New Zealand
Law Journal
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"A change is taking place in the whole centre of gravity of legal practice through the tendency of the Legislature to pour out a vast flood of legislation not concerned with legal principles but with social and economic reforms. It is the duty of the lawyer to adapt himself to the new conditions and, somehow or other, to interpret and read order into this vast mass of statute law."

—LORD MACMILLAN.

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Reform in Legal Education.

TWO years ago the Lord Chancellor appointed a Committee to reconsider the organization of legal education in England, with a view to a closer co-ordination between the work done by the Universities and the professional bodies. Lord Atkin was chairman, and the Committee included members interested in the practice of the law as well as in the educational side. The Report has now been issued. The Committee contrast the scope of University and professional legal education, and sum up the difference in the maxim :

> "the University illustrates principles by examples; the professional bodies explain examples by reference to principles."

In other words, the Universities have education, and the professional Law Schools have practice, as their primary object.

The report of the Committee appointed by our own Council of Legal Education, which appeared in our last issue, seems to confuse these two functions by making the University degree serve too many purposes without adequately effecting any of them. It appears to be too much in the nature of a "wedding garment" without which none may enter the legal profession, a cultural habiliment which both qualifies and entitles the holder, his moral fitness being ascertained, to admission by the governing body of the profession without further question. It seems that different considerations should move the University in granting a degree, and the Law Society in admitting its holder to practice. In a spirit of helpfulness and not of criticism it will be our purpose to indicate that the Committee's Report may be the result of too close a following of existing precedent, and that it may not provide the results hoped for.

I.

We shall first go back some years, and review the various changes in the subject-matter of legal examinations.

At first the Law Professional examination and the LL.B. degree examination were quite distinct. Taking the year 1887, as a starting-point : in that year the subjects for the latter comprised three divisions :— I. Latin, English or Mental Science, Jurisprudence, and Constitutional Law. II. Roman Law (*Institutes of Justinian*), Contracts, and Torts. III. Real and Personal Property, Evidence, Criminal Law, and Equity. The requirements under the Law Practitioners Act, 1882, were as follows : For barristers : (1) Roman Law ; Sandar's *Institutes of Justinian*, first two books, with introduction and notes, Gibbons' *Decline and Fall*, Ch. 44 on Roman Law ; (2) International Law and Conflict of Laws ; (3) Real Property and Conveyancing ; (4) Contracts and Torts ; (5) Equity ; (6) Criminal Law ; (7) Evidence ; (8) Practice and Procedure ; (9) New Zealand Statute Law.

In the same year, solicitors were examined generally on the theory and practice of the laws of England and of New Zealand, the examination being of the same character as prescribed by the Law Society in England for the final examination of solicitors there.

In 1888, Statute Law in New Zealand, and Practice and Procedure of the Courts of New Zealand, were added as subjects for the LL.B. degree.

On June 27, 1889, new rules under the Law Practitioners Act were gazetted, and they were to come into force on June 1, 1890. These prescribed for the examination of barristers the law subjects required for the LL.B. degree, and for the examination of solicitors the same subjects excepting Jurisprudence and Constitutional History, Roman Law, International Law, and Conflict of Laws.

During these years, the system of articling was generally in practice.

It was not until 1893 that rules were made to provide that candidates for admission as barristers or solicitors who had taken the LL.B. degree since June 1, 1890, should not be required to pass any further examination. Candidates who had sat in the intervening years were only admitted to practice as barristers and solicitors on passing both the LL.B. and Law Professional examinations.

The practical amalgamation of the examinations in 1893 was due, in the first place, to a desire to raise the standard of education of legal practitioners who were barristers by making the examinations of the same standard as those for the LL.B. degree, and, at the same time, not to handicap the LL.B. candidate by compelling him to take longer over his course and to pass a further examination. It was thought that so long as this was the case law-students would prefer to take the shorter and easier cut of the Law Professional examination, with freedom from University restrictions, and to get into practice at the earliest possible date ; and that a large proportion of students would not get the benefit of a University education in law. Hence the inclusion in the LL.B. degree, which should be a cultural degree, of subjects of adjectival law that are necessary to equip the lawyer in the practice of his profession.

In 1926, the law courses were revised by a representative committee on which were represented the New Zealand Law Society, the University Senate, and the Teachers of Law, the late Sir Charles Skerrett being a member. The results of the Committee's deliberations and careful consideration of the whole field of legal training and education were embodied in the present regulations concerning the LL.B. and Law Professional examinations. Every candidate for admission as barrister or solicitor—except an LL.B.—is required to pass in Book-keeping (elementary questions on trust

accounts and book-keeping); but the LL.B. candidate is not required to pass any further examination, and from him this subject is not required as part of his degree course, and he may be admitted as a barrister and solicitor without any study of the subject.

Under the present regulations, the curriculum for the LL.B. degree is made comprehensive, including adjectival law as well as cultural subjects; and the candidate for the barrister's examination is required to take the same subjects, but without complying with University conditions.

In the course for the LL.M. degree the candidate is allowed to do some specialisation; but he still has to select one subject from the cultural side—Roman Law, International Law, Conflict of Laws, or Jurisprudence, and one subject from the two great branches of Contract and Torts or Real Property, and one subject from certain special departments of English Law that he thinks will be of assistance to him in practice. Statistics taken out for the last ten years show the subjects taken from the cultural group and the number of candidates who took each subject to be as follows: Roman Law, 26; International Law and Conflict of Laws, 50; and Jurisprudence, 47.

Five years after the LL.M. degree is obtained, a candidate may submit for the degree of Doctor of Laws a dissertation or thesis embodying the result of original work on the history, philosophy, exposition, or criticism of law. To date, two candidates have attained this degree.

So far, we have surveyed the field of examination and qualification for admission as barrister or solicitor, and for the degrees of Bachelor, Master, and Doctor of Laws, as it appeared up to the time when the Committee of the Council of Legal Education made its recent recommendations. Whether the Committee has taken full advantage of the present conditions, or has suggested improvements in the curriculum for qualification and admission, will be considered in our next issue.

Summary of Recent Judgments.

SUPREME COURT
In Chambers.
Wanganui.
1934.
Aug. 30.
Myers, C.J.

IN RE A LEASE, AOTEA DISTRICT MAORI LAND BOARD TO C.

Mortgagors and Tenants Relief—Timber-cutting License—Jurisdiction—Cutting of Timber completed before Act came into Operation—License in force and Royalties in arrear when Application for Relief made—Mortgagors and Tenants Relief Act, 1933, ss. 14, 15.

Application for relief by a lessee.

There is jurisdiction to grant relief to a lessee under a license for the cutting or removal of timber which was in existence when the Mortgagors and Tenants Relief Act, 1933, came into force, and which was still in existence when the application for relief came before the Court, there being arrears of royalties owing to the lessor at the time when such application was made.

Spencer v. Somervell, [1932] G.L.R. 564, and **In re An Application by B., a Lessee,** [1933] N.Z.L.R. s. 68, distinguished.

Counsel: B. C. Haggitt, for the applicant; **W. A. Izard,** for the Land Board.

Solicitors: Treadwell, Gordon, Treadwell, and Haggit, Wanganui, for the applicant; **Marshall, Izard, and Wilson,** Wanganui, for the Aotea District Maori Land Board.

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.
Aug. 30; Sept. 5.
Ostler, J.

JAMIESON v. JAMIESON.

Divorce and Matrimonial Causes—Permanent Maintenance—Order registered in Magistrates' Court—Application to Supreme Court for Increase in Amount—Whether Supreme Court has Jurisdiction to vary the Order—Destitute Persons Amendment Act, 1930, s. 2.

Where a copy of an order of the Supreme Court has been registered in the office of a Magistrates' Court pursuant to s. 8 of the Destitute Persons Amendment Act, 1926, the effect of the Destitute Persons Amendment Act, 1930, is to oust the original jurisdiction of the Supreme Court, and to confer on it an appellate jurisdiction only in all cases where its order has been registered in a Magistrates' Court, and where the amount payable under the order does not exceed £3 a week, or security has not been ordered to be given, and where, on the registration of the order, proceedings were not pending in the Supreme Court for its variation.

Counsel: Neal, for the respondent; **Parry,** for the petitioner.

Solicitors: Buddle, Kirkcaldie, and Parry, for the petitioner; **Levi and Yaldwyn,** Wellington, for the respondent.

NOTE:—For the Destitute Persons Amendment Act, 1930, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, 1908-1931, Vol. 2, title *Destitute Persons*, p. 939.

SUPREME COURT
Wellington.
1934.
Sept. 6, 7.
Ostler, J.

H. H. MORRIS, LIMITED v. CAMPIN.

Second-hand Dealers—Purchaser of Second-hand Gold Jewellery—Small part of Gold-content used in Manufacture of other Jewellery—Balance melted down into Ingots and exported as Gold—Whether a Manufacturer of "Other articles therefrom"—Whether such Purchaser should be licensed as Second-hand Dealer—Second-hand Dealers Act, 1908, ss. 2, 3.

A manufacturing jeweller carried on the business of purchasing second-hand gold jewellery. Some small part of the gold-content of such jewellery was used for the purpose of manufacturing other articles of jewellery, but the great part of it was melted down into ingots and exported as gold. There was no evidence that the jeweller carried on the business of selling or exchanging the second-hand jewellery purchased, or any other second-hand articles.

On appeal from a conviction for the offence of carrying on business as a second-hand dealer without being the holder of a license under the Second-hand Dealers Act, 1908.

Levi and **Yaldwyn,** for the appellant; **Evans-Scott,** for the respondent.

Held, allowing the appeal, That appellant came within the exception in the definition of "second-hand dealer" in s. 2 of the Act, as being a person "who purchases such articles for the purpose of manufacturing other articles therefrom," as it purchased second-hand articles—*i.e.*, old jewellery—for the purpose of manufacturing other articles—*i.e.*, ingots of bullion—therefrom.

Solicitors: Levi and Yaldwyn, Wellington, for the appellant; **Menteath, Ward, Macassey, and Evans-Scott,** for the respondent.

NOTE:—For the Second-hand Dealers Act, 1908, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, 1908-1931, Vol. 8, title *Second-hand Dealers*, p. 182.

COURT OF APPEAL
Wellington.
1934.
July 7; Aug. 31.
Myers, C.J.
Ostler, J.
Johnston, J.

WELLINGTON WATERSIDE WORKERS' INDUSTRIAL UNION OF WORKERS v. HARGREAVES.

Industrial Conciliation and Arbitration—Industrial Union—Limitation of Membership by Rules—Rule providing Admission to Membership subject to Consent of Executive of Union—Whether Rule valid—Industrial Conciliation and Arbitration Act, 1925, ss. 5 (1) (c) (viii), 11.

It is not unlawful for an industrial union of workers registered under the Industrial Conciliation and Arbitration Act, 1925, to limit its membership by its rules.

So held by the Court of Appeal (*Myers*, C.J., *Ostler* and *Johnston*, JJ.), reversing the decision of *Reed*, J., p. 131, *ante*.

A rule which provides that admission to membership shall be subject to the consent of the executive of the union is valid.

So held by *Myers*, C.J., and *Johnston*, J., *Ostler*, J., dissenting.

Ex parte Hanley, [1922] Q.W.N. 10, applied.

