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"*Everybody knows that the legal profession in Great Britain is the finest profession in the world; it contains men of all varieties of intelligence.*"
—SIR W. ARBUTHNOT LANE, M.D., ETC.

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Punctuation Marks in Statutes.

IT was in the reign of Henry V that Bills in the form of Acts, according to the now-prevailing custom, were first introduced. Formerly, Bills were entered upon the Parliament Rolls, and, at the end of each Parliament, the Judges drew them into the form of a statute which was entered on the Statute Rolls. In the reign of Henry VI to prevent mistakes and abuses the statutes were drawn up by the Judges before the end of the parliamentary session. These rolls consisted of sheets of parchment, and no punctuation marks or marginal notes appeared upon them. "It seems that in the Rolls of Parliament the words are never punctuated," said Sir John Romilly, M.R., in *Barrow v. Wadkin*, (1857) 24 Beav. 327, 330; 53 E.R. 384, 385, after he had examined two separate editions of the Statutes, in which the differing punctuation led to two distinct readings of the Statute 13 Geo. 3, c. 21, s. 3. He had then inspected the Roll which was in his custody, and from which the words in the printed copies were taken. He concluded that he must treat the statute as if the Legislature had given no directions on the subject other than as appeared on the face of it.

In England since 1849 an authenticated vellum print of each Act of Parliament is preserved in the House of Lords and constitutes the official record. In New Zealand a copy of each Act to which the Royal assent has been given by the signature of the Governor-General is kept, so signed, by the Clerk of Parliaments. In these, the punctuation marks and marginal notes appear as in the printed statute-books of each Parliamentary year. But neither the punctuation marks nor the marginal notes form part of the statute. No statute has authorized the inclusion of punctuation marks in statutes; and marginal notes are expressly not to be deemed part of an Act: Acts Interpretation Act, 1924, s. 5 (*g*).

In *Claydon v. Green*, (1868) L.R. 3 C.P. 511, 521, Willes, J., after stating the change which came about in 1849, says:

> "Since that time, the only record of the proceedings of Parliament—the important proceedings of the highest tribunal of the Kingdom—is to be found in the copy printed by the Queen's printer. But I desire to record my conviction that this change in the mode of recording them cannot affect the rule which treated the title of the Act, the marginal notes, and the punctuation, not as forming part of the Act, but merely as *temporanea expositio*. The Act when passed, must be looked at just as if it were still entered upon a roll, which it may be again if Parliament should be pleased so to order; in which case it would be without these appendages, which, though useful as a guide to a hasty inquirer, ought not to be relied upon in construing an Act of Parliament."

As regards the title, the rule, as stated by Willes, J. (*supra*), has become obsolete. "The title is now an important part of the Act," said Lord Lindley, M.R., in *Fielden v. Morley Corporation*, [1899] 1 Ch. 1, 4. The name of an Act is not part of it. As Lord Moulton said in *Vacher and Sons, Ltd. v. London Society of Compositors*, [1913] A.C. 107 at p. 128,

> "If I may use the phrase, it is a statutory nickname to obviate the necessity of always referring to the Act under its full and descriptive note. It is not legitimate, in my opinion, to use it for the purpose of ascertaining the scope of the Act. Its object is identification and not description."

But, as with marginal notes, punctuation marks in a statute cannot be used to aid in the interpretation of the statute, the reason being given by Cockburn, C.J., in *Stephenson v. Taylor*, (1861) 1 B. & S. 101, 106; 121 E.R. 652, 654, when he said:

> "In the construction of the enactment before us some difficulty has been occasioned by the erroneous punctuation to be found in some copies of the statute. On the Parliament Roll there is no punctuation, and we therefore are not bound by that in the printed copies."

In the *Duke of Devonshire v. O'Connor*, (1890) 24 Q.B.D. 468, Lord Esher, M.R., said at p. 478:

> "To my mind it is perfectly clear that in an Act of Parliament there are no such things as brackets any more than there are such things as stops."

So much for "these miserable brackets," as Lord Moulton called the parentheses in the same case.

Sir Alison Russell, K.C., in his *Legislative Drafting and Forms*, 3rd Ed., 75, doubts whether Lord Esher's dictum is correct at the present time when Acts are necessarily so much more complex. He suggests that it is not a correct statement of the law in a colony where every ordinance (in New Zealand, every passed Bill) is signed by His Majesty's representative "in a print complete with punctuation and brackets."

But mistakes in punctuation easily arise. The intended provisions of a United States Tariff Bill were largely negatived some years ago by a mistake in punctuation. Among the articles scheduled for admission free of duty were "all foreign fruit plants." In the statute this appeared as "all foreign fruit, plants, . . ." In consequence, all foreign bananas, oranges, lemons, etc., were admitted duty-free. Heavy loss resulted until the mistake was discovered.

In the revision of the Canadian statutes in 1886, a comma in one of the Acts of 1872 which had been revised was placed in a different position in its section. In considering this, the Judicial Committee, in a judgment delivered by Viscount Dunedin, said: "It is antecedently very improbable that it was meant really to alter the law by the displacement of a comma." (*Pope Appliance Corporation v. Spanish River Pulp and Paper Mills*, [1929] A.C. 269, 284.)

The intention must be collected from the context to which the words relate: *verba intentioni inservire debent*. So long ago as 1790, Lord Kenyon, Ch. J., said in *Doe d. Willis v. Martin*, 4 T.R. 39, 65; 100 E.R. 882, 897,

> "We know that no stops are ever inserted in Acts of Parliament, or in deeds; but the Courts of Law, in construing them, must read them with such stops as will give effect to the whole."

It has been questioned whether that old rule in regard to the Statute Rolls should apply in these times when the official record and the Annual Statutes are printed from the same type. In a case in which the presence of a semicolon caused considerable difficulty in ascertaining the mind of the Legislature, *President, etc., of the Shire of Charlton v. Ruse*, (1912) 14 C.L.R. 220, Griffith, C.J., after quoting the above-cited dictum of Lord Esher, M.R., in *Duke of Devonshire v. O'Connor* (*supra*), said (at p. 224):

> "Without going quite so far as that in view of the form of modern Acts of Parliament, I think that stops, which may be due to a printer's or proof-reader's error, ought not to control the sense if the meaning is otherwise clear. . . . I think it sufficient to rest my decision on the plain meaning of the words, as they stand. Hearing them read without knowledge of the absence of a capital T and the presence of the semicolon, there could be no doubt about the meaning of the provision."

In his judgment in the same case, Isaacs, J., (as he then was), said (at p. 229):

> "There are many English cases deciding that punctuation is to be disregarded; but I am not at all sure how far those cases are guides to us, because it appears from them that the Rolls of the Imperial Parliament are not punctuated. That is not so, however, in Victoria; the original Acts assented to and signed by the Governor on behalf of the Sovereign are punctuated, and I have examined the original Statute No. 782—the Act of 1883 so signed—it is in fact punctuated as in the copies before the Court.
>
> "Though I am not prepared to discard wholly the punctuation of an Act, it would be unsafer to allow it to govern the construction."

It appears, therefore, even when the assent copy of an Act of Parliament is available, that, notwithstanding the changed form of statutes in modern times, "it is an error to rely on punctuation in construing Acts of the Legislature," as the Judicial Committee said in *Maharani of Burdwan v. Krishna Komini Dasi*, (1887) L.R. 14 I.A. 30. So, for the purpose of construing the language, the punctuation may be disregarded, as Lord Reading, C.J., said in *Rex v. Cassell*, [1916] 1 K.B. 595, 615. At most, as all the recent decisions show, the punctuation of an Act of Parliament is secondary to the important consideration of the interpretation of the words used by the Legislature.

Lord Halsbury and the Law Lords.

In his *Memoirs* Sir Almeric FitzRoy, the Secretary of the Privy Council, records an incident that happened at the end of March, 1905:

"A characteristic instance of the Lord Chancellor's humour occurred yesterday. An appeal of the Duke of Northumberland on some point touching estate duty was down for hearing in the House of Lords, whereupon Lord James, though of course not in as many words, intimated that his familiarity with Dukes would render it difficult for him to preserve an impartial mind. The Chancellor, who was quite equal to the occasion, sent him to the Judicial Committee to hear an Indian appeal, which James hates, as he knows nothing of Indian law and is reduced to a humiliating silence, and brought Davey to the House of Lords, who, knowing the circumstances took it as an intimation that he was not familiar with Dukes, which was wounding to his vanity. The Lord Chancellor scored by exchanging a weak lawyer for a strong one, and flouted two colleagues neither of whom he is particularly fond of."

