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" *The Bar is an unselfish Profession : it is the litigants who want to fight, and counsel who try to make peace.*"
—SIR GERALD HURST, at the Annual Dinner of the Hardwicke Society.

Vol. X. Tuesday, October 2, 1934 No. 18

Reform in Legal Education.

II.

IN our last issue we surveyed the field of examination and qualification for admission as barrister or solicitor, and for the degrees of Bachelor, Master and Doctor of Laws, over a period extending from the late 'eighties to the present time. If we turn to the Report of the Committee of the Council of Legal Education, we find that the maintenance of certain of these conditions is taken for granted. These may be summarized as follows :—

(*a*) That the professions of Barristers and Solicitors should be separated.

(*b*) That the curriculum and examinations should be the same for the Law degree as for admission to the profession.

(*c*) That the curriculum and standard should be conditioned by the assumption that law students must be earning a living or gaining experience in an office during the greater part of their course, except in the case of those who have already taken their B.A. : in other words, that the LL.B. course should not be framed on the basis that law students should be required to give up their whole time to law-school work and study during their course.

(*d*) That practical professional work cannot be obtained in a law school.

Now, all these assumptions that we should carry on under existing conditions need careful examination.

There seems no reason whatever why the two branches of the profession should be separated, seeing that in any event by far the greater number will practise both as barristers and solicitors. By far the most convenient method is that of Victoria where every practitioner has the same curriculum and is admitted as a barrister and solicitor, generally known as an " amalgam." And yet in Victoria, at all events in Melbourne where the bulk of barristers' work is done, the two branches are for practical purposes almost as distinct as in New South Wales where the two branches are kept quite separate and where the practitioner must be either barrister or solicitor, and cannot be both. And that distinction is far more marked than in New Zealand, where theoretically the two branches are separated. The adoption of the Victorian system would lead both to simplification and a raising of the standard for all practitioners.

The experience of most British countries seems to show that an LL.B. Degree should be essentially a cultural degree and ensure that its possessor should have a foundation of general culture, a knowledge of the principles, history, and philosophy of law, and not be hampered by details of statutes and such subjects of adjective law, as (say) evidence, practice and procedure, and the more detailed side of (say) company, bankruptcy, divorce law, which would be required for the make-up of the practitioner. The old method by which the LL.B. had to pass in such additional subjects before he could be admitted as a practitioner had a good deal to recommend it. The reason for the amalgamation of the two requirements was, as we have seen, because it was felt that, when the Law Professional examination was easier and could be taken in a shorter time than the LL.B., students would not bother to go to the University but would take the shorter and easier course ; whereas, where the two were identical, students would prefer to have the University degree. Now the Council wants to make the LL.B. examination serve three purposes :—

1. A University degree ; and
2. A pass examination for law practitioners ; and
3. An honours examination for LL.M.

Other countries can get their students to give up three whole years to work at a law school, as they do in America and Canada : for instance, at Harvard a student is required to have an Arts degree before he begins his law course, and the students undertake menial occupations during the vacation to enable them to earn their living. Surely we should endeavour to make our legal education a reality, and our law school an institution of which New Zealand might be proud, and cease to try and persuade ourselves, students and parents, that legal education can be attained at the fag-end of the day, when a greater part of that fag-end is devoted to students' gatherings and recreations. The continuation of the present system can never give the depth or breadth of education that is required for our leaders of the Bar, our administrators, and our Judges.

It seems to be overlooked that a properly organized law school can provide the bulk of practical professional work for its students in a far more effective way than mere routine, haphazard work in an office. The solicitor can be taken through a carefully thought-out practical course in drafting such deeds as wills, settlements, and deeds of trust, of which he now gets little experience in the average office. The law clerk usually " learns " to draft deeds by copying something of the kind among the office precedents : thus acquiring his knowledge parrot-fashion, and not knowing the why and wherefore of his task. In an efficient law school, on the other hand, he can be taught to draw and deal with the principal conveyancing documents at the same time as he learns and understands on what principles and for what purposes their provisions are framed. The principles of registration can be taught and illustrated in practice by a few visits to the Lands and Deeds Registration Offices, with explanations by the chief officers.

This system would be infinitely preferable to the present rule of thumb by which the clerk in an office learns to do a particular thing in a particular way because that is the way everyone else does it, without understanding of the principles and purpose of the process.

Then, in such a law school, the barrister can be trained, by actual practice, in writing opinions, in

arguing cases, in moots, in attending the Courts and reporting tersely the chief features in the conduct of civil and criminal cases, and in summarizing judgments and in writing head notes so as to elicit his grasp of the points of issue. In fine, a law school needs to be a legal clinic, with clinical material and training available, such as every other profession provides for its students. But such training requires whole-time study, as does the wide reading requisite for a real cultural LL.B. degree, including a comparison of the doctrines of various schools and a discussion and weighing-up of their respective values.

Conversely, since branches of adjective law, practice, etc., are included as examination subjects for the intended cultural degree of LL.B., the Committee recommends that the University should examine in subjects which may only be learnt properly outside its walls, under present conditions. If it be objected that such is not the intention, then why is there insistence on the years of practical experience in a law office? And, further, if three years of "practical professional work since the passing of the University Entrance examination" be considered a pre-requisite for admission, why reduce that period by a year where a candidate has the purely cultural degree of Bachelor of Arts? Some explanation is surely needed.

In our next issue we shall consider the suggested prescriptions for qualification to admission to the profession.

Summary of Recent Judgments.

SUPREME COURT.
Wellington.
1934.
Sept. 6, 8.
Ostler, J.

MORRIS v. RITCHIE.

Gold-coin Dealer—Purchase and Sale of Gold Coins—Whether Regulations are Ultra Vires—Whether they purport to license Persons to carry on Illegal Trade—Finance Act, 1920, s. 48—Board of Trade Regulations, *1932 N.Z. Gazette*, **2067, cl. 2 (1).**

On appeal from a conviction of appellant of the offence of unlawfully carrying on the business of a gold-coin dealer without a license, contrary to cl. 2 of the regulations under the Board of Trade Act, 1919, *1932 New Zealand Gazette*, 2067,

Held, dismissing the appeal, That the first ground of appeal—namely, that as sovereigns are still legal tender in New Zealand and are therefore part of the currency, they cannot be purchased or sold but can only be exchanged for currency in a different form—failed as the giving of a higher value in cash for a sovereign is a purchase of that sovereign, and it is taken by the purchaser not as a current coin of the realm, but as a piece of gold of standard fineness, and is bought as gold for the purpose of making a profit on the gold.

2. That the regulations are not *ultra vires*.

3. That the third ground of appeal—namely, that, as it is an offence under s. 48 of the Finance Act, 1920, to use sovereigns otherwise than as currency, it is illegal to conduct a business of purchasing sovereigns, and therefore the regulations are illegal and void because they purport to license persons to carry on an illegal trade—failed as the section deals exclusively with coins which have become the person's own property, and only provides that, after acquisition, a person shall not use those coins otherwise than as currency without the consent of the Minister of Finance.

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

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

NOTE:—For the Finance Act, 1920, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, 1908-1931, title *Criminal Law*, Vol. 2, p. 345.

COURT OF APPEAL
Wellington.
1934.
July 9, 10, 11, 12, 13, 16;
Sept. 14.
Reed, J.
Ostler, J.
Blair, J.

PUBLIC TRUSTEE v. MERRY.

Landlord and Tenant—Trustee—War Legislation—Interpretation—"Dwellinghouse"—"Dwellinghouse used as such"—Powers of Landlord to raise Rent—Agreed Rent—Standard Rent—Whether Trustee negligent after Refusal of Beneficiary to take over Estate from him—Beneficiary estopped by Conduct from disputing Adequacy of Rents received—Duty of Trustee to obtain Best Available Rents during his Trusteeship—Liability for Difference—Negligence of Trustee to collect Moneys due to Estate—Liability to pay Interest—Trust for Accumulation—Liability to pay Compound Interest on Amount not in hand but which the Trustee ought to have collected—War Legislation Amendment Act, 1916, ss. 2, 3, 5, 6, 7—War Legislation Act, 1917, s. 20—Housing Amendment Act, 1920, s. 17.

A property, which consisted of a shop, a bath-room, and three living-rooms, and which is used as a dwellinghouse as well as a shop by all the tenants of the premises, was a "dwelling-house" within the meaning of Part I of the War Legislation Amendment Act, 1916, and its amendments; and the change in s. 20 of the War Legislation Act, 1917, from "the dwelling-house" to "that dwellinghouse used as such" leaves the definition in the same position as it was before those words were used.

Epsom Grand Stand Association, Ltd. v. Clarke, (1919) 35 T.L.R. 525, followed.

It was provided by the War Legislation Amendment Act, 1916, that the landlord should have the right to raise the rent against his tenant from the agreed rent to the standard rent, which, before the War Legislation Act, 1917, in all cases, and, after that Act, in the case of houses let before August 3, 1914, could at the option of the landlord be 8 per cent. of the capital value, and there has been no indication on the part of the Legislature in the several subsequent amendments, including the Rent Restriction Act, 1926, and its amendments, and s. 17 of the Housing Amendment Act, 1920, to take away from the landlord the right given by the War Legislation Amendment Act, 1916, to increase his tenant's rent from the agreed to the standard rent if the standard rent were higher.

