAT I have passed the examinations in General Knowledge and Law prescribed by the above-mentioned Act and the Rules and Regulations made thereunder to be passed by candidates for admission as a Barrister and Solicitor of this Honourable Court as appears from a Certificate of the Registrar of the University of New Zealand hereunto annexed and marked "B" and that I am the person named therein.

3. THAT I am the person referred to in the affidavit of filed herein.

4. THAT I am desirous of being admitted as a Barrister and Solicitor of this Honourable Court, and that I have not been admitted previously in New Zealand or elsewhere.

5. THAT notice of my intention to apply for admission as a Barrister and Solicitor was duly lodged with the Registrar of this Honourable Court at on day the day of 19 in accordance with the Rules and Regulations under the above-mentioned Act.

6. THAT attached hereto and marked "C" is a certificate of character signed by the Secretary of the District Law Society and that I am the person named therein.

7. THAT attached hereto and marked "D" is a receipt for the sum of twenty-six pounds five shillings (£26 5s.) paid by me to the District Law Society as the fee for admission as a Barrister and Solicitor.

Sworn etc.

(*Signature.*)

AFFIDAVIT AS TO CHARACTER AND FITNESS.

(*Same heading.*)

I of Barrister-at-Law make oath and say as follows:—

1. THAT I have known the above-named for the last years and I have had an opportunity of judging as to his character during that time.

2. THAT he is an employee of the firm of Barristers and Solicitors of which firm I am a member and is resident in .

3. THAT he is a person of good repute and character and that I believe him to be honest and upright and a fit and proper person to be admitted as a Barrister and Solicitor of this Honourable Court.

Sworn etc.

(*Signature.*)

OATH OF ADMISSION.

(*Same heading.*)

I of Law Clerk swear that I will truly and honestly demean myself in the practice of a Barrister and Solicitor according to the best of my knowledge and ability. So help me God!

Sworn etc.

(*Signature.*)

Before me

Chief Justice of New Zealand.

[*or* a Judge of the Supreme Court of New Zealand].

OATH OF ALLEGIANCE.

(*Same heading.*)

I of Law Clerk do swear that I will be faithful and bear true allegiance to His Majesty King George V his heirs and successors according to Law. So help me God!

Sworn etc.

(*Signature.*)

Before me

Chief Justice of New Zealand.

[*or* a Judge of the Supreme Court of New Zealand].

ORDER FOR ADMISSION AS A SOLICITOR.

(*Same heading.*)

day the day of 19 .

UPON READING the Motion filed herein and Affidavits of and the said filed in support thereof AND UPON HEARING Mr. of Counsel for the said AND IT APPEARING that the said is over the age of twenty-one years and has passed the examination in General Knowledge and Law required by the above-mentioned Act AND I being satisfied as to the character and fitness of the said to act as a Solicitor of this Honourable Court AND the said being a British subject and having taken the prescribed oaths DO ORDER that the said be and he is hereby admitted as a Solicitor of this Honourable Court AND I DO FURTHER ORDER that the name of the said be enrolled accordingly by the Registrar of this Honourable Court at .

Chief Justice of New Zealand.

[*or* a Judge of the Supreme Court of New Zealand.]

ENROLLED accordingly at this day of 19 .

Registrar.

ORDER FOR ADMISSION AS A BARRISTER.

(*Same heading.*)

day the day of 19 .

UPON READING the Motion filed herein and the Affidavits of and the said filed in support thereof AND UPON HEARING Mr. of Counsel for the said AND UPON READING the Order of even date herewith admitting the said as a Solicitor of this Honourable Court AND IT APPEARING that the said has passed the examination in General Knowledge and Law required by the above-mentioned Act to be passed by candidates for admission as Barristers of this Honourable Court AND there being no rules and regulations in force that Barristers shall not practice as Solicitors nor Solicitors as Barristers AND I being satisfied as to the character and fitness of the said to act as a Barrister of this Honourable Court DO ORDER THAT the said be and he is hereby admitted as a Barrister of this Honourable Court AND I DO FURTHER ORDER that the name of the said be enrolled accordingly by the Registrar of this Honourable Court at Wellington.

Chief Justice of New Zealand.

[*or* a Judge of the Supreme Court of New Zealand.]

ENROLLED accordingly at this day of 19 .