Staples and Co., Ltd. v. Mayor, &c., of Wellington, (1900) 18 N.Z.L.R. 857, distinguished.

Osborne v. Greymouth Wharf Labourers' Industrial Union of Workers, (1911) 30 N.Z.L.R. 634, and **In re Ngahauranga Slaughtermen's Industrial Union of Workers,** (1913) 15 G.L.R. 389, referred to.

The legislation in the Commonwealth of Australia and the States of New South Wales and Queensland contrasted with the New Zealand Act as regards membership.

Per Ostler, J., dissenting, 1. That such a rule is *ultra vires*, as it does not comply with s. 5 of the Act, which requires that the rules must provide for the mode in which and the terms on which persons shall become or cease to be members. The rule before the Court, as framed, is not a publication but a concealment of such terms, leaving the executive free to legislate on each application on any principle it chooses, and to reject one application on one ground, and, on the same ground, admit another. No applicant can ascertain from a perusal of the rules whether he can satisfy the terms imposed.

Staples and Co., Ltd. v. Mayor, &c., of Wellington, (1900) 18 N.Z.L.R. 857, applied.

2. That, whether the preference to unionists was a preference in fact or law, the respondent was entitled to recover the damage sustained by him, owing to the union's wrongful refusal to admit him to membership.

Counsel: **M. J. Gresson,** for the appellant; **P. B. Cooke,** and **Shorland,** for the respondent.

Solicitors: **Wynn Williams, Brown, and Gresson,** Christchurch, for the appellant; **Chapman, Tripp, Cooke, and Watson,** Wellington, for the respondent.

SUPREME COURT
Auckland.
(In Banco)
1934.
Aug. 27; Sept. 5.
Fair, J.

BREWER v. PAPATOETOE TOWN BOARD.

Rating—Dwellinghouse occupied by mere Caretaker paying no Rent—Whether "Actually vacant and unoccupied"—Rating Act, 1925, s. 69 (a).

A dwellinghouse which is occupied by the owner's caretaker who pays no rent or makes other payment to the owner, is not "actually vacant and unoccupied" within the meaning of those words in s. 69 (*a*) of the Rating Act, 1925.

Mayor, &c., of Dunedin v. Baird, (1913) 33 N.Z.L.R. 149, referred to.

Counsel: **Gould,** for the appellant; **V. R. Meredith,** for the respondent.

Solicitors: **Morpeth, Gould, and Wilson,** Auckland, for the appellant; **Meredith, Hubble, and Meredith,** Auckland, for the respondent.

NOTE:—For the Rating Act, 1925, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, 1908-1931, Vol. 7, title *Rating and Valuation of Land*, p. 977.

SUPREME COURT
Gisborne.
1934.
Aug. 15, 20.
Reed, J.

LYSNAR v. PROPRIETORS OF WHAKAONGAONGA No. 1 BLOCK.

Natives and Native Land—Lease—Construction—Rent on renewal "at a rental equivalent to five per centum of the Government valuation"—Native Land Act, 1931, s. 277.

A lease of Native land contained the following:—

"Provided always and it is hereby agreed and declared that if the lessee shall duly observe and perform all the covenants conditions and agreements on his part herein contained or implied then the lessor shall at the expiration of the said term execute to the lessee a further lease of the said demised premises for the term of twenty-one years at a rental equivalent to five per centum of the then Government valuation (unimproved) of the said demised premises. Such lease to contain the same covenants and conditions and agreements as are herein contained save and except this present agreement for renewal."

On originating summons for interpretation of such covenant,

Blathwayt, for the plaintiff; **Gambrill,** for the defendant and the Tairawhiti District Maori Land Board.

Held, 1. That no technically restrictive meaning can be given to the words "Government valuation" so as to bind the parties to accept the valuation on the District Valuation Roll, however long a period may have since elapsed.

Potts v. Waikato-Maniapoto District Maori Land Board, [1933] N.Z.L.R. 1208, applied.

2. That, in construing the covenant, the words "Government valuation" mean nothing more than valuation by the Valuer-General under the Valuation of Land Act, and the word "then" refers to the date of the expiration of the lease. Consequently, the clause means that rent should be calculated on the unimproved value of the land as at the date of the expiration of the lease, to be ascertained under the provisions of the Valuation of Land Act, 1925.

Semble, Where one party to a lease obtains such a valuation, the other party is not irrevocably bound thereby without having the opportunity of being heard before an Assessment Court, and in order to meet any possible technical objections such other party should apply for a new valuation and then object if not satisfied.

Solicitors: **J. de V. W. Blathwayt,** Gisborne, for the plaintiff; **Nolan and Skeet,** Gisborne, for the defendant.

NOTE:—For the Native Land Act, 1931, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, 1908-1931, Vol. 6, title *Natives and Native Land*, p. 103.

SUPREME COURT
Wellington.
In Chambers.
1934.
July 20, 23.
Ostler, J.

IN RE BASSETT (DECEASED), BASSETT AND OTHERS v. BASSETT AND OTHERS (No. 2).

Practice—Discovery—Mortgage of Beneficial Interest under Will in Possession of Sub-mortgagee—Whether a Document in the "possession or power" of the Mortgagor required to produce it—Code of Civil Procedure, R. 163.

Where a mortgage of a beneficial interest under a will is held by a mortgagee it is not in the mortgagor's "possession or power" within the meaning of R. 163.

Counsel: **Clere,** in support of motion for production; **Arndt,** to oppose.

Solicitors: **P. W. Dorrington,** Dannevirke, for the plaintiffs; **Gifford Moore, Ongley, and Tremaine,** Palmerston North, for the defendants.

SUPREME COURT
Auckland.
(In Banco.)
1934.
Aug. 13, 31.
Fair, J.

MATTHEWS v. NORTH AUCKLAND DISTRICT LAND BOARD.

Land for Settlements—Contract—On Ballot for Disposal of Land Two Balls drawn—Successful Applicant failing to pay Deposit when required but subsequently paying to Field Inspector previously notified as Person who could give Interim Receipt—Land Board cancelling successful Applicant's Application and alloting Land to Person whose Number drawn second—Appeal against Board's Decision—Validity of Regulations—Whether fresh Ballot necessary—Discharge of Contract—Waiver—Whether Cancellation necessary—Whether Power to grant Relief against forfeiture—Land for Settlements Act, 1925, ss. 34 (*f*) and (*g*), 53, 69, 108, and 110; Land Act, 1924, ss. 71, 72, and 74; Regs. 9-12 (1931 *N.Z. Gazette*, 2253).

In a ballot held on February 21, 1934, for the selection of a section of land under renewable lease under the Land for Settlements Act, 1925, the first ball drawn from the ballot box bore the rotation number of the appellant and he was declared the successful applicant. A second ball was drawn pursuant to reg. 10 of the regulations made on August 30, 1931, dealing with the disposal of land under both the Land Act, 1908, and the Land for Settlements Act, 1908, and the rotation number thereon was that of S. Kemp.

On February 22, 1934, the Commissioner of Crown Lands wrote informing the appellant of the result of the ballot and requiring the payment by return of the necessary deposit of £43 17s. 2d. Owing to the non-payment of the deposit after subsequent correspondence the Commissioner on May 3 referred to a previous memorandum, which had stated that failing payment of the amount the section would be allotted to another applicant; gave the appellant seven days within which to forward the deposit to the office; and stated the notice was final. No reply having been received, the Commissioner communicated with Kemp from whom a letter was received on May 19, 1934, forwarding the necessary moneys and stating that he was ready to proceed with the application. On May 18 appellant paid through his solicitor £43 17s. 2d. to the Field Inspector at Dargaville, who had been mentioned by the Commissioner in the correspondence as a person to whom payment could be made and who could give an interim receipt, and who gave such receipt.

On May 23, at a meeting of the respondent Land Board, it was decided that the application of the appellant be cancelled and the section be allotted to Kemp. The Commissioner notified the appellant and returned his deposit, but appellant refused to receive it or to give up possession of the land of which he was in occupation without permission.

On appeal, pursuant to s. 59 of the Land Act, 1924, against the Board's decision,

Greville, for the appellant; **Hubble,** for the respondent.

Held, 1. That reg. 11 of the said regulations which provided for the successful applicant, on being declared, immediately paying the moneys required by law, and reg. 12 which provided that, in the event of non-payment as required by law then in case a second number had been already drawn as provided by reg. 10, the applicant whose rotation number it was should be declared the successful applicant were authorised by the statutes and were not *ultra vires*.

2. That reg. 12 dealt with a case which did not fall within reg. 10 and was not to be restricted by the terms of that regulation; and, therefore, no fresh ballot was required to be held.

3. Assuming that upon the appellant's succeeding in the ballot a binding contract existed between himself and the Crown, it was a contract conditional on his complying with the conditions prescribed by reg. 11 that he should pay the deposit immediately, and, upon failure to so comply, the contract was discharged.

4. That the receipt by the Field Inspector was not a waiver of compliance with a statutory condition, and, in any event, the appellant had not discharged the onus which was upon him to show that the payment was intended to be accepted as such a compliance, and that the person receiving it had authority to waive the previous breach.

5. That the Court had no power to grant relief against forfeiture.

6. That the decision of the Land Board purporting to cancel the allotment to the appellant was unnecessary.

7. That the Board was justified in assuming that such rights as the appellant had acquired ceased on his failing to pay the deposit on or before May 10, 1934.

Wightman v. Land Board of the Canterbury District and Quirk, (1912) 31 N.Z.L.R. 799, and **Davenport v. The Queen,** (1877) 3 App. Cas. 115, distinguished.

Bank of New Zealand and Ewing v. Scandinavian Water Race Co. (No. 2), (1906) 26 N.Z.L.R. 1351, **Colvin v. Nelson Land Board,** [1916] G.L.R. 557, and **Auckland Harbour Board v. The King,** [1919] N.Z.L.R. 419, aff. on app. [1924] A.C. 318, referred to.

Solicitors: R. H. Greville, Auckland, for the appellant; **Meredith, Hubble, and Meredith,** Auckland, for the respondent Board.

Case Annotation: *Davenport v. The Queen*, E. & E. Digest, Vol. 31, p. 472, para. 6195.

NOTE:—For the Land for Settlement Act, 1925, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, 1908-1931, Vol. 4, title *Land Settlement*, p. 862; for the Land Act, 1924, *ibid.* p. 622.

FULL COURT.
Wellington.
1934.
June 29;
Aug. 31.
Myers, C.J.
Ostler, J.
Johnston, J.

BURTON v. PRECISION ENGINEERING COMPANY, LIMITED.

Master and Servant—Apprentices—Contract of Apprenticeship—General Apprenticeship Order remaining in Force—Cancellation of Award whereby Employers for time being bound—Preservation of Statutory Rights of Parties to Apprenticeship Contracts—"Any such industry"—Jurisdiction of Court to apply Act to Parties to Apprenticeship Contracts for time being not bound by Award—Procedure to be followed by Employer seeking Cancellation of Contract or Apprentice suing for Breach—Apprentices Act, 1923, s. 3 (1), 4, 5, 6; Amendment Act, 1925, s. 2; Finance Act, 1932, s. 56.

Questions of law argued before trial.

