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"I always feel I may have been wrong if I am in a majority; but I am always sure I am right when I am in a minority."

—LORD MACNAGHTEN.

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In the Interests of Decency.

IN order to kill the germs of disease, all pathologists are unanimous on the necessity of cleanliness. Hygiene is the watchword of medical science. It should also be the watchword of modern legislation. It is not the function of the law to teach the principles of morals; but it has a duty to foster and protect public morality by removing from the people, as far as it may, any possibilities of moral poison. That wonderful member the elephant's trunk can pick up, at will, a number six sewing needle and shift a ton of teak. The newspaper can, with analogous versatility, shape the raw convictions of a school child and sway the destinies of an Empire. As, therefore, the newspaper is one of the greatest possibilities for good or evil to the community which it serves, a duty of the Legislature is to guard against any abuse of this immense power exercised by the Press.

In New Zealand we are proud of the high tone of our newspapers in general. Consequently, in supporting the Judicial Proceedings (Regulation of Reports) Bill now before Parliament, we do not wish to be misunderstood. We are not impugning the motives or criticizing the practice of the proprietors of our local Press, since we know they have an instinct and a reputation for decency. We know, too, that its provisions cannot hamper them in their endeavour to serve the common good: as the motto of one of our metropolitan dailies has it,

> "*For the cause that lacks assistance,*
> *For the wrong that needs resistance,*
> *For the future in the distance,*
> *And the good that we can do.*"

But we do not wait until plague is ravaging our homes before we set out to frame our quarantine regulations; and it is now, while our Press is decent, that we should provide hygienic precautions against that type of journalism which gives, for the reading by all and sundry, those septic details arising in Court proceedings which, though at times must necessarily be included in professional journals, are dangerous to moral health when revealed to the public gaze. All decent-minded persons are agreed that a proper reticence should be observed in regard to giving particulars of that nature in the public Press.

Our readers will remember that, when he was describing the newspapers of the United States, "Mr. Dooley" said their purpose seemed to be to interest everybody "in what everybody else is doin' that's wrong." He added that nothing was sacred from them: "We march through life, an' behind us marches th' phottygrapher an' th' rayporter. There are no such things as private citizens." When newspapers in this way devote excessive space to morbid details of crime and intimate particulars in cases of a domestic character, they place such things in their wrong perspective and give them false values. And that is where the danger to public morality lies: a prominent New York Judge recently stated,

> "Long experience has taught me to regard the sensational newspaper as one of the chief causes, if not the most prolific cause, of youthful demoralization in this great city. If this source of evil were eliminated, juvenile crime would only be a fraction of what it is."

In Great Britain before the passing of the Judicial Proceedings (Regulation of Reports) Act, 1926, from which so much of the Bill under notice is taken, the position was little better. The Earl of Birkenhead, a former Lord Chancellor, is on record as having said that, in the few years before that Act became law,

> "the publication of many unsavoury proceedings in the Law Courts had approached the dimensions of a public scandal."

And he referred to the then recent case of *Russell v. Russell*,

> "in which details were published day by day of over some seven or eight columns of the daily Press of a lubricity and indecency which certainly no other country in the world could have conceived as being tolerable"

and he agreed that, if it was possible to stop that, it ought to be stopped.

Lord Darling said:

> "I know it is said by some that there is the old Common Law and there are certain Statutes and even the Newspaper Acts which gave the Press great liberty but yet contained a proviso that the publication of indecent matter was not permitted. But there is a great difficulty in enforcing these particular remedies. . . . The existing law has failed to put a stop to these fearful, degrading publications."

It had taken England some seventy-odd years to reach this deplorable condition of reporting matters before the Courts. Shortly after the establishment of the Divorce Court, Queen Victoria wrote to the then Lord Chancellor, Lord Campbell, as follows:

> "The Queen wishes to ask the Lord Chancellor whether steps can be taken to prevent the present publication of the proceedings before the new Divorce Court. These cases which must necessarily increase when the new law becomes more and more known, fill almost daily a large portion of the newspapers, and are of so scandalous a character that it makes it almost impossible for a paper to be trusted in the hands of a young lady or a boy." (*Letters of Queen Victoria*, vol. iii, p. 482).

The Queen's fears were certainly justified: by 1925 it was pointed out that, over a period of one year, *The Times* had devoted 82 columns and the *Morning Post* 35 columns to reports of divorce cases; and in 52 issues certain Sunday newspapers had displayed from 311 to 118 columns.

In 1912, Lord Alverstone, when Lord Chief Justice of England, strongly expressed his opinion that legislation on the lines of the Bill now under notice should be attempted.

Lord Campbell, in reply to Queen Victoria's letter, attempted to remedy the evil by having all divorce cases heard in camera, but he was unable to overcome objec-

tions from such procedure. That was a totally different thing from the proposals in the present Bill, which merely limits the publication of evidence and statements given publicly before the Courts. It is impossible to found a prosecution for indecency upon innuendo or suggestion, and, as was said in the Report of the Select Parliamentary Committee which considered the Bill which became the Act of 1926, from which the local legislative proposals bearing the same name are taken, and supported such proposed legislation:

"The pernicious transformation of sordid details into epics for profit cannot really be restrained in any other way."

And the Committee concluded their Report with these words:

"Your Committee think that, if a choice has to be made, the high standard of national character must be chosen."

The then leader of the English Bar, Sir John Simon, K.C., was one of the Bill's strongest supporters in the Commons.

The principle of the Bill had been supported by the best elements in the journalistic world. Thus the President of the Institute of Journalists of Great Britain, in his evidence before the Select Committee, produced the following resolution of the Institute's Council:

"Whilst prepared to offer determined resistance to any attempt at censorship, the Council of the Institute of Journalists place on record their disapproval of the increasing tendency in newspaper reports to publish and give undue prominence to nauseous and intimate details of divorce petitions and of murders and of other criminal cases."

As the *Yorkshire Herald* (July 10, 1925) put it,

"All that would be excluded are those mephitic details the publication of which at inordinate length has sickened every decent-minded citizen. . . . .

"The people who are assailing the real liberty of the Press are those who have failed in the task of differentiating between what is salutary and what is harmful in a newspaper report."

We are opposed to further legislative restriction upon the public administration of justice, which is one of the deterrents to crime and immorality; and sufficient restrictive provisions in this regard already appear in the Crimes Act, 1908, s. 432; the Justices of the Peace Act, 1927, s. 128; the Destitute Persons Amendment Act, 1926, s. 10; and the Divorce and Matrimonial Causes Act, 1928, s. 55. The Present Judicial Proceedings (Regulation of Reports) Bill covers new ground by preventing the publication of details of evidence, etc., none of which may in itself be technically obscene, but the cumulative and familiarizing effect of which on all manner of persons is pernicious to public morals.

The principal clauses of the new Bill are as follows:

"**3.** It shall not be lawful to print or publish, or cause or procure to be printed or published, in relation to any judicial proceedings, any indecent matter or indecent medical, surgical, or physiological details, being matter or details the publication of which would be calculated to injure public morals.

"**4.** Except with the authority in writing of the presiding Judge or Magistrate it shall not be lawful to print or publish, or cause or procure to be printed or published, in relation to any judicial proceedings for dissolution of marriage, or for nullity of marriage, or for judicial separation, or for restitution of conjugal rights, or for the making under the Destitute Persons Act, 1910, of an affiliation order, a maintenance order, a separation order, or a guardianship order, any particulars other than the following, that is to say:—

(*a*) The names, addresses, and descriptions of the parties and witnesses, and of solicitors and counsel:

(*b*) A concise statement of the charges, defences, and countercharges in support of which evidence has been given:

(*c*) Submissions on any point of law arising in the course of the proceedings, and the decision of the Court thereon:

(*d*) The summing-up of the Judge and the finding of the jury (if any), the judgment of the Court, and observations made by the Judge or Magistrate in giving judgment:

"Provided that nothing in this section shall be held to permit the publication of anything contrary to the provisions of the last preceding section."

It is instructive to see the manner in which eminent members of the Judiciary in England approached discussion of a similar Bill. Lord Darling, from his place in the House of Lords, spoke strongly in its favour. His long judicial life had prepared him to be a competent advocate in support of the measure, in order, as he remarked,

"that an example may be set and something may be done for public decency."

He drew attention to the total prohibition in France of the reproduction by means of the Press of any proceedings in relation to divorce, which, by Art. 250 of the Code Civile was forbidden under a fine of from 100 to 2,000 frs. He said that a similar prohibition applied in Belgium, in Switzerland, and in the Netherlands.

Lord Merrivale, President of the Probate, Divorce, and Admiralty Division, supported the principle of the Bill heartily. He went further than its provisions: he asked if some tribunal could not be found, which, when it was informed of indecency in a newspaper, could say the immediate penalty was an immediate cessation of publication of the journal for a period. And he proceeded:

"When we were dealing with a matter which affected the national and material interests in the War the Legislature did not hesitate to entrust tribunals with very absolute summary powers because they were required at the time; and it did not permit irresponsible discussion as to why the powers were exercised."

He concluded by saying that he was sure that all respectable and responsible elements in the Press were desirous that the evil against which the Bill was aimed,

"the deliberate distribution for profit of moral poison especially calculated to affect the mind of the young and inexperienced,"

should be brought to an end. It was this experienced Judge in divorce who had inserted in the Bill what are now clauses 4 (6) and 7 of the Bill before our Parliament to-day.

It is a significant fact that as regards penalties, Lord Darling remarked that, while he and other promoters of the Bill were prepared to chastise offenders with whips, the learned President of the Divorce Court would chastise them—as he (Lord Darling) thought very properly—with scorpions. Lords Sumner and Carson opposed the penalty of suspension of publication which Lord Merrivale in an amendment strongly pressed upon the House of Lords, those learned Lords considering the provision for the imprisonment of the editor of a persistently offending newspaper was a sufficient safeguard. That they proved true prophets is shown by the fact that no prosecution under the Act has been found necessary in the eight years which have elapsed since it was enacted, so carefully have hitherto offending newspapers put, and kept, their several houses in order.

The New Zealand legislative proposals include those which have been statute law in Great Britain since 1926, with the addition of a safeguard that provision to allow publication of further details than the Bill

allows may be given by the presiding Judge or Magistrate; and, further, that no prosecution shall be instituted unless with the leave of the Attorney-General. It is also provided that proceedings under the Destitute Persons Act, 1910, shall be subject to the new provisions. This is all to the good. Practitioners well know that much injustice is suffered by innocent persons who shrink from the possibility of their domestic unhappiness appearing in the public Press. There is no earthly reason why such personal details should be paraded before the eyes of people in nowise concerned; and the certainty of their non-disclosure publicly will save the suffering of possible misery and want on the part of hitherto hesitant but deserving complainants.

We have dealt with this matter at some length because we are aware of misconceptions in the public mind as to the Bill's scope and purpose ever since it was first suggested for enactment here, two years ago. Its opponents say it is dangerous in that the interests of justice require that the fullest publicity should be given to reports of judicial proceedings. We agree that publicity is a deterrent to crime; but we maintain that the public should be protected from pernicious details, the non-publication of which will not affect the interests of justice in any shape or form. As a former Lord Chancellor, Lord Buckmaster, said:

> "There should be published the names of the parties, the charges made, the result, and the report of any discussion on a point of law which arose in the course of the proceedings. I cannot see that the interests of public justice require any more than that."

What possible harm can be done to the cause of justice by preventing the publication of scabrous particulars and of purely intimate personal matters, and by restricting reports of cases of a domestic nature to essential facts?