Aitken v. Smedley, [1921] N.Z.L.R. 236, approved and applied.
Dufty v. Palmer, [1924] 2 K.B. 35, considered and distinguished.

Respondent was not entitled, on the facts appearing in the judgment, to claim that the appellant was negligent in the management of her property from the time that she unreasonably refused to take it over from him, for the reasons:—

(*a*) From the time he had completed the administration of the estate of her deceased husband, the Public Trustee was a bare trustee, his duty being to hand over the estate to the beneficiary.

(*b*) Respondent was estopped by her silence as to the adequacy of the rents obtained by the appellant from claiming that appellant was negligent in the management of the rented properties as from the date upon which she first knew what rents were being obtained—*i.e.*, from May 13, 1925.

Richards v. Browne, (1857) 3 Bing. N.C. 493, 132 E.R. 500, applied.

As the appellant from September 3, 1913, when the respondent's husband's estate was committed to his charge, had failed to obtain rentals which a prudent, skilful, and diligent businessman or trustee could have obtained, he must be held liable for the difference.

A trustee, who has negligently omitted to collect moneys due to his estate so that they have been left outstanding and lost, is liable to replace the amount so lost; and he ought further to be charged with the interest which such moneys would have earned if they had been got in.

Styles v. Guy, (1849) 1 Mac. & G. 422, 41 E.R. 1328, followed.
Tebbs v. Carpenter, (1816) 1 Madd. 290, 56 E.R. 107, and **Lowson v. Copeland,** (1787) 2 Bro. C.C. 156, 29 E.R. 89, distinguished.

Statement in *Lewin on Trusts*, 13th Ed. 300, disagreed with.

Where such lost moneys are income and if got in would have been subject to a trust for accumulation, the trustee may be charged with compound interest on the amount of the funds which ought to have been collected.

In re Barclay, Barclay v. Andrew, [1899] 1 Ch. 674, **Gilroy v. Stephens,** (1882) 51 L.J. Ch. 834, **Bryne v. Norcott,** (1851) 13 Beav. 336, 51 E.R. 130, **Moss v. Moss,** (1898) 19 N.S.L.R. (Eq.) 146, and **In re Greenwood, Greenwood v. Firth,** (1911) 105 L.T. 509, referred to.

So held by the Court of Appeal, varying the judgment of *MacGregor*, J. (unreported).

Judgment was accordingly given for the respondent for the deficiency in rents as found by referee between September 3, 1913, and May 13, 1925, with compound interest thereon at 3 per cent., and with simple interest at 4 per cent. from the latter date to the date of judgment, no costs being allowed in the Court of Appeal as each party had partially succeeded.

Counsel: **Callan,** K.C., and **Evans,** for the appellant; **Heine** and **Cleary,** for the respondent.

Solicitors: **Bell, Gully, Mackenzie, and O'Leary,** Wellington, for the appellant; **W. A. Heine,** Wellington, for the respondent.

Case Annotation: *Epsom Grand Stand Association, Ltd. v. Clarke,* E. & E. Digest, Vol. 31, p. 581, para. 7296; *Dufty v. Palmer, ibid.*, p. 567, 7139; *Richards v. Browne, ibid.*, Vol. 23, p. 395, para. 4660; *Styles v. Guy, ibid.*, p. 324, para. 3911; *Tebbs v. Carpenter, ibid.*, Vol. 24, p. 699, para. 7243; *Lowson v. Copeland, ibid.*, Vol. 23, p. 322, para. 3891; *In re Barclay, Barclay v. Andrew, ibid.*, Vol. 24, p. 701, para. 7264; *Gilroy v. Stephens, ibid.*, para. 7268; *Byrne v. Norcott, ibid.*, Vol. 43, p. 976, para. 4166; *Moss v. Moss, ibid.*, Vol. 23, p. 492, note *d*; *In re Greenwood, Greenwood v. Firth, ibid.*, Vol. 23, p. 322, para. 3890.

NOTE:—For the War Legislation Amendment Act, 1916, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, Vol. 8, title *War Legislation*, p. 1073; War Legislation Act, 1917, *ibid.*, p. 1075; Housing Amendment Act, 1920, *ibid.*, Vol. 3, title *Landlord and Tenant*, p. 814.

SUPREME COURT
Invercargill.
1934.
Aug. 13, 14.
Kennedy, J.

RE WEST.

Practice — Amended Conviction — "Omission or mistake"—Whether Correction of Mistake or Fresh Substantive Adjudication—Inferior Courts Procedure Act, 1909, s. 12.

A Stipendiary Magistrate convicted a defendant, fined him £15, ordered him to pay costs, and cancelled his license. The cancellation could not be supported. After entering up the conviction, the Magistrate altered the record, which accurately recorded his decision, deleting that part which purported to cancel the license and substituting a direction that the license be indorsed.

On motion to quash the conviction, **Held,** That the Magistrate's alteration went further than a mere correction of an omission or mistake and amounted to a fresh substantive adjudication, which was not authorised by s. 12 of the Inferior Courts Procedure Act, 1909, or by any inherent power.

That part of the amended conviction, therefore, which directed the indorsement of the license, as well as that which purported to cancel the license, was quashed. The remaining part of the conviction, being severable, stood.

Counsel: **Sinclair,** in support of motion to quash; **Macalister,** to oppose.

Solicitors: **Alan Smyth,** Mataura, for the defendant; **Macalister Bros.,** Invercargill, for the Crown.

NOTE:—For the Inferior Courts Procedure Act, 1909, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, 1908-1931, Vol. 2, title *Courts*, p. 55.

SUPREME COURT
Napier.
1934.
Aug. 20;
Sept. 13.
Reed, J.

PUBLIC TRUSTEE v. GILL AND OTHERS.

Workers' Compensation—Injury by Accident—"In or about any mine, building," &c.—Equitable Charge on Employer's Estate or Interest therein—Meaning of "in or about"—Workers' Compensation Act, 1922, s. 47—Mortgagee's Indemnity (Workers' Charges) Act, 1927, s. 5.

T.H.G., deceased, of whom plaintiff was the administrator, prior to the earthquake of February 3, 1931, carried on at Hastings a combined business of auctioneer and land agent in one building, which was on the freehold property of the deceased, and in another building with attached saleyards, which was on a leasehold property of which he was lessee. The properties were contiguous, but, to pass from the building on the leasehold to the freehold, it was necessary to go by the street, a distance of under 30 ft.

E.M.H., who was killed at the same time as T.H.G., was in his employment as sole cashier, accountant, and book-keeper in his combined businesses. Her office was on the leasehold portion, and both she and her employer were there killed by the collapse of the building. The nature of her duties required her at times to make as many as a dozen visits to the building on the freehold in the course of a morning. The Arbitration Court found that her death was due to accident arising out of and in the course of her employment.

The plaintiff, as administrator of E.M.H., recovered judgment for compensation in the Arbitration Court against the first defendant, as administratrix of T.H.G., whose estate was insolvent and who had not insured his employees. The leasehold property had no value, and a summons was taken out to obtain satisfaction of the judgment by having recourse to the freehold land under s. 47 (1) of the Workers' Compensation Act, 1922, which is as follows:—

> "(1) When injury is caused to a worker by accident arising out of and in the course of his employment in or about any mine, building, factory, or ship, the amount of compensation or damages for which the employer is liable in respect of that injury, whether under this Act or independently of this Act, shall be an equitable charge upon the employer's estate or interest in that mine, building, factory, or ship, and in the plant, machinery, and appliances in or about the same, and in the land on which the mine, building, or factory is situated."

The mortgagee was joined as second defendant, and the Registrar-General of Land, as third defendant in terms of s. 5 of the Mortgagee's Indemnity (Workers' Charges) Act, 1927.

The question before the Court was whether E.M.H.'s employment was "in or about" the building on the freehold land owned by her employer.

Bate, for the plaintiff; **Holderness,** for the first defendant; **H. B. Lusk,** for the second and third defendants.

Held, on the facts, that whether regarded from the point of view of the character of the employee's duties, or the proximity of the scene of her death to the freehold building, the injury which resulted in her death arose out of and in the course of her employment in and about the freehold building.

Held further, 1. That the word "about" is a geographical expression involving the idea of a certain physical contiguity and also involves the idea of an employment connected with the business carried on at the place indicated.

Owens v. Campbell, Ltd., [1904] 2 K.B. 60, 6 W.C.C. 54, followed.

2. That whether the accident occurred "in or about" the premises is a question of fact.

Powell v. Brown, [1899] 1 Q.B. 157, 1 W.C.C. 44, followed.

3. That the spot where the employee was killed was upon land the use of which was involved in the business carried on in the building over which the charge was sought, and was within 10 yards of that building: it was, therefore, within an area reasonably necessary for the purpose of the business carried on in the building concerned, the whole of the land included in the leasehold being necessary for the purposes of that business.