Section 3 (1) of the Apprentices Act, 1923, as amended by s. 2 of the Amendment Act, 1925, provides that—

"(1) Save as otherwise expressly provided herein, this Act shall apply—(*a*) To all employers engaged in an industry in which apprentices are employed and who are for the time being bound by an award or agreement relating to such industry; and also to *all other employers engaged in any such industry* to whom this Act is applied by order of the Court:

"(*b*) To all apprentices employed by such employers in any such industry:

"(*c*) To all contracts of apprenticeship between such employers and apprentices."

"The Court" in this section means the Court of Arbitration, and "award" and "agreement" mean an award or industrial agreement under the Industrial Conciliation and Arbitration Act, 1908.

Section 5 provides that "As soon as practicable after the coming into operation of this Act, and from time to time as may be necessary, the Court shall make such order or orders as it may think fit in respect of each industry or branch thereof to which this Act applies prescribing" wages, conditions of employment, numbers of apprentices, &c., cancellation and amendment of such orders, &c. Section 4 provides for the appointment of an Apprenticeship Committee in any industry or group of industries in any locality. Such a Committee has been appointed for the engineering industry in the Wellington Industrial District. Section 6 provides that the Court may delegate most of its powers conferred by s. 5 (4) to an Apprenticeship Committee, in so far as these powers relate to the industry and locality for which the Committee has been appointed, and may at any time resume any power so delegated. Among the powers which the Court can delegate is the power to cancel any contract of apprenticeship. This power was delegated to the Wellington Committee.

On December 30, 1924, the Court of Arbitration made an apprenticeship order under s. 5 relating to the conditions of apprenticeship in the engineering trade in the Wellington Industrial District. At that date there was an award in force relating to the engineering trade: *25 Book of Awards, 911.* That award had been made on September 19, 1924, and it continued in force until superseded by an award dated November 25, 1926; *26 Book of Awards, 1316.* This latter award was again superseded by an award relating to the engineering industry: see *28 Book of Awards, 624.*

On July 8, 1929, defendant company, which is engaged in the engineering trade, entered into a contract of apprenticeship with plaintiff and plaintiff's father whereby it agreed to employ plaintiff for five years, to teach him the trade, and to pay him certain wages. On that date there was in force the award of the Arbitration Court already referred to: *28 Book of Awards, 624.* Defendant company was not bound by this award, although it erroneously believed it was so bound when it executed the apprenticeship contract. This award was in force until August 5, 1929, when it was superseded by a new award to which defendant company was a party: see *29 Book of Awards, 492.* This award remained in force until July 17, 1932, when it was cancelled by the Court of Arbitration. Since that date there had been no award or industrial agreement in existence in the engineering industry.

On September 18, 1933, defendant company suspended plaintiff, and thereafter applied to the Wellington Engineers Apprenticeship Committee for the cancellation of the apprenticeship contract. The Committee was unable to come to a decision on the application, and referred it to the Court of Arbitration. The application came before the Court on November 14, 1933, when the Court decided that it had no jurisdiction to deal with the application, upon the ground that, the award having been cancelled as from July 17, 1932, and there being no award in existence, the Act had ceased to apply to the contract. The Court stated that it was following its prior decision in *In re Otago Motor Engineering Apprenticeship Order, ante,* p. 16.

F. W. Ongley and **Arndt,** for the plaintiff; **Stevenson,** for the defendant.

Held, per *Ostler* and *Johnston,* JJ., *Myers,* C.J., dissenting, That, although the award was cancelled, the Apprentices Act, 1923, applied to the contract of apprenticeship and to the parties thereto. The Court, therefore, had jurisdiction to hear and determine defendant company's application for the cancellation of its contract with the plaintiff apprentice who must move under the procedure of the relevant Acts for enforcement of his remedies.

Held, per *Ostler,* J., *Johnston,* J., agreeing, without deciding the point, That the words in s. 3 (1) (*a*) of the Act of 1923, as amended, "to all other employers engaged in *any such industry* to whom this Act is applied by order of the Court," and paras. (*b*) and (*c*) refer to any industry in which apprentices are employed and not to the words "and who are for the time being bound by an award or agreement relating to such industry."

The Court, therefore, had power to apply the Act to all employers (and to their apprenticeship contracts) engaged in any industry in which apprentices were employed and who for the time being were not bound by an award or agreement.

Semble, per *Johnston,* J. If the Act were not applicable, plaintiff could proceed at common law and the doctrine of frustration would not be a sufficient defence.

Held, per *Myers,* C.J., dissenting, (1) That the whole of s. 3 (1) of the Act of 1923, as amended, refers only to one and the same industry being an industry in which apprentices are employed and the employers are for the time being bound by an award or agreement relating to that industry.

2. That, therefore, the continued existence of an award or industrial agreement affecting an industry is the foundation of the application of the Apprentices Act to that industry.

3. That once the award or industrial agreement ceases to exist the apprenticeship order and the general order no longer have effect.

4. That, if the Act ceases to apply, the contract remains in its essential features; and a party, therefore, has his ordinary remedy in damages if the other party commits a breach of contract in respect of those essential features.

5. That the doctrine of frustration did not apply.

Solicitors: Ongley, O'Donovan, and Arndt, Wellington, for the plaintiff; **Izard, Weston, Stevenson, and Castle,** Wellington, for the defendant.

NOTE:—For the Apprentices Act, 1923, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, 1908-1931, Vol. 5, title *Master and Servant,* p. 576; for the Amendment Act, 1925, *ibid.* p. 588.

SUPREME COURT. Wellington. 1934. May 23; Aug. 27. *Myers, C.J.*

IN RE WARREN (DECEASED), TAYLOR v. WARREN AND OTHERS.

Will—Devisees and Legatees—Direction to Trustees to apportion Child's Share "to his or her dependents in a way my trustees shall think best"—"Dependents"—Direction void for uncertainty—Further Directions in Will interpreted.

A will contained the following clause:—

". . . should any of the beneficiaries mentioned herein my will predecease my wife. The trustees shall then apportion his or her share to his or her dependents in a way my trustees shall think best."

On originating summons for the interpretation of, *inter alia,* the above clause,

J. C. Nicholson, for the plaintiff; **Macallam,** for Anastasia Warren; **T. P. Anderson,** for Alice Warren; **Ball,** for William Henry Warren; **L. M. Moss,** for Vernon Wright.

Held, That the provision was void for uncertainty, the word "dependents" being of vague and indefinite import, and the testator having in effect left the trustees to make a will for him.

Grimond (or **McIntyre**) **v. Grimond,** [1905] A.C. 124, followed.

In interpretation of the following clause:—

"I give devise and bequeath unto my wife Anastasia Warren the whole of my personal and real estate whatsoever and wheresoever situate. The interest and income only of my estate to be used by my wife for her maintenance and for the maintenance of my daughter Alice Warren during my wife's lifetime."

Held, That the widow was not entitled to the estate absolutely, but to the whole of the income subject to her maintaining the daughter, Alice, who was not entitled to any specific share, the quantum of maintenance being in the widow's discretion; and, so long as that discretion was honestly exercised, the Court would not interfere.

In re Booth, Booth v. Booth, (1894) 2 Ch. 282, followed.

In interpretation of a further clause, which was as follows:—

"After my wife's death or in case she should remarry the whole of my estate shall be divided between my three children [named] in equal shares share and share alike. The share of my daughter Alice Warren after my wife's death shall be invested by my trustees in some institutions for a sure and certain provision for my daughter Alice Warren's maintenance."

Held, That the trust or direction for investment of Alice's share was inoperative, and, subject to the trust as to income, she took one-third share of the estate free from all restrictions.

In re Johnston, Mills v. Johnston, [1894] 3 Ch. 204, applied.
In re Carter, Harding v. Carter, (1901) 21 N.Z.L.R. 227, referred to.

Solicitors: Nicholson, Bennett, and Kirkby, New Plymouth.

Case Annotation: *Grimond (or McIntyre) v. Grimond,* E. & E. Digest, Vol. 8, p. 296, para. 734; *In re Booth, Booth v. Booth, ibid.,* Vol. 28, p. 244, para. 1011; *In re Johnston, Mills v. Johnston, ibid.,* Vol. 44, p. 446, para. 2697.

Land-lock.

And Ways of Necessity.

Land is in the state of being "land-locked" when the person entitled to possession of it can get no access except by a trespass. To avoid this condition it is not necessary that the land should actually front a highway. It is sufficient if access to a highway is enjoyed by means of an easement of way. Nor is it necessary that the highway should be a public road. A water-highway—*i.e.*, the sea or a navigable stream, tidal or non-tidal, the bed of which has not been granted away from the Crown, and which links up with the general highway system—is sufficient. The intervention of the foreshore raises no difficulty: provided that, as is usually the case in New Zealand, the Crown retains the foreshore, since a landowner has the right to pass over the foreshore to and from the water. A paper frontage is sufficient, even though difference in level between the land and the highway makes it impracticable; and in such a case no way of necessity can arise: *Titchmarsh v. Royston Water Co., Ltd.*, (1899) 81 L.T. 673, where there was a 20 ft. precipice above the level of the road.

The condition of land-lock may either arise on the acquisition of title, or may supervene. The first of the cases of "original" land-lock is where land is granted by the Crown without access. There the owner has a certain, if sometimes expensive, remedy under s. 124 of the Public Works Act, 1928. He is entitled to demand a way of access by road from the nearest public road; it does not indeed appear that his "way of access," though it is called a "road," must itself be made a public road. If, in order to satisfy the demand, acquisition of land by the Crown is necessary, and the cost of acquiring it is not more than one-fifth of the price paid for the land in the Crown grant, the Crown bears the cost; any excess is borne by the landowner.

The effect of current legislation is that a land-lock upon assurance between parties cannot often arise, inasmuch as s. 125 of the Public Works Act requires a vendor of part of his land to dedicate as a public road or street land that will serve for frontage to the land sold. The section applies to all dispositions of a fee-simple and to leases for fourteen years or over. It is enforced (subs. (10)) by prohibition of irregular registration. The section can, however, be negatived under subs. (1) where the local authority is satisfied that the land is not intended as a site for a dwellinghouse and resolves that the subsection shall not apply. In such a case, or in the case of a lease for less than fourteen years, it is left to the purchaser to rely on his own watchfulness, or that of his solicitor, to see that he gets some adequate right of access.

Failing any such provision, at common law a way of necessity arises, which is in effect an easement by way of grant, with the peculiarity that the grant is by necessary implication instead of by express words: *Clarke v. Cogge*, (1607) Cro. Jac. 170, 79 E.R. 149; *Holmes v. Goring*, (1824) 2 Bing. 76, 130 E.R. 233; *Proctor v. Hodgson*, (1855) 10 Exch. 824, 156 E.R. 674. Once arisen, and till it has been extinguished (either by any of the ways in which rights of way in general may be extinguished, or by the special case of other access becoming available—*Holmes v. Goring* (*supra*)), it is as much a legal right as if it had been set out in the assurance—although, presumably, a subsequent purchaser will require pretty complete evidence of its existence.