Summary of Recent Judgments.

SUPREME COURT
Auckland.
1933.
Nov. 29.
1934.
Feb. 27.
Smith, J.

SMERDON AND OTHERS v. McELWAIN AND OTHERS.

Companies—"First Allotment"—Sum payable on Application for Minimum Subscription not "paid to and received" by Company—Duty to allot at one and same Time—Compensation for Breach—Companies Act, 1908, ss. 95, 96.

In an action by forty-nine plaintiffs, shareholders in Speedwell Oil Co. (N.Z.), Ltd., against four defendants, with three of whom a settlement was arranged leaving for determination only the rights of the plaintiffs against the defendant, McElwain, a director of the company, one cause of action (the only one on which the case is reported) was that defendants allotted shares to the plaintiffs in breach of the requirement of s. 95 of the Companies Act, 1908, that no allotment of share capital offered to the public for subscription shall be made unless the minimum subscription has been paid to and received by the company, and in this respect the plaintiffs invoked the statutory remedy of compensation provided by s. 96 (2) of that Act.

Upon the evidence the learned Judge found that the moneys paid in respect of the shares comprised in the application of Stocker, a nominal underwriter of the minimum subscription of six thousand shares fixed by the prospectus of the proposed company, were never paid to and received by the company within the meaning of those words in s. 95 (1), that at no time was there any allotment of the minimum subscription at one and the same time, and that the breach alleged was knowingly committed by the defendant McElwain with regard to each plaintiff.

Gould, for the plaintiffs; **J. N. Wilson,** for the defendants,

Held, 1. That the words "first allotment" in s. 95 (6) refer to the whole of the shares first offered to the public for subscription, whether that allotment be the whole of the shares of the company for the time being or any part or lot of them.

2. That the shares offered by the first prospectus of a company constitute the company's first allotment of shares offered to the public for subscription and the provisions of s. 96 as to the effect of an irregular allotment apply in favour of all allottees of shares comprised in the shares so offered until the minimum subscription has been subscribed and the sum payable on application for the minimum subscription has been paid to and received by the company.

3. That it is the duty of the directors under s. 95 to allot the shares comprised in the minimum subscription at one and the same time, and, if that is not done, the directors commit a breach of the conditions of s. 95.

4. That the measure of compensation under s. 96 (2) for "any damage, loss, or costs" the allottee may have sustained should be the difference between the price paid for the shares and their real value at the time of allotment.

5. That, as the shares in the company had at no time any real value at the respective times at which they were allotted and all the capital on the shares had been called up, each plaintiff was severally entitled to judgment against the defendant McElwain for the amount which he had paid and/or was liable to pay on his shares together with interest at the rate fixed by s. 95 (4), 5 per centum per annum.

In re Shortland Flat Gold-mining Co., Ltd., (1910) 29 N.Z.L.R. 931, 952, 955, applied.

Peek v. Derry, (1887) 37 Ch. D. 541, 591-594, applied as to measure of damage.

Solicitors: Morpeth, Gould, and Wilson, Auckland, for the plaintiffs; **Goldstine, O'Donnell, and Wilson,** Auckland, for the defendant McElwain.

Case Annotation: *Peek v. Derry*, E. & E. Digest, Vol. 9, para. 642, p. 125.

NOTE:—For the Companies Act, 1908, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, 1908-31, Vol. 1, title *Companies*, p. 827.

SUPREME COURT Auckland. March 14, 16. *Smith, J.*

NATIONAL INSURANCE COMPANY OF NEW ZEALAND, LIMITED v. BRAY.

Partnership—Syndicate Agreement to Purchase and Deal with one Piece of Land—Whether Members Partners or Co-owners —"Carrying on Business in Common"—Partnership Act, 1908, ss. 2, 4.

Action claiming from the defendant as a partner the sum of £1,187 10s., balance of interest owing under the following agreement entered into with the plaintiff by the defendant and others:

"We the undersigned hereby agree to form ourselves into a syndicate to purchase the property known as the National Insurance Building Queen Street Auckland for the sum of twenty three thousand pounds of which the sum of five hundred pounds is to be paid as deposit, the further sum of three thousand five hundred pounds on or before the date of possession namely the twenty-fifth day of March 1928 and the balance of nineteen thousand pounds six years thereafter with interest in the meantime at six per centum per annum. We agree:—

"1. That the property shall be purchased by Archibald Bernard Wheatley in his own name on behalf of the syndicate.

"2. That we will upon demand punctually pay to the said Archibald Bernard Wheatley our respective proper proportions of all sums of money which he may be called upon to pay in respect of the said property whether for purchase money, interest duty costs or other lawful outgoings whatsoever.

"3. That the property shall be dealt with only in accordance with the decision of the majority in number and value of the syndicate members.

"4. That no member of this syndicate shall deal with his interest therein separately without the written consent of the other syndicate members.

"5. The proportions in which syndicate members shall be liable or entitled to profits hereunder shall be the ratio of their respective subscriptions appearing hereunder to the total amount of the syndicate capital."

Then followed the names and signatures of the members and the amount of the subscription of each.

The plaintiff, the vendor of the property, claiming that defendant and the others were partners, sued defendant for interest.

Northcroft, for the plaintiff; **Johnstone, K.C.,** with him **Segar,** for the defendant.

Held, 1. That the members of the syndicate were partners, as they were carrying on a business in common with a view to profit.

2. That a partnership can be, and in this case should be, inferred in respect of the purchase of one piece of land.

3. That the business was not limited to managing and letting but included the sale of the property.

Darby v. Darby, (1856) 3 Drewry 495, 61 E.R. 992, applied. **Commissioner of Taxes v. Miramar Land Co., Ltd.,** 26 N.Z.L.R. 723, referred to.

Solicitors: Earl, Kent, Massey, and Northcroft, Auckland, for the plaintiff; **J. Stanton,** Auckland, for the defendant.

Case Annotation: *Darby v. Darby,* E. & E. Digest, Vol. 36, p. 436, para. 1036.

NOTE:—For the Partnership Act, 1908, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, 1908-31, Vol. 6, title *Partnership,* p. 611.

SUPREME COURT Christchurch. 1934. Feb. 21, 26. *Johnston, J.*

IN RE AN ARBITRATION, McKAY AND THE BRIAN BORU GOLD-DREDGING COMPANY, LIMITED.

Arbitration—Arbitration Clause—Questions or Differences arising out of or in relation to Specified Documents or the Subject-matter thereof—Dispute under separate subsequent Agreement between same Parties—Jurisdiction.

A., an engineer, by agreement dated September 18, 1931, gave B., a company promoter, an option to purchase a gold-mining dredge, plant, and equipment. This agreement also contained certain offers—quite independent of the option, by A to dismantle and transplant plant, replace and overhaul plant and reassemble same on pontoons, &c., to be supplied by the promoter, supply plant and material and erect so that B. would be in possession of a complete modern dredging plant, to pump out a dredge paddock, and dismantle pontoon, &c., of an existing dredge, transplant and re-erect, and to erect derrick, winch, huts, and motors. As a condition of acceptance the promoter undertook to supply power for work and lighting, to provide a suitable pond for launching the pontoon and a suitable water-supply for such pond, and to clear the site for huts, &c.

The company he promoted was formed, and entered into an agreement on January 23, 1932, with A. direct, B. being released, whereby, after a recital that the company had exercised the option and agreed to accept certain offers of A., the company accepted such offers, made provision that work should be done in accordance with the specification in the schedule so that the dredge when handed to the company should be a complete modern gold-dredging plant; also as to the size of the pond and the supply of water, and as to special metering equipment. The exercise of the option and the exercise of the offers were contemporaneous.

On April 2, 1932, an agreement was made between A. and the company, whereby the work in connection with the pond, which under the previous agreements was the obligation of the company, was undertaken by the engineer.