Nor can the liberty of the Press be in issue: it is not essential for the maintenance of that liberty that the Press should be free to publish unnecessary, harmful, and often cruel details, even though in practice it exercises in this country a better discretion at the present time. We do not reflect on the general conduct of our popular journalism when we say that the present Bill should become law. No one suggests that because we regulate the sale of poisons by appropriate legislation that the people of New Zealand are distinguished for their homicidal tendencies. We think that those newspapers who object to the Bill do not realize the implications to which their objections lead, and we regret that misleading implications of this nature should even be suggested.

Another objection which has been made is that cl. 5 of the Bill—prohibiting publication of unauthorized photographs or drawings of persons engaged in judicial proceedings—does not appear in the Judicial Proceedings (Regulation of Reports) Act, 1926 (Gt. Britain). It does not; for the very good reason that it was already part of the statute law of Great Britain when the 1926 Act was passed: see s. 41 of the Criminal Justice Act, 1925: *11 Halsbury's Statutes of England*, p. 420.

We trust that the Bill will find its way to the statute-book during the present session. It was supported last year on its introduction by a unanimous vote of the Council of the New Zealand Law Society. All the best elements of public opinion are behind the Minister of Justice who has introduced the Bill as a Government measure.

Summary of Recent Judgments.

FULL COURT
Wellington.
1934.
April 20, 23, 26, 27; June 29.
Myers, C.J.
Herdman, J.
Reed, J.
Blair, J.

NELSON v. BRAISBY (No. 2).

Mandated Territory—Western Samoa—Regulations made by Governor-General in Council "for peace, order, and good government" of Western Samoa—Scope of s. 45 of Samoa Act, 1921, authorizing such Regulations—Whether *ultra vires*—Whether Maxim *Delegatus non potest delegare* applicable—Whether Power to provide Imprisonment for Breach of Regulations—Seditious Organizations Regulations providing Imprisonment or Fine for certain Acts in connection with Mau if proclaimed by Administrator "a seditious organization"—Whether repugnant to s. 102 of Act dealing with sedition—Samoa Act, 1921, ss. 45, 46, 102; Samoa Seditious Organization Regulations, 1930; Acts Interpretation Act, 1924, s. 25.

Western Samoa is administered by the Government of the Dominion of New Zealand, under a mandate dated December 17, 1920, conferred upon His Britannic Majesty to be exercised on his behalf by the said Government (named in the instrument as "the Mandatory"). The Mandatory by art. 2 is given "full power of administration and legislation over the Territory, subject to the present mandate, as an integral portion of the Dominion of New Zealand, and may apply the laws of the Dominion of New Zealand to the Territory, subject to such local modifications as circumstances may require."

By Imperial Order in Council made on March 11, 1920, under the Foreign Jurisdiction Act, 1890 (Imp.), His Majesty in Council ordered that the Parliament of New Zealand should have full power to make laws for the peace, order, and good government of the Territory of Western Samoa subject to and in accordance with the Treaty of Peace, 1919. The Samoa Act, 1921, was passed by the Parliament of New Zealand to make permanent provision for such peace, order, and good government.

The Samoa Seditious Organizations Regulations, 1930, were made by the Governor-General in Council under the powers conferred by s. 45 of the Samoa Act, 1921.

On January 13, 1930, the Administrator of Western Samoa, pursuant to the power purporting to be conferred upon him by the regulations, declared the Mau to be a seditious organization, the Mau being a nationalist organization of inhabitants of Western Samoa which has caused serious trouble since the mandate commenced to operate and whose object, as shown by documents found upon appellant's premises, was "to set up a separate government in opposition to the Administration and a plank in whose platform is that the members shall refuse to pay taxes to the Government and shall impose their own taxes and fines; and an independent administration is indicated with provision for paid president, ministers, and secretaries."

Section 102 of the Samoa Act, 1925, defines "seditious intention," "seditious words," "seditious libel," and "seditious conspiracy," and makes liable to two years' imprisonment everyone who speaks seditious words or publishes a seditious libel or is party to a seditious conspiracy.

The appellant was convicted on three charges brought under the said regulation, two of addressing a meeting held by or for the purposes of a seditious organization, and the third of aiding, abetting, or encouraging the continuance of the activities and objects of a seditious organization—to wit, the Mau. He was sentenced on each charge to eight months' imprisonment with hard labour and to ten years' exile, the sentences to take effect concurrently, exile being authorized by s. 21 of the Samoa Act, 1921.

On appeal from the judgment of the Chief Judge of Western Samoa,

P. B. Cooke and **Shorland,** for the appellant; **Johnstone,** K.C., and **A. E. Currie,** for the respondent.

Held, per Curiam, That s. 45 of the Samoa Act is *intra vires* the New Zealand Legislature because by the mandate New Zealand has full and exclusive power of administration and legislation over Samoa, subject only to the terms of the mandate. Therefore, the Parliament of New Zealand may delegate all or any of its powers to the Governor-General in Council.

Tagaloa v. Inspector of Police, [1927] N.Z.L.R. 883, followed.
In re Tamasese, [1929] N.Z.L.R. 209, discussed and explained.
R. v. Christian, [1924] App. D. (S. Af.) 101, and **Jolley v. Mainka,** (1933) 49 C.L.R. 242, referred to.

Held, by *Myers,* C.J., *Herdman* and *Reed,* JJ., 1. That the words "peace, order, and good government" in s. 45 are not limited (on the ground submitted, *viz.,* that the Samoa Act, 1921, lays down a general code of law) to conferring upon the Governor-General in Council authority to make regulations dealing only with minor and subsidiary matters, but are apt to authorize the exercise of a wide discretion and to enable a state of emergency, with which the existing laws may be inadequate to cope, to be dealt with promptly.

2. That the regulations were not *ultra vires* the New Zealand Legislature on the ground submitted—*viz.,* that the Governor-General was exercising a delegated power and had sub-delegated his power or authority to the Administrator. Assuming that the Governor-General in Council's authority under s. 45 was that of a delegate, there was no sub-delegation of legislative power. So far as the regulations involved a matter of legislation, such legislation was conditional and anything left to the Administrator to do was a matter of administration only.

Reg. v. Burah, (1878) 3 App. Cas. 889; **Hodge v. The Queen,** (1883) 9 App. Cas. 117; **Powell v. Apollo Candle Co., Ltd.,** (1885) 10 App. Cas. 282; **Baxter v. Ah Way,** (1909) 8 C.L.R. 626; and **Welsbach Light Co. of Australasia, Ltd. v. Commonwealth of Australia,** (1916) 22 C.L.R. 268, applied.

3. That regulations under s. 45 can validly make provision for imprisonment for their breach: subs. (1) conveying the widest powers without qualification, subs. (2) including the word "fines" referring to revenue matters and not limiting the powers given by subs. (1).

Held, by *Herdman* and *Reed,* JJ., That "seditious organization" in the regulations had a special meaning assigned to it—*viz.,* "an organization declared by the Administrator to be seditious," and that none of the offences of which appellant was convicted was bad upon the ground that the regulations creating them were repugnant to s. 102 of the Samoa Act, 1921, on the ground submitted—*viz.,* that they took away the right of a person charged thereunder to require the prosecution to prove the fact of sedition. The new offences created provided that no person should do any of the prohibited acts in connection with a proclaimed organization, and did not involve a seditious mind or intention.

Held, by *Myers,* C.J., and *Blair,* J., That the word "seditious" in the regulations is used in its ordinary sense and has the same meaning and involves the same applications as in s. 102 of the Act.

Held, by *Myers,* C.J., That, while in the case of the two charges of addressing a meeting, the offences did not involve a seditious mind or intention and the convictions in respect of which should be affirmed, the conviction for aiding and abetting the activities or objects of a proclaimed seditious organization should be quashed on the ground that such an act necessarily connotes a seditious mind, and that a person charged with such an act is by the regulations deprived of his right to require that the fact of sedition should be proved: to that extent para. 4 of Reg. No. 3 was inconsistent with s. 102, and, therefore, invalid.

Held, by *Blair,* J., That all the convictions should be quashed upon two grounds:—

(*a*) That the regulations so far as they purported to impose imprisonment were invalid, the generality of the powers conferred by s. 45 (1) being materially cut down by subs. (2), the Legislature having conferred upon the Governor-General in Council authority to impose "fines" which should bear its ordinary meaning, but abstained from conferring power to impose greater punishment, and, despite the full powers given in subs. (1) of s. 45, power was given in several other places in the Act to the Governor-General in Council to make regulations.

(*b*) That that portion of the regulations which was the authority for the three convictions was repugnant to s. 102 of the Samoa Act, 1921, and therefore invalid, in all the offences set out in the regulations sedition being a necessary ingredient and the gravamen of the charge.

As to the effect of the equal division of opinion on the third conviction,

Held, per Curiam, That the position of the Court sitting as a Supreme Court corresponded with that of a Divisional Court in England sitting in its appellate jurisdiction, whose practice, where the Judges are equally divided in opinion—as was the case here with regard to the conviction for aiding and abetting—is that the judgment appealed from stands; and that practice should be followed.

All three convictions were therefore affirmed. The sentence, however, by the unanimous opinion of the Court, was varied to the extent and upon the considerations set out in the judgments.

Solicitors: Chapman, Tripp, Cooke, and Watson, Wellington, as agents for **Klinkmueller and Pleasants,** Apia, Western Samoa, for the appellant; **Crown Law Office,** Wellington, for the respondent.

Case Annotation: *R. v. Christian,* E. & E. Digest Supplement No. 9 to Vol. 15, p. 58, note 6515 *i*; *R. v. Burah, ibid.* Vol. 17, p. 450, para. 197; *Hodge v. The Queen, ibid.* pp. 427-28, para. 90; *Powell v. Apollo Candle Co., ibid.* p. 424, para. 64; *Baxter v. Ah Way, ibid.* p. 419, note *t*; *Welsbach Light Co. of Australasia v. Commonwealth of Australia, ibid.* pp. 171-72, note *l.*

FULL COURT
Wellington.
1934.
June 29.
Myers, C.J.
Reed, J.
Blair, J.

NELSON v. BRAISBY (No. 3).

Practice—Appeals to Privy Council—Judgment on Appeal from High Court of Samoa—Whether Supreme Court has Jurisdiction to grant Leave to appeal to Privy Council—Samoa Act, 1921, s. 96.

Motion for leave to appeal to the Judicial Committee of His Majesty's Privy Council from the judgment reported *supra.*

P. B. Cooke, with him **Shorland,** in support; **A. E. Currie,** to oppose.

Held, That the Supreme Court of New Zealand has no jurisdiction to grant leave to appeal to the Privy Council from a judgment of the Supreme Court on an appeal from the High Court of Western Samoa.

Leave refused.

Solicitors: Chapman, Tripp, Cooke, and Watson, Wellington, as agents for **Klinkmueller and Pleasants,** Apia, Western Samoa, for the appellant; **Crown Law Office,** Wellington, for the respondent.

NOTE:—For the Samoa Act, 1921, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, 1908-1931, Vol. 2, title *Dependencies and Mandated Territories,* p. 791.

SUPREME COURT
New Plymouth.
1934.
May 23; June 21.
Myers, C.J.

COMMERER
v.
THE STRATFORD CARRYING COMPANY, LIMITED.

Negligence—Motor-vehicles approaching Intersection from Opposite Directions—Duty of Driver altering his Course and Turning to Right into Intersecting Street and so to cross Line of Route of other Motor-vehicle.

It is the duty of the driver of a motor-vehicle, who intends to alter his course and go down an intersecting street—before turning to his right across the line of route of a vehicle within a short distance and approaching along the street from which the turn is being made—to stop until the approaching vehicle has crossed his line of route, unless he is satisfied that the driver of the approaching vehicle has seen and appreciated his signal of intention to make the turn.

Warren v. Heinzel, [1923] S.A. S.R. 429, referred to.

Counsel: **Chrystal,** for the appellant; **North,** for the respondent.