Fenn v. Miller, [1900] 1 Q.B. 788, 2 W.C.C. 55, applied.

Westport Coal Co., Ltd. v. Champion, (1906) 26 N.Z.L.R. 590; **Back v. Dick, Kerr, and Co., Ltd.,** [1906] A.C. 329, 8 W.C.C. 40, **Wrigley v. Whittaker and Son,** [1902] A.C. 299, and **Spacey v.**

Dowlais Gas and Coke Co., Ltd., [1905] 2 K.B. 879, 8 W.C.C. 29, distinguished.

The plaintiff was accordingly entitled to an order under s. 47 of the Workers' Compensation Act, 1922, relative to the freehold land.

Solicitors: **Simpson and Bate,** Hastings, for the plaintiff; **Logan, Williams, and White,** Hastings, for the first defendant; **Brandon, Ward, Hislop, and Powles,** Wellington, for the second defendant; **Kennedy, Lusk, and Morling,** Napier, for the third defendant.

Case Annotation: *Owens v. Campbell*, E. & E. Digest, Vol. 24, p. 921, para. 151; *Fenn v. Miller, ibid.*, p. 925, para. 180; *Back v. Dick, Kerr, and Co., Ltd., ibid.*, p. 898, para. 5; *Wrigley v. Whittaker and Son, ibid.*, Vol. 34, p. 264, para. 2249; *Spacey v. Dowlais Gas and Coke Co., ibid.*, Vol. 24, p. 899, para. 11.

NOTE:—For the Workers' Compensation Act, 1922, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, Vol. 5, title *Master and Servant*, p. 597; Mortgagees' Indemnity (Workers Charges) Act, 1927, *ibid.*, Vol. 7, title *Real Property and Chattels Real*, p. 1286.

SUPREME COURT
Christchurch.
1934.
July 30.
Johnston, J.

BROMS v. DAVIS GELATINE (N.Z.), LIMITED.

Practice—Trial—Jury—Claim by Widow under Deaths by Accidents Compensation Act arising out of Alleged Negligence of Fellow-servant—Trial before Judge and Jury—Code of Civil Procedure, RR. 254, 255.

An application for trial before a Judge and jury should not be refused in an action by a widow claiming to recover damages under the Deaths by Accidents Compensation Act, 1908, in respect of the death of her husband caused by alleged negligence on the part of his employers or their servants, as such action does not arise out of contract.

Robin v. Union Steamship Co., Ltd., [1918] N.Z.L.R. 215, 217, aff. on app. [1920] A.C. 654, followed.

Counsel: **M. J. Gresson,** for the defendant, in support of motion that trial take place before a Judge alone; **W. J. Hunter,** for the plaintiff, to oppose.

Solicitors: **Hunter and Ronaldson,** Christchurch, for the plaintiff; **Wynn Williams, Brown, and Gresson,** Christchurch, for the defendant.

SUPREME COURT
Wellington.
1934.
Sept. 4, 6.
Reed, J.

GABB v. THE LOAN AND DEPOSIT CO., LTD. (IN LIQUIDN.), AND EDWARDS.

Money-lenders—"Money-lender"—Carrying on other Business—Lending money in the Course of that Business—Money-lenders Act, 1908, s. 2 (*d*).

To bring a person within the exception to the definition of "money-lender" contained in s. 2 (*d*) of the Money-lenders Act, 1908, viz.:—

> "Any person *bona fide* carrying on . . . any business in the course of which and for the purposes whereof he lends money at a rate of interest (including any payment or deduction by way of premium, fine, or foregift) not exceeding ten per centum per annum,"

it is not enough to say that in certain transactions money is lent to customers who come in contact with the lender in another business carried on by him.

Kerr v. Louisson, [1928] N.Z.L.R. 154, and **Edgelow v. MacElwee,** [1918] 1 K.B. 205, followed.
Fagot v. Fine, (1911) 105 L.T. 583, referred to.

Counsel: **A. J. Mazengarb,** for the plaintiff; **Jessep,** for the first-named defendant; **R. E. Harding,** for the second-named defendant.

Case Annotation: *Edgelow v. MacElwee*, E. & E. Digest, Vol. 35, p. 203, para. 289; *Fagot v. Fine, ibid.*, para. 290.

Solicitors: **Mazengarb, Hay, and Macalister,** Wellington, for the plaintiff; **A. C. Jessep,** Wellington, for the first-named defendant; **Meek, Kirk, Harding, Phillips, and Free,** Wellington, for the second-named defendant.

NOTE:—For the Money-lenders Act, 1908, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, 1908-1931, Vol. 6, title *Money and Money-lending*, p. 5.

FULL COURT
Wellington.
1934.
June 22;
Aug. 14.
Myers, C.J.
Reed, J.
Ostler, J.
Johnston, J.

TAWA CENTRAL, LIMITED v. MINISTER OF PUBLIC WORKS, HOARE v. MINISTER OF PUBLIC WORKS.

Public Works—Compensation—Enhancement in Value accrued at Time of Entry to Land taken in common with other Lands consequent upon Execution of Public Work—Whether to be included in Compensation—Public Works Act, 1928, ss. 79, 80.

In answer to the following question submitted by the learned President of a Compensation Court, *Blair*, J.,

Whether, in ascertaining the compensation for land taken for a public work, there can be included any enhancement in value accrued (at the time of taking or at the time mentioned in s. 80 of the Public Works Act, 1928) to the land taken in common with other lands in the district consequent upon the execution of such public work?

Held, by *Myers*, C.J., and *Ostler*, J., That the owner is not entitled to any such addition in value due to the construction or prosecution of the public work for the purposes of which the land was taken,

On the grounds that the general principles laid down by the English authorities in regard to the assessment of land compulsorily acquired apply, unaffected by s. 80—*i.e.*, the value to be ascertained is the value to the vendor, not its value to the purchaser, in its actual condition at the time of expropriation, excluding any increase in value consequent on the execution of the undertaking for or in connection with which the purchase is made. The assessment is to be made in England as at the date of the notice to treat given by the undertaking authority.

Per Myers, C.J., That s. 80 does no more than fix the point of time as at which the value of the land is to be assessed for the purpose of ascertaining the amount of compensation.

In re Lucas and Chesterfield Gas and Water Board, [1909] 1 K.B. 16, discussed.

Fraser v. City of Fraserville, [1917] A.C. 187, and **McDermott v. Corrie,** (1913) 17 C.L.R. 223, aff. on app. [1914] A.C. 1056, referred to.

Per Ostler, J., That the word "value" in ss. 79 and 80 means "the value of the loss to the owner." So construed, there is nothing in the statute inconsistent with the English principles of compensation.

Cedar Rapids Manufacturing and Power Co. v. Lacoste, [1914] A.C. 569, and **Ross v. Minister of Public Works,** (1913) 32 N.Z.L.R. 1155, discussed.

Fitzgerald v. Kelburne and Karori Tramway Co., Ltd., (1901) 20 N.Z.L.R. 406, and **Russell v. Minister of Lands,** (1898) 17 N.Z.L.R. 241, referred to.

Held, by *Reed* and *Johnston*, JJ., That the value of the lands for compensation purposes must be taken as at their value, *howsoever caused*, as at the date they were first entered upon for the purposes of the public work.

On the ground that the Legislature has definitely fixed the date at which the value is to be ascertained. Any increase in the value of the land due to the work is at that date an accrued value, and, if the principle of betterment does not apply, represents the value of the land.

Per Reed, J., That there is considerable difference between the English and the New Zealand law in the principles to be applied in assessing compensation, due to the fact that there are in New Zealand definite statutory provisions upon matters which in England are based on judicial decisions on the Common Law.

In re Lucas and Chesterfield Gas and Water Board, [1909] 1 K.B. 16, discussed.

Fitzgerald v. Kelburne and Karori Tramways Co., Ltd., (1901) 20 N.Z.L.R. 406, **Russell v. Minister of Lands,** (1898) 17 N.Z.L.R.

241, **New Zealand and Australian Land Co. v. Minister of Lands,** (1895) 13 N.Z.L.R. 714, and **Fraser v. City of Fraserville,** [1917] A.C. 187, referred to.

Per Johnston, J., That s. 80 prohibits consideration of any other rule, not contained in the statute, the effect of which would limit the manifest purpose of s. 80 to assess value on a basis as at any appointed time.

New Zealand and Australian Land Co. v. Minister of Lands, (1895) 13 N.Z.L.R. 714, **Countess Ossalinsky and Manchester Corporation,** (1883) (not reported: see *Brown and Allan's Law of Compensation,* 2nd Ed. 659), **Sidney v. North Eastern Railway Co.,** [1914] 3 K.B. 629, and **Ross v. Minister of Public Works,** (1913) 32 N.Z.L.R. 1155, referred to.

Semble, The English rule that the value to the owner is to be estimated as it stood before the grant of the compulsory powers (thus excluding enhanced value due to the execution of the works), means only for the purpose of excluding a value in excess of market value raised by "special adaptability."