Disputes arose between the parties and were referred to arbitration under the arbitration clause of the agreement of January 23, 1932, the relevant part of which was that "all questions or differences whatsoever which may at any time hereafter arise between the parties hereto touching these presents and for the original agreement or the subject-matter thereof, respectively, shall be referred to arbitration."

On a special case stated by the umpire as to whether certain disputes were within the ambit of the said arbitration clause,

Upham, for McKay; **Twyneham,** for the company,

Held, That all questions about the dredge and material appertaining to it were within such ambit, but that questions relating to the pond originally to be provided by the company for launching the pontoons and a suitable supply of water for it were not within such ambit, as such matters arose out of a separate agreement neither contemporaneous with nor supplemental to the previous agreement, or dealt with a matter not contemplated by the parties at the time when the original agreement was entered into.

Goodwins, Jardine, and Co., Ltd. v. Brand and Son, (1905) 7 F. (Ct. of Sess.) 995, and **Turnock v. Sartoris,** (1889) 43 Ch. D. 150, referred to.

Wade-Gery v. Morrison, (1877) 37 L.T. 270, distinguished.

Solicitors: Harper, Pascoe, Buchanan, and Upham, Christchurch, for the company; **Twyneham,** for McKay.

Case Annotation: *Goodwins, Jardine, and Co., Ltd. v. Brand and Son,* 2 E. & E. Digest, p. 331, *n* 137i, para. a; *Turnock v. Sartoris, ibid.* p. 374, para. 389; *Wade-Gery v. Morrison, ibid.* para. 392.

Wandering Stock.

Liability for their Damage.

By T. P. McCarthy, LL.M.

At common law an owner or occupier of land adjoining a highway is under no duty to fence his land or restrain his cattle from wandering along that highway: *Jones v. Lee*, (1911) 28 T.L.R. 92; *Ellis v. Banyard*, (1911) 28 T.L.R. 122. The actual user of the highway by animals was considered to be not unlawful by Phillimore, J., in *Hadwell v. Righton*, [1907] 2 K.B. 345, 76 L.J.K.B. 891, where he said:

> "I think that members of the public in addition to using it *eundo et redeundo*, are also entitled to use it *morando* for a short time. And I doubt whether, even with that addition, the lawful uses are exhausted. For instance, if fowls are kept near a highway and there is corn stubble belonging to their owner on the other side of the road to which they might naturally and properly go, I am not prepared to say that to allow them to go there by themselves would be an unlawful use of the highway . . ."

Consequent upon this, the general rule arose that an owner or occupier of such land is not liable for injuries to persons attributable *simpliciter* to animals straying thereon. Nor is he liable for damage caused by these animals when trespassing from the highway on to private property. Chapman, J., in *Millar v. O'Dowd*, [1917] N.Z.L.R. 716, refers to this derivation when at page 723 he says that the law on these matters "is probably older than the practice of fencing grazing lands."

The position in New Zealand, so far as the question of liability for damage caused by cattle trespassing from the highway is concerned, has been altered by the passing of the various Impounding Acts, of which the Act of 1908 is the one at present in operation. Section 6 provides that the occupier of any fenced land trespassed upon by cattle may claim on account of such trespass the trespass rates provided in the Second Schedule to that Act, or he may claim in any Court of competent jurisdiction full satisfaction for any actual damage sustained by him in consequence of such trespass, etc. Section 5, dealing with unfenced freehold lands enacts that the occupier of such land shall not be entitled to demand or recover any damages whatever by reason of the trespass thereon of any cattle except fees for driving or for giving notice of the detention of such cattle as provided in the Second Schedule. An exception to this last section is created in respect of pigs or goats by s. 14. These sections, however, have no operation within the Provincial Districts of Nelson, Marlborough, Westland, and Otago; and in respect of those provinces special provisions are contained in an Appendix to the Act.

But it is not by reason of cattle damaging property adjoining the highway that questions of liability usually call to be determined, but rather as a result of damage caused by cattle to persons who are sharing the highway with them.

I have said that as a general rule injury or damage caused by cattle to those using the highway does not involve their owner in liability, but such an owner may in two ways be held responsible for this type of injury: he will be held liable for the damage if it can be established that it was caused or added to as a result of his own negligence: *Jones v. Owen*, (1871) 24 L.T. 587; *Paul v. Rowe*, (1904) 24 N.Z.L.R. 641; or, if it be proved that he was aware of some vice in his animals he will be liable for damage resulting from such vice no matter what care he has exercised to prevent the damage arising. A farmer who drives his bull through the main street of a town when aware that the animal has a particular predilection for ladies robed in colours red, does so at his peril. An example of this type of case, which raises, of course, the vexed question of *scienter*, is to be seen in *Cox v. Burbidge*, (1863) 13 C.B. (N.S.) 430.

In England, by the Highways Acts of 1835 and 1864, and in New Zealand by the Impounding Act, 1908, the Public Works Act, 1928, and the Police Offences Act, 1927, various severe penalties are provided so as to prevent the obstruction of highways by cattle; but these statutes do not of themselves create a ground of civil liability for damage caused by cattle on the highway. It is true that if an owner allows his animals to remain on the highway for such a length of time in such numbers as to create an obstruction and thereby prevent to an unreasonable extent the free user of the road by the public, he may be held liable in the same way as if he had created some inanimate obstruction (*cf. Harris v. Mobbs*, (1878) 3 Ex. D. 268), but this is independent of the statutes referred to.

It was submitted in *Heath's Garage, Ltd. v. Hodges*, [1916] 2 K.B. 370, 85 L.J. K.B. 1289, that s. 74 of the Highways Act, 1835, and s. 25 of the Act of 1864 gave to an injured party a right of action in damages where a breach of these provisions had been established without throwing on a plaintiff the burden of proving negligence. Lord Cozens Hardy said to that contention:

> "I do not forget that under the Highway Acts of 1835 and 1864 certain penalties may be imposed upon any one whose cattle are found straying on the road. That was a new remedy given for the protection of the public, but I do not think it is a case in which the man whose cattle has strayed renders himself liable to an action at law. The fine imposed by the Justices is the only remedy available."

Pickford, L.J., and Neville, J., were in agreement that the statutes there under review did not impose any new civil liability. The late Sir Charles Skerrett (then Mr. Skerrett, K.C.) urged before the Court of Appeal in *Millar v. O'Dowd* (*supra*) that a similar view must be taken of the Police Offences Act, and, *semble*, the Impounding Act, and the Public Works Act; but this submission does not appear to have been considered sufficiently necessary to receive attention in the judgments.

Judicial Ferocity.—According to Lord Shaw of Dunfermline there was a time when the Scottish Bench had several specimens of that odious monster, the baiting and brow-beating judge; when the Second Division, with its four judges, had "an unenviable reputation for ongoings of this character, and public protest against it had reached black type." So bad it was that some men, good lawyers, "changed their careers to their own and their country's loss." Neil Kennedy was the fearless Highlander who shook them; who in one of his passages mentioned an "unfortunate counsel trying to face four questions at once, all on different points, like the early Christian exposed in the arena to fight simultaneously with an elephant, a tiger, a leopard, and a bear;" and he spoke longingly of England's darling, King Alfred, who hanged forty-four undesirable judges in one year.

Lincoln's Inn.

"The Realm of Conveyancers."

The architectural glory of Lincoln's Inn is the old Gate House in Chancery Lane. The Gate House at St. James's Palace is alone comparable to it as a specimen of Tudor brickwork of its kind. The building of it, which was begun in 1517 and finished in 1521, is attributed to Sir Thomas Lovell, who was a distinguished member of the Inn, and whose arms, with those of Henry VIII and the Earl of Lincoln, adorn the arch.

There is a tradition that Oliver Cromwell had chambers near the Gate House, but there is no mention of his name in the Books of the Society. John Thurloe, a Secretary of State to Oliver, occupied the ground floor of No. 24 Old Buildings for twelve years, and his period of residence—from 1647 to 1659—is commemorated by a tablet a little to the south of the Gate House in Chancery Lane. It was not in these old chambers, however, that the famous State Papers were discovered in a false ceiling. That was at No. 13 Old Buildings, where Thurloe resided after he left No. 24. Though the famous Papers are known as the *Thurloe Papers*, there is no evidence that it was really he who hid them.