Solicitors: **Andrew Chrystal,** Eltham, for the appellant; **Horner and North,** Hawera, for the respondent.

COURT OF APPEAL
Wellington.
1934.
June 18, 21.
Myers, C.J.
Reed, J.
Ostler, J.
Johnston, J.

IN RE LYON (DECEASED).
LYON
v.
PUBLIC TRUSTEE (No. 2).

Practice—Appeals to the Privy Council—Appeal as of Right—Whether Court may impose Special Conditions—Privy Council Appeals Rules, R. 5 (a).

Motion by respondent for conditional leave to appeal to the Judicial Committee of His Majesty's Privy Council from the judgment of the Court of Appeal, reported p. 101, *ante*.

O'Leary, with him **E. S. Smith,** for the respondent in support; **O. C. Mazengarb,** for the appellant to oppose.

Held, If a party is entitled to appeal to the Privy Council as of right, the Court can impose only such conditions as the rules prescribe.

Conditional leave to appeal granted.

Solicitors: **Rout and Milner,** Nelson, for the appellant; **The Solicitor,** Public Trust Office, Wellington, for the respondent; **Pitt and Moore,** Nelson, for the creditors.

FULL COURT
Wellington.
1934.
June 20.
Myers, C.J.
Reed, J.
Johnston, J.

GORDON
v.
WAIHI GOLD-MINING COMPANY, LIMITED (No. 2).

Mining—Master and Servant—Injury caused to Miner by Negligent Fellow Servant—Compensation—Limitation of Amount—Mining Act, 1926, s. 295—Workers' Compensation Act, 1922, s. 67.

Special case reserved by the Warden's Court pursuant to s. 365 of the Mining Act, 1926, for the opinion of the Supreme Court.

The question for the opinion of the Supreme Court was: Whether by virtue of s. 67 of the Workers' Compensation Act, 1922, the plaintiff's right to damages is in law limited to the sum of £1,000?

Section 295 of the Mining Act, 1926, is in part as follows:—

"(1) If any person employed in or about any mine suffers any injury in person, or is killed, owing to the non-observance in such mine of any of the provisions of this Act, such non-observance not being solely due to the negligence of the person so injured or killed, or owing in any way to the negligence of the owner of such mine, his agents or servants, the person so injured, or his personal representatives, or the personal representatives of the person so killed, may recover from the owner compensation by way of damages as for a tort committed by such owner.

* * * * * * *

"(3) Such compensation may be recovered under the provisions of the Workers' Compensation Act, 1922, or the Deaths by Accidents Compensation Act, 1908, whichever is applicable, according to the circumstances of each particular case."

P. J. O'Regan, for the appellant; **Richmond** and **West,** for the respondent company.

Held, That the meaning of subs. 3 is that such provisions of the Workers' Compensation Act, 1922, or the Deaths by Accidents Compensation Act, 1908, as the case may be, as are applicable must be read into the subsection.

Consequently, the maximum amount of compensation recoverable by way of damages in any one cause of action by a person who is employed in or about a mine and who is injured by the negligence of a fellow servant, is limited to £1,000 by virtue of s. 67 of the Workers' Compensation Act, 1922.

Anderson v. Greymouth and Point Elizabeth Railway and Coal Co., (1897) 16 N.Z.L.R. 30, approved and applied.

Judgment of *Ostler, J.*, p. 85, *ante*, affirmed.

Solicitors: **P. J. O'Regan and Son,** Wellington, for the appellant; **Buddle, Richmond and Buddle,** Auckland, for the respondent.

NOTE:—For the Mining Act, 1926, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, 1908-1931, Vol. 5, title *Mines, Minerals and, Quarries*, p. 943; Workers' Compensation Act, 1922, *ibid*, title *Master and Servant*, p. 597.

SUPREME COURT
Dunedin.
1934.
March 8;
June 29.
Kennedy, J.

BELL v. BAKER AND OTHERS.

Mining—"Right of priority"—Owner prospecting his own Land—Application by him for a Special Alluvial Claim—Prior Grants of Ordinary Prospecting Licenses over Land to Objectors to his Application—Application by Objectors for Resumption of Land—Whether Holders of Prospecting Licenses had "right in priority" to owner of Land as Applicant for Alluvial Claim—Whether any Right of Resumption—Warden's Discretion—Mining Act, 1926, ss. 52, 55 (f), 58, 71, 73 (l), 76, 90, 169 (c), (y), (2); Reg. 14 (i).

Special case reserved under s. 365 of the Mining Act, 1926.

Bell acquired on July 4, 1933, freehold land situate in a mining district but not Crown land open for mining. By virtue of s. 52, however, it was open for prospecting for gold subject to the provisions later contained in the Act. Since his purchase he had been prospecting the whole of the land in compliance with s. 55 (*f*) of the Mining Act, 1926. He filed an application on July 20, 1933, for a special alluvial claim over the land, and the application came on for hearing on September 19, 1934. Prior to the latter date, certain persons, hereinafter called the "objectors," had applied for ordinary prospecting licenses over the land before Bell acquired it, grants to them had been recommended and awaited the Minister's consent when Bell purchased the land, and licenses were granted prior to September 19, 1934. The objectors opposed the grant to Bell. After he had applied for a mining privilege the objectors made application to the Minister of Mines to have the land resumed for mining purposes.

On a special case reserved by the Warden for the opinion of the Supreme Court.

Held, That, in view of s. 76 (*d*) which excepts from prospecting "any private land the owner or occupier whereof satisfied the Warden that the same is being prospected as vigorously and continuously as would be required in the case of a licensee under a prospecting license," s. 73 (*l*), which provides that "the holder of a prospecting license shall, in such manner and subject to such conditions as are prescribed, have the *right in priority* to any other person of obtaining a license for any mining privilege in respect of the land to which his prospecting license relates . . . Provided also that in every case such *right* shall be subject to the provisions of s. 90 thereof"—viz., as to resumption—does not operate to give priority over the owner and occupier, where the latter is applying for a mining privilege over his own land not being an ordinary prospecting license, and where he opposes any grant to a stranger in derogation of a grant to himself. The existence of the prospecting license, if not cancelled under reg. 14 (1), was no hindrance in the circumstances to the grant of the mining privilege applied for, and such licenses were in fact in the nature of paper rights which might, in any event, be determined by effluxion of time or earlier surrender or forfeiture or abandonment.

So long as the mining privilege granted under s. 58 continues in force, the land contained therein is not to be resumed for mining purposes nor is any prospecting license to be granted in respect thereof.

This not being one of the cases specified in s. 169 (9), the application might be granted or refused by the Warden in his discretion under s. 169 (2).

Hence the application by Bell did not require the consent of the Minister of Mines, the grant was in the discretion of the Warden, and the circumstances of the case afforded no grounds upon which such discretion should be exercised against the applicant, Bell.

Parcell, for applicant; **J. S. Sinclair,** for J. W. Gibson and W. H. Gibson; **Bodkin,** for Baker and other objectors.

Solicitors: Brodrick and Parcell, Cromwell, for the applicant; **Duncan and Jamieson,** Ranfurly, for J. W. and W. H. Gibson; **Bodkin and Sunderland,** Alexandra, for the other objectors.

NOTE:—For the Mining Act, 1926, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, 1908-1931, Vol. 5, title *Mines, Minerals, and Quarries,* p. 543.

SUPREME COURT
Christchurch.
1934.
Feb. 22; May 7.
Johnston, J.

P. v. P.

Divorce and Matrimonial Causes—Practice—Costs—Decree *nisi* on Ground that Husband a Person of Unsound Mind—Petitioner's Costs payable by Respondent's Estate.

Petition for Divorce by wife on the grounds set out in s. 10 (*g*) of the Divorce and Matrimonial Causes Act, 1928. The learned Judge granted a decree *nisi,* but reserved the question of costs. In accordance with the New Zealand practice, the petitioner had undertaken to pay the costs of counsel for the Solicitor-General, representing respondent's committee.

Archer, for the petitioner; **A. W. Browne,** for the Solicitor-General.

Held, That a wife, petitioner, having obtained a decree *nisi* on the ground of her husband's unsoundness of mind and unlikeliness of recovery within the meaning of s. 10 (*g*) of the Divorce and Matrimonial Causes Act, 1928, her costs—including the costs of the Solicitor-General representing the respondent, which petitioner undertook to pay—were payable by the respondent husband's estate.

Order accordingly.

Solicitors: K. G. Archer, Christchurch, for the petitioner; **The Crown Law Office,** Wellington, for the respondent.

SUPREME COURT
In Chambers.
Napier.
1934.
June 6; July 14.
Blair, J.

IN RE AN APPLICATION BY C. AND OTHERS.

Mortgagors and Tenants Relief—Variation of Orders granting Relief—Improvement in Prices for Wool and Stock—Practice of the Court—Mortgagors and Tenants Relief Act, 1933, s. 17.

Although s. 17 of the Mortgagors and Tenants Relief Act, 1933, gives the Court full discretion to vary orders, the fact that prices have improved since an order for remission of interest was made is not alone a ground sufficient to justify the Court's rescinding any such order.

So held, by *Blair,* J., five other learned Judges concurring in his view of the Court's practice when administering s. 17 of the Act, on an application by mortgagees for review of an order providing for remissions of interest.

Counsel: D. F. Scannell, for the applicants; **Grant,** for the Guardian Trust and Executors Co. of New Zealand, Ltd.; **J. Mason** and **A. E. Lawry,** for certain beneficiaries; **Amyes,** for the mortgagee of certain beneficiaries.

Application dismissed.

Solicitors: Carlile, McLean, Scannell, and Wood, Napier, for the mortgagors; **Sainsbury, Logan, and Williams,** Napier, for the mortgagees.

NOTE:—For the Mortgagors and Tenants Relief Act, 1933, see Kavanagh and Ball's *The New Rent and Interest Reductions and Mortgage Legislation,* 2nd Ed., p. 1,

SUPREME COURT
In Chambers.
Timaru.
1934.
June 15.
Johnston, J.

IN RE A MORTGAGE, W. TO F.

Mortgagors and Tenants Relief—Application of Principle that Relief should be refused to Mortgagor in Hopeless Position—Consideration of Facts in each Case—Mortgagors and Tenants Relief Act, 1933, s. 9.

The statement in *In re an Instrument by Way of Security, S. E. H. to A. B.,* [1932] N.Z.L.R. 1331, that relief should not be granted where the mortgagor is in a hopeless position and there is no possibility of his pulling through, is not applicable where the mortgage is to secure balance of purchase-money, the property is well managed, and the only creditor other than the mortgagee is a stock company which has been financing the mortgagor in the past, and, knowing his financial position, is still prepared to do so in the future.

In re an Instrument by Way of Security, S. E. H. to A. B., [1932] N.Z.L.R. 1331, distinguished.

In re a Mortgage, C. to the State Advances Superintendent, [1933] G.L.R. 53, and **In re a Mortgage, W. and Another to B.,** [1932] N.Z.L.R. 1378, referred to.

Counsel: Cuthbert, for the mortgagor; **Nicoll,** for the mortgagee.

Solicitors: R. Kennedy, Ashburton, for the mortgagor; **G. C. Nicoll,** Ashburton, for the mortgagee.

NOTE:—For the Mortgagors and Tenants Relief Act, 1933, see Kavanagh and Ball's *The New Rent and Interest Reductions and Mortgage Legislation,* 2nd Ed., p. 1.

SUPREME COURT
Wellington.
1934.
Feb. 21; June 5; July 10.
Myers, C.J.

DUFF AND OTHERS v. GALVIN AND OTHERS.

Companies—Private Company—Appointment of Directors—No Provision in Articles of Association thereon—Ordinary Resolution fixing Number thereof—Invalidity—Companies Act, 1908, s. 69.