The Court being evenly divided, as the reference by the Compensation Court was consultative, the question so referred must be determined by the learned President of the Compensation Court.

Counsel: F. W. Ongley and **Arndt,** for the claimants; **Currie,** for the respondent.

Solicitors: Ongley, O'Donovan, and Arndt, Wellington, for the claimants; **Crown Law Office,** Wellington, for the respondent.

Case Annotation: *In re Lucas and Chesterfield Gas and Water Board,* E. & E. Digest, Vol. 11, p. 127, para. 169; *Fraser v. City of Fraserville, ibid.,* p. 124, para. 156, note *e*; *Cedar Rapids Manufacturing and Power Co. v. Lacoste, ibid.,* p. 130, para. 187; *In re Countess Ossalinsky and Manchester Corporation, ibid.,* p. 126, para. 166; *Sidney v. North Eastern Railway Co., ibid.,* p. 128, para. 171.

NOTE:—For the Public Works Act, 1928, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, 1908-1931, Vol. 7, *title Public Works,* p. 622.

SUPREME COURT
Napier.
1934.
May 5;
Aug. 22.
Blair, J.

IN RE HUNTER BROWN (DECEASED), GLENDINNING AND OTHERS v. BLACKLEY AND OTHERS.

Will—Construction—Income to Widow during Widowhood and named Daughter in Equal Shares—Estate for Life in whole Estate to Daughter by implication on Widow's Death.

Testator by his will directed his trustees to pay to his widow an annuity of £500, with discretionary power to increase it to an amount not more than £1,000 in any one year, it being his intention that such annuity should approximate one-fourth of the net income of his estate, and subject thereto to hold the trust estate in trust for all his children in specified shares.

By codicil, after reciting that only one of his children, a daughter, was then surviving, testator declared as follows:—

"My trustees shall stand seized and possessed of my trust estate upon trust to pay thereout to my said wife so long as she shall remain my widow and my said daughter the whole of the said free annual income thereof [my trust estate] in equal shares."

The daughter's children became entitled in equal shares to the capital on her death.

On originating summons for interpretation of, *inter alia,* such clause:—

A. L. Martin, for plaintiffs; **H. B. Lusk,** for first defendant.

Held, That, on the widow's death, the daughter became entitled to the whole income, the gift of the income to the widow being a gift for life during her widowhood.

In re Tate, Williamson v. Gilpin, [1914] 2 Ch. 182, **In re Stanley's Settlement, Maddocks v. Andrews,** [1916] 2 Ch. 50, referred to.

Solicitors: Carlisle, McLean, Scannell, and Wood, Napier, for the plaintiffs.

Case Annotation: *In re Tate, Williamson v. Gilpin,* E. & E. Digest, Vol. 44, p. 1215, para. 10505; *In re Stanley's Settlement, Maddocks v. Andrews, ibid.,* Vol. 40, p. 563, para. 1016.

Settlement of Workers' Compensation Claims.

Discharge to Employer paying Compensation.

By E. S. SMITH, M.A., LL.B.

An employer who is prepared to admit liability to pay compensation under the Workers' Compensation Act, or to compromise a claim for compensation, not infrequently finds considerable difficulty in obtaining a discharge which will constitute a valid receipt for the moneys paid, and will in addition free him from further liability either for compensation or for damages. Obviously difficulties of this nature will arise more frequently where the claim is by the dependants of a deceased worker than where it is by an injured worker, though even here an employer may occasionally be put to inconvenience, if not to actual expense, in obtaining a sufficient discharge.

Where compensation is payable to workers who are adult and *sui juris,* difficulties seldom or never arise. If the amount payable has been determined by judgment or by agreement, the receipt of the worker operates as an effective discharge; the employer then is merely concerned to comply with any direction given in the judgment as to the mode of payment, or, in the case of settlement by agreement, to place himself in a position to discharge the onus (which is on him alone) of establishing that the worker has received independent legal and medical advice which complies with the requirements of s. 18 of the Workers' Compensation Act. Upon receipt of the compensation awarded or agreed upon, the worker is, by force of the provisions of the Act itself (ss. 49 and 51), precluded from recovering damages in respect of the same accident, though it is not unusual in settlements by agreement to include an express provision discharging any claims to damages the worker may possess. An agreement in either form will provide the employer with a complete answer to any action for damages under the Deaths by Accidents Compensation Act, 1908, should the worker subsequently die as the result of the accident in question, for rights to damages under the Act last mentioned exist only in those cases where the deceased himself had a right to damages at the date of his death: *Reid v. Great Eastern Railway Co.,* (1868) L.R. 3 Q.B. 555; *"The Stella,"* [1900] P. 161; *Nunan v. Southern Railway Co.,* [1924] 1 K.B. 223; *Birss v. The King,* [1924] N.Z.L.R. 179. However, from the combined operation of ss. 18 and 49 (3), and from the decision in *Bowley v. Booth and Co.,* [1918] N.Z.L.R. 77, it is clear that mere admission of liability and the making of payments in terms of that admission will not operate as an agreement which precludes an action for damages by the worker, though the compensation so paid must be deducted from any damages recovered; an employer is not relieved of the risk of an action for damages by a worker unless he obtains an agreement complying with the provisions of s. 18 or satisfies a judgment for compensation.

Similar relief from risk of further action is secured by an employer who completes an agreement or satisfies a judgment settling the claim for compensation of an *infant* or other person under disability. In such cases, however, the receipt of the person entitled is not neces-

sarily or even usually a good discharge for the moneys payable, though by subs. 2 of s. 36 of the Workers' Compensation Act (which gives the Court jurisdiction to supervise the payment and application of moneys payable to persons under legal disability) any weekly payment to which a minor is entitled may be paid to him unless the Court otherwise orders, and by s. 18 (4) compensation payable in terms of an agreement—whether by way of weekly payments or lump sum payments—may be paid to a minor unless the Magistrate approving the agreement otherwise directs. In practice a minor is normally permitted to receive and give valid receipts for weekly payments, but the Magistrate or Court will usually direct that the major portion of any lump sum recovered on his behalf be invested for his benefit pending the termination of his minority.

There are only two methods by which a claim for compensation in respect of the *death of a worker* can be settled with the result that, beyond all doubt, the employer is freed from further liability for compensation or damages. The first method is by agreement with the legal personal representative of the worker (ss. 18 (3) and 51); the second is by the satisfaction of a judgment obtained at the suit either of the legal personal representative of the worker, or of a dependant who sues on his own behalf and on behalf of all other dependants and at trial gives conclusive evidence as to who are the dependants and that there are no others (ss. 23 and 49 (4)). In view of possible difficulties in obtaining conclusive evidence that no further dependants exist, it is obviously desirable that an administrator should be appointed in cases where the claim is being settled by way of compromise. It has on occasions been seriously suggested that s. 38 of the Workers' Compensation Act provides a third method of obtaining an absolute discharge from liability of any nature, and that, in the absence of a judgment or of an agreement with an administrator, an assessment by the employer of the compensation payable is a method of "arriving at" the compensation payable within the meaning of s. 38 (1), so that upon payment to the Public Trustee of the sum so assessed an absolute discharge is obtained. While s. 38 might be more happily worded, it would appear reasonably obvious that the Public Trustee is by this section constituted merely a statutory custodian of compensation moneys, whose duties arise only after the amount due has been settled in one or other of the two methods provided by the Act, and that his receipt is a valid receipt solely for the compensation paid and cannot operate to discharge or release any rights vested in the dependants.

The employer of a deceased worker is accordingly safe only where his liability has been settled by agreement with an administrator, or by judgment recovered on behalf of all dependants, though where no grant of administration has been obtained he may, in exceptional circumstances, be content to settle the claim by agreement with the dependants. This latter course has numerous and serious disadvantages. Not only does it place upon the employer the obligation of seeing that the dependants receive adequate advice, and, in the case of minors, procure the approval of a Magistrate, but, as each dependant can contract only on his own behalf, it leaves the employer subject to the risk of an action for damages by some dependant of whose existence he was unaware, and this even though the maximum compensation has been paid: *Cf. Kinneil Cannel and Coking Coal Co., Ltd. v. Waddell*, [1931] A.C. 575. Moreover, agreements of this nature cannot be made with infants of tender years, and are impracticable where there is a definite possibility of further dependants, either legitimate or illegitimate, subsequently appearing; here the employer is forced to refuse any payment whatever until an administrator is appointed who can contract on behalf of all dependants, or an action is brought by one dependant on behalf of all. There are, of course, cases where the worker leaves total dependants and it is clear that there can be neither a claim for damages nor a dispute as to the quantum of compensation payable, and in these the employer will be sufficiently protected by paying the moneys to the Public Trustee in terms of s. 38, despite the possibility of further dependants being discovered.