Across the green enclosure, as you enter "the realm of conveyancers" through the ancient Gateway, stands the old Hall, which, formerly the Bishop's Hall, was in existence when the Society purchased the site. More than once the "Merry Monarch" was present at the frequent "revels" in the old Hall, now devoted to the sombre uses of a lecture room. It is recorded in the Black Books of the Society that on one festive occasion, when Charles II was accompanied by the Duke of York, Prince Rupert, and the Duke of Monmouth, "the banquet at the King's table was served by the barristers and students on their knees." On another visit Charles II did—so it is recorded—"transcendent Honour and Grace to the Society" by entering "with his owne hand" his Royal name in the Book of Admittances and "condescending to make himself a member thereof."

Lincoln's Inn, like all the Inns of Court, is rich in Royal associations. The new Hall, which is the largest of all the Halls, was opened by Queen Victoria in 1845, when the Prince Consort, becoming a member of the Inn, donned a student's gown over his Field-Marshal's uniform. King George V, who is a Bencher of the Inn, filled the office of Treasurer whilst he was Prince of Wales, and, accompanied by the Queen, His Majesty attended the service held in Lincoln's Inn Chapel in 1922 in commemoration of the Quincentenary of the Inn.

One of the noblest features of the spacious Hall is Mr. G. F. Watt's fresco painting which adorns the north wall above the Benchers' table. The picture, which has been called *The School of Legislation*, represents the early lawgivers of various nations, from Moses to Edward I.

Lincoln's Inn Chapel, though not nearly so beautiful or ancient as the Temple Church, has historical and literary associations in plenty. Built by Inigo Jones, with some assistance from Sir Christopher Wren, it was consecrated in 1623, when John Donne, the most famous of all the Preachers of the Inn, preached the sermon. "At the consecration," it is recorded, "the crush of people was so great that two or three persons were taken up as dead." John Donne is one of several great divines whose voices have been heard within the plain walls of the Chapel. The names of Usher, Tillotson, Hurd, and Warburton, with that of the famous Dean of St. Paul's, figure on the roll of the Preachers of the Inn.

When Sir Walter Scott visited the Chapel—the visit is described in his *Journal*—he was much struck by the open crypt. "The Chapel," he remarks, "is upstairs, which seems extraordinary, and the space below forms the cloisters, in which the ancient Benchers of *this Society of Lincoln's Inn are interred.*" Here, in addition to John Thurloe, lie buried Alexander Broome, the Cavalier poet, and William Prynne, whose *Histrio Mastix* cost him his ears. The crypt of Lincoln's Inn Chapel, like "The Round" of the Temple Church, was used as an ambulatory when *Hudibras* was written.

> Retain all sorts of witnesses
> That ply i' th' Temple under trees,
> Or walk the Round with Knights o' the Posts
> About their cross-legged Knights their hosts
> Or wait for customers between
> The pillar rows in Lincoln's Inn.

Mr. Pepys once walked "under the Chapel" to keep an appointment with his lawyer.

When the new Hall was erected the Gardens of Lincoln's Inn, once a fashionable resort, were much curtailed. "The walks under the elms" celebrated by Ben Jonson have gone. It is said that the author of *Every Man Out of His Humour*—the play he dedicated, by the way, "to the noblest nurseries of humanity and liberty in the kingdom, the Inns of Court"—worked as a bricklayer on the garden wall of Lincoln's Inn.

There are many shining names on the roll of Lincoln's Inn. They include Sir Thomas More, Sir Matthew Hale (whose large collection of manuscripts is one of the chief treasures of the Library), Mansfield, Erskine, Brougham, St. Leonards, Campbell, Selborne, and Cairns. Bentham, Macaulay, and Maine are among the jurists and historians who have studied within its walls. Five Prime Ministers—Pitt, Addington, Canning, Spencer Percival, and Asquith—have been members of the Inn. Both Disraeli and Gladstone kept terms for a while at Lincoln's Inn, but, abandoning their intention of being called to the Bar, had their names taken off the Books. "Upon the petition of Benjamin Disraeli, Esq., a Fellow of this Society, praying that his name may be taken off the Books, his health not permitting him to follow the profession of the law, it is ordered accordingly"—so runs an entry in the records of the Benchers made in 1832. Seven years later Disraeli's great rival presented a similar petition with the same result, except that in Gladstone's case it was merely recorded that he had "given up his intention of being called to the Bar."

Though not a few Prime Ministers have been members of the Bar, none has ever been known to return to practice. Pitt, however, nearly created a precedent at Lincoln's Inn. Lord Rosebery writes of "the Great Commoner" on his dismissal from office:

> "He now made unostentatious preparations to resume his practice at the Inn. We may be permitted to regret that he was not allowed to pass for a month or two from his seat of power to a cell in Lincoln's Inn. History, however, was denied so picturesque an episode."

Whether history will continue, in these times of rapid change, to suffer such a denial only history can show.

The Cultural Training of the Practical Lawyer.

The Views of an English Law Lecturer.

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

In considering the views of Professor Algie and other Reformers in the revision of our LL.B. and Law Professional Course that the Council of Legal Education has in contemplation, the opinion of an English teacher of law who has the same problems to face as the professors of law in our University Colleges should carry some weight. At the annual meeting at Leeds last July of the Society of Public Teachers of Law Mr. G. L. Haggen, M.A., B.C.L., Lecturer in Law in the University of Leeds, read a paper on "the training of the practical man," which has been published in the 1933 number of the *Journal* of that society (Butterworth & Co. (Publishers) Ltd.). His problem is to teach the cultured lawyer and to teach and equip the practical man for the practice of his profession, to meet professional requirements without sacrificing University standards and traditions. He points out that a sound education is a better equipment than a thorough knowledge of the law for one who is entering the profession, for knowledge of the law can be acquired in practice, but the law has a tendency to cut one off from other intellectual pursuits.

Roman Law, he knows, is odious to the practical man, but he attributes that to the fact that Roman Law as taught at present is too dull, too lifeless, and too difficult. All of us who have studied it will agree with him. The student should not be bothered with having to translate odd bits of Justinian; but should be taught the spirit of Roman Law and the civilization to which it applied. In the same way, when I look back to eight years of Latin at School and University, I can see that in that time with intelligent and interesting teaching, instead of mere devotion to translation, I could have acquired a lasting and inspiring knowledge of Greek and Roman literature, history, and civilization. Mr. Haggen considers that teaching Roman Law to the budding practitioner is essential to a proper teaching of English law, for the former provides us with standards of comparison such as we cannot hope to find in English law alone. For instance, Roman Law affords a striking parallel to the development of the corresponding part of our own law, which has culminated in the statutory charge by way of legal mortgage, the nearest thing to the Roman *Hypothec* that the English lawyer can hope to devise. This distinction throws light on the meaning of the words "by way of charge only" in the law as to the assignment of choses in action. And in Roman equity we find an aid to the proper understanding of the equity with which we must grapple if we are to understand the law of England.

He advocates with Professor Winfield the teaching as early as possible of those parts of Constitutional History, Constitutional Law, and Legal History which explain the formative machinery of our law, so essential to a true understanding of the other branches of English law, and also an outline of the position in regard to local government, with particular emphasis on the history of the Royal Prerogative in relation to legislation as providing a magnificient object-lesson in the virtue of compromise. He says:

> "If that lesson had only been understood by all the Dominions, I cannot help feeling that we should have been spared the so-called Statute of Westminster and we should have had seriously to consider the question of including in our curriculum for the practical man something substantial in the way of Colonial Constitutional Law. Even now the practical man should not be allowed to go his way until it has first been impressed upon him that Parliament is responsible for India, the Crown Colonies, and other territories. So far as the Dominions are concerned, it is enough to inform him of the fact that they are independent nations with, generally speaking, a higher regard for us than other nations."