The question arises whether a way of necessity can occur in New Zealand, now that virtually all land is held by Torrens title. Except where a prescriptive easement has ripened before the servient tenement came under the Land Transfer Act, it seems impossible to subject land to the burden of any easement otherwise than by registration of an express grant, and until registration there can be no ownership. This seems to conclude the matter as regards immediate acquisition of a way held as a legal appurtenance, but there is a prior stage. At common law, before completion the purchaser is the owner in equity and the vendor holds the legal estate in trust for him. The purchaser is equitable owner of everything in his purchase, including, no doubt, in a proper case such an easement as a way of necessity. The peculiarities of the Land Transfer system, though they may prevent the equitable way from becoming a legal way as it would upon a conveyance by deed, have no effect at the preliminary stage. Nor, it is submitted, is the equity to a way lost by taking title—that is, by taking title to so many rights of ownership only as registration of a transfer will make pass to the purchaser. The purchaser will be entitled to have his equity raised to a legal easement, and the main difficulty will be to define the way with the degree of detail required by the District Land Registrar.

Complications may, however, arise if there have been further dealings with the servient tenement. In general, mere notice of an outstanding equity will not jeopardize the title of a person who gets on the register: *Waimiha Sawmilling Co. v. Waione Timber Co., Ltd.*, [1926] A.C. 101, is a recent authority to this effect. It is necessary to fix the newly-registered person with actual fraud; see *Boyd v. Mayor, etc., of Wellington*, [1924] N.Z.L.R. 1174, 1189. The case of a person acquiring land which is a servient tenement appears, however, to be exceptional. If the purchaser has so much as a knowledge of the easement, then, according to *Bevan v. Tatum*, [1927] N.Z.L.R. 909, s. 58 (*b*) of the Land Transfer Act, 1915, works against his claim of indefeasibility, and the title can be rectified against him.

Should the servient tenement be in a borough or town district, the creation of a right-of-way is not altogether in the hands of the parties, but requires the assent of the local authority. It is not likely that the statute could be read to permit to be done by implication what is prohibited in a general way. Either this requirement negatives the implication of a grant, or (as seems more likely) it merely varies the grant to one conditional on the obtaining of the necessary consent. Instances have been observed of a demise of upper rooms without any express rights of way over staircases or corridors to enable the tenant to reach the street. It is a matter of construction whether s. 184 of the Municipal Corporations Act, 1933, applies to every grant of a right-of-way, however slight and temporary; it is believed that the current practice of some at least of the Land Transfer Registries does not require municipal consent to a right of way over corridors created in a lease of rooms in office buildings. Supposing that the rooms fronted the street, and even that the outer wall was included in the demise (which is the presumption laid down in *Goldfoot v. Welch*, (1914) 1 Ch. 213) so as to confer a technical street frontage, it would be a nice question whether these facts prevented a way

of necessity from arising; the obstacle of the 20 ft. precipice is, legally, more formidable when the cliff-dweller has no power to quarry down to the road level to get his access.

The wide definition of "sale" in s. 125 of the Public Works Act probably prevents land-lock from arising in most cases of voluntary partition. It is, however, not infrequent in partitions ordered by the Native Land Court. The wide powers of that Court to create rights-of-way and roads under Part XX of the Native Land Act, 1931, prevent any serious consequences from arising.

Supervening land-lock may arise in one of two ways. First, an owner may divest himself of that part of his land that affords him access to what remains. Here also at common law a way of necessity arises, by way this time of regrant from the grantee of the land disposed of: *London Corporation v. Riggs*, (1880) 13 Ch. D. 798 (where many of the old cases are collected). As regards the intervention of the Land Transfer Act, what has been said above will be applicable. Apparently, however, the existence of land-lock, and the need for the easement, must be known to the purchaser: *Davies v. Sear*, (1869) L.R. 7 Eq. 427.

In the second case of supervening land-lock, the access is lost by deprivation or cesser of the right that conferred it. An adjoining parcel may prove to be held by defective title; a right-of-way may have been obtained only for a term which has expired. In one instance, an owner of land subject to mortgage acquired adjoining land, and he being an adjoining owner no road access was necessary. The new parcel was not added to the mortgage. Subsequently, the mortgagee realized the property in his security, leaving the new parcel land-locked.

In such cases, apparently the only resource of the land-locked owner is to persuade the local authority to take steps in his behalf by compulsorily acquiring land that may be dedicated as a public road. It is to be noted that a mere easement cannot be taken under the Public Works Act, unless perhaps if it is an easement already in existence. It is true that surface without subsoil may be taken (s. 20), but it is doubtful whether in New Zealand ownership or acquisition of the surface alone confers sufficient title to authorize dedication as a public road by the person or local body in whom or in which the surface is vested.

A particular case of supervening land-lock is where the frontage or other access is acquired by a public authority under the Public Works Act. If the parcel remaining does not exceed one acre the owner may under s. 31 require it also to be taken. In any case a claim for compensation arises. Although this claim may be satisfied in whole or in part by the grant of an easement (s. 98), such easement is not a way of necessity, and apparently no right to a way of necessity can arise, the right to compensation taking its place. A curious complication arose in one case that did not reach the Courts. The frontage of an allotment was taken for road-widening purposes. What was left was accepted as a mortgage security, apparently in the faith that the land taken for a road was, or would become, a public road. The road-widening scheme was afterwards abandoned, and the Proclamation taking the land revoked. The frontage-strip re-vested in the owner, but the mortgage did not attach. A second mortgage was then given over the whole property. Alone of all the parties concerned, the first mortgagee was found to be definitely land-locked. Unfortunately perhaps for the elucidation of legal problems, the position was amicably arranged.

A note may be added as to the duty and liability of the solicitor in cases of land-lock. In *Wheeldon v. Burrows*, (1879) 12 Ch. D. 31, Thesiger, L.J., laid down the proposition "that, if the grantor intends to reserve any right over the tenement granted, it is his duty to reserve it expressly in the grant," but added that the rule was subject to exceptions, and said, "one of those exceptions is the well-known exception which attaches to cases of what are called ways of necessity." It would follow that at common law if a way of necessity is established, the vendor's solicitor is not technically to blame for having left it at that, instead of including an express re-grant in the assurance; and so in the converse case, of a way of necessity passing by implied grant to a purchaser. Since, however, under the Land Transfer Act the assurance does not, it would seem, create a legal easement, the duty of the solicitor in New Zealand may be a higher one; and if, where the circumstances require an easement and no provision is made by him for a proper registered instrument to complete the equitable one arising on the contract for sale, the solicitor may, if he knows, or should have known, the circumstances, be liable for neglect of duty.

An Important Constitutional Issue.—There will shortly be argued before the Judicial Committee of the Privy Council constitutional questions of the highest significance to all the British Dominions. In *Moore v. The Attorney-General for the Irish Free State*, [1934] I.R. 48, the plaintiffs successfully brought an action before Johnston, J., in which they claimed a declaration that they were entitled to a several fishery for salmon and other fish in the River Erne, in County Donegal, in the full extent of its tidal waters. On appeal to the Supreme Court, that judgment was reversed by Kennedy, C.J., and Murnaghan, J., FitzGibbon, J. dissenting. The appellants obtained special leave to appeal to the Privy Council.

The Irish Free State has since passed a law (No. 45 of 1933) forbidding such appeals, and its scope is made retrospective. The Registrar of the High Court thereupon refused to send forward to the Judicial Committee a copy of the judgment appealed against. It was then sought to overcome this obstacle by challenging the constitutional propriety of last year's Free State Statute, and praying for audience upon that issue.

Apart from its reading of the Irish Free State (Agreement) Act, 1922, and the Irish Free State Constitution Act, 1922 (both of the Imperial Parliament), and its own Constituent Act of 1922, the Free State relies on the Statute of Westminster, 1931, s. 2, as authority for the Oireachtas to pass what legislation it pleases, and for the validity of such legislation notwithstanding its being repugnant to the law of England.

The Judicial Committee decided to advise the Crown to order a reference under s. 4 of the Judicial Committee Act, 1833, as to the validity and effect of the Irish Free State's statute purporting to abolish the right of appeal from the Supreme Court to His Majesty in Council. When that reference comes up for hearing, we shall have constitutional arguments the importance of which cannot be overestimated, and not least of all on the effect of the Statute of Westminster itself.

The Money-lenders Amendment Act, 1933.

More Mathematics.

By C. C. Marsack.

The article on this subject, February 20, p. 30 *ante*, deals adequately and correctly with the question of the practical computation of interest under s. 10 of the Amendment Act and the Schedule to that Act. At the same time no attempt has been made critically to examine the method of computation with a view to deciding whether the Act is fair to the money-lender. It will probably surprise members of the profession who are called upon to advise money-lending institutions to find that the rate of interest so calculated differs considerably from the true rate, and that the difference is decidedly to the disadvantage of the money-lender.

Section 10 provides that where principal and interest are repaid together by monthly instalments, each instalment shall be deemed to represent interest and principal in the same proportion as the total sum of the interest bears to the principal. If, for example, a loan of £100 with a total interest of £20 is repayable by instalments of £3 per month, then each instalment is deemed to represent 100/120 principal and 20/120 interest—namely £2 10s. and 10s. respectively.

This method is obviously inaccurate. For the first month the lender is entitled to interest on the full sum of £100, which in the case quoted is considerably more than 10s. For the second month the correct interest will be on a principal sum of slightly less than £100—that is to say, on £100 less the amount of principal which has been repaid in the first instalment. In each succeeding month the interest will represent a gradual decrease until the last instalment represents almost entirely principal.

It may be said that there will be very little difference between the amount of interest correctly computed, and the amount computed in accordance with the Act, in view of the fact that though the payments of interest at the commencement of the loan are too small, those at the end are too large. But a moment's consideration will show that by applying too much to the earlier instalments of principal, the amount of interest payable throughout the whole term must necessarily be reduced.

This will easily be seen if some practical examples are taken. The Schedule to the State Advances Act, 1913, correctly sets out examples of the repayments of loans upon the instalment system. The correct interest for the half-year is taken, the balance of the instalment is applied to principal, and for the next half-year interest is charged only on the reduced principal. Consequently, the borrower pays exactly the interest he covenants to pay and not a penny more; and as soon as he makes any payment on account of principal, interest on that payment ceases to accrue.

Now let us work out the rate of interest in the manner prescribed by the Money-lenders Amendment Act, 1933. Your contributor of February 20 correctly sets out the formula to be followed. Take as our first example Table C in the State Advances Act, whereunder a loan of £100 with interest at 5 per cent. is repaid by 40 half-yearly instalments of £3 19s. 8d. Using your contributor's symbols

$$P = £100, \quad p = £59\ 6s.\ 8d., \quad m = 40.$$

Then, where r equals the rate of interest, we have the equation

$$r = \frac{400 \times p}{(m+1)P} = \frac{400 \times 59\frac{1}{3}}{41 \times 100} = \frac{400 \times 178}{3 \times 41 \times 100} = \frac{712}{123} = 5{\cdot}8\%$$

Applying the same method of working to Table B in the Schedule to the State Advances Act, we have the extraordinary result that the rate of interest correctly shown in the Schedule as 5 per cent. becomes 6·1 per cent. when calculated in accordance with the Money-lenders Amendment Act. It would probably surprise no one more than the State Advances Superintendent if he had to advise his borrowers that though the rate of interest they were paying worked out with absolute accuracy at 5 per cent., yet none the less it was considered as 6·1 per cent. if worked by the method laid down by another statute.

Naturally the discrepancy becomes greater as the term of the loan is longer. But even in quite short loans the discrepancy is there. Under the Money-lenders Act, for example, the appropriate monthly instalments for a loan of £100 at 10 per cent. for six months amount to £17 3s. 1d. If any reader has the patience to work this out correctly, charging only interest from month to month on the balance of principal at 10 per cent., he will find that there is a shortage of 19s. 1d. at the end of six months, when the loan should be fully repaid. And this, notwithstanding the fact that the total charge for interest is only £5 18s. 6d.