Two further points warrant comment. First, neither an agreement by an administrator settling a claim for damages under the Deaths by Accidents Compensation Act, 1908, nor the satisfaction of a judgment for damages under that Act obtained by an administrator or by a relative, is necessarily a bar to an action under the Workers' Compensation Act, 1922. The class of dependants under the Workers' Compensation Act is wider than the class of relatives entitled to sue under the Deaths by Accidents Compensation Act; and as the only persons whose claims to compensation are barred by an agreement or judgment respecting damages are those who are bound by the agreement or judgment (ss. 49 and 51, Workers' Compensation Act, 1922) it follows that the rights of dependants who cannot sue under the Deaths by Accidents Compensation Act, 1908, are left unimpaired by such an agreement or judgment: *Cf. Kinneil Cannel and Coking Coal Co., Ltd. v. Waddell* (*supra*). Secondly, even where an agreement settling a claim for damages has been entered into by or on behalf of all persons entitled to sue for compensation or damages, such an agreement is not a bar to any further action for compensation unless it complies with the requirements of the Workers' Compensation Act respecting legal and medical advice: *Bowley v. Booth and Co.*, [1918] N.Z.L.R. 77, 82.

The Solicitor-General.

Receives his Patent as a King's Counsel.

Prior to the commencement of the present sittings of the Court of Appeal on September 17, the Solicitor-General (Mr. H. H. Cornish) received his patent as King's Counsel with the ceremonial usual on the taking of silk. On the Bench were the Chief Justice (Rt. Hon. Sir Michael Myers) and Their Honours Mr. Justice Herdman, Mr. Justice Blair, Mr. Justice Kennedy, and Mr. Justice Fair.

The Rt. Hon. Sir Francis Bell, K.C., Mr. C. H. Weston, K.C., and Mr. J. B. Callan, K.C., represented the Senior Bar, and Mr. J. S. Barton, S.M., and Mr. B. L. Dallard, Under-Secretary for Justice, were present. In addition, a very large gathering of members of the Junior Bar testified to the esteem and affection in which the newly-appointed King's Counsel is held by his professional contemporaries.

Accord and Satisfaction.

Mutual Promises as the Consideration.

A right of action arising from a breach of contract, if not exercised in the ordinary manner by a suit instituted before a Court of competent jurisdiction, or allowed to expire through a passage of time, may be discharged by the consent of the parties to the contract. This consent by the parties may take the shape of a formal release under seal, or rescission in a narrow and specific sense, or, alternatively, may be given by means of an "accord and satisfaction," which occurs where there is, in the words of Salmond and Winfield's *The Law of Contract*, "no such mutual release of reciprocal obligations, but merely a unilateral release of one party from some or all of his obligations or liabilities in consideration of some payment or other valuable consideration moving from him to the other party." By "accord," as the learned editors tell us, is meant the agreement to dissolve, and by "satisfaction" is meant the consideration so moving from the party released to the other.

At one time the consideration had to be executed, and a mere promise of performance could not amount to a satisfaction, but even as early as the time of *Comyn's Digest* it was recognised that the consideration might be executory, for there we read (Accord (B.4)) that "an accord, with mutual promises to perform, is good, though the thing be not performed at the time of action; for the party has a remedy to compel the performance"; and this statement of the law was approved by Parke, B., in *Good v. Cheesman*, (1831) 9 L.J. (o.s.) K.B. 234, 237, 109 E.R. 1165, by the Court of King's Bench in *Cartwright v. Cooke*, (1832) 3 B. & Ad. 701, 110 E.R. 256, and, recently, by the Court of Appeal in *British Russian Gazette v. Associated Newspapers*, [1933] 2 K.B. 616, where Scrutton, L.J., said (at p. 781):—

> "Accord and satisfaction is the purchase of a release from an obligation arising under contract or tort by means of any valuable consideration, not being the actual performance of the obligation itself. The accord is the agreement by which the obligation is discharged. The satisfaction is the consideration which makes the agreement operative."

In *Good v. Cheesman* (*supra*) the plaintiff and three other persons, creditors of the defendant, agreed to accept payment by the defendant's covenanting and agreeing to pay one-third of his annual income and executing a warrant of attorney as a collateral security, the plaintiff to appoint a trustee. At that time, however, the defendant had already given such a warrant to another creditor, which judgment had been entered up, and the plaintiff, therefore, agreed that, if this last creditor would consent, an additional sum of £20 might be set aside by the defendant out of his income. The required consent, however, was not given, and as the plaintiff had not appointed a trustee, no warrant of attorney had been executed by the defendant as arranged, and the plaintiff's claim remained unsatisfied. On his bringing an action, the jury found that the agreement entered into by the creditors (including the plaintiff) was absolute and not conditional on the consent of the other creditor to whom the defendant had already given a warrant of attorney, and on this finding the trial Judge gave judgment for the defendant, leave being reserved to the plaintiff to move for judgment, On being so moved, however, the Court upheld the verdict as given for the defendant, holding that the plaintiff and the other creditors were bound by the agreement and that, as they had not appointed a trustee to whom the defendant could have executed his warrant of attorney, the defendant was not in default, and the agreement afforded him a complete answer to the plaintiff's claim so long as it remained unbroken. Tenterden, C.J., and Littledale, J., thought that this was not strictly an accord and satisfaction, but Parke, J., was of the opinion that it was.

This decision was approved and the principle carried much further very shortly afterwards in *Cartwright v. Cooke* (*supra*), in which it was held that where an annuity bond, executed by two brothers as surety and principal respectively, was included in a subsequent settlement between the parties and a third brother, it thereupon became binding on all three brothers, so that when the surety, who had been compelled to pay, and his representative brought an action against the principal to be reimbursed, the latter was enabled successfully to set up the agreement as a good defence, the Court being of the opinion that it was a good accord as between the parties to the instrument, whether subsequently acted on or not, and was binding on the plaintiff.

In its early days the common law did not recognise executory agreements as effectively binding upon the parties, and from this there sprang the principle that an accord without satisfaction has no force and affords no defence in an action for damages after breach, and, though the tendency has since been to lessen the application of this rule, it is still, generally speaking, well recognised. In *Bayley v. Homan*, (1837) 6 L.J. C.P. 309, 132 E.R. 663, the defendant in an action for breach of covenant in not repairing and leaving in repair certain premises, pleaded that after the expiration of his term, while the premises were ruinous, and before the commencement of the suit, an agreement was made by the parties whereby, in consideration of the defendant having become, at the request of the plaintiff, the occupier of the premises, and of his having promised to repair the same on or before a certain day, the plaintiff had agreed to forbear to sue for the breaches, and, if the premises were properly repaired by the day fixed, to forego all claims upon the defendant. The plaintiff, who commenced his suit before either the repairs had been carried out or the day fixed for their execution had arrived, claimed that the defendant's plea amounted to one of accord without satisfaction, and Tindal, C.J., held that the plea was bad.

The House of Lords in *Morris v. Baron & Co.*, [1918] A.C. 1, gave some consideration to the rule, and Lord Atkinson said (at p. 162):

> "There is no doubt that the general principle is that an accord without satisfaction has no legal effect, and that the original cause of action is not discharged so long as the satisfaction agreed upon remains executory. That was decided so long ago as 1611 in *Peytoe's Case*. If, however, it can be shown that what a creditor accepts in satisfaction is merely his debtor's promise, and not the performance of that promise, the original cause of action is discharged from the date when the promise is made."

Lord Justice Greer in his judgment in *British Russian Gazette v. Associated Newspapers*, [1933] 2 K.B. 616, 784, has now made a useful survey of the present state of the law on this matter.

> "In my judgment, at the present day the law of this country is that where two people make mutual promises, the promise of each being the consideration for the promise of the other, this amounts to a contract in law for the non-performance of which an action for damages will lie. I think, however,

that it is too late to say that the old rule that an accord without satisfaction does not discharge a liability after breach, can be disturbed by a judgment of this Court. I think it is still the law that a mere accord without satisfaction does not put an end to an existing liability after breach, but I think it amounts to an agreement which can be enforced by a claim for damages if it is broken by one of the parties when the other has shown his readiness to perform the terms of the agreement."

And after dealing with a number of decisions which were cited before the Court, His Lordship continues (at p. 786):

"It will be seen that we have not been referred to any case in which it was necessary to decide that an action will not lie on an agreement which is a mere accord, and has not been performed. On the question whether such an agreement can be a binding contract, opinions of Judges have varied. I therefore feel that we are now entitled to decide the question on principle, and I think at the present stage of the development of the law we ought to decide that an agreement for good consideration, whether it be an agreement to settle an existing claim or any other kind of agreement, is enforceable at law by action if it be an agreement for valuable consideration, and such valuable consideration may consist of the promise of the other party."

Thus, there is now set at rest any doubt that may have existed as to whether, where the accord and satisfaction consists in mutual promises, the satisfaction is effective in the event of the promise of which it is composed being unfulfilled.

Bench and Bar.

Mr. N. A. Foden, of Wellington, accompanied by Mrs. Foden, left last week on a visit to England.

The following solicitors have been recently admitted as barristers by His Honour Mr. Justice Johnston, at Christchurch: Messrs. E. P. Wills, on the motion of Mr. W. J. Sim; and Mr. M. W. Simes, on the motion of Mr. A. W. Brown.