Conflict of Laws he considers essentially an ancillary subject and not teachable *per se*. He advocates giving more time to Roman Law and letting the axe fall on Jurisprudence and International Law, although he says that the kind of Jurisprudence that ought not to be neglected is the science which is concerned with the nature of law, its functions in the community, its strength as an instrument of policy and, on the other hand, its weakness:

> "Treated in relation to modern problems, jurisprudence would be far from unpopular with the practical man. A teacher, who had the audacity to announce that he would discuss the subject of why prohibition in America was not a 'hundred per cent' success, or the juridical distinction between such offences as keeping an unlicensed dog and keeping an unlicensed revolver, or the Irish Sweepstake, would be reasonably certain of an audience which had come prepared and anxious to listen, if not indeed, to think."

The budding English lawyer must, in his opinion, be given a sound working knowledge of the principles which govern the construction of documents.

As for English law, it requires "rationalizing" and a complete regrouping of its subjects.

In the discussion on this paper it was pointed out that a recent case in the House of Lords had depended entirely on the analysis of what was meant by a *right*, and that Jurisprudence was useful to the practical man in relation to such matters as *possession*. I remember shortly after the federation of the Australian States, Sir Wm. Harrison Moore telling me how the practical lawyers at the outset scoffed at his references to Jurisprudence but soon found that the solution of important constitutional questions depended upon the application of its elementary principles.

Finally, Mr. Haggen says that if he had to make the choice for a boy, he would unhesitatingly send him to the University *before* he took articles, simply because life is so much more important than practice.

The Judiciary and the Legislature's Separate Functions.—"A judicial tribunal has nothing to do with the policy of an Act which it may be called upon to interpret. That may be a matter for private judgment," said Lord Macnaghten, in *Vacher and Sons, Ltd. v. London Society of Compositors*, [1913] A.C. 107, 118. "The duty of the Court, and its only duty is to expound the language of the Act in accordance with the settled rules of construction. It is, I apprehend, as unwise as it is unprofitable to cavil at the policy of an Act of Parliament, or to pass a covert censure on the Legislature."

New Zealand Conveyancing.

By S. I. GOODALL, LL.M.

Transfers in Exercise of the Power of Sale under a Mortgage—II.

(Concluded.)

2.—Transfer by Mortgagee in Exercise of Power of Sale to Purchaser.

Under the Land Transfer Act, 1915.

MEMORANDUM OF TRANSFER.

WHEREAS A.B. and C.D. both of etc. (hereinafter called "the Mortgagors") are registered as proprietors of an estate in fee simple (OR for a term of years under and by virtue of etc.) subject however to such encumbrances liens and interests as are notified by memoranda underwritten or endorsed hereon in ALL THAT piece of land situate etc.

SUBJECT to Memorandum of Mortgage Number to M.N. of etc. (hereinafter called "the Mortgagee") securing the principal sum of £ with interest thereon as therein provided.

AND WHEREAS by the said recited mortgage it was expressly declared and agreed that in case default should be made in payment of the quarterly instalments as therein provided or any part thereof for the space of days or in payment of the interest moneys thereby secured or any part thereof for the space of days after any of the respective days therein-before appointed for payment thereof or in the due observance or performance of any of the covenants or conditions on the part of the Mortgagors contained or implied therein then (notwithstanding the time for payment thereof as aforesaid should not have arrived) the principal sum with interest thereon at the rate aforesaid until payment should at the option of the Mortgagee become at once due payable and recoverable and it should be lawful for the Mortgagee upon or at any time after such default as aforesaid by virtue of the said recited mortgage to exercise all such powers of sale and incidental powers as are in that behalf vested in mortgagees by the Land Transfer Act 1915 as fully and effectually in all respects as if the two months' default mentioned in the Seventh Clause of the Fourth Schedule to the said Act had been made and continued and the one month's notice in writing also therein mentioned had been duly given and had elapsed.

AND WHEREAS on or about the day of 19 the Mortgagors made default in payment to the Mortgagee of the said instalments as in the said recited mortgage provided and such default has continued ever since and still continues in respect of the instalment then due and all subsequent instalments under the said recited mortgage and the power of sale thereunder became and still is exerciseable.

AND WHEREAS the Mortgagors abandoned the said land on or about the day of 19 (OR recital of Order of Court under the Mortgagors Relief Act 1933 giving Mortgagee leave to sell).

AND WHEREAS in pursuance of the said power of sale and incidental and subsidiary powers conferred upon the Mortgagee by the said recited mortgage and the Land Transfer Act 1915 the Mortgagee has agreed with P.Q. of etc. and X.Y. of etc. (hereinafter called "the Transferees") for the sale to the Transferees of the said land at the price of £ (OR recitals of application to Registrar and purchase at auction by Transferees).

NOW THEREFORE IN CONSIDERATION of the sum of £ paid to the Mortgagee by the Transferees (the receipt whereof is hereby acknowledged) the Mortgagee in pursuance and exercise of the power of sale and incidental and subsidiary powers conferred upon him by the said recited mortgage and the Land Transfer Act 1915 and of every other power him thereunto enabling DOTH HEREBY TRANSFER unto the Transferees as tenants in common in equal shares ALL THAT the said estate and interest of the Mortgagors in the said land free and discharged from all liability on account of the said recited mortgage.

IN WITNESS WHEREOF etc.

SIGNED etc.

CORRECT etc.

3.—Declaration by Mortgagee in Proof of Compliance with Statutory Restrictions on Exercise of Power of Sale.

IN THE MATTER of the Soldiers' Protection Regulations 1919

AND

IN THE MATTER of the Mortgagors Relief Act 1933.

I M.M. of etc. do solemnly and sincerely declare:

1. THAT I am the Transferor under the within written Transfer and the mortgagee named and described in Memorandum of Mortgage Number therein mentioned.

2. THAT the Mortgagors under the said Mortgage A.B. and C.D. on or about the day of 19 made default in payment to me of the instalments as in the said mortgage provided and such default has continued ever since and still continues in respect of the said instalment then due and all subsequent instalments under the said mortgage and the power of sale under the said mortgage thereby became and still is exerciseable.

3. THAT the Mortgagors are not either of them an assisted discharged soldier within the meaning of the Soldiers' Protection Regulations 1919 as continued in force by the War Regulations Continuance Act 1920.

4. THAT the Mortgagors (being the only mortgagors under the said mortgage within the meaning of the Mortgagors Relief Act 1933) abandoned the land comprised in the said mortgage on or about the day of 19 and I have ever since been and still am in possession of the said land or in receipt of the rents and profits thereof.

AND I MAKE etc.

DECLARED etc.

Annual Meetings.

Auckland District Law Society.

About eighty members attended the annual meeting of the Auckland District Law Society in the Auckland University College Hall on March 10. It was decided to hold social gatherings during the year at which discussions on matters of professional interest will be held, and to which members of the Hamilton Society could be invited as guests.

The annual report showed that during the year there had been eight admissions as barristers and solicitors, two solicitors, and four barristers, the total number of practising certificates issued were: barristers and solicitors, 235; barristers only, 4; and solicitors only, 275.

The meeting passed votes of appreciation of the services of the retiring president, Mr. A. M. Goulding, and of Mr. R. P. Towle, a member of the New Zealand Law Society for four years, who did not seek re-election. Mr. Towle at various times held the positions of Treasurer, Vice-President, and President (1930-31 and 1931-32), and a member of the Council since 1921.

The election of officers resulted: President, Mr. G. P. Finlay; Vice-President, Mr. L. K. Munro; Treasurer, Mr. H. M. Rogerson; Council, Messrs. W. H. Cocker, A. M. Goulding, J. B. Johnston, A. H. Johnstone, S. R. Mason, and T. A. H. Oliphant; members of the New Zealand Law Society, Messrs. Finlay, Johnstone, and Johnston; Council of Law Reporting, Messrs. R. McVeagh and H. P. Richmond; Auditor, Mr. N. A. Duthie.

Canterbury District Law Society.

The annual meeting of the Canterbury Law Society was held on March 2, when Mr. C. S. Thomas was elected president for the period 1934-35.

The election for the other offices resulted as follows: Vice-president, Mr. A. F. Wright; hon. treasurer, Mr. R. Twyneham; committee, Messrs. A. W. Brown, M. J. Burns, J. D. Hutchison, K. M. Gresson, A. S. Taylor, T. D. Harman, C. H. Tripp, and J. D. Godfrey. The following were appointed the Society's delegates to the New Zealand Law Society, Messrs. C. S. Thomas, A. T. Donnelly, and R. Twyneham; Messrs. A. T. Donnelly and M. J. Gresson were appointed representatives on the Council of Law Reporting.