Section 69 of the Companies Act, 1908, provided that "Unless directors are appointed by the articles of association or until directors are appointed in the manner provided by the articles of association, the subscribers to the memorandum of association of any company shall be the directors of the company."

Where under that Act the articles of association of a private company did not appoint directors and contained no provision for their appointment, an ordinary resolution fixing the number of directors and the subsequent election of that number of directors were held invalid. The proper course for the company to have adopted, if the subscribers to the memorandum of association were not to continue to be the directors, was to make the necessary amendment to the articles of association by special resolution or by entry in the company's minute-book pursuant to s. 168 (6) of the Act.

Ho Tung v. Man On Insurance Co., Ltd., [1902] A.C. 232, referred to.

Counsel: Foden, for the plaintiffs; **M. O. Barnett,** for the defendants.

Solicitors: Foden and Thompson, Wellington, for the plaintiffs; **M. O. Barnett,** Wellington, for the defendants.

Case Annotation: *Ho Tung v. Man On Insurance Co., Ltd.,* E. & E. Digest, Vol. 9, p. 82, para. 321.

NOTE:—For the Companies Act, 1908, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, 1908-1931, Vol. 1, title *Companies,* p. 827.

SUPREME COURT
New Plymouth.
1934.
May 24; July 2.
Myers, C.J.

CHRISTOFFEL v. MOKAU COLLIERIES LIMITED (IN LIQUIDATION).

Company—Winding-up—Whether Application to District Land Registrar to notify upon the Register Re-entry and Recovery of Possession of Leasehold Premises is an "action or other proceeding" against a Company in Liquidation—Companies Act, 1908, s. 244 (a); Companies Act, 1933, s. 384 (4)—Land Transfer Act, 1915, s. 99 (1).

Application under s. 244 (*a*) of the Companies Act, 1908, for leave to apply to the District Land Registrar to register notice of re-entry in respect of a sub-lease to the Mokau Collieries, Ltd. (in Liquidation).

C. H. Croker, in support; **Macallan,** to oppose.

Held, That an application made to the District Land Registrar under s. 99 (1) of the Land Transfer Act, 1915, to notify upon the register and upon the outstanding instrument of title re-entry and recovery of possession of leasehold premises is not "an action or other proceeding against the company" within the meaning of s. 244 (*a*) of the Companies Act, 1908.

Solicitors: Croker and McCormick, New Plymouth, for the plaintiff; **Govett, Quilliam, and Hutchen,** Wellington, for the defendant.

NOTE:—For the Companies Act, 1908, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, 1908-1931, Vol. 1, title *Companies*, p. 827.

SUPREME COURT
Christchurch.
1933.
Sept. 18.
1934.
Mar. 22; June 18.
Kennedy, J.

IN RE ANDREW (DECEASED), ANDREW AND ANOTHER v. ANDREW AND OTHERS.

Will—Trust to Divide "balance" of Residuary Estate (after Legacies of Specified Annuity to Widow and of Specified Sum to be divided between Testator's Children)—Whether Balance a True Particular Residue including Lapsed Legacies or Amount remaining after Sums equivalent to Payments directed to be made are in any Event deducted.

Originating summons for the interpretation of the will of Charles Andrew, of Greenpark, farmer, who died on November 26, 1917.

Testator directed his trustees to stand possessed of his residuary estate upon the following trusts: (*a*) To pay his wife an annuity of £700; and after his death or remarriage, (*b*) to divide the sum of £14,000 between all his children, with provision for children of a child who predeceased him; (*c*) *upon trust to divide the balance of his residuary estate (after payment of the said annuity of £700 under cl. (a), and the payment of the said sum of £14,000 under cl. (b), amongst brothers and sisters of the testator).*

Testator left him surviving a widow, but no children.

Upon originating summons for the interpretation of para. (*c*) as italicized.

Dr. A. L. Haslam, for the plaintiffs; **Leete,** for A. C. and F. J. Andrew; **Donnelly,** for the other defendants.

Held, 1. That the word "balance" was equvailent to residue.

Burke Irwin's Trusts, Barrett v. Barrett, [1918] 1 I.R. 350, followed.

(2) That the testator in para. (*c*) had defined a true particular residue so that if in the event no payment was called for or could be made under para. (*a*) or (*b*) the gift conferred by para. (*c*) would include lapsed legacies, and had not defined the last-mentioned gift in such terms that it was not of residue but of the sum remaining after sums equivalent to the payments directed to be made were, in any event, deducted.

Therefore the testator did not die intestate as to the sum of £14,000 in para. (*b*), but that sum was disposed of by para. (*c*).

Burke Irwin's Trusts, Barrett v. Barrett, [1918] 1 I.R. 350, followed.

The principles laid down in **In re Harries' Trust,** (1859) Johns. 199, 70 E.R. 395, applied.

Page v. Leapingwell, (1812) 18 Ves. Jun. 463, 34 E.R. 392; **Easum v. Appleford,** (1839) 5 My. & Cr. 56, 41 E.R. 292; **Green v. Pertwee,** (1846) 5 Hare 249, 67 E.R. 905; and **Simmons v. Rudall,** (1858) 1 Sim. (N.S.) 115, 61 E.R. 45, distinguished.

Question answered: The testator did not die intestate as to the sum of £14,000, but the said sum is disposed of by that part of the will which is referred to in the judgment as para. (*c*).

Solicitors: C. S. Thomas, Christchurch, for the plaintiffs; **A. S. Nicholls,** Christchurch, for the defendants.

Case Annotation: *Burke Irwin's Trusts, Barrett v. Barrett,* E. & E. Digest, Vol. 37, p. 465, note *a*; *In re Harries' Trust, ibid.* p. 468, para. 680; *Easum v. Appleford, ibid.* p. 465, para. 654; *Page v. Leapingwell, ibid.* Vol. 23, p. 424, para. 4953; *Green v. Pertwee, ibid.* p. 462, para. 5342.

Bills Before Parliament.

Reciprocal Enforcement of Judgments Bill—Statutory provision for the enforcement in New Zealand of the judgments of superior Courts in the United Kingdom or in other parts of His Majesty's dominions is already made in the Administration of Justice Act, 1922. That Act is an adaptation of Part II of the Administration of Justice Act, 1920 (Imperial).

By the Foreign Judgments (Reciprocal Enforcement) Act, 1933 (Imperial), provisions coinciding in all material particulars with the provisions of the Administration of Justice Act have been made for the enforcement in the United Kingdom of judgments given by the superior Courts of such foreign countries as agree to enforce the judgments of the superior Courts of the United Kingdom. Differences of minor importance do, however, occur between the Acts of 1920 and 1933, and s. 7 of the latter Act contains provision whereby it can be applied for the enforcement of judgments given by superior Courts within the British dominions; it may be confidently anticipated, therefore, that the earlier Act will soon be virtually superseded by the later Act.

In the present Bill it is proposed to repeal the Administration of Justice Act, 1922, and to adapt the provisions of the Foreign Judgments (Reciprocal Enforcement) Act, 1933 (Imperial), so that they will be applicable to the judgments of all superior Courts, whether foreign Courts or Courts within the British dominions.

The benefits conferred by the Administration of Justice Act, 1922, are conditional on similar benefits being conferred with respect to the enforcement of New Zealand judgments in the countries to which that Act has been applied. The same condition as to reciprocity is preserved under the Bill, but countries that now enjoy the benefits of the present Act will receive the benefit of the new measure without the necessity of further action being taken by them or by the Governor-General in Council.

Before the enactment of the provisions of 1922, s. 56 of the Judicature Act, 1908, made provision for the enforcement in New Zealand of judgments obtained elsewhere within His Majesty's dominions. The operation of that section is not conditional on reciprocal treatment being accorded to New Zealand judgments, and because of that fact it was not thought advisable in 1922, nor is it now thought advisable, that the section referred to should be repealed.

A minor point of difference between the Imperial Act of 1933 and the present Bill has relation to the enforcement of awards. The term "judgment" as defined in the 1933 Imperial Act (unlike the definition in the Administration of Justice Act) does not include awards, the reason being that foreign awards are enforceable in England under the Arbitration (Foreign Awards) Act, 1930. But this leaves uncertain the position of awards made within those parts of His Majesty's dominions to which the new Act is applied in substitution for the earlier Act. The Bill provides for this matter by including awards within the definition of the term "judgments," but excluding from the operation of the Bill all foreign awards that would be enforceable under the Arbitration Clauses (Protocol) and Arbitration (Foreign Awards) Act, 1933.

The Court of Appeal.

A Suggested Reform.

By CLAUDE H. WESTON, K.C.

That portion of the interim report of the Business of Courts Committee in England, recommending the abolition of the office of Lord Justice of Appeal and the return to an appellate system similar to that of the old Court of Exchequer Chamber under which the puisne Judges themselves constituted the Court of Appeal, has given rise to considerable controversy and the better opinion seems to agree with Mr. Justice Talbot who tendered a minority report supporting the existing system.

Several points emerge from the correspondence in the Legal Journals and elsewhere and from the report of the General Council of the Bar upon the suggested change. Unanimity is accorded to the view that the guidance and shaping of the Common Law are in the hands of the Court of Appeal: in short, it is giving England its law. Emphasis is placed upon the leisure for reflection and research, and the opportunity for consultation and discussion which the existing system gives to the Lords Justices of Appeal. It seems to be tacitly admitted that their Lordships "do not lisp and the numbers come," but that ideas are the product of studious contemplation. Their continuous association is also regarded as of value. Further, those Judges better suited by temperament for Banco as opposed to *nisi prius* work gravitate to the Court.

It may seem retrogression to suggest that in New Zealand we change to a system that is on its trial in England; but, if we ask ourselves whether we can improve on our present appellate system, we must confess that it lacks the advantages possessed by the English system. We employ, in general, five Judges to sit upon our Court of Appeal, who are taken direct from the harassing and difficult work of witness actions, kept at it hard for from four to six weeks at each session hearing the cases, and then dispersed to their Judicial Districts to again take up their circuit duties. In many cases they can have little opportunity for research, reflection, or discussion, beyond what they can take from their current work.

If the necessity of reform were conceded, one might venture to suggest that to suit the circumstances existing in New Zealand an Appellate Court be created consisting of the Chief Justice and the two present senior puisne Judges. The Chief Justice *ex officio* would be the permanent President of the Court and on a vacancy occurring amongst the other two members it would be filled by one of the puisne Judges of five years' standing, his appointment to be made by the Governor-General on the recommendation of the members of the Appellate Court. For example, on the retirement of one of the two puisne Judges, forming with the Chief Justice the Appellate Court, his successor would be selected by the Chief Justice, the other member of the Court and himself, and on their recommendation to the Governor-General, appointed from among those of the remaining puisne Judges who had accomplished five years' service on the Bench. In case of the temporary incapacity of one of the members of the Court, a puisne Judge nominated by the Chief Justice would be available. "At Home" (saving Mr. Bernard Shaw's grace) the Lords Justices are appointed by the Prime Minister although their resignations go to the Lord Chancellor.

The Court would, it is suggested, be stationed permanently in Wellington and sit for six months of the year—viz., March, April, June, July, September, and October. The Court could be given authority to hear appeals from Magistrates when convenient and its members could try Full Court cases. Its members would also be available for the Criminal Sessions in February, May, August, and November, and for such other work as might be considered to be of an emergency nature.

The expense of the Court to the country should be no greater than that incurred under our present system. The time of five Judges sitting for three sessions of five weeks each is almost equivalent to that of three Judges sitting for twenty-six weeks during the year. Some adjustment of the circuits might be necessary.

The disadvantage of disturbing the present system lies in depriving the puisne Judges of their opportunity of meeting in Wellington three times in every two years, an opportunity which doubtless assists in attaining uniformity of view in many important matters.