Messrs. J. G. Imlay, M.A., LL.B., and E. H. J. Preston, LL.B., each of whom has been in practice in Invercargill for a number of years, have amalgamated their practices, and as from September 1 are practising under the firm name of Messrs. Imlay and Preston at 17 Tay Street, Invercargill.

Messrs. Raymond, Raymond, and Campbell, of Timaru, have dissolved partnership. As from September 1, Mr. W. D. Campbell, Crown Solicitor, is practising on his own account, while the new firm of Messrs. Raymond, Raymond, and Tweedy has been formed.

Mr. H. T. Watts, LL.M., lately of the staff of Messrs. J. J. Dougall, Son, and Hutchison, and Mr. H. W. Hunter, LL.B., of Mr. A. H. Cavell's office, have commenced practice in Christchurch under the style of Hunter and Watts.

Mr. H. F. O'Leary was the successful candidate in the recent election by the District Court of Convocation of one of its representatives on the Council of Victoria University College. Mr. O'Leary has taken his seat on the Council in succession to Mr. Justice Fair, who resigned on his appointment as one of the resident Judges at Auckland.

New Zealand Conveyancing.

By S. I. Goodall, LL.M.

Memorandum of Lease by Mortgagor of Freehold Farm Property, Mortgagee joining for Purposes of consenting thereto and obtaining the Benefit of Powers thereunder in the Event of Default by the Mortgagor under the Mortgage.

The draftsman is referred (1) to the articles by contributors: (*a*) Mr. C. E. H. Ball, LL.M., in the New Zealand Law Journal, Vol. 8, p. 114, on Leases by Mortgagors; (*b*) Mr. Henry Cotterill, Vol. 9, p. 26, on Consents by Mortgagees; and (c) Mr. C. Palmer Brown, M.A., LL.B., Vol. 9, p. 43; and (2) to the Forms of Common Clauses in Leases, Vol. 9, p. 286.

Under the Land Transfer Act, 1915.

Memorandum of Lease.

WHEREAS A.B. of etc. (hereinafter called "the Lessor") is registered as proprietor of an estate in fee-simple subject however to such encumbrances liens and interests as are notified by memoranda underwritten or endorsed hereon in ALL THAT piece of land situated in the of containing acres roods perches more or less being etc. and being all the land comprised in Certificate of Title Volume Folio in the Register-book at .

SUBJECT to Memorandum of Mortgage Number from the Lessor to C.D. of etc. (hereinafter called "the Mortgagee").

AND WHEREAS the Lessor has agreed to lease the said land to E.F. of etc. (hereinafter called "the Lessee") and the Lessee has agreed to accept such lease for the term at the rent and upon and subject to the covenants and provisions hereinafter set forth.

AND WHEREAS the Lessor has requested the Mortgagee to join in and consent to this lease which the Mortgagee has agreed to do upon having secured to him the benefit of the covenants and provisions of this lease in manner hereinafter appearing.

NOW THEREFORE in pursuance of the premises IN CONSIDERATION of the rent hereinafter reserved and the covenants and provisions on the part of the Lessee herein expressed and implied the Lessor DOTH HEREBY LEASE unto the Lessee ALL THAT the said land to be held by him the Lessee as tenant for the space or term of years from and inclusive of the day of 19 at the yearly rental of £ payable by equal quarterly instalments on the days of and in each and every year during the term hereby created THE FIRST of such instalments to be paid on the day of 19 and the last of such instalments to be paid in advance on the day of 19 together with the other quarterly instalment then to fall due.

SUBJECT to the following covenants conditions and restrictions that is to say:

I. THE LESSEE DOTH HEREBY COVENANT with the Lessor and also (as a separate covenant) DOTH HEREBY COVENANT with the Mortgagee as follows:—

1. THE LESSEE will duly and punctually at the times and in the manner hereinbefore provided for payment of the rent and free of exchange and without any deduction whatsoever pay the rent hereby reserved to the Lessor from now henceforth unless and until the service on the Lessee of the notice by the Mortgagee as hereinafter provided and not to the Lessor but to the Mortgagee from and after the service of any such notice.

2. [*To pay rates and charges*].
3. [*To repair.*]
4. [*Not to assign.*]
5. THE LESSEE "will insure" within the meaning ascribed to those words in the Sixth Schedule to the Land Transfer Act 1915 PROVIDED THAT the insurance pursuant thereto shall be effected in the name of the Mortgagee alone.
6. THE LESSEE shall and will at all times and from time to time during the term hereby created use farm cultivate and manage the said land in good and husband-like manner and will not impoverish or waste the soil thereof and will lay down in good English grasses with proper quantity of seed and manure respectively of good quality all such parts thereof as shall be broken up for tillage.
7. THE LESSEE will in each and every year of the term hereby created evenly distribute and broadcast a quantity of not less than tons of super-phosphate of lime or other suitable and approved fertiliser upon an area of acres or thereabouts of the said land to be selected in rotation from year to year.
8. [*Special covenants as to drains noxious weeds vermin and other covenants if any.*]

II. THE LESSOR DOTH HEREBY COVENANT with the Lessee as follows:—
9. [*For quiet enjoyment.*]
10. [*Special covenants if any.*]

III. IT IS MUTUALLY AGREED and declared by and between the parties hereto and by each and every one of them JOINTLY AND SEVERALLY with the others of them as follows:—
11. [*Abatement of rent at agreed rates pending reinstatement in case of damage or destruction by fire.*]
12. [*Negativing implied covenants of Lessee.*]
13. [*Power of distress.*]
14. [*Power of re-entry.*]
15. THE MORTGAGEE doth hereby consent to this lease to the intent that it shall be binding upon him.
16. UNTIL the Mortgagee shall by notice in writing served upon the Lessee personally or by prepaid registered letter addressed to the Lessee at the demised premises or affixed to the dwellinghouse on the demised premises require payment to himself the Mortgagee of the rent hereby reserved the same shall be paid to the Lessor BUT from and after the service of any such notice upon the Lessee all rent hereby reserved (inclusive of arrears if any accrued and further rent accruing) shall be paid to the Mortgagee to the exclusion of the Lessor AND the person for the time being entitled to be paid and to receive the said rent shall be competent to give a valid discharge therefor AND also to do any act and exercise any power (including the powers of distress for rent and re-entry into possession and all incidental and subsidiary powers whether expressed or implied) which ought otherwise to be done or exercised by the Lessor hereunder.
17. No covenant whatever shall be implied herein on the part of the Mortgagee.

IV. AND THE LESSEE DOTH HEREBY ACCEPT this lease of the above-described land to be held by him as tenant and subject to the conditions restrictions and covenants above set forth.

DATED etc.
SIGNED etc.
SIGNED etc.
SIGNED etc.
CORRECT etc.

Australian Notes.

By WILFRED BLACKET, K.C.

On the Doorstep.—Mr. Latham, Attorney-General in the Federal Ministry, was at one time Leader of the Opposition in the House of Representatives. Then he stepped down so that Mr. Lyons might lead, and as in politics no one ever does anything for nothing it has always been thought that Latham, A.-G., would, if a vacancy on the High Court Bench occurred, be able to persuade himself that he was eminently suitable for the position. There is not yet a vacancy; but Sir Frank Gavan Duffy, C.J., is eighty-two years of age, and Mr. Latham has stated his intention of retiring from politics, and does not deny the published statement that he is to be appointed Chief Justice. His present position is not altogether admirable; but if Duffy, C.J., holds on to his office until September 15, Latham, A.-G. may not be "knee-deep in daisies," for Australian Ministries when they go to the country have a persistent habit of leaving their majority there, a fact which is possibly due to the conscientious desire of electors to make due payment of the wages of sin. If such disaster should befall the Lyons' Ministry before a vacancy on the High Court Bench occurs, it is quite certain that an incoming Ministry would not be at all favourably impressed with the claims of Latham, K.C., but whether he gets the appointment or not the unadmirable position which he now occupies is very greatly to be regretted. In New South Wales, in 1869, there was a strange happening arising out of a comparable state of affairs. J. F. Josephson was a member of the Robertson Ministry which was tottering to its tomb, a certain Judge of the District Court Bench, whose name I cannot at the moment verify, had announced his intention of retiring in six months' time, and Josephson offered him a strong inducement to retire at once. He retired accordingly, and Josephson was appointed to the vacancy. The Premier, being attacked in the Assembly regarding the appointment, said that there was no other person available, and that therefore Mr. Josephson's appointment was really a necessity, and thereupon Dr. John Dunmore Lang retorted "Ah well, necessity and Josephson are suited to a tittle, for necessity knows no law, and Josephson but little," but whether the criticism was well-founded or not I cannot say.