Otago District Law Society.

The Annual General Meeting of this Society was held on February 23, in the University Club Rooms, the retiring President, Mr. F. B. Adams, being in the chair.

The Annual Report was adopted and the following office-bearers for the ensuing year were appointed: President, Mr. C. L. Calvert; Vice-President, Mr. Peter S. Anderson; Treasurer, Mr. A. C. Stephens; Council, Messrs. F. B. Adams, A. N. Haggitt, H. L. Cook, E. J. Smith, J. P. Ward, and R. G. Sinclair.

After discussion of various matters affecting the profession, the meeting concluded with a very hearty vote of thanks to Mr. Adams, the outgoing President, for his labours on behalf of the profession.

Southland District Law Society.

The Annual Meeting of the Southland District Law Society was held in the Supreme Court Library, Invercargill, on March 7. Mr. A. B. Macalister, the retiring President, took the chair until the election of his successor.

In moving the adoption of the Annual Report and Balance-sheet, Mr. Macalister traversed briefly the work of the Council during the past year. A further levy of £2 2s. per member had been made during the year mainly due to the decrease in the numbers of admission fees.

The officers elected for the ensuing year are: President, Mr. J. G. Imlay; Vice-President, Mr. J. C. Prain; Secretary, Mr. G. C. Broughton; Treasurer, Mr. E. H. J. Preston; Members of Council, Messrs. G. M. Broughton, A. B. Macalister, M. M. Macdonald, F. G. O'Beirne, and Robert Stout.

Mr. A. M. Macdonald was reappointed as representative of the Society on the Invercargill Chamber of Commerce, and Mr. T. R. Pryde was appointed Auditor.

The meeting passed a hearty vote of thanks to Mr. S. A. Wiren, Wellington, who had during the past year attended on behalf of the Society at the meetings of the New Zealand Law Society.

Wellington District Law Society.

The Annual Meeting of the Wellington District Law Society was held on February 26, 1934, at 8 p.m., in the Small Court Room, Supreme Court Buildings, Wellington, there being an attendance of approximately eighty members of the Society.

The President (Mr. E. P. Hay) occupied the Chair until the election of his successor for the current year (Mr. T. C. A. Hislop).

Retiring President's Address.—After reading the minutes of the last annual meeting and before moving the adoption of the report and balance-sheet, Mr. E. P. Hay referred to the death of Sir Alexander Gray, K.C., and of Sir Thomas Sidey, an appreciation of the work of each having been recorded in the Society's Minutes and Annual Report.

The year had been a busy one, involving the usual routine matters and a considerable number of complaints against practitioners, but in only two cases had disciplinary action been necessary. In these two instances striking-off proceedings had been instituted.

The question of advertising by members of the profession had been considered by the Council during the year, and the result of their deliberations was embodied in the rules set out in the Annual Report. It was obviously impossible to lay down a set of rules to cover every case that might occur, or to draw up a code of ethics for practitioners, but specific instances of matters objectionable from the point of view of the profession had been given.

Mr. Hay then drew attention to the regulations which had been gazetted concerning the deposit of moneys with solicitors, and emphasised the fact that it was most important to maintain the sanctity of Trust Accounts and to minimise the chances of claims upon the Guarantee Fund.

The Society's rule that two members of the Council must retire each year was not altogether desirable, and in the President's opinion it would be wise to have this rule altered.

Mr. Hay referred to the election of Mr. C. H. Treadwell to the position of President of the New Zealand Law Society, and the gratification of the Wellington District Law Society at his appointment to this high and honourable office. He congratulated Mr. Treadwell on his election, and trusted that the latter would be long spared to occupy the position.

In conclusion, Mr. Hay expressed his pleasure at having held the office of President during the past year, thanked his colleagues on the Council for their assistance, and referred to the loss sustained by the Council in the retirement of Messrs. M. F. Luckie and H. F. O'Leary.

Report and Balance-sheet.—Mr. Hay then formally moved the adoption of the Report and Balance-sheet, this being seconded by Mr. D. Perry (Treasurer), and the motion was carried unanimously.

Election of President, Vice-President, and Members of the Council.—There being only one nomination for President, Mr. E. P. Hay, the retiring President, declared Mr. T. C. A. Hislop duly elected, Mr. Hislop thereupon taking the Chair. There being only one nomination for Vice-President, Mr. W. H. Cunningham was declared duly elected. There being only one nomination for Treasurer, Mr. D. Perry was declared duly elected.

As the nominations for the Council exceeded the number required, a ballot was taken and resulted in the election of the following members: Messrs. S. J. Castle, A. M. Cousins, E. P. Hay, P. Levi, D. R. Richmond, G. G. G. Watson, S. A. Wiren, and A. T. Young.

New Zealand Law Society—Election of Members.—The following were elected unanimously: Messrs. H. F. O'Leary, C. H. Treadwell, and G. G. G. Watson.

Mr. W. Perry inquired if the President was not *ex officio* one of the members of the New Zealand Council, Mr. Hislop replying that there was no rule to this effect, though it had been a custom for some years, but that he personally would be grateful not to be elected a member this year owing to pressure of business.

Council of Law Reporting—Election of Two Members.—The following were elected unanimously: Messrs. W. Perry and C. H. Treadwell.

Election of Auditor.—The Chairman mentioned that Mr. J. S. Hanna, who had been Auditor for the past five years, had notified the Council that he did not desire re-election. The Society was grateful to Mr. Hanna for the work he had done during that period. On the motion of Mr. D. Perry, it was decided to place on record the Society's appreciation of Mr. Hanna's services. It was then proposed by the Chairman, and seconded by Mr. Hay, that Messrs. Clarke, Menzies, Griffin, and Ross be appointed Auditors at a fee approved by the Council, the motion being carried unanimously.

Notices of Motion.

(*a*) **Re Easter Holidays.**—Mr. J. D. Willis had given notice of his intention to move the following resolution: "That the offices of practitioners in the Wellington City and Suburbs be closed for the annual Easter Vacation from 5 p.m. on Thursday, March 29, 1934, and re-open at 9 a.m. on Monday, April 9, 1934." The Chairman intimated to the meeting that at the last meeting of the Council it had been decided that the Easter Holidays for this year should be fixed for the dates mentioned by Mr. Willis, and that therefore there was no occasion for him to move his resolution.

(*b*) **Re fixing of Easter and Christmas Vacations by Annual Meeting.**—After an animated discussion Mr. R. E. Tripe's motion:

> "1. That the Easter vacation be fixed each year at the annual meeting of the Society.
>
> "2. That the Christmas vacation be fixed each year at the annual meeting of the Society."

was carried.

Christmas Holidays, 1934-35.—Mr. C. G. White's motion that offices should close at noon on Saturday, December 22, and re-open at 9 a.m. on Wednesday, January 9, was adopted.

Ten per cent. Discount on Bills of Costs.—Mr. W. Perry raised the question of the 10 per cent. discount allowed on Bills of Costs, expressing strong disapproval of the practice. He therefore moved the following resolution:

> "That this Society is strongly opposed to the practice of allowing any discount on profit costs, and directs its representatives on the New Zealand Law Society to move for the rescission of any resolution of the New Zealand Law Society on the subject."

Mr. H. E. Anderson seconded the motion, and, after a lengthy discussion, the motion was carried.

Profit and Loss Account.—Mr. A. E. Currie asked if it would be possible to have a Profit and Loss Account in connection with the annual accounts, and was informed by the Chairman that this would be arranged.

Public Trust Advertising.—Mr. J. Bennett stated that the Public Trustee appeared to be advertising again and asked what steps were being taken to enforce the agreement with the New Zealand Law Society. The Chairman stated that the agreement had been determined by the Public Trustee, who had given the requisite notice, and that the matter was being discussed by the New Zealand Society at its meeting on March 22.