[Since the above article was in our hands, there has come to hand the English Law Society's Report on the Second Interim Report of the Business of Courts Committee, on which the Bar Council's and the Law Society's observations were asked by the Lord Chancellor. The Bar Council, after careful consideration of the common objection that the puisne Judges would be having their decisions reviewed by their collcagues of equal rank one day and themselves be reviewing the decisions of those colleagues of equal rank the next day, goes on to say:

> "The work of an appellate tribunal, particularly in civil cases, differs in many respects from that of a Court of first instance. Experience in Courts of first instance is no doubt eminently desirable in Judges of Appeal, but the work of an appellate tribunal calls for and develops some qualities not required to so great an extent in courts of first instance. The Council feels sure that the co-ordination and consistency so desirable in a Court of Appeal, and especially in what is to be normally a final court of appeal, are best secured by a body of men specially selected for permanent employment in that work, permanently working together, and deliberately recognised as of a higher judicial rank and higher judicial authority than the Judges whose decisions they are called on to review. The public will of necessity regard such an appellate tribunal with more confidence than one constituted of Judges of the same rank as the one from whom the appeal is laid, and might indeed be excused for regarding an appeal from one Judge to three others of the same rank as an unnecessary duplication of expense and delay."

The Law Society is of the same opinion:

> "The Committee disapprove the recommendation that puisne Judges should sit in the Court of Appeal and that no more Lords Justices should be created. They are of opinion that the Court of Appeal should be entirely independent of the Court of first instance. They believe that the public approve of this principle. They do not consider it necessary that Judges of the Court of Appeal should sit as Judges of first instance or that they lose touch with the difficulties of such Judges and with the realities that belong to ordinary life. The Lords Justices have, as a rule, had varied experience as Judges of first instance, and have had long experience at the Bar. In the opinion of the Committee, there is no advantage in doing appellate work and at the same time sitting as a Judge of first instance."

This is strong support for the views expressed in Mr. Weston's previously written article.

The views of other members of the Bar on this subject will be welcomed.—ED., N.Z.L.J.]

Sir Frederick Pollock.

His Interesting Reminiscences.*

Sir Frederick Pollock has given us his reminiscences. A prefatory note, containing "personal dates," says he was born in December, 1845. The long span of his life makes him nearly level with that other jurist who alone is of Sir Frederick's standing in practical jurisprudence–Justice O. W. Holmes who retired recently from the Bench of the United States Supreme Court at the age of ninety—and his book is full of experiences which will be a surprise to those who have looked upon him only as a very learned lawyer. With his mother he saw Sarah Bernhardt in the minor part of Aricie in *Phèdre* at the beginning of her career. "At the end my mother and I said to one another, 'that young woman will go far.'" And the chapter on "The Liberal Arts" in which this occurs has recollections of the English Theatre and the *Comèdie Francaise* in the latter part of the Nineteenth century, which could only come from one who was, as Sir Frederick says of himself, "a born playgoer if such a thing were possible."

These recollections are in the second section of this chapter, the Stage. The first, on Music, shows Sir Frederick Pollock equally interested in the best musicians of the same period. He has very interesting recollections of the early performances of Wagner's operas at Dresden and later in London, and of Joachim.

Turning to the chapter on "The Inns of Court," the reader will find how, in 1931, Sir Frederick Pollock, then treasurer of Lincoln's Inn, promoted a concert in the Old Hall—which had been restored in 1929—in honour of the centenary of Joachim's birth: "Altogether it was a worthy and delightful commemoration of a great master and few things have given me greater pleasure than the part I had in setting it on foot."

We might also diverge with Sir Frederick into the affairs of the Alpine Club and the sort of feat which will qualify for membership, and into fencing and the literature of swordsmanship, in which art and learning he is —or has been—an expert; but here our interest is in the law, and we must get back to our own province. The story of the Pollock family has been told by Lord Hanworth in *Lord Chief Baron Pollock*, published in 1929. David Pollock came from Berwick-on-Tweed to London in the latter part of the Eighteenth century and was saddler to George III and his sons. The saddler's third son Frederick was born in 1783 and became Chief Baron, and the first Baronet. A genealogical tree showing his descent from David Pollock and further back, and his numerous children—twenty-five or so by his two marriages—with their descendants, is appended to Lord Hanworth's book. His son, Sir William F. Pollock, the second Baronet, was Queen's Remembrancer, and was succeeded by his son, Sir Frederick Pollock. Sir Frederick's book contains reminiscences of his grandfather, the Chief Baron, and of his father, the Queen's Remembrancer, but it does not seem to give information about "My Grandson" to whom it is inscribed: "George Frederick *b.* 1928."

When "this six years' darling of a pygmy size" has attained maturity he will be far removed from the mid-Victorian days, and from the Cambridge and Oxford life which Sir Frederick describes at the beginning of the book. The four Masters of Trinity whom he has known begin with Whewell; and names of the members of "The Apostles" whom he recalls will mostly have faded into oblivion. But they are interesting to this generation, and some—Maine, Fitzjames Stephen, and Maitland—will be of permanent importance for students of the Law. They include also Elphinstone, Vaughan Hawkins, and Charles Sanger—"prematurely lost to us only the other day"—whom Sir Frederick describes as "unknown to the world at large," but

> "in high honour in the comparative seclusion of Lincoln's Inn, where a small body of specialists grapple with the intricate problems of our Law of Property."

There is much of literary and philosophical interest in Sir Frederick's book both connected with Oxford and Cambridge and of a wider nature. He gives short appreciations of Jowett; of the four Oxford historians—Stubbs, Freeman, Froude, and York Powell—he had known; and his sketch of Sir Henry Maine is a useful addition to the biographical details we have of the founder—it may be said—of English historical jurisprudence. Maitland came later. Then there are Tennyson, Meredith, Hardy, all of whom Sir Frederick knew; and Browning and Swinburne. But when Swinburne showed him a pleasing aphorism in *Cupid's Whirligig*, a book of 1630: "Man was made when Nature was but an apprentice; but woman when she was a skilfull Mistresse of her Arte," did it not occur to them to guess whether Burns knew of this in:

> "Her 'prentice han' she tried on man,
> An' then she made the lasses, O."

There is the story too, of how Sir Frederick became interested in Spinoza and his work. He does not claim to be a philosopher by profession;

> "but being an amateur in philosophy, besides the exercise and amusement of intellectual athletics, brings with it considerable opportunities of enlarging one's human interests."

In the sphere of legal interest he singles out for special notice his masters in the law, Lindley and James Shaw Willes. In 1870 Lindley was a leading junior in the Chancery Courts, and Pollock became his pupil:

> "By seeing Lindley's work and hearing him explain it, I learnt, as I said later in a published dedication to him, that the law is not a trade, but a science."

Mr. Justice Willes, who was a friend of Pollock's father, chose him as his Associate on the Western Circuit in the summer of 1870, and from Willes he learned the admiration of the Common Law which Sir Frederick has passed on to others. To Willes "a man courageous and accomplished, a Judge wise and valiant," he dedicated his book on *Torts*.

Other Judges to whom Sir Frederick refers are Macnaghten and Bowen:

> "If you ask me who were the greatest English Judges I have known besides Willes, I should say Macnaghten and Bowen";

Lord Justice Chitty—the genealogical tree to which we have referred shows his connection with the Pollocks; and Lord Justice James, whose judgments, "hardly inferior to Jessel's in learning and acuteness, were much more elegant in form." And Sir Frederick Pollock, of course, gives an account of the *Law Reports* and his connection with them. Whether his grandson will appreciate the book or not must be left to the future. To us of the present it is full of interest.

* *For My Grandson.* Remembrances of an Ancient Victorian. By the Rt. Hon. Sir FREDERICK POLLOCK, Bt., K.C. John Murray.

A Monumental Work.

Macdonald on Workers' Compensation (2nd Ed.)*

A Review by P. J. O'REGAN.

The first edition of this work appeared in 1915, when the late Mr. J. W. Macdonald was Solicitor to the Public Trust Office. The volume has proved of much practical use to the profession; but, in the meantime, there has been a great development of case law, and hence it must necessarily become entirely superseded by that now under consideration. Here we have an imposing work of 865 pages, every chapter of which is divided into well-written paragraphs, and, since it is pre-eminently a book of reference, not the least attractive feature is the very copious index which will enable the reader readily to find what he wants, despite the immense mass of detailed information which the learned author has compiled.

During his comparatively short life Mr. Macdonald managed to accomplish much, but assuredly he has in this work left a monument which will not merely perpetuate his memory, but exact the lasting appreciation of the legal profession. The book opens with a very readable and accurate epitome of the history of the subject, and we are enabled thus to realise at a glance, as it were, the immense strides made by legislation to mitigate the harshness of the common law. Thus the work will prove of advantage to law students, as well as to those engaged in the active practice of the profession.

When the legislation of 1897 was under consideration by the House of Lords, the view was expressed by more than one speaker that its effect would be to enable masters and men to settle accident claims by agreement; indeed, the Home Secretary stated that he looked forward to the time when committees would be established to settle such questions between employers and men. No doubt legislators had in mind the copious crop of litigation which followed the enactment, first, of the Fatal Accidents Act, 1845, and, secondly, of the Employers' Liability Act, 1881. We have only to glance at the formidable index of cases in Mr. Macdonald's book to realise how completely this prediction has been falsified, and we grasp the rationale of this unlooked-for result by the very valuable chapters on the judicial interpretation of such words and phrases as "accident," "arising out of the employment," "average weekly earnings," &c. Incidentally the historical development of these words and phrases affords a complete answer to those who would deprecate the great public service rendered by our profession; nor can it be maintained for a moment that there has been any improper extension by Judges of the language employed by legislators to clothe their meaning.

An accident is usually defined as an unforeseen event, but not until legislation compelled attention to it was the wide meaning of the word apprehended, doubtless for the reason that the occasion had never previously arisen to give the word judicial consideration. Were a man gored to death by a bull or killed by a wild animal in the course of his employment, we would have no hesitation in saying that he had been killed under circumstances entitling his dependants to compensation, and hence we understand the rationale of the decision of the House of Lords in *Nisbet v. Rayne and Burn* where it was held that a man murdered in the course of his employment had been killed by accident. That decision, indeed, has been followed in New Zealand on at least one occasion, the victim being a pay-clerk who habitually carried money at certain intervals from Greymouth to Runanga to pay coal-miners there. Undoubtedly the word "accident" has been extended to cases where medical men would say that the deceased had died from natural causes. It has been laid down by an eminent Judge in a claim for damages at common law, however, that a defendant cannot escape liability by pleading that the injured person had a weak heart or a thin skull; and so we are not surprised, viewing the cases in retrospect, to find that a worker suffering from heart disease or hardened arteries, who has collapsed by exertion incidental to his employment, has been held to have died as the result of injury by accident.

The historical résumé in Mr. Macdonald's book, explained as it is by very copious reference to cases, makes quite fascinating reading, and must go far to promote interest in the subject and to popularise his book. Obviously the work has entailed much laborious investigation, and not the least formidable task has been to sift from the mass of judgments the pith of each case. Legislation throughout the British Empire on the subject of workers' compensation has been carefully scanned, and there seems to be a record of every reported case, usually with appropriate comments.

In such a work, the most competent author must needs have assistance, and Mr. Macdonald has accordingly to give credit to Messrs. E. S. Smith and J. Byrne, Assistant Solicitors to the Public Trust Office, for their co-operation and assistance. It remains to be added that the printing has been well done and that the Appendices and Index of Subject Matter, covering 68 and 85 pages respectively, are attractively presented.

It is impossible to do justice to the work within the limits of space at my disposal; but it may be safely commended to the profession as a masterly exposition of a subject of every-day practical importance.