It becomes abundantly clear from these examples that many a loan made at a lower rate than 10 per cent. is none the less deemed to be at more than 10 per cent. when calculated in accordance with the statute. This has two great disadvantages. In the first place, it means that a money-lender must notify his client in writing that the interest charged is at a certain rate which is in fact higher than the rate really is. In the second place it brings certain transactions, negotiated at a real rate of less than 10 per cent., into the class of cases deemed to be over 10 per cent., thus involving the lender in the necessity of registration under the Act. Moreover, such transactions would be wholly illegal under s. 7, and would render the lender liable to imprisonment for three months and a fine of £100, unless the document signed by the borrower set out the rate of interest calculated in the manner provided by the Act.

Our Act is, of course, a slavish copy of the Imperial Money-lenders Act, 1927. Its provisions are aimed directly at the class of money-lender which we read about in melodramatic novels and in magazines of the thriller type. The restrictions imposed by the Act upon the operations of a money-lender are so severe that they leave no doubt in the mind of the reader as to the opinion held by legislators of money-lenders as a class—namely, that they are rapacious sharks of an almost criminal type from whom the public should at all costs be protected. It has possibly not been fully realised yet in New Zealand how many varieties of business will be affected by the Act. There are, for example, the finance corporations whose business is concerned with the financing of motor-car sales. A man purchases a car, pays a substantial portion of the purchase money and leaves £100 outstanding. This he arranges to pay by twelve monthly instalments.

The corporation charges him £7 as interest, and the purchaser feels that this is reasonable treatment. Under the Amendment Act of 1933 the lending institution will have to notify the borrower in writing that the rate of interest thus charged is 12·9 per cent.—a rate sufficiently high to frighten any borrower. In several examples which have been chosen at random from financial transactions of this sort, extending, as is usual in such cases, over eighteen months, where the interest appears thoroughly reasonable, the rate calculated in accordance with the Act is between 13 and 14 per cent.

It seems clear to the writer that the effect of the 1933 Amendment will be to hamper, with all the unpleasant and difficult restrictions set out with such clarity in the Act, the operations of a large number of concerns which are transacting legitimate business upon what has always been regarded as a fair and reasonable basis. Rates of interest in England are, generally speaking, considerably lower than they are in the Colonies; and for this reason statutory provisions which may work without any injustice at Home may have an unfortunate effect upon business in New Zealand when an Imperial Act is adopted word for word here, without giving any heed to the fact that the conditions for which the Imperial Act was designed do not obtain in this Dominion.

[The above article was submitted to the Under-Secretary for Justice (Mr. B. L. Dallard) for his comments. He has forwarded the following reply.—Ed. N.Z.L.J.:]

DEPARTMENT OF JUSTICE,
Wellington.

"Your correspondent is mathematically correct in his contention that the true nominal rate of interest, as computed, for example, in the Schedule to the State Advances Act, is slightly less than the rate calculated on the basis laid down in the Money-lenders Act. Your correspondent, however, has failed to appreciate the fundamental distinction between the short term loan which characterises the business of the money-lender, and the long term mortgage investment. As your correspondent points out the shorter the term the narrower the margin of difference.

"The Money-lenders Act lays down a simple method which avoids the necessity of reference to annuity tables. It can be understood and be checked, if desired, by the average layman, and it is sufficiently accurate for all practical purposes as it is not likely that marginal cases would ever be made the subject of Court proceedings.

"It is questionable whether the true *nominal* rate as quoted by your correspondent is actually more correct than the rate computed under the Money-lenders Act. The true *effective* rate (which assumes that the interest is re-invested immediately it is received) would, in all cases, be considerably greater than the true nominal rate shown in the State Advances tables, hence for all practical purposes the method laid down in the Money-lenders Act is quite reasonable.

"The Act has been designedly based on the Imperial Act, and in devising it those responsible were not influenced by "melodramatic fiction" such as your correspondent may have time to indulge in, but the sentiments expressed by Lord Justice Farwell in "Feildings v. Pawson and Others" were kept in mind, i.e., "I know that money-lenders are a necessary class "of people; I know that at times they have saved people from "ruin and from misery and they are a body of men who must "exist, and therefore I have never, in dealing with these cases, "as far as I know, dealt with the matter harshly or unfairly, "certainly not intentionally."

"Whether there was any necessity for legislation on these lines is a question upon which those more experienced in the matter may hold views at variance with that of your correspondent. Suffice it to quote a few extracts which speak for themselves from a sheaf of letters addressed by prominent money-lending firms to the Hon. the Minister in charge of the Bill:—

1. "Would you permit us to congratulate you on the introduction of the Money-lenders Amendment Act. We consider that this Bill is in the interests of the legitimate money-lending institutions and will certainly prevent a certain type of undesirable from operating with unreasonable and unconscionable charges, as, we regret to say has been the case in . . We cannot see anything in the Bill which would cause any reputable firm any concern, and it will in fact assist to a great extent the continuance of the money-lending firms which have endeavoured in the past to regulate the rates and terms of contract, and to be reasonable in their transactions."

2. "In the first place, having discussed the Bill with other reputable money-lending firms we may say that we think the general principles of the Bill are in the best interests not only of the public, but also of those firms which desire to keep this business on a higher plane."

3. "I have to thank you for your letter of the 25th instant enclosing a copy of the Money-lenders Bill as requested, and have to further thank you for promoting the Bill.
The Bill seems to me quite a good one."

4. "At the outset, we have been instructed to state that the Association, which comprises fourteen Financial Companies of good reputation, some of whom have been established in . . . . for over twenty years, is in entire accord with the proposed legislation and welcome same if only for the reason that it will eliminate certain undesirable persons who have brought the legitimate money-lending into disrepute. That there are some such persons must be acknowledged."

"The originals of these letters and many more are on file should you desire to authenticate the foregoing extracts. They certainly bear evidence of the fact that even those most directly affected were concerned to put their house in order."

"B. L. DALLARD,
"Under-Secretary."

Some Historical Successions.

The late Sir Thomas Scrutton commenced his career at the Bar by reading in the chambers of Archibald Levin Smith, a practitioner on the Northern Circuit and afterwards Master of the Rolls. The name of A. L. Smith recalls a most interesting apostolic succession which connects the subject of our sketch with a famous eighteenth-century pleader. A. L. Smith (1836-1901) was a pupil in the chambers of James Hannen (1821-1894), afterwards Lord Hannen, and James Hannen was a pupil of the great pleader, Thomas Chitty (1802-1878). Thomas Chitty read with his father, Joseph Chitty (1776-1841), another of the great pleaders of a past day. Joseph Chitty was a pupil of William Tidd (1760-1847), whose ancestor, Thomas Tidd, is the most famous of all Common Law pleaders whose name history has preserved. William Tidd was a pupil of Charles Runnington (1751-1821), and Charles Runnington was a pupil of Thomas Warren, whose precise dates are unknown. Both Runnington and Warren are delineated in Campbell's *Lives of the Chancellors*, 3rd Ed., Vol. V, at p. 490. It is interesting to note that the succession does not end with Sir Thomas Scrutton, for Mr. Justice Mackinnon read in chambers with Sir Thomas, and Mr. Porter, K.C., who edited the last edition of *Scrutton on Charter-parties*, is a former pupil of Mr. Justice Mackinnon. There must be many other interesting examples of "apostolic succession" in the annals of the last two centuries of our legal history; but as a rule the task of tracing such traditions in the available records is not feasible.

Local Authorities.

Their Liability for Negligence.

Gas and water, when properly handled, are not in themselves dangerous, but they become so when proper safeguards are no longer maintained. It is for this reason that the accumulation of water by artificial means involves the so-called "absolute liability" under the rule in *Rylands v. Fletcher*, (1868) L.R. 3 H.L. 330. This liability, however, is far from absolute. There are several defences which can be successfully established, and one of them is that the dangerous thing was brought on the land, or accumulated, in consequence of statutory authority to do so. Here there is no liability beyond the ordinary general liability for negligence. On this point, Lindley, L.J., discussing the rule in *Rylands v. Fletcher* (*supra*) said, in *Green v. Chelsea Waterworks Co.*, (1894) 10 T.L.R. 259:

> "It is possible that that principle might have been applied to companies having statutory authority to make railways or carry water, but the Court has declined to extend it to such cases. That case is not to be extended beyond the legitimate principle on which the House of Lords decided it. If it were extended as far as strict logic might require, it would be a very oppressive decision. Here the defendant company were only doing what they were authorised to do by their Act, and as they were not guilty of negligence they are not liable for damage."

It has frequently been noticed, however, that this distinction is not based on logic, since there seems to be no reason why A. should be absolutely liable for doing what the common law permits him to do, whilst B. is only liable in negligence for doing what a statute permits him to do. Nevertheless, the distinction has long been clearly established, and it is unquestionably one of public convenience, since a higher liability would undoubtedly have meant a tardier development of public services by local authorities.

Providers of public utilities usually employ a great many servants, and not all of them are efficient. Even if they are, it would be a miracle if they were not occasionally careless; but a moment's negligence on the part of one employee, or a failure on the part of the administrative staff to co-ordinate the labours of outdoor workmen may involve the corporation in very heavy loss. This, of course, is exactly the position of any large employer, but the risk of the provider of public services is greater inasmuch as he handles what is potentially an exceedingly dangerous substance. This last point is clearly demonstrated in two recent decisions, *Davenport v. Gateshead Corporation*, decided by Du Parcq, J. (*Times Newsp.*, March 29), and *Markland v. Manchester Corporation*, (1934) 50 T.L.R., 215. In the first case, Mrs. Davenport claimed damages under Lord Campbell's Act, for the death of her husband, and in addition, damages for personal injuries to herself, from the Gateshead Corporation, Mr. Duncan (a contractor employed by them), and also from the Gateshead Gas Company. The Gateshead Corporation were carrying out certain street works, and during their progress a powerful excavator was used. Whilst it was being employed, it caught a gas-pipe at the junction of the main with the service pipe. An explosion resulted, from which the injuries complained of arose. It appeared that when the Gateshead Gas Company were laying the service pipe, they did not give to the corporation the notice required by s. 8 of the Gas Clauses Act, 1847. Both the gas company and the corporation had taken the view that the notice was only required where a main was installed. However, this breach of a statutory duty was not the cause of the accident, which resulted from the negligence of the contractor's servants. The learned Judge therefore awarded the plaintiff £500 under Lord Campbell's Act, £600 for personal injuries, and further sums for injuries to a child and damage to property against the corporation and the contractor. It is a little difficult to see, however, how either of these parties can be regarded as negligent, acting as they did with customary prudence. The act of the workman using the excavator was only dangerous because the gas company had failed to supply information which it was under a statutory duty to give to the corporation.

Markland v. Manchester Corporation (*supra*) is an interesting case, about which different opinions are possible, and it exhibits the rare spectacle these days of a dissenting judgment by Scrutton, L.J. Once again a widow claimed under Lord Campbell's Act for the death of her husband, who was killed by a motor-car as he was stepping off a tram-car, the motor-car having skidded on ice which had collected on the road from a pipe through which the defendant corporation, who were the statutory water authority, supplied water.