Rules of the Society.—Mr. Virtue stated that it seemed somewhat difficult to obtain copies of the Rules of the Society, which had been last printed in 1909, and suggested that as each practitioner became a member he should be furnished with a copy of the Rules. On the motion of Mr. von Haast, seconded by Mr. McCormick, it was resolved to recommend to the incoming Council that steps should be taken in the near future to revise the Society's Rules and to submit such revised Rules to a General Meeting for approval.

Vote of Thanks to the Staff.—Mr. E. P. Hay proposed a vote of thanks to the Society's staff for their work during the past year, expressing the opinion that the Society was fortunate in its Secretary, whose work for both this and the New Zealand Society had been much appreciated.

Australian Notes.

By WILFRED BLACKET, K.C.

Alas, Those Charms.—In Melbourne the case of *Mitchell v. Barnett* has served for a season to while away the time that must elapse before the Prince arrives. The plaintiff, Isobel Mitchell, is a mannequin, and therefore must be beautiful as a matter of business: the defendant is a beauty specialist whose business it is to assist nature in giving beauty to his clients. She went to him to purchase a permanent wave, but according to her statement must have got into the breakers for when she got home she found that her hair was so broken that it came away "in heaps." She said that too much heat had been applied and that too strong an alkali had been used in the defendant's prescription for beauty while you wait. He on the contrary says that it was a really good wave, and that any brittleness or other lack of quality in the lady's hair was due to the bleaching and dyeing it had endured in earlier days. She said that for ten or fifteen years she had bleached, dyed, and peroxided it every three months, which goes to show that a lady's lustrous locks are liable to have an adventurous life in Melbourne. The case is a serial that is still running and may be continued in our next or later issue.

The Vivers Pearls.—Dr. Arthur Vivers, of Sydney, and his wife have again been in litigation over their pearl necklace which is valued at £14,000. In 1931 there was a suit to determine the rights of the parties, and Long Innes, J., then made a decree declaring that the necklace belonged to the parties as tenants in common in the proportion of four-fifths to Dr. Vivers and one-fifth to his wife. Recently the Doctor, wishing to realise on his interest, moved for an order directing a sale and appointing a receiver. Mrs. Vivers opposed the motion, and Dudley Williams for her contended that the Court had no power at law or under any statute to order a sale, and said he would argue the case in support of that contention. His Honour's reply is the one reason for mentioning the suit here, for he said: "I think you will be wasting your breath. I know that you will find there is no authority. But I remember going, some time ago, into the question of what the Court ought to do in cases where there is no precedent with the Chief Judge, and we decided that if there was no precedent we should make one. It would be monstrous that the law should be that people were without remedy."

Mr. Williams said there was power under the Conveyancing Act to order a partition, but, as his client was in England, could not say that she would agree to such an order. His Honour thought partition inapplicable to such property as a necklace. "Reduce the necklace to a single pearl which has to be divided. Would the Court have to take a hammer and crack it like a nut?" Obviously His Honour was going to order a sale, but just then the Court followed the Equity custom of letting the matter stand over till Friday week, and upon the resumption of the hearing counsel for the lady was able to consent to the sale and appointment of a receiver. "Long" Innes—I sometimes wonder if this is not a misprint for "Strong" Innes.

A Study in Psychology.—Little children, especially if they are little girls, very often invent fictitious persons who are to them quite real and imagine strange adventures and actions with regard to them, but the strangest of all cases of such delusions was told at the inquest on Roy Eagles at Parramatta, N.S.W. He was seventeen and had a girl friend, Joyce Neat, whom he used to take to the pictures. He often told her of another girl friend named "Nancye," and related many things of and concerning her and finally told her that Nancye had married a man named Harry. Then one night he gave Joyce a letter which was not to be opened for three hours. Before that time elapsed he had shot himself. The letter stated his mental agony and despair compelling him to take his own life because Harry had discovered a fact in respect of which he was guilty, and Nancye after making full confession in her despair had stabbed herself with a long bacon knife in the neck and had died. As a matter of fact there was never any Nancye nor any misconduct as alleged, nor any Harry nor any bacon knife that had ever been used for such a dreadful purpose. No wonder that the Coroner found that Eagles was of unsound mind, but think of what the poor fellow must have suffered by reason of his delusion!

Brief Mention.—In Melbourne, W. Calvert pleaded guilty to a charge that he "did steal, take, and carry away" six pennyworth of gas. No balloon was used, only the good old length of rubber pipe that evaded the gas-meter.

Thumb-Prints.—I mentioned some time ago that in New South Wales it is the law that a finger-print without other evidence is sufficient to support a conviction, but in Melbourne in *R. v. Schade* evidence that a thumb-print on a pane of glass found on the lawn of a house the prisoner was charged with entering was his thumb-print was not highly regarded by Judge Winneke who told the jury that the finger-print system was "not a science on the plane of chemistry but was more on a par with the system of identifying handwriting," and said that the jury "must regard this evidence with caution." Verdict not guilty.

A Deed of Release.—At Bundaberg (Queensland) Judge Brennan sentenced a prisoner to five years' imprisonment for an offence against a school girl, but said he would order his release if he furnished a certificate that a certain surgical operation had been performed.

Robbery under Arms.—Melbourne has been much moved by the conviction of C. Beissell and G. Sedgman who are described as "students." A Minister of the Crown and others gave evidence of their excellent character and laudable ambition and intention to study medicine and dentistry, and eloquent addresses on their behalf were made by Maxwell, K.C., and Mr. Burbank. It had to be admitted that Sedgman had been aforetime convicted of wounding by shooting two boys who with others had annoyed him by their noise when he was studying. The boys were very close friends who used to spend every Sunday evening together, but trouble came to them one night when they armed themselves with revolvers and stuck up the Manager of a Service Station, compelled him to give up his keys, and then took £23 from the safe. Twelve months' imprisonment does not seem to be a harsh sentence for the crime to which they had pleaded guilty.

Practice Precedents.

Service of Citation in Divorce.

Section 46 of the Divorce and Matrimonial Causes Act, 1928, provides that every petition shall be served on the party to be affected thereby, *either within* or *without* New Zealand, in such manner as the Court by any general or special order from time to time directs, and for that purpose the Court shall have and may exercise all the powers it now possesses by law.

The manner of service is regulated by RR. 15–23: see *Sim on Divorce*, 4th Ed. 47.

In view of the section it is not now the practice to apply for leave to serve the citation *without* the jurisdiction, but merely to ask that the time for filing an answer be fixed: see *Oakley's Divorce Practice*, 7th Ed. 37.

In the forms following it is assumed that a wife has been deserted by a husband whom it is desired to serve in South America.

As to the domicile of a deserted wife, see s. 12 of the Act. On the subject of desertion generally, see note to s. 10. It is to be noted that *Parsons v. Parsons* and the subsequent cases cited in *Sim* at p. 48 have no application in these forms as they apply to a *wife* who is to be served. See Rule 188 of the Code of Civil Procedure, Stout and Sim's *Supreme Court Practice*, 7th Ed. 165-6, as to whom affidavits out of New Zealand may be sworn before.

MOTION TO FIX TIME FOR ANSWER.

IN THE SUPREME COURT OF NEW ZEALAND.

.....District.

.....Registry.

BETWEEN A.B. *etc.* Petitioner,

AND

C.D. *etc.* Respondent.

Mr. of counsel for the petitioner to move in Chambers before the Right Honourable Sir Chief Justice of New Zealand at the 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 fixing the time within which the respondent may file an answer to the petition filed herein UPON THE GROUND that the respondent resides at in Argentina in South America.

Dated at this day of 19 .

Certified pursuant to Rules of Court to be correct.

Counsel for Petitioner.

Reference: His Honour is respectfully referred to s. 46 of the Divorce and Matrimonial Causes Act, 1928, *Sim on Divorce* 4th Ed. 47, and the notes thereto.

ORDER FIXING TIME FOR ANSWER.

(*Same heading.*)

day the day of 19 .

Before the Honourable Mr. Justice .

UPON READING the Motion filed herein and upon the application of Mr. of counsel for the petitioner IT IS ORDERED that the time allowed the respondent for filing an answer to the petition filed herein be [*ninety*] days from but excluding the date of service upon the respondent of the citation issued herein AND THAT this suit be set down for hearing at the first sittings of this Honourable Court after the expiration of the said period of [*ninety*] days.