Where Sir Henry Irving Differed.—Sir Henry Irving was once a witness in a case of street robbery. The thief's counsel roared at the distinguished actor: "At what hour did this theft happen?"

"I——— I think———," began Sir Henry.

The lawyer interrupted: "It isn't what you *think* that we want to know."

"Don't you want to know what I think?" the actor asked mildly.

"I do not!" counsel snapped.

"Well, then," Sir Henry replied, "I might as well leave the witness-box. I cannot talk without thinking. I'm not a lawyer."

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* **Macdonald's Law Relating to Workers' Compensation in New Zealand,** Second Edition, by the late J. W. Macdonald, C.M.G., Barrister and Solicitor, Public Trustee, assisted by E. S. Smith, M.A., LL.B., and J. Byrne, LL.M., Assistant Solicitors to the Public Trust Office; pp. 764 + ci. Butterworth & Co. (Aus.) Ltd., Wellington and Auckland.

New Zealand Law Society.

Council Meeting.

A meeting of the Council was held on Friday, June 29, in the Supreme Court Building, Wellington. The President, Mr. C. H. Treadwell, occupied the Chair.

The District Societies were represented as follows: Auckland, by Messrs. G. P. Finlay, J. B. Johnston, L. K. Munro (Proxy); Canterbury, Mr. A. T. Donnelly; Gisborne, Mr. C. A. L. Treadwell; Hamilton, Mr. F. A. Swarbrick; Hawkes' Bay, Mr. H. B. Lusk; Marlborough, Mr. P. B. Cooke; Nelson, Mr. J. Glasgow; Otago, Messrs. F. B. Adams, C. L. Calvert, and R. H. Webb; Southland, Mr. S. A. Wiren; Taranaki, Mr. J. C. Nicholson; Wanganui, Mr. R. A. Howie; Westland, Mr. A. M. Cousins; and Wellington, Messrs. H. F. O'Leary, C. H. Treadwell, and G. G. G. Watson. The Treasurer, Mr. P. Levi, was also present.

Actions by or against Government Departments.—The following report was received:—

"In pursuance of the resolution passed by the Council on the 29th September, 1933, a deputation consisting of Messrs. C. H. Treadwell, H. F. O'Leary, G. G. G. Watson, and the Secretary waited on the Prime Minister on the 13th June, 1934, to ask that the Government should take up the Bill prepared by Mr. Ziman.

"After the Bill had been outlined, the Prime Minister desired to know what the law was in England, pointing out that there had been no request for amendment in New Zealand for many years. On being told that the English law was at present the same as our own, but that in most of the Australian States the system advocated in the proposed Bill was in force, Mr. Forbes stated that he would be pleased to go into the representations of the deputation and see if the required amendments could be made."

The Secretary reported that a letter had just been received from the Associated Chambers of Commerce, enclosing an article on the privileges enjoyed by Government trading departments, and asking that the Society should assist in making representations to the Government to have these departments placed on the same footing as private traders.

It was decided to join with the Chambers of Commerce as requested.

Registration of Chattel Instruments.—The following report was received:—

"In pursuance of the resolution at the last meeting of the Council the Committee has again considered the question of place of registration under the Chattels Transfer Act.

"It was suggested at the meeting that the best course might be to have provision made that particulars of all chattel registrations should be forwarded to the Registrar of the Supreme Court at Wellington. If this were done a search in the Wellington Office would indicate whether any particular person had given an instrument by way of security in any part of the Dominion.

"We are satisfied that this proposal is not practicable on account of the enormous number of registrations under the Act. A very large staff would be required to make the necessary entries; it would be necessary to prepare a new list of existing registrations; in many cases there would be substantial delay between registration and the completion of the entries in Wellington; a search would take considerable time; and in many cases particulars of a registration would almost certainly be overlooked.

"We have carefully considered the suggestion made by the Under-Secretary for Justice that all chattel instruments should be registered at the office in the Provincial District nearest the place where the chattels are situated. The advantage of such a system would be that only one search need be made in order to ascertain whether any instruments were registered against any particular chattels.

"In our opinion, however, the disadvantages of such an alteration outweigh the advantages. It would probably be necessary for regulations to be made exactly defining the areas of registration for each Registry in a Provincial District. Whatever method were adopted there would certainly be many properties partly in one area and partly in another. It may be answered that in such a case provision should be made for registration at the registration offices for both areas. We think, however, that many difficulties might arise on account of portions of a property changing hands, and for other reasons. If the actual situation of the chattels at the time of the granting of the instrument were made the test, the chattels might be moved from one area to an adjoining area. In many cases, however clear the regulations might be, a solicitor would be obliged to make a detailed investigation before he could be satisfied as to the area within which registration should be effected. We think that too great a burden and too great a liability would be imposed upon practitioners. Incidentally it would probably be necessary to re-write the present registers. Moreover, the great advantage under the present system of having all registrations in a District sent to the chief town in that District would apparently be lost.

"Under the present system solicitors practising in places such as Hamilton and Palmerston North are obliged to have searches made both in the main registration centre and also in a local registry. This may at times be inconvenient, but no expense is incurred by practitioners. The solicitors' obligations in searching are simple and without great difficulty.

"The Under-Secretary for Justice has already stated that the Government is not prepared to arrange for duplicate lists of registrations to be sent from the main centres to the local registration offices. We are inclined to think that even if the Under-Secretary were to agree to do this it would not be safe for a solicitor to rely upon any such duplicate lists, and that it would still be necessary to have a search made at the main registration centre. It is obvious that many registrations take place, and many particulars of registration are received in a main registration centre during the time that would elapse between the dates upon which such duplicate particulars would be received at the local offices.

"In view of our conclusions we have not discussed the matter any further with the Under-Secretary as we think that the matter should first be considered by the Council."

It was decided to adopt the report of the Committee and to let the matter drop.

Audit Regulation 22 (b).—The following report was received from the Audit Committee:—

"Regulation 22 (b)—Partly cancelled titles.

"If a title is deposited by a solicitor and sections are being sold from time to time, it is clear that the only way of verifying particulars of the remaining land is by searching. I have seen the Registrar-General of Lands and he states that the policy of the Department is not to make searches, and he would not consider starting such a practice. He is, however, still prepared, if an auditor wrote to him asking if a certain title was deposited on a certain date and was held by the Department, to reply stating that it was or was not as the case may be.

"It seems to us that the auditors' only other method of dealing with the matter would be to take a clerk from the solicitors' office and inspect the title with him, a practice which has been adopted by the writer. It has been suggested to me that the accountants are not anxious to do this as it might involve them in doing searching which is legal work. Furthermore, it would involve them in spending a great deal of time in searching. I suggest, however, that it is not really searching that is required, but merely the inspection of titles, produced by the Office at the request of the solicitor or clerk, in order to enable the auditor to certify the statement prepared by the solicitor."

It was decided to send the report to Messrs. Young, White, and Courtney on behalf of the Accountants' Society.

Audit Regulations—Delay in Nominating New Auditor.—The following letter, received from the Auckland District Law Society, had been submitted to the Audit Committee for their opinion:—

"In two instances recently in this District where Auditors approved by the Council have relinquished their positions, the practitioners concerned have neglected for a considerable

time to nominate fresh auditors in their stead. It appears that there is nothing in the Regulations compelling the nomination of other auditors under these circumstances or enabling the Council to take action to see that such is done, and I am directed to bring before the notice of your Society this apparent omission."

The Audit Committee reported as follows :—

"There is no regulation expressly providing for the nomination of other Auditors where approved Auditors have relinquished their positions. It is, however, pointed out that solicitors must comply with Regulation 2 (audit of Trust Account) and Regulation 4 (3) (examination of accounts during the year) and if a solicitor fails to do so, he will be liable to the penalties for default contained in Regulations 34 and 35.

"There is also Regulation 10 as to change of auditors. If a solicitor fails to fill a vacancy by complying with Regulation 10, it is plain he does not comply with Regulation 2 and others. It would be no doubt desirable to provide especially that on an auditor ceasing to act the solicitor should submit another name within a specified time."

It was decided to send a copy of the report to the Auckland District Law Society and to inform them that the matter would be attended to when the new Regulations are drawn.

Audit Committee.—Mr. H. E. Anderson wrote asking to be relieved from duty on the Audit Committee owing to pressure of work. It was decided to thank Mr. Anderson for his valuable services as Chairman of this Committee, and to accept his resignation with regret.

It was resolved that Mr. P. Levi should be Chairman, and that Messrs. S. A. Wiren and C. H. Weston, K.C., should be added to the membership of the Audit Committee.

National Expenditure Adjustment Act, Mortgagors and Tenants Relief Act, Property Law Act, and Mortgagors Relief Act—Proposed Amendments.—The following report was received from Messrs. J. Glasgow and C. A. L. Treadwell :—

"I. The first amendment proposed is to bring within the provisions of the National Expenditure Adjustment Act, 1932, and the Mortgagors and Tenants Relief Act, 1933, a lease granted pursuant to a covenant for renewal contained in the lease which was subject to the provisions of these Acts.

"In our opinion this type of legislation should not be encouraged by the profession and we consider the proposed amendment particularly objectionable. In all covenants for renewal the tenant has everything to gain and nothing to lose as far as the landlord is concerned, and there seems to be no reason why the landlord should be compelled to grant a new lease at less than the actual rental. It is entirely optional for the tenant to renew and if he does not think he can carry on under the agreed rent and cannot persuade the landlord to lower it, then he need not do so.

"If the tenant has been a good tenant and the land is not really worth more than the rent as reduced by the Act, the tenant would in almost every case get a renewal at such reduced rent. If he has been a bad tenant or the land is really worth a higher rent we see no reason why the landlord should be compelled to renew except at the originally agreed rent.

"This is by no means in the same category as an extension of a mortgage where at the end of the term the mortgagor is under the obligation to find a sum of money.

"II. The second amendment for consideration is to s. 2 of the Property Law Amendment Act, 1928, and the suggested amendment is that where a lessee has made default in the performance of the covenants under a lease which contains a covenant for renewal and has applied to the Court for relief under the Mortgagors and Tenants Relief Act, and the Court has made an order for relief, and the terms of such order have been observed and performed, and no further default has been made subsequent to the making of the order, that the lessee shall be entitled as of right to a renewal of such lease without having to make application to the Court under the 1928 Amendment Act.

"The 1928 Amendment Act was obviously passed to remove the supposed hardships caused by the case of *Greville v. Parker*, and the Court was authorised by the Amendment Act, on application by the Lessee for relief, 'having regard to all 'the circumstances of the case to grant or refuse relief as it 'thinks fit, and in particular, to decree, order, or adjudge 'that the lessor shall grant to the lessee a renewal of his lease 'or a new lease, as the case may require, on the same terms 'and conditions in all respects as if the covenants, conditions, 'and agreements aforesaid had been duly performed and 'fulfilled.'

"This section clearly shows that the Amendment Act intended that in a deserving case, although all the covenants, conditions, and agreements had not been performed and fulfilled the Court could grant a renewal on *the same terms*. If the proposed amendment were adopted the lessee would be entitled *as of right* to a renewal notwithstanding that he had failed to perform or fulfil the covenants in the lease.

"We do not see why a tenant should be entitled to this renewal as of right. The reasons for recommending relief influencing the Adjustment Commission may be totally different from the reasons actuating the Court in deciding whether to grant relief under Section 2 of the Amendment Act, and in any case these were passed for two entirely different purposes. We think that the tenant who has made default and obtained relief should be in the same position as any other tenant and that the Supreme Court is the proper tribunal to decide whether or not he should have his renewal.