It is clear that a person who negligently allows ice to collect on a highway and injures another is liable (*Brackley v. Midland Railway Co.*, (1916) 85 L.J. K.B. 1596), and therefore the question to be decided in *Markland's* case was whether the corporation had negligently allowed it to collect or not. It appeared that Mr. Markland was killed at 11 p.m. on Saturday, February 11, 1933. A frost had set in at 8 p.m. that evening after some mild, wet weather, and the water had collected in consequence of a burst in a service pipe, the burst having apparently occurred some time early on Thursday, February 9. A corporation water inspector had tested the pipes in that area on Wednesday, the 8th, in the ordinary course of his duties, and there was then nothing to cause him to suspect a leak. A policeman passed the place where the burst occurred on Thursday afternoon and did not notice anything. If he had done, it would have been his duty to report it. Similarly, a road superintendent on Friday morning did not notice anything. No tramwayman reported it, nor did any local resident. As Scrutton, L.J., observed:

> "It may be that . . . it did not become dangerous to persons using the road till 8 p.m. on the Saturday when the frost began."

It was not seriously contested that the corporation took all the precautions usually taken by other water authorities, and the problem therefore was: "Is a water authority, which itself takes the precautions usually taken by other water authorities, and adds to them the probability of information from other interested authorities, guilty of negligence if it is not informed of a water burst for two and three-quarter days?"

To this question, Scrutton, L.J., answered, No, and Slesser, L.J., and Talbot, J., Yes. In addition, Slesser, L.J., suggested an elaborate system of co-ordination between various classes of the corporation's servants to ensure the speedier notification of bursts in the future. In effect, Slesser, L.J.'s, judgment amounts to a general condemnation of the precautions at present taken by local authorities to attend to bursts, and requires increased precautions. Local authorities will no doubt take this plain hint, but they will probably have an uneasy suspicion that their precautions in respect of some other public service may in the future fail to receive judicial approbation.

New Zealand Conveyancing.

By S. I. GOODALL, LL.M.

Agreements for Sale and Purchase.—II.

(*Concluded from p. 224.*)

On a similar question in *Steedman v. Drinkle*, [1916] 1 A.C. 275, the Privy Council held that, time being of the essence, specific performance could not be decreed, but that the forfeiture of the instalments of purchase-money was in the nature of a penalty from which relief should be granted on proper terms. No terms were, however, indicated, and here (as in *Kilmer's* case) it does not appear that the purchaser had been in possession of the land. It was explained, too, that in *Kilmer's* case the respondent company had submitted to postponement of the date of payment and could no longer insist that time was essential.

In *Harrison v. Holland*, [1921] 3 K.B. 297, [1922] 1 K.B. 211, C.A., the vendors, having forfeited a deposit of £50,000, in terms of the agreement, sought to retain a further payment of £100,000 on account of the purchase-money as security for any loss they might sustain on a re-sale of the property. The purchaser's assignees were held entitled to recover the £100,000.

In *Mayson v. Clouet*, [1924] A.C. 980, the contract provided merely for forfeiture of deposit, and on default by the purchaser the vendor rescinded. The purchaser recovered instalments of purchase-money over and above the deposit. The Privy Council, however, remarked upon the distinction drawn in the contract between the deposit and the instalments, the former of which was forfeitable only.

In *Mitchell v. Parkinson*, (1915) 34 N.Z.L.R. 1004, a forfeiture clause was construed as a penalty, and *Cooper*, J., held that the defendant vendor was not entitled to forfeit instalments of purchase-money paid by the plaintiff purchaser, but that there must be an inquiry as to damages (if any) sustained by the vendor by reason of the purchaser's default; and that the damages when ascertained must be set-off against the moneys retained by the vendor.

In *Martin v. Finch*, [1923] N.Z.L.R. 570, the defendant purchaser was (in effect) held to be entitled to recover an instalment of purchase-money paid by him, but only on terms of his making *restitutio in integrum*.

On what principles the amount to be set off in favour of a vendor against the refund of instalments to the purchaser is to be calculated is not clear; and, where the purchaser has been in possession for a considerable period, it is obvious that the vendor should, in addition to forfeiture of the deposit, be entitled on default in completion by the purchaser to interest upon the balance of purchase-money and arrears (if any) of rates, land-tax, and other outgoings, or mesne profits or occupation rents in respect of the property. In *Hayes v. Ross*, [1919] N.Z.L.R. 786, a reasonable rent for occupation of the premises and not interest on purchase-money was allowed.

In *Pitt v. Curotta*, (1931) 31 S.R. (N.S.W.) 477, 483-84, in a suit for relief against forfeiture, *Long Innes*, J., directed an inquiry by the Master to ascertain the amount payable by the defendant vendor to the plaintiff purchaser in respect of—

(1) Instalments of purchase-money;

(2) Interest on unpaid balances of purchase-money;

(3) Interest thereon;

(4) Costs up to and inclusive of the decree;

and, on the other hand,

(*a*) What rents and profits had been actually received by the plaintiff purchaser;

(*b*) What sum ought to be charged against the plaintiff purchaser in respect of a fair occupation rental;

(*c*) What damages (if any) had been sustained by the defendant vendor by reason of the defendant's breach of contract; and

the amounts ascertained under inquiries (1), (2), (3), and (4) were required to be set off against the amounts ascertained under inquiries (*a*), (*b*), and (*c*) and the balance certified.

In *Blanch v. Miller*, [1931] N.Z.L.R. 839, the plaintiff purchaser was held entitled to rescind the contract for purchase on the ground of innocent misrepresentation by the defendant vendor. Smith, J., directed inquiries to enable restitution to be made, and in settling accounts between the parties allowed the vendor an occupation rent in respect of the purchaser's occupation of the land; the purchaser was not required to account for profits ("milk cheques") received during his occupation of the land, but was allowed to keep the item as against the occupation rent he had to pay.

With further reference to the question of relief to the purchaser by way of specific performance, it appears that where time is essential in respect of the day for completion, and the purchaser is in default in that regard, then as against a vendor who is able and willing to convey the purchaser is not entitled to specific performance of the contract: *Brickles v. Snell*, [1916] A.C. 599, 603-604.

The powers and remedies of a vendor under a "long term" agreement for sale and purchase seem, therefore, to compare unfavourably with those which would be conferred upon him if the agreement were carried into effect before possession by his giving a conveyance and taking back a mortgage of the land for the balance of purchase-money and interest thereon.

If the purchaser has been let into possession, notice in writing requiring remedy of the breach or breaches complained of will apparently be necessary before any forfeiture can be made under the default clause of an agreement for sale and purchase of land: The Property Law Act, 1908, s. 94 (6); *Bray v. Kuch*, (1908) 28 N.Z.L.R. 667. It may be that the words "right or option to purchase" in the context of subs. 6 are not intended to include the ordinary agreement for sale and purchase of land, but unless and until *Bray v. Kuch* (*supra*) is over-ruled or authoritatively approved the matter is not free from doubt. In *Mitchell v. Parkinson*, (1915) 34 N.Z.L.R. 1004, the point was not raised, probably because the purchaser had abandoned and was not in possession of the property. In *Nash v. Preece*, (1901) 20 N.Z.L.R. 141, the instrument under consideration was a lease with a purchasing clause, which was held to be within the ambit of the code of relief against forfeiture, but the dicta of Williams, J., in the Court of Appeal (at p. 153) are strongly in favour of extending the operation of the section to an agreement for sale and purchase. Although *Nash v. Preece* must be taken

to have been over-ruled by the judgment of the Judicial Committee of the Privy Council in *Greville v. Parker*, [1910] A.C. 335 (see *Birch v. Prouse*, [1922] N.Z.L.R. 913) and the subject-matter has been dealt with by the Property Law Amendment Act, 1928, nonetheless the *dictum* remains undisturbed.

Finally, in *Hargreaves v. Dukes*, [1931] N.Z.L.R. 1143, counsel for both parties accepted the position that it was necessary for the vendor to give notice under s. 94 of the Property Law Act, 1908, in order that he might validly re-enter for breach of agreement for sale and purchase of land : See per *Smith*, J., at p. 1152.

Legal Literature.

Forensic Success or Malpractice and Procedure, by S. T. UFF, Butterworth & Co. (Publishers), Ltd. ; pp. 99. Price : 5*s*.

Dedicated to that master of legal humour, " O," this is a bright and breezy skit on " those aesthetic, sprightly, and dainty volumes," the *Yearly Practice* and *Annual Practice*, and it is spiced with instruction in a light vein of humour on " the tortuous and devious means by which those Rules are to be turned into account by the astute and cunning practitioner," but which, the author informs us, barely touch the fringe of a great and comprehensive scheme of education.

The subjects treated by Mr. S. T. Uff in his work are Parties ; Pleadings—Amendment ; Discovery ; Selection of Tribunal ; Summons for Directions ; Interlocutory Proceedings ; Affidavits ; Time ; Venue ; Evidence *de bene esse*—and other evidence ; Payment into Court and *sometimes* out ; Interpleader ; Appeals ; Money-lenders ; and Costs, with a Postscript and three Appendices.

The book is full of bright things. Treating the subject of " Pleadings " historically in an Appendix, we find : " Even accidents will happen, and not infrequently it became essential for a ' Leader ' to explain why he had lost a winning case. So Pleadings were introduced." The maxim of the draftsman of bills of costs, we are told, is " *cuilibet in sua arte perito credendum est.* Therefore, let the study of this all-important branch of legal training rank among the foremost articles of faith of the ambitious practitioner." Elsewhere, we learn that an attorney should be satisfied in including in his bill for taxation such amount for a " brief fee " as will be proportioned to the susceptibility of the taxing officer to an attack of apoplexy.

The author assures us, and his pages show, that there is a serious vein underlying the surface of what some might imagine to be pure frivolity. " Therefore, to the reader whose ambition it is to arrive at the topmost rung of the ladder in his profession this book is cheerfully and confidently offered."

It is certainly full of good things, and the author's offer should be accepted in the spirit in which it is tendered.

London Letter.

Temple, London,
July 30, 1934.

My dear N.Z.,

I suppose the uppermost thoughts in everyone's mind in the Temple to-day is the Long Vacation, which commences officially on August 1. Like last year, it is to be curtailed, and the next term will commence on October 2 instead of October 12 (or thereabouts) as in former years. Now that the vacation is about to commence the drought, about which I wrote last month, seems to be breaking. There have recently been heavy storms ; but the rainfall for the year is still a long way below the average, and great care in the use of water is still necessary.

Festivities in the Temple.—The Temple has been the scene of more than one festivity during the past few weeks, which only shows that the law is not necessarily a dull profession. At the end of last month the Treasurer and Masters of the Bench of the Inner Temple gave a Ball to which they invited all the members of the Inn and their wives or lady friends. Dancing took place in the Hall of the Inn and supper was served in the Benchers' quarters and in the Library, while the Inner Temple Garden was flood-lit and thrown open for the use of the dancers. A large company attended the Ball, including many of the Judges. Following this the Bar Golfing Society organised a Ball in the Middle Temple Hall in aid of the Barristers' Benevolent Association. I cannot give you first-hand information of this event, but as men were busy putting up marquees all over Fountain Court for two or three days before the dance, there would appear to be no doubt that the preparations were adequate, and I hear the result was a great success.