By the Court,

Registrar.

AFFIDAVIT OF SERVICE OF CITATION.

(*Same heading.*)

I of No. , , Buenos Aires, in the Republic of Argentina, South America, Law Clerk, make oath and say as follows:—

1. That the citation bearing date the day of 19 issued under the seal of this Court against the respondent in this cause and now hereto annexed and marked with the letter "A" was duly served by me upon the above-named of Buenos Aires at No. , Buenos Aires in the Republic of Argentina aforesaid by showing to him the original under seal and by leaving with him a true copy thereof on the day of 19 .

2. That at the same time and place I handed to the said personally a certified copy under seal of the said petition filed herein.

3. That attached hereto and marked with the letter "B" is a photograph of the person served by me.

4. That I recognised the said from the said photograph but before stating my business when I approached the said I asked him his name and he replied "(C.D.)".

4. That thereupon I served the said with the documents aforesaid.

5. That the said acknowledged the receipt of the said documents by signing the attached memorandum marked with the letter "C."

Sworn at Buenos Aires this day of 19 .

Before me .

British Consul.

[SEAL.]

New Zealand Law Society.

Meeting of Standing Committee.

A meeting of the Standing Committee of the Council was held on March 2, 1934. The President, Mr. C. H. Treadwell, occupied the Chair.

Present: Mr. C. A. L. Treadwell, representing Gisborne; Mr. P. B. Cooke, Marlborough; Mr. R. H. Webb, Otago; Mr. S. A. Wiren, Southland; Mr. F. C. Spratt, Taranaki; Mr. C. H. Treadwell, Wellington; Mr. G. G. G. Watson, Wellington, and Mr. A. M. Cousins, Westland. The Treasurer, Mr. P. Levi, was also present.

Electric-power Boards Amendment Act, 1927, s. 8 (5).—The Chairman outlined to the Committee the correspondence in connection with this question, and particularly the facts of the specific case cited by Messrs. Stout, Lillicrap, and Hewat in their letter of October 16, 1933, to the Southland District Law Society.

After discussion, the following motion, moved by Mr. P. Levi, and seconded by Mr. P. B. Cooke, was carried:

"That a letter be sent to the Minister of Public Works, giving details of the facts forwarded by the Southland District Law Society, and stating that the New Zealand Society is definitely of the opinion that the engineer's certificate should be *prima facie* evidence only and not conclusive; and that a deputation consisting of the President and Messrs. O'Leary and Watson wait upon the Minister in this connection."

In pursuance of the above resolution passed by the Standing Committee on March 2, a deputation, con-

sisting of Messrs. H. F. O'Leary, G. G. G. Watson, and the Secretary, waited on the Minister of Public Works (Hon. J. Bitchener) on March 15.

Mr. Watson outlined the facts as given by the Southland District Law Society, and pointed out the grave injustice that could arise through the engineer's certificate in such a case being made conclusive evidence. He said that the Society desired particularly to draw the Minister's attention to the general principle involved in allowing any such certificate, whether under the Act in question or any other Act, to be "conclusive," and the Society was very strongly of opinion that the certificate should be *prima facie* evidence only.

The Minister, who gave the deputation a very sympathetic hearing, stated in reply that he had already had under consideration the necessity for obtaining a certificate from some person other than an official of the interested Power Board, though he had not thought of going quite as far as was suggested by the deputation. He would, however, take into account the representations of the Society and give these every attention.

Legal Literature.

The New Zealand Company Secretary: A practical exposition of the duties of Secretaries of Companies (Public and Private) Incorporated under the Companies Act and limited by shares, by John S. Barton, C.M.G., S.M., President of the N.Z. Society of Accountants, 1915-1916 and 1916-1917; Fellow of the Incorporated Institute of Accountants in New Zealand; Author of *Twentieth Century Commerce and Bookkeeping*, *Australasian Company Secretary*, and *New Zealand Land Agent*. **Sixth Edition**; pp. 525 + viii. Butterworth & Co. (Aus.) Ltd., Wellington.

The first edition of Mr. Barton's well-known work appeared in 1910, since when it has been in constant demand as the fact that it is the sixth edition which is now under review bears witness.

While this is not a legal text-book on Company Law in the usual meaning of the word, it is the key to the finding of the law and to its practical every-day application. No Company Secretary of ability or discernment would act on his own opinion when a question of legal importance or difficulty arises: he would wisely take counsel's advice. But in the every-day, "bread-and-butter" work of a company's secretary, he needs the efficient guidance of an expert like Mr. Barton if he desires to increase his usefulness to his Directors.

It can be taken for granted that complete accuracy and attention to detail characterize the pages of the *N.Z. Company Secretary*, which, in its latest edition, is based entirely upon the Companies Act, 1933. The forms, hints, suggestions, and general guidance given by the author enable the company secretary to put his finger at once on the essential, and to work it out in detail in a manner that is both workmanlike and time-saving. In fact, he has, with such assistance, the working plan of his daily duties in all circumstances affecting him.

The new Companies Act necessarily renders previous editions of this work obsolete and, as has already been indicated by those accustomed to using this work as a daily reference and guide, the present edition is already certain of a large circulation.

Mr. Barton is to be congratulated on the prompt manner in which he has fulfilled his new and extended task, and on the completeness with which he has anticipated all the needs of the secretary of every variety of company doing business in the Dominion.

Rules and Regulations.

State Advances Amendment Act, 1922. Finance Act, 1933. Order in Council fixing the Rate of Interest payable on the Amount of Loans granted under Section 22 of the State Advances Amendment Act, 1922, and Section 9 of the Finance Act, 1933.—*Gazette* No. 13, March 8, 1934.

Convention between United Kingdom and the Netherlands respecting Legal Proceedings in Civil and Commercial Matters. Extension to New Zealand.—*Gazette* No. 13, March 8, 1934.

Land and Income Tax Act, 1923. Notification by Commissioner of Taxes *re* Returns of Land as at 31st March, 1934.—*Gazette* No. 13, March 8, 1934.

Convention between United Kingdom and Turkey respecting Legal Proceedings in Civil and Commercial Matters. Extension to New Zealand.—*Gazette* No. 16, March 15, 1934.

Notification by Under-Secretary Native Department *re* Fixture of Native Land Court for Year commencing 1st April, 1934.—*Gazette* No. 16, March 15, 1934.

New Books and Publications.

Paterson's Licensing 1934. 44th Edition. (Butterworth & Co. (Pub.), Ltd. Price 30/-.

The Local Government Act, 1933. By G. E. Hart, together with Index by Neville Faulks, M.A., LL.B. (Butterworth & Co. (Pub.) Ltd.). Price 28/-.

Carriage of Goods in a Nutshell, 1934. By J. A. Balfour. (Sweet & Maxwell, Ltd.). Price 5/-.

The Modern English Prison. By L. W. Fox. (Routledge.) Price 15/-.

Essays in Equity. By H. A. Hanbury, 1934. (Oxford Press, Ltd.) Price 15/-.

Circumstantial Evidence. By C. E. Ratcliffe, 1934. (John Bale Sons.) Price 10/6d.

Annual County Court Practice, 1934. By Hon. Judge Ruegg, K.C. (Sweet & Maxwell, Ltd.) Price 53/-.

Outlines of Central Government including the Judicial System of England. By John J. Clarke, M.A., F.S. Sixth Edition, 1934. (Pitman & Sons.) Price 14/-.

The Local Government of the United Kingdom and I.F.S. 8th Edition, 1933. By John J. Clarke. (Pitman & Sons.) Price 14/-.

Australia in the World Crisis, 1929-33, 1934. By Douglas Copland. (Cambridge Press.) Price 13/-.

National Health Insurance. By W. J. Foster and F. A. Taylor. (Pitman & Sons.) Price 10/6d.

Partnership Law and Practice. By J. J. Wontner, 1934. (Jordan & Sons.) Price 7/-.

Laws of Ceylon. By K. Balasingham, 1933, Vol. II, Law of Persons. (Sweet & Maxwell, Ltd.) Price 44/-.

The Student's Conflict of Laws, Founded on Dicey. By E. L. Burgin and E. A. M. Berger. 2nd Edition, 1934. (Stevens & Sons). Price 27/-.