"III. The third suggestion is to amend s. 6 (2) of the Mortgagors and Tenants Relief Act by providing that if the Mortgagor is dead and Probate or Letters of Administration of his Estate have not been applied for within six months after the date of his death service of such notice shall be sufficient if the same is affixed or left on the land or any house or building thereon and also by advertising the same in a newspaper published in the town nearest to the situation of the mortgaged land.

"We consider this amendment very desirable. Under the present section no provision is made for this possibility and the District Land Registrar is at present entitled to refuse to register a transfer in such a case and the Registrar of the Supreme Court is also entitled to refuse to allow the property to be sold through the Court. It is obvious that some provision should be made and the proposed suggestion seems to be quite a good one."

After some discussion, it was agreed to adopt the report as presented with the alteration of the words "applied for" in the first paragraph of Part III to "granted."

It was also decided to refer to the Attorney-General Part III of the Report.

Magistrates' Courts Act, 1928: Rule 32.—The Otago District Law Society wrote, enclosing the following letter from a practitioner, and suggesting that the Rules should be amended in the way suggested :—

"I am writing to draw the attention of your Society to Rule 32 under the Magistrates' Courts Act, 1928, regarding the undertaking to be signed by a person who is prepared to act as 'next friend' to an infant Plaintiff. You will notice that the section requires the attendance of the next friend before the Clerk of Court of the Office in which the Plaint is issued and at the time when it is issued. The absurdity of this rule was recently demonstrated in a case in which I had to bring the father of a young boy from Kaitangata to Dunedin at very great inconvenience to him to sign the undertaking before the local Clerk of Court.

"I suggest the Council might make a recommendation to the Government that the Rule be amended to enable the undertaking to be signed before any Clerk of Court."

It was resolved to endeavour to have the amendment made as requested.

Law Practitioners Act, 1931: Proposed Amendments.—Considerable time was spent in discussing the final draft of the Amendments, which were finally settled. It was decided to appoint a Committee of Managers who, with the help of the President, should attend to the preparation and passing of the proposed Bill. Messrs. A. M. Cousins, A. T. Donnelly, and H. F. O'Leary were accordingly appointed, and were instructed to see the Attorney-General as soon as the draft Bill was available.

(To be concluded.)

New Zealand Conveyancing.

By S. I. GOODALL, LL.M.

Power of Attorney: General Power.

TO ALL TO WHOM THESE PRESENTS SHALL COME I M.R. of etc. SEND GREETING:

WHEREAS I am about to leave and for a time be absent from New Zealand and am desirous of appointing attorneys to act for me in relation to my affairs.

NOW KNOW YE and these presents witness as follows:—

1. I the said M.R. DO HEREBY NOMINATE CONSTITUTE AND APPOINT A.B. of etc. and C.D. of etc. (hereinafter together with the survivor of them referred to as and included in the term " my attorney ") to be my attorney for me in my name and on my behalf or otherwise to do execute and perform all or any of the acts deeds matters and things hereinafter contained that is to say:—

(1) So far as I can lawfully give or delegate such powers discretions and authorities respectively to sell transfer lease mortgage dispose of deal with and manage any property real or personal which may be or become vested in or administered or controlled by me alone or jointly with any other person or persons as a trustee assignee executor administrator director committee attorney agent substitute or delegate or in any fiduciary capacity whatsoever and to exercise any powers and discretions bring and defend actions and proceedings control and administer any estates or funds execute and sign any deeds and instruments and generally to do any acts whether in my own name or in the name of any other person or persons which I could lawfully exercise execute sign do and cause to be done in any and every such capacity whether solely or jointly with any other person or persons.

(2) To act for me in my name on my behalf and in my interests in New Zealand aforesaid and elsewhere in all matters connected with or pertaining to my affairs and in all matters of what kind and nature soever with or in which I shall be in any way connected interested or concerned or which shall or will in any way pertain to me (whether pertaining to me solely or jointly with any other person or persons corporation or corporations whomsoever) as fully effectually unconditionally and absolutely as I myself could do if personally present it being the true intent and meaning of these presents that my attorney shall have absolute and unrestricted power hereunder at the sole and absolute discretion of my attorney and without reference to me to do or cause to be done for me and on my behalf any act deed matter or thing of what kind and nature soever pertaining to my affairs and moneys properties real and personal rights privileges deeds securities goods chattels effects and things choses in action or choses in possession.

(3) To do all matters of what kind or nature soever with which I shall or may be in any way connected or which shall or may in any way pertain to me as my attorney may think proper and expedient and which I myself could do or cause to be done if personally present and acting therein.

(4) To delegate all or any of the powers hereby conferred upon my attorney and from time to time to appoint a substitute or substitutes with the same or more limited powers as are hereby conferred upon my attorney and at any time to revoke such delegation or appointment and if necessary or expedient to make another or other delegation or appointment from time to time.

(5) And for such purposes or any of them to sign and use my name and affix my seal in any manner to any deed instrument document or other writing whatever.

2. I HEREBY EXPRESSLY DECLARE that the foregoing powers are to be construed not strictly but in the widest sense including authority to borrow money and property of any kind whatsoever in any manner with or without security therefor of any kind and that I do not by these presents specify any particular power or powers which I hereby intend to confer upon my attorney for fear that by so doing I should in any way be deemed or construed to limit abridge or restrict the absolute and unconditional powers and authorities hereby conferred upon my attorney.

3. I HEREBY FURTHER DECLARE that no person or persons corporation or corporations dealing with my attorney shall be concerned to see or enquire as to the propriety or expediency of any act deed matter or thing which my attorney may do or perform or purport to do or perform or agree to do or perform in my name by virtue of these presents.

4. I HEREBY RATIFY AND CONFIRM and agree to ratify and confirm whatsoever my attorney or his substitute or substitutes shall lawfully do or cause to be done in or about the premises by virtue of these presents.

5. AND I HEREBY DECLARE that the powers and authorities hereby given may be exercised at any time and from time to time by the said A.B. and C.D. jointly and by the survivor after the death of the other of them.

IN WITNESS etc.

SIGNED SEALED AND DELIVERED etc.

Wellington Practitioners at Golf.

Prince of Wales' Birthday Tournament.

The members of the profession in Wellington enjoyed a pleasant day for their annual golf tourney, held at the Hutt Links, on June 25. The morning round resulted in a tie between J. C. Peacock, W. B. Rainey, and H. F. Bollard, 2 down. In the four-ball, H. Burns and H. F. Bollard, E. D. Blundell and R. L. A. Cresswell, C. Armstrong and P. Miles, all finished 4 up. Trophies were presented by His Honour the Chief Justice, who, with Mr. Justice Johnston, spent the afternoon on the links.

London Letter.

Temple, London,
May 29, 1934.

My dear N.Z.,

Events move rapidly in the Temple at this time of the year, for during this month the Easter Term has become a matter of past history, the Whitsun Vacation has come and gone, and the Summer Term has begun. I always seem to be writing about vacations, and no doubt you think that we over here have far too many. At any rate our summer vacation is to be shortened again this year, as it was last year, and the Winter Term is to start at the beginning, instead of the middle, of October. When I was in New Zealand I was impressed by the number of public holidays you have; but that of course is a different matter. After all, our legal vacations only mean that the High Court in London is not working. Other Courts sit as usual, and there is in fact a considerable amount of legal work done during the vacations for those fortunate enough to have it to do.

More about Law Reforms.—Further criticism of the recommendations made in the Second Interim Report of Lord Hanworth's Committee are contained in a memorandum recently submitted to the Lord Chancellor by the London Chamber of Commerce. You may remember that the Second Interim Report proposed, *inter alia*, the abolition of the Probate, Divorce, and Admiralty Division of the High Court as a separate Division, and the abolition of Lords Justices of Appeal. The London Chamber of Commerce, following the criticism already made by many, have expressed the view that the Admiralty Court should remain as a separate organisation and should incorporate the Commercial Court (not the other way round, as the Report suggested). Nothing, they think, can be done about the Divorce Court until the circuit system is reformed, a matter which they advocate strongly as requiring attention. They are against the abolition of the Lords Justices of Appeal on the ground that under the present system the members of the Court of Appeal are chosen specially for their ability and should form a stronger Court than would be formed by puisne Judges sitting according to a rota.

The Second Interim Report was also discussed a short while ago by a meeting of fifty lawyer members of Parliament, who were summoned by the Attorney-General to meet the Lord Chancellor and the Master of the Rolls. No detailed report of what transpired at that meeting has been issued; but it is understood that there was considerable opposition to the proposal to transfer Divorce and Admiralty work to the King's Bench Division, and that that proposal is not likely to be carried into effect. Whatever else may have been discussed, it appears to have been generally agreed that the most effective way of speeding up the work would be by increasing the number of Judges. Merely as a personal opinion I should say that this proposal also is not likely to be carried into effect.

The Law Revision Committee, which was appointed by the Lord Chancellor last January to inquire into the need for the revision of certain legal maxims and doctrines, have also been busy, and have issued reports on two of the matters which were referred to them for inquiry—namely, the *actio personalis* rule and the question of recovery of interest in civil proceedings. No time has been wasted on these reports; but a Bill, known as the Law Reform (Miscellaneous Provisions) Bill, is already before the House of Lords, to give effect to them. The Committee considered that the revision of the *actio personalis* rule had become a matter of urgency by reason of the number of road accidents, many instances having recently occurred where, the driver of a car having been killed in an accident, no redress has been possible as against his estate or as against his insurance company.

The Passing of Lord Sumner.—Lord Sumner, whose sudden death occurred last week, at the age of seventy-five, has been described as the greatest lawyer of his generation. His intellectual ability was certainly amazing and must be taken solely to account for his rise to the high position that he occupied, since he came to the Bar with no advantages in the way of influence or private means.

Lord Sumner was the second son of Andrew Hamilton, an iron merchant of Manchester, and was educated at Manchester Grammar School and afterwards, with the help of a scholarship, at Oxford. Hamilton, as he then was, was called to the Bar by the Inner Temple in 1883, but it was some years before he achieved any success. During this time he kept himself by teaching and journalism, at the same time remaining in the chambers of Bigham (afterwards Lord Mersey) where he studied Bigham's methods in the Commercial Court. Gradually Hamilton also acquired a very large practice in that Court and took silk in 1901. He was appointed a Judge in the King's Bench Division in 1909, a Lord Justice of Appeal in 1912, and a Lord of Appeal in Ordinary in 1913, when he took the title of Lord Sumner.

It was as a Lord of Appeal in Ordinary that Lord Sumner really achieved fame. His masterly judgments on many different subjects are probably as well known to you as they are to us and no doubt as frequently referred to for the principles of English law contained in them. Lord Sumner took little interest in politics, although he performed a number of public duties other than judicial ones, the most important of which was probably as a member of the British Delegation to the Reparations Commission of the Peace Conference. He retired from the Bench in 1930, since when he had devoted himself mostly to his favourite pursuits—the study of literature and art. Lord Sumner was made a G.C.B. in 1920, in recognition of his services with the Reparations Commission, and was created a Viscount in 1927. He was married, but leaves no children.

Old London Customs.—May seems to be the month, more than any other, when various quaint old London customs fall to be observed. There is the custom at the Old Bailey on May Day of placing a bouquet of flowers on the Judge's table and strewing the Court with herbs—this dating from the days before the Old Bailey had a system of ventilation. Then there is the custom of closing the gates of the Temple on Ascension Day and the beating of the bounds of the parish of St. Clement Danes; and finally there is Oak Apple Day, which is kept at the Chelsea Hospital, founded by Charles II, by a parade and inspection of the old pensioners.

Heard in the County Court.—

Witness: The plaintiff has only had her car for about six months.

Counsel: Had she not a car before that?

Witness: No, only a Baby Austin.

Yours ever, H. A. P.

Practice Precedents.

Leave to Swear Death.