A Point of Criminal Law.—It is not often that the House of Lords is called upon to exercise its appellate jurisdiction in criminal matters, but in *Maxwell v. Director of Public Prosecutions*, in which their Lordships delivered judgments at the end of last month, the House had to consider a matter of some importance. The facts of the case were as follows. The appellant, who was a herbalist, was indicted at York Assizes for the manslaughter of a woman and for using certain instruments upon her. He gave evidence on his own behalf, and put his character in issue. In the course of his cross-examination he was asked certain questions as to the death of a woman patient whom he had treated in 1927, and as to his subsequent trial for manslaughter and acquittal. Objection was taken to the admissibility of this evidence on the ground that as he had been acquitted it should not have been brought up against him. On the other hand, the prosecution contended that as he had put his character in issue the evidence was admissible in answer to his evidence of good conduct. The House of Lords, after taking time to consider their judgment, decided that evidence was not admissible on the ground of irrelevance.

Law Revision.—Such is the energy of those whose duty it has become to suggest reforms in the Law of this country that a paragraph on this subject has now become a regular feature of my monthly letter to you. The latest step is the issue of the third interim report

of the Law Revision Committee, which was appointed last January under the Chairmanship of the Master of the Rolls to consider the desirability of revising certain legal maxims. The Committee has already dealt with the maxim *actio personalis*, and with the question of recovery of interest in civil proceedings. Now the third interim report deals with the doctrine of no contribution between joint tort-feasors: *Merryweather v. Nixon*, (1799) 8 Term Rep. 186. The Committee recommend that the rule should be altered as speedily as possible and suggest following the lines of the Companies Act, under which a director who has been made liable for a misstatement in a prospectus has a right to recover contribution from any other person who would have been also liable, except where the director has, and the other person has not, been guilty of fraud.

Meanwhile the Bill providing for the abolition of the Divisional Court is well on its way, and it seems likely that before the commencement of next term it will be necessary to appoint three new Lord Justices of Appeal. Rumour has in fact already been busy with actual names. One suggestion is that the President of the Probate, Divorce, and Admiralty Division may be asked to accept one of the new posts, while Clauson, Roche, and Branson, JJ., have all been mentioned as possible candidates.

A Manx Trial.—No doubt you will have heard of the trial of the well-known racing motorist, Mr. Kaye Don, for the manslaughter of his mechanic, who was killed during a practice run in the Isle of Man. I have never been to the Isle of Man, but it sounds a strange country from more than one point of view. In the first place it seems odd that, as appeared in evidence during the trial, Mr. Kaye Don should have been driving a racing-car along a public highway at sixty or seventy miles an hour at 10.30 p.m. (when it was just getting dark) without lights and without even lamps, horn, number-plate, or license on his car. I am aware that when racing is taking place in the Island certain highways are set apart for that purpose, but this was apparently not one of those occasions.

But of far greater interest is the Court before which the trial took place. The constitution of the Isle of Man is of very ancient origin. The government is known as the Tynwald and is said to be a relic of Druid rule. The judicial officers have curious titles. There are two Deemsters, who act as Judges, and there are also the Keys, who are Justices of the Peace. In this case the trial took place before a Deemster and a jury. Before commencing the trial a ceremony was performed which is known as "fencing the Court," and consists in the announcement by an official known as the Lockman of a warning to all present to refrain from quarrelling, brawling, or making any disturbance. The jury were then chosen from a panel of seventy-six jurors, and the trial proceeded. Mr. Kaye Don was found guilty and sentenced to four months' imprisonment, but has entered an appeal.

Other News Items.—The Recorder of London, Sir Ernest Wild, K.C., who had been on the sick list for about three months, returned to his duties at the Central Criminal Court this month.

The appeal in the Rasputin case, which I mentioned in a recent letter to you, has been dismissed by the Court of Appeal.

Yours ever,

H. A. P.

Obituary.

Mr. J. J. Dougall, Christchurch.

The death occurred on the 2nd inst. of Mr. J. J. Dougall, senior partner of the firm of Messrs. Dougall, Son, and Hutchison, Christchurch.

Mr. Dougall was born in Aberdeen in 1860, and began his education there. He came to New Zealand at an early age and continued his schooling at Gee's School, Christchurch. He was admitted as a solicitor in 1896, and had practised in Christchurch ever since. For many years he took a leading part in civic affairs and served on many public and semi-public bodies. He was, for a term, Mayor of the city.

Mr. Dougall was a prominent worker in war time and was an original member of the Canterbury Patriotic Society and a member of the Advisory Board of New Zealand Patriotic Societies.

In his younger days Mr. Dougall was an enthusiastic volunteer. He joined the E Battery, N.Z.F.A., in 1880, and after passing through various ranks was commissioned a lieutenant in 1896. He transferred then to the Canterbury Engineer Corps, where he held the rank of captain. He was an excellent rifle shot and won the Battery Gold Star, the championship trophy, outright. He was a member of the battery team which, using carbines, held its own for many years against other volunteer corps using rifles. He held the Colonial and Auxiliary Forces Long Service Medal and the Victoria Decoration for long service as a commissioned officer.

His first work on a public body was on the Riccarton Road Board, of which he was a member from 1901 to 1910. When the original Christchurch Tramway Board was formed in 1904 he was a member and continued in office for a number of years. His interest in civic affairs took him to the City Council, of which he was a member for a long time, becoming Mayor of the city in 1912. He was a member of the Lyttelton Harbour Board for six years and was a member of the Canterbury College Board of Governors from 1916. He was chairman of the Museum and Library Committee.

He was president of the Navy League from 1912 to 1915 and for a second term from 1922, holding that position at the time of his death. From 1926 to 1930 he was Dominion president. In May, 1929, he represented the Canterbury Branch of the Navy League at a conference in London, at which delegates were present from all parts of the Empire. He had already a considerable reputation as an orator; and to this he added when he was given the honour of proposing the principal resolution—one protesting against the reduction in size of the Fleet. It was said that he took an able and prominent part in the conference. He was awarded the Navy League Special Service Decoration by the London executive a number of years ago for his work on behalf of the league.

Prominent in Mr. Dougall's many activities was his work for Freemasonry. He was a foundation member of the Civic Lodge and held many high offices, including the Grand Mastership in the years 1914-15. He was a very popular member of the lodge, and his knowledge of Masonic law made his addresses exceptionally interesting to members.

The funeral was very largely attended. There were nearly 200 motor-cars in the procession from Mr. Dougall's house in Clyde Road to the Waimairi cemetery. Many members of the Masonic craft were present as were representatives of the Mayor of Christchurch, the City Council, the Canterbury Branch of the Navy League, and many other public bodies and associations with which Mr. Dougall was associated. The legal profession was also largely represented.

New Zealand Law Society.

Meeting of Standing Committee.

A meeting of the Standing Committee of the Council of the New Zealand Law Society was held on August 24, 1934.

The Statutes Revision Committee of the House of Representatives had written inviting the Society's comments on the Mortgagors and Tenants Relief Amendment Bill and the Distress and Replevin Bill, and the meeting was held to consider these Bills, and also the Reciprocal Enforcement of Judgments Bill on which the Society's Examiner of Bills had reported.

Mortgagors and Tenants Relief Amendment Bill.—The following report was received from Mr. N. A. Foden, Examiner of Bills :—

"This Bill is an attempt to reintroduce the suspension of the personal covenant in a mortgage or in a guarantee in the case of religious, charitable, or educational bodies.

"A firm in Wanganui protested on the previous occasion as they considered there was a special case in their district which would cause great injustice if the principle were allowed.

"It is difficult to see why guarantors of such bodies only should be relieved of liability. It would be unfair to mortgagees of such property which may have little market value to remove the element which probably was the greatest inducement to them to lend. In addition, it savours strongly of invidious discrimination, as the relief from the personal covenant should operate generally or not at all."

The Wanganui firm mentioned above also wrote and cited a specific instance in which grave injustice would be done if the proposed amendment were carried, and asked for assistance in placing the position before the Statutes Revision Committee.

It was decided that the Council should state its strong objection to the Bill, and that the President or his nominee should, in company with a representative of the firm in question, wait on the Statutes Revision Committee and endeavour to prevent the passing of the Bill.

Distress and Replevin Bill :—Mr. Foden reported on this Bill as follows :—

"This Bill makes a fairly substantial alteration in the principal Act (1908).

"The present section, which it proposes to amend, is as follows :—

"Sec. 5.—'The personal and family clothing, the bedclothes, bedding, furniture, and tools of trade to an amount not exceeding in all £50 are hereby declared to be absolutely exempted from being sold or disposed of under any distress for rent: Provided that the tenant or person in possession of the messuages or lands in respect of which the distress is made gives up possession of the same if demanded by the landlord or his agent.'

"The Bill proposes to delete the proviso altogether, and to add before the word 'sold' in the substantive part of the section the further word 'seized.'

"The effect will be that it is likely to become more difficult to oust obstinate tenants, the only remedy remaining being that of suing for possession. It may be that in the present hard times it is necessary to give protection to tenants who cannot pay their rent, but the alteration will deprive landlords of the most expeditious and effective remedy which yet remains to them."

It was resolved to point out to the Statutes Revision Committee that the proposed amendment would be unjust to the landlord. The legislation at present in force affords tenants ample justice, but if this were altered as suggested a landlord in every case would be compelled to take lengthy and expensive proceedings.

Judicial Proceedings (Regulation of Reports) Bill.—The Examiner of Bills reported on this Bill as follows :—

"This Bill was reported on previously, having been introduced in a former session.

"Besides restricting details of divorce proceedings, s. 4 extends to proceedings under the Destitute Persons Act, 1910. In the above proceedings the following details only can be published, unless a Judge or Magistrate authorises further matter to be reported :—

"1. The names, etc., of parties, witnesses, solicitors, and counsel.

"2. A concise statement of the charges, defences, and countercharges in support of which evidence has been given.

"3. Points of law and the Court decision thereon.

"4. Judge's summing up, jury's finding, the judgment of the Court, and the observations of the Bench in giving judgment.

"No indication is given of what constitutes a 'concise statement' in terms of (2) above.

"Section 5 prohibits the publishing of photographs of Judge, Magistrate, parties, witnesses, jurors.

"The authority of the Court or of the party concerned enables the photograph to be published. In this connection it is perhaps appropriate to observe that photos of solicitors and counsel are frequently published, to an extent that indicates that they are not altogether averse to the appearance of their portraits in the Press. In future, if such are published, the obvious inference is that consent has been given. I suggest that in the interests of the profession a uniform course of action should be followed, preferably that of non-publication, as the alternative is likely to lead to publicity in a form not likely to commend itself to the generality of the profession.

"The circulation of fuller reports of technical interest among members of the legal and medical professions is not prohibited, nor other reports of evidence, etc., for the information of the parties.

"Two matters require notice in cl. 5 (1). In the first place, apart from the requirement of 'writing,' there is no provision directing how the consent of the Court is to be obtained or recorded. And, secondly, in the case of the consent of the person represented, there is not even the requirement of writing, although one would have thought that in precisely this case such a provision would have been the more necessary as a safeguard.

"There is, moreover, no provision for appeal from the conviction or from the sentence of imprisonment and/or fine set out in cl. 6 of the Bill."