"**Between the Joints of His Harness.**"—At Adelaide, S.A., the executors of the will of Sir Josiah Symon, K.C., applied to the Court for an order to omit from the probate and from all copies of the will and codicil certain words which, as the executors had been advised, were "scandalous and offensive and defamatory" of certain persons, and an order was made accordingly. I should not have expected such a lapse from Sir Josiah. He was one of the most eminent of Australian lawyers and jurists, and was foremost in the inauguration of Federation. I hold him in very reverent memory. In 1917 I led for the Commonwealth in an appeal from an acquittal in South Australia of one Snow upon a charge of trading with the enemy contrary to D.O.R.A. Sir Josiah and Cleland appeared for Snow. It was a fearsome fight. Sir Samuel Griffiths, C.J., was horrified at the idea of an appeal from an acquittal, and did not conceal his real feelings from me. Mr. Justice Isaacs

was much incensed at the thought that anyone in Australia should assist the Germans. While Sir Josiah was battling with Isaacs during his argument a telegram was handed to him. He glanced at it and continued his argument. Presently, in answer to a contention he was urging, Isaacs, J., hotly said "But Sir Josiah you have to remember that your client is charged with sending 6,000 tons of lead to Germany to be made into bullets to be fired at Australian soldiers." Speech failed Sir Josiah. He swayed and almost fell, but then with intense determination, and gradually returning strength and self-control, proceeded with his argument. The telegram contained the news that his son had been killed in France!

"**The Quality of Mercy.**"—Percy M. Webster of Tumut, N.S.W., admittedly drove his motor-car at high speed at midnight, and at a dangerous curve was within two feet of his wrong side of the road. He naturally collided with a motor-cycle and carried it along for twenty-eight feet. Robert Ingle, the cyclist, had his right leg broken in several places and sustained other grievous wounds and injuries too numerous to mention. Atkinson, S.M., who adjudicated on a charge against Webster of driving in a dangerous manner fined the defendant £3, but refused to award a heavy penalty, or to order the suspension of Webster's license, because the defendant had "already suffered considerably from worry." So, by the way, has Ingle. The magisterial view of the matter recalls the memory of a Quarter Sessions Judge, who, on his appointment in New South Wales many years ago, in his early days of judicial office would sentence a prisoner convicted of stealing much money to imprisonment with light labour till the rising of the Court, and then suspend the sentence under the First Offenders Act, or to some other punishment in which mercy figured very prominently. He justified his clemency by mention of the fact that for an eminently respectable man to be discovered to be an habitual thief was in itself a great punishment, and so also was the fact of having to tell his wife about it, and also the police Court hearing, and the trial at Sessions, and conviction, and so he would say: "You see the poor chap has been seven times punished already before I have to deal with him." But it was not long before this Judge, like another Pharaoh, hardened his heart, and would not let the "poor chaps" go on such easy terms of payment for their crimes.

"**Insanity and Crime.**"—The life-long tragedy of Francis O'Brien in Victoria raises some problems of national and terrible importance. He was tried in March, 1924, at Bendigo for the murder of his wife and being acquitted on the ground of insanity was sent to Mont Park Asylum. The misguided affection of his brother induced a petition for his release in the same year, but Dr. Cattarinich, Medical Superintendent, reported that although O'Brien seemed "sane at the time he was very likely to suffer a relapse," and that "under no circumstances should he ever again live with his children," and added "Nor do I consider it safe to give him liberty even with restrictions." In reply to another petition in 1926 he refused to alter his recommendation. Yet in 1927 there was a departmental decision that he should be released, and Dr. Cattarinich then recommended, *inter alia*, that he should be required to report once a month. He did report for a few months, but after that he failed to do so, and the Department did not trouble further about him. The need for such supervision was shown by a letter written by him some time after his release, in which he said: "I am rapidly becoming a mental and physical wreck." However in 1930 he married a woman who had once for some time been a patient at Mont Park Asylum and of this awful union three children were born. Then on May 31, 1934, O'Brien murdered his wife and the three children and killed himself. From the evidence of the doctors called at the inquest it seems clear that in the case of such a man as O'Brien a mental relapse is always probable but no efficient safeguard was suggested. Perpetual imprisonment apparently offers the only certain protection to the community from the recurrent homicidal mania of the man himself and from the inherited tendencies of his children. It was a shocking crime for him to murder his own children; but one may doubt whether it was not a greater crime against them and the community, for him and their mentally affected mother to bring them into the world at all.

"**Advance Australia Fair.**"—In order that the dwellers in the Federal Capital may enjoy all the home comforts of a great city, the Chief of the Commonwealth Police has recommended the issue of licenses for starting-price betting in Canberra. This concession should tend to a considerable increase in the bookmaking population of that city and should "take well and give pleasure to all." It will be a great convenience for persons in the States where starting-price betting is illegal to be able to place their bets by telephone or telegraph with the Canberra bookmakers who will carry on their business under the patronage of the Commonwealth. Then, as all Australians will be able to get their lottery tickets from the New South Wales Government, the only thing lacking to our happiness will be some efficient statutory means of providing facilities for two-up schools in the homes of the people.

Brief Mention.—George Edward Crawford, upon his trial in Melbourne for having given false particulars when registering his business under the local Business Names Act said he "thought a man could change his name as often as he liked," and under that mistake had changed his name to "George Ford" before registering under that Act, and had stated his address as of a residence that George Edward Crawford had once occupied and to which George Ford intended some day to return.

Even shoplifters are difficult to please. Mrs. Woodhill and Mrs. Hindle of Sydney, who were both married and living happily with their husbands, recently went out for an afternoon's shoplifting. They only went to the best shops, but had to visit seven of them in order to satisfy their requirements. It is probable that they had not even then got all they wanted, but a woman detective who had been "on their wheel" stopped their enterprise by giving them in charge. The Magistrate allowed them "the usual reduction on taking a quantity," and fined them 6s. per shop each. A courageous attorney, who appeared for them, said they had "fallen to a sudden temptation." "Seven sudden temptations" said the prosecuting constable: which reminds me of Jorkin's testimony in favour of a "certain cure" for drunkenness. "It has cured me fourteen times," said Jorkin.

From a Sydney paper: "Yesterday the Registrar in Bankruptcy admitted proof of a debt contracted more than fifty years." And this indeed may prove that the Depression is still with us.

Practice Precedents.

Letters of Administration De Bonis Non.

Where an Administrator dies before he has fully administered letters of administration *de bonis non*, or abbreviated *de bonis non*, are granted to a fresh administrator to complete the administration.

If the administrator becomes insane, letters of administration may be recalled and a fresh grant *de bonis non* made. Leave may be granted to the original administrator to apply for administration should he recover: see *In re McMaster*, (1913) 32 N.Z.L.R. 790, 15 G.L.R. 488.

If the original administrator disappears and cannot be found or traced, a fresh grant may be made: see *In the Estate of Saker*, [1909] P. 233, *In the Estate of French*, [1910] P. 169.

A grant of administration *de bonis non* may be limited and reserve leave to recall administration; see *In re Holder*, (1915) 34 N.Z.L.R. 1002; see also *Garrow on Law of Wills and Administration*, pp. 599-600.

Where of several co-administrators on intestacy one dies his office survives to his co-administrators, and no fresh grant is necessary. But where the sole or sole surviving administrator dies, leaving part of the estate unadministered, the Court must grant administration *de bonis non* to another, for an administrator cannot transmit his office either to his executor or administrator.

Where a grant *de bonis non* becomes necessary, the Court is governed in all respects by the same rules as apply to original grants: see *Mortimer on Probate Law and Practice*, 2nd Ed. p. 354; note also R. 531D of the Code of Civil Procedure, *Stout and Sim's Supreme Court Practice*, 7th Ed., p. 334.

The Court will not dispense with sureties where there are debts and where there are infant children: See *In re Morrison*, (1931) 7 N.Z.L.J. 115; *In the Estate of Sixtus (deceased)*, (1912) 14 G.L.R. 440.

MOTION FOR GRANT OF LETTERS OF ADMINISTRATION *De Bonis Non* AND FOR ORDER THAT SURETIES BE DISPENSED WITH.

IN THE SUPREME COURT OF NEW ZEALAND.

.....District.

.....Registry.

IN THE ESTATE OF A.B. of Farmer, deceased.

Mr. of counsel for C.D. TO MOVE before the Right Honourable Sir Chief Justice of New Zealand at his Chambers Supreme Courthouse on day the day of 19 at 10 o'clock in the forenoon or so soon thereafter as counsel can be heard FOR AN ORDER that letters of administration of the estate effects and credits of the said A.B. deceased now remaining unadministered situate outstanding or recoverable in New Zealand be granted to the said C.D. UPON THE GROUNDS that the said C.D. is the son of the said A.B. deceased AND FOR AN ORDER that sureties to the bond to be given by the said C.D. be dispensed with UPON THE GROUNDS that there are no debts owing by the estate of the said A.B. deceased and that the next-of-kin are all adults and of full age and have consented to sureties being dispensed with AND UPON THE FURTHER GROUNDS appearing in the affidavit of the said C.D. filed herein.

Dated at Wellington this day of 19 .

Solicitor for applicant.

Certified pursuant to Rules of Court to be correct.

Counsel moving.