The evidence the Court requires, to enable it to grant leave to swear to the death of an alleged deceased, will depend upon the circumstances.

In *In re Mathews*, [1898] P. 17, the Court, on proof of sufficient inquiries, allowed the death of a testator to be sworn three years after his disappearance: but see *In re Bishop*, (1859) 1 Sw. & Tr. 303, 164 E.R. 704.

The Court does not find as a fact that the presumed deceased is dead, but merely finds that sufficient evidence has been laid before it to justify it granting to the applicant leave to swear the death. The Court gives leave to applicant to swear the death as occurring *on* or *since* the last date upon which the presumed deceased was known to be alive. It will not allow the applicant to swear the death as occurring on a particular day: *In the Goods of Jackson*, (1902) 87 L.T. 747. The Court will not presume the death of any person other than the person whose estate is to be administered. Therefore where a married woman died intestate, and the next-of-kin applied for administration, the Court refused to presume the death of her husband: *In the Goods of Clark*, (1889) 15 P.D. 10.

Every inquiry must be made, every clue followed up and investigated, and the results placed before the Court. Advertisements requesting information as to the present whereabouts of the presumed deceased, if alive, should be published in a newspaper circulating in those parts of the world where they are most likely to come to his knowledge if alive: *In the Goods of Robertson*, [1896] P. 8.

Advertisements were not required in *Re Clark's Estate*, (1893) 11 N.Z.L.R. 64; see also *In re Dawson Cook*, [1918] N.Z.L.R. 379.

If the applicant cannot swear positively to the fact of the death on or about a specified date, he must place the evidence available before the Court and by motion obtain the Court's leave to swear to the fact of death: *In re Harris*, [1916] N.Z.L.R. 967; and see *Garrow on the Law of Wills and Administration*, 583-584; and *Mortimer on Probate Law and Practice*, 2nd Ed. 416.

As to costs on application, where it is opposed but applicant was successful, see *In re Robertson*, [1926] G.L.R. 59.

As to giving of notice of application to insurance companies in which the life of the missing person is insured, see R. 531 C.C., Code of Civil Procedure: *Stout and Sim's Supreme Court Practice*, 7th Ed. 342.

In actual practice, the application is made to a Judge in Chambers; but, as the order is a Court order and the application is by way of notice of motion, it should not be drawn as an *ex parte* motion and certified pursuant to rules of Court to be correct.

Hereunder are forms for the application for leave to swear to death.

Notice of Motion.

IN THE SUPREME COURT OF NEW ZEALAND.

.....District.

.....Registry.

IN THE ESTATE of A.B. late of Carrier a missing person.

TAKE NOTICE that Mr. of Counsel for the applicant herein will move this Honourable Court (in Chambers) at the Supreme Courthouse at on day the day of 19 at 10.30 o'clock in the forenoon or so soon thereafter as counsel can be heard FOR AN ORDER granting leave to applicant to swear that the above-named missing person died on or since the day of 19 UPON THE GROUNDS that the said disappeared on the day of 19 AND UPON the further grounds set out in the affidavits of and filed herein.

Dated at this day of 19 .

Solicitor for applicant.

This notice of motion is filed by solicitor for applicant whose address for service is at the offices of Messrs. , Street, , Solicitors.

Affidavit in Support of Motion.

(*Same heading.*)

I of in the City of married woman make oath and say as follows:—

1. That I am the wife of the above-named missing person to whom I was married on the day of 19 .

2. That there are issue of the said marriage two children to wit born on the day of 19 and born on the day of 19 .

3. That on the morning of the day of 19 at about 10 o'clock in the forenoon I accompanied my husband to the wharf at and he then set out in a rowboat to engage in a day's fishing.

4. That some four hours after his departure a sudden storm sprang up and my husband never returned.

5. That to the best of my knowledge and belief neither my husband or the rowboat have been seen since the said day of 19 .

6. That about a week after my husband set out as aforesaid part of an oar which I believe my husband had used in the rowboat was found on the beach at .

7. That on the and days of 19 respectively I advertised in the and newspapers circulating in requesting anyone who had seen or heard of my husband since the day of 19 or who had seen any sign of a rowboat to communicate with me. Copies of such advertisements are annexed hereto and marked "A" and "B" respectively.

8. That I have received no answer to the said advertisements.

9. That my husband always enjoyed good health and was in a good financial position and had no debts.

10. That the above-named missing person was a fond and indulgent husband and father and never at any time expressed any intention to end his life.

11. That an inquest concerning my husband's disappearance was held by the Coroner at when a verdict of "Lost at sea" was returned.

12. That I verily believe my husband was drowned at sea.

13. That my husband was insured in the sum of £ in the Insurance Company Limited.

14. That I desire to obtain leave to swear that my husband died on or since the day of 19 in order that I may apply to the Supreme Court for a grant of probate of his will.

15. That I have made exhaustive inquiries of all persons and relatives who knew my husband but have failed to obtain any information as to his whereabouts since his disappearance.

Sworn, etc.

Affidavit in Support of Motion.

(*Same heading.*)

I of Police Constable make oath and say as follows:—

1. That I am a Constable of Police and have been in charge of the Police District of from the day of down to the present date.

2. That I knew and was well acquainted with the above-mentioned missing person from the date of my taking over the said Police District until the date of his disappearance.

3. That the above-mentioned missing person was a highly respected man and took an active interest in local affairs and he lived happily with his wife and family.

4. That on the day of 19 I am informed and verily believe that the above-mentioned missing person set out in a rowboat to engage in a day's fishing.

5. That on the day of 19 aforesaid an unusual and sudden storm sprang up whereby I was delayed from returning from the countryside where I had proceeded on duty to my station until about 7 p.m.

6. That on the day previous to the day of 19 I spoke to the above-mentioned missing person in his workshop when he was repairing an oar for his rowboat by encircling same with a band of copper.

7. That the above-mentioned missing person was then in his usual good health and spirits and told me he was looking forward to a good day's fishing on the morrow.

8. That the above-mentioned missing person made a habit of fishing about twice a month.

9. That on my return from the countryside aforesaid Mrs. the wife of the above-named missing person called at my office at about 7 p.m. and stated that her husband had not returned home from fishing.

10. That along with several persons I paraded the beach at but owing to the high sea running and the fact that there was no sufficient boat or launch to explore the outer harbour little could be done by way of search.

11. That on the day of 19 a launch was procured from the township of and on that day and several other days I along with several other persons made an intensive search along the seashore at and later on land for traces of the rowboat and missing person but without result.

12. That on the eighth day after the disappearance I found some five miles from the township of part of an oar containing part of a copper band similar to that I had seen mending aforesaid but no trace of the rowboat was seen.

13. That for a period of approximately two months I had the matter of the search in hand but active inquiries ceased after that time.

14. That an inquest concerning the disappearance was held by the Coroner at on the day of 19 when a verdict that " was lost at sea " was returned.

15. That I made diligent inquiries of many persons who knew the above-mentioned person if they knew of any reason as to why the said would desire to disappear.

16. That the answer was in the negative and that no boat could live in such a sea as was running on the day in question.

17. That I verily believe the above-mentioned was drowned at sea.

Sworn, etc.

AFFIDAVIT OF SERVICE.

(*Same heading.*)

I of law clerk make oath and say as follows :—

1. That I am a clerk in the employ of solicitor for the applicant herein.

2. That I did on the day of 19 serve upon the Insurance Company Limited at its offices at Buildings [*Street*] in the City of copy of the notice of motion for leave to swear death filed herein and of the affidavits of and of filed in support thereof.

3. That copies of the said notice of motion and affidavits are attached hereto and marked " C " " D " and " F " respectively.

4. That attached hereto and marked " F " is a letter received from the said Insurance Company Limited acknowledging receipt of the said notice of motion and affidavits and stating that the said company did not intend to oppose the application for leave to swear to the death of the above-mentioned missing person.

Sworn, etc.

ORDER FOR LEAVE TO SWEAR DEATH.

(*Same heading.*)

day the day of 19 .

Before the Hon. Mr. Justice .

UPON READING the notice of motion and affidavits filed herein and UPON HEARING Mr. of counsel for the applicant herein IT IS ORDERED that leave be and the same is hereby granted to the said to swear that the above-mentioned missing person died on or since the day of 19 .

By the Court,

Registrar.

Bills Before Parliament.

Reciprocal Enforcement of Judgments (Hon. Mr. Cobbe).

PART I: RECIPROCAL ENFORCEMENT OF JUDGMENTS :— Cl. 3—Application of this Part of Act. Cl. 4—Application for, and effect of, registration of judgment. Cl. 5—Rules of Court. Cl. 6—Cases in which registered judgments must, or may, be set aside. Cl. 7—Powers of Supreme Court on application to set aside registration. Cl. 8—Judgments which can be registered under this Act not to be enforceable otherwise. PART II: MISCELLANEOUS AND GENERAL :— Cl. 9—General effect of judgments given by superior Courts outside New Zealand. Cl. 10—Power to make judgments unenforceable in New Zealand if no reciprocity. Cl. 11—Issue of certificates of judgments obtained in New Zealand. Cl. 12—Repeal and savings. Cl. 13—Application of Part I of the Act to awards.

Rules and Regulations.

Motor-vehicles Act, 1924. Motor-vehicle Regulations Amendment No. 2.—*Gazette* No. 45, June 15, 1934.

Customs Amendment Act, 1921: Exempting Lead in Ingots or Pigs from Primage Duty.—*Gazette* No. 46, June 21, 1934.

Post and Telegraph Act, 1928. Postal Regulations relating to Small Packets.—*Gazette* No. 46, June 21, 1934.

Air Navigation Act, 1931. Repeal of Aviation Regulations, 1921.—*Gazette* No. 46, June 21, 1934.

Public Works Act, 1928. The Water-power Regulations, 1934.—*Gazette* No. 50, June 28, 1934.

Magistrates' Courts Act, 1928. Regulations prescribing Travelling-allowances of Stipendiary Magistrates.—*Gazette* No. 51, July 5, 1934.

Customs Act, 1913. Meat-export Restriction Order, 1934.—*Gazette* No. 52, July 10, 1934.

Board of Trade Act, 1919. Board of Trade (Superphosphate) Regulations, 1934.—*Gazette* No. 53, July 12, 1934.

Agricultural and Pastoral Societies Amendment Act, 1933. Regulations as to Appeals under Section 3 of the Act.—*Gazette* No. 53, July 12, 1934.

Transport Licensing Act, 1931.—Transport Law Amendment Act, 1933. Transport Licenses (Transfer) Regulations, 1934.—*Gazette* No. 53, July 12, 1934.

Finance Act, 1932. Notice by Minister of Finance fixing rate of Interest payable on moneys invested in the Common Fund of the Public Trust Office.—*Gazette* No. 53, July 12, 1934.

New Books and Publications.

An Introduction to the Law of Local Government Law and Administration. By Sir Wm. E. Hart, LL.D., and William O. Hart, B.C.L., M.A. (Butterworth & Co. (Pub.) Ltd.). Price 28/-.

Yearly Digest, 1933. Edited by W. S. Goddard, M.A. (Butterworth & Co. (Pub.) Ltd.) Price 28/-.

Ridge's Constitutional Law of England. By A. B. Keith, D.C.L., D.Litt. Fifth Edition, 1934. (Stevens & Sons, Ltd.) Price 24/-.

Gibson's Criminal and Magisterial Law. By A. Weldon and L. C. Warmington. Tenth Edition, 1934, (Law Notes). Price 23/6d.

Law of Landlord and Tenant. By Edgar Foa, M.A., Fifth Edition, 1934. (Law Times). Price 10/6d.

Railway and Canal Traffic Cases. Vol. 21. By E. F. M. Maxwell. (Sweet & Maxwell, Ltd.) Price 42/-.