It was pointed out by various members that the proposed Bill was wide enough to include such reports as an agent's report of divorce proceedings, and it was therefore decided that Messrs. Wiren and Levi should be appointed a committee to consider certain points arising out of the Bill and to interview the Statutes Revision Committee with a view to the inclusion of a clause protecting solicitors reporting in the performance of their professional duties.

Practice Precedents.

Leave to serve a Writ of Summons out of New Zealand.

Rule 48 of the Code of Civil Procedure, *Stout and Sim's Supreme Court Practice*, 7th Ed. p. 48, provides *inter alia*, that a writ of summons may be served out of New Zealand *by leave of the Court* where there has been a breach in New Zealand of any contract wherever made.

The Court has a discretion which it is bound to exercise judicially and on proper grounds.

In exercising this discretion the Court shall have regard to the amount or value of the property in dispute or sought to be recovered, and to the existence in the place of the residence of the defendant of a Court having jurisdiction in the matter in question, and to the comparative cost and convenience of proceeding in New Zealand or in the place of such defendant's residence; and in the above-mentioned cases no such leave shall be granted without an affidavit stating the particulars necessary for enabling the Court to exercise its discretion in manner aforesaid, and all such particulars (if any) as it requires to be shown: Rule 49 of the Code, *cit. sup.*, p. 49.

Rule 50 provides that every such application shall be supported by evidence, by affidavit or otherwise, showing in what place or country the defendant is or probably may be found, and whether such defendant is a British subject or not, and the grounds on which the application is made: See the notes to the rule, pp. 73, 74.

By Rule 51 any order giving leave to effect such service shall fix the time within and the place at which the defendant is to file his statement of defence, and the sittings of the Court at which the action is to be heard.

In practice the writ of summons is usually issued first, and the application for leave to serve is then made to the Court. In such a case the motion should ask for an order authorising the completion of the writ of summons by filling in the time and place and the sittings fixed, and that the costs of and incidental to the order be fixed and be added to the costs indorsed on the writ of summons.

IN THE SUPREME COURT OF NEW ZEALAND.

.....District.

.....Registry. No. .

Between A.B., etc., plaintiff, and C.D., etc., defendant.

MOTION FOR LEAVE TO SERVE WRIT OF SUMMONS OUT OF NEW ZEALAND AND FOR ORDER FIXING TIME FOR DEFENCE AND SITTINGS.

Mr. of counsel for the plaintiff TO MOVE before the Right Honourable Sir Chief Justice of New Zealand at his Chambers Supreme Courthouse on day the day of 19 at o'clock in the forenoon or so soon thereafter as counsel can be heard FOR AN ORDER granting leave to serve the writ of summons and statement of claim herein upon the defendant in the City of in England or elsewhere in the United Kingdom AND fixing the time within which and the place at which the defendant may file his statement of defence AND for an order fixing the sittings of this Court at which the action is to be tried AND authorising the completion of the said writ of summons by filling in the time and place and the sittings so fixed AND for a further order that the costs of and incidental to such order be fixed and added to the costs endorsed on the said writ of summons UPON THE GROUNDS:—

(*a*) That the contract sought to be enforced in the said action was made and entered into and was wholly to be performed in New Zealand.

(*b*) That the defendant is a British subject born in New Zealand who is now resident within the City of in England.

(*c*) That it will be cheaper and more convenient to have the said action tried in New Zealand.

AND UPON THE FURTHER GROUNDS set out in the affidavit of filed herein.

Dated at this day of 19 .

Solicitor for plaintiff.

Certified pursuant to the Rules of Court to be correct.

Counsel moving.

Reference: His Honour is respectfully referred to RR. 48 to 51 inclusive of the Code of Civil Procedure, *Stout and Sim's Supreme Court Practice*, 7th Ed., pp. 69-74.

Counsel moving.

AFFIDAVIT IN SUPPORT OF MOTION.

(*Same heading.*)

I E.F. of the City of law clerk make oath and say as follows:—

1. That I am the plaintiff in the above-mentioned action.

2. That I am informed and verily believe that the defendant is a British subject and was born at in New Zealand and was domiciled and resided in New Zealand up to the day of 19 .

3. That for some years prior thereto the above-named carried on business in the City of in New Zealand as an indent agent.

4. That on or about the day of 19 the defendant proceeded from New Zealand to England.

5. That I am informed and verily believe the defendant is employed by the Company in the City of in England as a salesman.

6. That the cause of action upon which this action is based arose in New Zealand.

7. That the claim is one for damages for breach of agreement in respect of a tenancy of tenements made and to be performed within New Zealand.

8. That there is now due and owing under the said agreement the sum of £ .

9. That the sum of £ is claimed from the defendant by way of special damages and the sum of £ for general damages in respect of the said breach of agreement.

10. That all the witnesses for the plaintiff in this action reside in New Zealand.

11. That since the defendant left New Zealand I have had no communication with him whatsoever.

12. That I have made inquiries from defendant's mother and relatives and as far as I am able to ascertain there is no likelihood of defendant returning to New Zealand.

13. That I am informed by my solicitor and verily believe that I have a good cause of action and that there can be no valid defence to my claim.

14. That it will be cheaper and more convenient to have the action tried in New Zealand.

15. That from inquiries made from defendant's mother and relatives I verily believe that defendant left no lawful attorney in New Zealand.

Sworn etc.

ORDER FOR LEAVE TO SERVE WRIT OUT OF NEW ZEALAND.

(*Same heading.*)

day the day of 19 .

Before the Honourable Mr. Justice .

UPON READING the motion for order granting leave to serve writ of summons out of New Zealand filed herein and the affidavit of filed in support thereof AND UPON HEARING Mr. of counsel for the plaintiff IT IS ORDERED that leave be and leave is hereby granted to serve the writ of

summons and statement of claim filed herein upon the above-named defendant in the City of in England or elsewhere in the United Kingdom AND IT IS FURTHER ORDERED that the defendant file his statement of defence to the said claim in the Registry of the Supreme Court of New Zealand at within ninety (90) days after the day on which such writ of summons shall be served upon him AND FURTHER that this action be tried at the first sittings of this Court at Wellington in New Zealand to be held after the expiry of the said period of ninety days AND IT IS FURTHER ORDERED that the costs of and incidental to this order be reserved AND IT IS FURTHER ORDERED that the said writ of summons be completed accordingly.

By the Court,

Registrar.

Recent English Cases.

BANKRUPTCY AND INSOLVENCY.

Bankruptcy—Private Sitting—Examination of Witness—*Re* MAUNDY GREGORY; TRUSTEE *v.* NORTON (Ch. D.).

Under sec. 25 of the Bankruptcy Act, 1914 (Gt. Brit.), a witness may be required to answer questions relating to the compromise of proceedings between the bankrupt and a third party.

As to sec. 25 of the Bankruptcy Act, 1914: see HALSBURY, 2nd Edn., para. 260 *et seq.*; DIGEST 5, p. 616.

Bankruptcy—Maintenance Order—Bankruptcy of Wife—Income from Maintenance—*Re* LANDAU; *ex parte* THE TRUSTEE (C.A.).

A debtor who is in receipt of an income under an order for maintenance may be ordered to pay a proper part of it for the benefit of her creditors.

As to sec. 51 of the Bankruptcy Act, 1914: see HALSBURY, 2nd Edn., 2, para. 328; DIGEST 5, p. 920 *et seq.*

CONFLICT OF LAWS.

Probate—Testatrix Domiciled in Italy—English Will—Revocation—VELASCO *v.* CONEY (P.D. & A.).

A will in English form, dealing with property in England, can be revoked by an Italian testator having an Italian domicile if revoked according to Italian law.

As to the revocation of wills by persons domiciled abroad: see HALSBURY, 2nd Edn., 6, para. 304; DIGEST 11, p. 375 *et seq.*

DIVORCE.

Divorce — Nullity — Incapacity — SNOWMAN, *otherwise* BENSIGNER *v.* SNOWMAN (P.D. & A.).

A decree of nullity may be granted on the ground of incapacity of the husband notwithstanding fecundation ab extra.

As to grounds for nullity: see HALSBURY, 2nd Edn., 10, para. 934 *et seq.*; DIGEST 27, p. 265 *et seq.*

HIGHWAYS.

Highway—Access to—Communication for vehicles across footpath—Sanction of Local Authority—MARSHALL *v.* BLACKPOOL CORPORATION (H.L.).

The owner of land adjoining a highway has a right of access to it from the highway, and the rights of the public to pass on the highway are subject to that right; and a local Act which requires the sanction of the local authority to the making of a communication crossing a footpath does not, unless so stated in express terms, entitle the local authority to consider questions of the safety or convenience of the public except so far as affected by the nature of the work.

As to right of access to highway see HALSBURY 16, para. 83 *et seq.*; DIGEST 26, p. 332.

MANDATED TERRITORY.

Mandated Territory—Bankruptcy—Jerusalem District Court—British Court—*Re* MAUNDY GREGORY; TRUSTEE *v.* PATRIARCH OF JERUSALEM (Ch. D.).

The District Court of Jerusalem is a British Court having jurisdiction in bankruptcy within sec. 122 of the Bankruptcy Act, 1914 (Eng.).

As to sec. 122 of the Bankruptcy Act, 1914: see HALSBURY, 2nd Edn., 2, para. 573; DIGEST 4, p. 39.

MASTER AND SERVANT.

Workmen's Compensation—Weekly Payments—None Made—Bankruptcy of Last Employer—Previous Employers.—M'GILLIVRAY *v.* HOPE AND BELL (H.L.).

An employer (or the Trustee in bankruptcy of an employer) who has made no payments under an order in favour of a workman, cannot claim contribution from earlier employers under clause 9 of the Various Industries (Silicosis) Scheme, 1928.

As to industrial diseases: see HALSBURY 20, para. 346; SUPPLEMENT for 1924, *ibid.* p. 22 *et seq.*; DIGEST 34, p. 463 *et seq.*

WEIGHTS AND MEASURES.

Weights and Measures—Sale of Coal—Notice of Alleged Offence—Condition Precedent—PHILLIPS *v.* PARNABY (K.B.D),

For the purposes of notice of the date and nature of an alleged offence under the Weights and Measures Acts, a retailer is a person who sells to a consumer.

As to weights and measures generally: see HALSBURY 28. para. 923 *et seq.*; DIGEST 44, p. 130 *et seq.*

WILLS.

Will—Construction—House—Lunacy of Testator—Effect on bequest—*Re* GARLAND; EVE *v.* GARLAND (Ch. D.).

A devise of a house "of which I may at the time of my death be the owner and occupier" is effective, although owing to mental disability the testator never in fact occupied the house.

As to the construction of wills generally see HALSBURY 28, para. 1225 *et seq.*; DIGEST 44, p. 534 *et seq.*

Rules and Regulations.

Harbours Act, 1923. General Harbour Motor-launch By-laws, 1934.—*Gazette* No. 67, August 30, 1934.

Surveyors Registration Act, 1928. Survey Examination Rules, 1928.—*Gazette* No. 67, August 30, 1934.

New Books and Publications.

Forensic Success. By S. T. Uff. (Butterworth & Co. (Pub.), Ltd. Price 5/-.

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Company Law. 9th Edition, 1934. By A. F. Topham, LL.M., A.M.R., and Topham, B.A. (Butterworth & Co. (Pub.) Ltd.). Price 10/6d.

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