AFFIDAVIT IN SUPPORT AND CONSENT OF NEXT-OF-KIN.

(*Same heading.*)

I C.D. of the City of clerk make oath and say as follows:—

1. That the said A.B. died at in New Zealand on the day of 19 intestate and that the said A.B. was resident or was domiciled at aforesaid in New Zealand.

2. That the said A.B. left him surviving as his next-of-kin his widow and one daughter namely born on the day of 19 and myself this deponent born on the day of 19 .

3. That letters of administration of the estate effects and credits of the said A.B. deceased outstanding or recoverable in New Zealand were granted by this Honourable Court at on the day of 19 to [*the widow*] my mother and the wife of A.B. deceased. That hereunto annexed and marked "A" is a certified copy of such grant.

4. That the said [*widow*] died on the day of 19 as I am able to depose from having seen her dead body after death.

5. That at the time of her death the said [*widow*] left part of the said estate effects and credits of the said A.B. deceased unadministered.

6. That annexed hereto and marked "B" is a consent by the said [*daughter*] to the said grant of letters of administration *de bonis non* to me and that sureties to the administration bond to be given by me may be dispensed with.

7. That the estate effects and credits of the said A.B. deceased now remaining unadministered and to be administered by me are under the value of £ .

8. That I will well and faithfully administer according to law all the estate unadministered which by law devolves to and vests in the personal representatives of the said A.B. deceased in New Zealand.

9. That I will exhibit unto this Court a true and perfect inventory of all the estate effects and credits of the said A.B. deceased left unadministered within three calendar months after the grant of letters of administration thereof to me and will file a true account of my administratorship within twelve calendar months after the grant of such letters.

10. That since the death of the said [*widow*] my mother I have had access to her papers and the papers of the said A.B. my father and that the said [*widow*] duly paid all debts due by the said A.B. at the time of his death and that there are not now any debts owing by the estate of the said A.B.

Sworn etc.

CONSENT TO GRANT AND TO DISPENSE WITH SURETIES.

(*Same heading.*)

I being the daughter of the above-named A.B. deceased DO HEREBY CONSENT to a grant of letters of administration of the estate of the above-mentioned A.B. deceased being made to my brother C.D. and to an order being made dispensing with sureties to the bond to be given by the said C.D. for the due administration by him of the estate of the said A.B. deceased.

Dated at this day of 19 .

Witness to signature: *Signature*:

Address:

Occupation:

EXHIBIT NOTE.

This is the consent marked "B" referred to in the annexed affidavit of C.D. Sworn this day of 19 before me:

A solicitor etc.

ADMINISTRATION BOND.

(*Same heading.*)

KNOW ALL MEN BY THESE PRESENTS that I C.D. of the City of clerk am held and firmly bound unto "Y" Registrar of the Supreme Court of New Zealand for the said district at in the sum of (£) for which payment well and truly to be made to the said "Y" or to such Registrar at for the time being I the said C.D. doth bind myself and my executors and administrators firmly by these presents.

WHEREAS by order of this Court of the day of 19 IT IS ORDERED that letters of administration of the estate effects and credits of the above-named A.B.

deceased now remaining unadministered situated outstanding or recoverable in New Zealand be granted to the said C.D. on his giving security for the due administration thereof. AND WHEREAS the said C.D. has sworn that to the best of his knowledge information and belief the said estate and effects now remaining unadministered to be administered by him are under the value of (£). NOW THE CONDITION of the above-written bond is that if the above-bounden C.D. exhibits unto this Court a true and perfect inventory of all the estate effects and credits of the said deceased which shall come into the possession of the said C.D. or any other person by his order or for his use and benefit on or before the day of 19 [*three months*] and well and truly administers the same according to law and renders to this Court a true and just account of his administration on or before the day of 19 [*twelve months*] then this bond shall be void and of none effect but otherwise shall remain in full force.

Dated at this day of 19 .

Signature:

SIGNED by the said C.D. in the presence of

Name:

Address:

Occupation:

Rules and Regulations.

Transport Licensing Act 1931.—Transport Law Amendment Act, 1933. Transport Licenses (Transfer) Regulations, 1934, Amendment No. 1.—*Gazette* No. 68, September 6, 1934.

Transport Licensing Act, 1931. Revocation of regulations relating to the rehearing of appeals.—*Gazette* No. 68, September 6, 1934.

Valuation of Land Act, 1925, and Amendments. Additional regulations.—*Gazette* No. 69, September 13, 1934.

Customs Act, 1913. Prohibiting the Exportation of calves' vells from New Zealand.—*Gazette* No. 69, September 13, 1934.

Inspection of Machinery Act, 1928. Amended Scale of Fees to be paid for the Inspection of Machinery and Boilers.—*Gazette* No. 71, September 20, 1934.

Fisheries Act, 1908, Native Land Amendment and Native Land Claims Adjustment Act, 1926. The Taupo Trout-fishing Regulations, Amendment No. 5.—*Gazette* No. 71, September 20, 1934.

Obituary.

Mr. Walter Raymond, Timaru.

Mr. Walter Raymond, a lifelong resident of Timaru, and until recently senior partner in the firm of Messrs. Raymond, Raymond, and Campbell, died last week. For the last 12 months Mr. Raymond had been in failing health.

The late Mr. Raymond was a son of Mr. F. B. Raymond, who, with his family, arrived in Timaru in 1879. Mr. Walter Raymond was educated at the Timaru Boys' High School where, in addition to scholastic attainments, he achieved distinction on the field of sport, especially as a member of the first Rugby fifteen. He entered the legal office of Messrs. Smithson and Raymond, for many years Raymond, Raymond, and Campbell, and now Raymond and Tweedy, and in 1906 was admitted as a solicitor. He was a member of the firm up till the time of its recent dissolution.

In his younger days Mr. Raymond took a keen interest in sport, being a member of the Timaru Football Club, of which he was captain in 1900 and 1901. He also gained South Canterbury representative honours. He was prominent in rowing, in which sport he also represented the province when a member of the Timaru Club. For some years he was a member of the Timaru Golf Club.

Although any progressive movement or anything for the welfare of the town had Mr. Raymond's wholehearted support, he did not take a very active part in public life. For many years, until ill-health caused his retirement, he was a member of the council of the South Canterbury Chamber of Commerce; he was also keenly interested in the work of the Timaru Plunket Society.

Mr. Raymond married a daughter of Sir John Sinclair, of Dunedin. He leaves his widow, two sons, and a daughter.

Palmerston North Golf Tournament.

"Law Journal" Cup Contest Resumed.

The third annual "Devil's Own" golf tournament, under the control of the Palmerston North Law Society, occupied the attention of some forty-seven members of the profession during Saturday and Monday, 22nd and 24th inst. The Manawatu Golf Club's links at Hokowhitu were in excellent order, and the visitors from all parts of the Wellington province were loud in their expressions of appreciation of the manner in which they were entertained by their Manawatu professional brethren.

The Law Journal Cup, which was the subject of eighteen-hole bogey foursomes on the Monday afternoon, was won by A. T. Young and J. R. E. Bennett, 5 up. The Cup will be held accordingly by the Wellington District Law Society for the ensuing year, and the miniature cups become the property of the winners.

The results of the other semi-finals and finals played on Dominion Day are as follows:

"Devil's Own" Championship.—Semi-finals: E. Page (Wellington) beat R. McKenzie (Masterton), 7 and 6; L. C. Hemery (Wellington) beat G. I. McGregor (Palmerston North), 5 and 4. Final: Page (6) beat Hemery (9), 6 and 5. Page's card was as follows: Out, 555255444—39; In, 452544556—39.

Mortgagors' Relief Stakes.—Semi-finals: N. G. Whiteman (Masterton) beat F. J. Christensen (Marton), 1 up; J. W. Ward (Wellington) beat S. A. Wiren (Wellington), 1 up. Final: Whiteman (18) beat Ward (6), 6 and 5.

Paupers' Relief Stakes.—Semi-finals: G. Saunders (Wellington) beat K. Adams (Levin), 1 up; A. W. Yortt (Palmerston North) beat H. H. Daniell (Masterton), 3 and 2. Final: Saunders beat Yortt, 6 and 5.

The eighteen-hole "Distress Foursomes" played in the morning was won by G. C. Phillips and E. T. E. Hogg (Wellington), 83, 16, 67.

The putting competition was won by I. W. N. Mackie (Waipawa).

Other results were as follows:—

Guarantee Fund Handicap (stroke)—J. Graham (Feilding); runner-up, G. C. Phillips (Wellington).

Cy-pres Handicap (stroke)—S. K. Siddells (Pahiatua); runner-up S. W. Rapley (Palmerston North).

Trust Audit Bogey.—S. A. Wiren (Wellington); runner-up F. J. Christensen (Marton).

Public Trust Bogey.—S. A. Wiren (Wellington); runner-up A. T. Young (Wellington). Aggregate two qualifying rounds, S. W. Rapley, 145.

The trophies were presented by Mr. F. J. Oakley, president of the Palmerston North Law Society, at the conclusion of the tournament.