Registrar.

Rules and Regulations.

Sale of Food and Drugs Act, 1908. Amended Regulations.—*Gazette* No. 84, December 14, 1933.

Public Service Act, 1912. Revoking of Declaration exempting Position from the Act.—*Gazette* No. 84, December 14, 1933.

Health Act, 1920. Declaration as to Infectious Disease.—*Gazette* No. 84, December 14, 1933.

Health Act, 1920. Declaration as to Notifiable Infectious Disease.—*Gazette* No. 84, December 14, 1933.

Judicature Act, 1930. Notice *re* Appointment of Members of Rules Committee pursuant to the Act.—*Gazette* No. 84, December 14, 1933.

Trade Arrangement (New Zealand and Belgium) Ratification Act, 1933. Notification of Commencement of Trade Arrangement between the Economic Union of Belgium and Luxemburg and the Dominion of New Zealand.—*Gazette* No. 85, December 16, 1933.

Board of Trade Act, 1919. Board of Trade (Wheat) Regulations 1933-34.—*Gazette* No. 85, December 16, 1933.

Samoa Act, 1921. The Samoa Publications Order, 1933.—*Gazette* No. 87, December 21, 1933.

Transport Licensing Act, 1931. Provisions as to the regulation of Goods-services in controlled Areas under Part III of the Act.—*Gazette* No. 87, December 21, 1933.

New Zealand University Amendment Act, 1926. Revocation of Regulations for Subsidies on Voluntary Contributions to University Colleges.—*Gazette* No. 87, December 21, 1933.

Transport Licensing Act, 1931. Regulations relating to the Design, Construction, and Condition of Passenger-service Vehicles.—*Gazette* No. 87, December 21, 1933.

New Books and Publications.

Yearly Supreme Court Practice, 1934. In one Volume. Edited by P. R. Simner, H. Hinton, F. C. Allaway. (Butterworth & Co. (Pub.) Ltd.). Price 60/-.

The Annual Practice. 52nd Edition, 1934. By V. Ball, F.C., Watmough, P. Clark, and T. Hyde Hills. (Sweet & Maxwell, Ltd.). Price 53/-.

Porter's Laws of Insurance. By T. W. Morgan. 8th Edition, 1933. (Sweet & Maxwell, Ltd.). Price 44/-.

Lawyer's Remembrancer and Pocket Book. Revised and edited by J. W. Whitlock, M.A., LL.B. (Butterworth & Co. (Pub.), Ltd.). Ordinary Edition, 7/-; Refill Edition, 7/-; Special Edition, 14/-; de Luxe, £1/1/-.

Tithes and Variable Rent-charges. By P. W. Millard, LL.B. (Butterworth & Co.) (Pub.), Ltd.). Price 10/6.

Police Law. By Cecil C. H. Moriarty, O.B.E., LL.D. Third Edition. (Butterworth & Co. (Pub.), Ltd.) Price 7/-.

Mistake in the Law of Contract. By Roland Champness. (Stevens & Sons). Price 7/-.

The Law of the Fire Brigade. By Frazier. (Solicitors' Law Stationery Society.) Price 7/-.

Compensation for Public Acquisition of Land, with Notes on Injurious Affection and Betterment. By Wm. Marshall Freeman. (Solicitors' Law Stationery Society.). Price 14/-.

Handbook on the Formation, Management, and Winding-up of Joint Stock Companies. By Sir Francis Gore-Browne, M.A., K.C., 38th Edition, by His Honour Judge Haydon, M.A., K.C. (Jordan.) Price 27/-.

Manual of Air Force Law. Second Edition, 1933. Air Ministry Publication (H.M. Stationery Office.) Price 10/6.

Jessup's Law of the Territorial Waters and Maritime Jurisdiction, 1933. (G. A. Jennings Co.).

The Problem of the Moscow Trial. By G. W. Keeton. (Black). Price 7/-.

Income Tax. By E. M. Konstam, K.C. Sixth Edition. (Stevens & Sons.) Price 55/-.

Law Relating to Master and Servant in a Nutshell. By Marston Garsia, B.A., Second Edition (Sweet & Maxwell Ltd.). Price 5/-.

Modern Theories of Law. By W. Ivor Jennings. (Oxford University Press). Price 12/6d.