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"*He stood four-square for principles which to-day are being challenged in every country in the world, the principles of liberty.*"

—Rt. Hon. Stanley Baldwin, at the unveiling of a tablet to the memory of the Earl of Oxford, K.C., in Westminster Abbey recently.

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Reform in Legal Education.

III.

THE Committee of the Council of Legal Education, in the report which we are considering, finds fault with some of the present prescriptions for the law subjects set for the LL.B. degree, and expresses the opinion that

> "The natural result is that teachers and students endeavour to cover the whole of very wide fields in a space of time quite insufficient for the purpose. This tends to cram rather than the mastery of principle and the formation of lawyer-like habits of mind."

The Committee apparently thinks that the narrowing of the prescriptions would prevent cramming. Surely, the opposite is the case. A narrow prescription cramps the professor in his choice, and enables the student to concentrate on memory work. Of course, a certain amount will always have to be memorized; just as a barrister going into Court must have memorized much of his own case and the order and nature of his authorities: he must state salient points from memory, if he is to be successful.

In these days of depression, of a diminished field of work, and of a profession that tends to overcrowding, it seems that the logical method of reform, and the one that is in the best interests of the profession as a whole, as well as of the public which it serves, is to revert to the old system as a basis. Thus, the LL.B. degree would become a cultural degree, including in its scope cultural legal subjects such as Roman Law, Constitutional Law and History, International Law, and Conflict of Laws. Jurisprudence is in its proper place at the end of the course, when, as Professor Kennedy of Toronto points out, the previous courses are gathered together and studied in the light of the demands of society; and when it is also treated, as recommended last year by Mr. G. L. Haggen, Lecturer in Law at the University of Leeds, in relation to modern problems, as the science concerned with the nature of law, its functions in the community, and its strength as an instrument of policy. Perhaps the ideal way to teach Jurisprudence would be to divide it, Part I being taken in an elementary form at the beginning of the course, and Part II being left to the end and treated as Mr. Haggen recommends.

Economics and Philosophy are subjects which should be part of the cultural background of the barrister, the former because its principles bulk so largely in the cases now coming before the Courts, and the latter because the study of the principles of human action or conduct is the most important that can be pursued by the barrister-to-be. The inclusion of these subjects is of more cultural advantage than the taking of Latin, English, and History at a higher standard. The trend of the degree course would thus have a close connection with the social and economic sciences, either studied separately as subjects or correlated with the course. In such a course, Statute Law (except incidentally), Practice and Procedure, Divorce, Bankruptcy, and Company Law are not required as separate subjects, and it is doubtful if, in view of the manner in which its principles have been whittled down, Evidence is of much value from a cultural point of view. On the other hand, Criminal Law is intimately connected with Philosophy and Jurisprudence, and should be retained.

Professor Algie's suggestion that the big subjects should be taken in two stages has much to recommend it: it seems preferable to the Council's proposal that Property, Contracts, Torts, and Crimes should be crowded into one year.

As far as the LL.M. proposals are concerned, the raising of the standard is all to the good. If the student does not take the degree before he gets well on in practice, he will probably not take it at all; and he should be encouraged to take one of the philosophical subjects, one of the great main subjects, and a practical subject in which he can specialize. International Law is a subject that should be retained, as it is one that will become increasingly important in legal as well as in public and general life.

To sum up: The cultural requirements of the LL.B. degree should be maintained and intensified. An attempt to amalgamate within its scope all the purely professional subjects will, we think, lead to the formulation of a curriculum which will be loaded up with "practical" subjects to the detriment of a proper background of subjects of cultural value. The remedy may be found in separating the two branches, leaving the University to examine in the cultural subjects and the Council of Legal Education, through the Law Society, to set the professional examination without which no one holding the degree would be admitted to practice. From this purely professional examination, Roman Law, International Law, Conflict of Laws, and Jurisprudence could well be omitted, while Statute Law (including the principles of interpretation), Divorce, Bankruptcy, Company Law, and Practice and Procedure would certainly be included. No one could sit for this examination unless he had proved he had the cultural background represented by his having his LL.B. degree.

It might well be found that the best test of practical knowledge for a student is to provide him with the appropriate text-books in the examination-room, such as candidates for examinations in Military Law are given when examined for commissions in the Army. These are the tools with which his everyday work will be done in his years of practice; for no one with any sense of responsibility relies on memory or on the remnants of student-day acquisitions of legal knowledge when he is dealing with client's business. The practical tests set under the auspices of the Law Society would surely be of greater relative value than their inclusion in papers set by University professors divorced from regular professional work.

The suggested division of examination-work follows in principle the degree examinations conducted by the

University in Great Britain, and the practical examination by the Bar Council or the Law Society. This presupposes that the University cannot undertake the provision of "clinical" material or that the student cannot be induced to give his whole time to study at a University Law School. By this means the University would conduct the degree examinations, and the profession would accept its degree as evidence of cultural training; and the profession would satisfy itself as to the practical knowledge and ability of the candidate for admission, accepting the holding of the degree as qualification for sitting for its own tests.

One important subject of this practical examination should, we think, be the keeping of solicitors' accounts. The Committee says:

> "It will be noted that no mention is made of the subject of Book-keeping. In view of the existing Audit regulations, it is felt that the necessity for examination in this subject no longer exists."

In this, we admit that we do not follow the reasoning of the eminent members of the Committee. It seems to us that the aspirant to the profession should be properly equipped and subject to examination in that part of a solicitor's practice in which he is most liable to statutory penalties. The report, we remember, deals with candidates for admission, not successful practitioners of long standing. The reality is that the law clerk in a large office usually learns little or nothing of the keeping or handling of accounts, which is the province of the accountancy staff. When otherwise qualified to practise, nothing daunts most young solicitors more than thought of the responsibility of having to keep accounts, which is new ground altogether when setting up for themselves. Then, too, commercial cases are increasing in our Courts, and the young barrister needs a working knowledge of accountancy practice. In both directions, there is the handicap of having had no training and little experience. The alternatives to the Committee's recommendation to abolish the Book-keeping examination seem either that the young solicitor, when he enters into practice for himself, should be dependent on his auditor to teach him (possibly from his mistakes), or that he should employ a qualified accountant on his staff. The former is dangerous; and the latter impracticable at the outset of building up a business: it is one of the consolations which success brings with it. We suggest that the subject be retained, and also that it be made more comprehensive than at present.

A paper on Professional Ethics could well round off the Law Society's practical tests. From its very nature, the subject should not require study of a text-book, except, perhaps, the rulings of the New Zealand Law Society. An experienced practitioner in examining a candidate in this subject should be able easily to learn whether or not he is, or is not, of the type desired in the profession.

The alternative is to perpetuate the present system: to make the LL.B. curriculum so comprehensive that the holder of the degree could be admitted to practice with no further qualification than that of sitting for three, or (if he is a B.A. as well) two, years on a stool in a solicitor's office. This would result, we think, in making the degree too comprehensive and "practical" at the expense of appreciation of the real principles of law and jurisprudence, and of the philosophy, history, and sociology which lie at the back of them. But with the professional examination providing the ultimate test of qualification for admission to the onerous and important daily duties of the practitioner, after acquisition of the degree as evidence of holding the cultural requirements that are now to a great extent lacking in a student's training, we should put behind us the defects of the present system with which no one is satisfied. To perpetuate present conditions, with variations merely, seems to tend to retard the LL.B. degree from becoming a real degree of academic value and University standard, and to lower it to an ordinary bread-and-butter qualification conditioned to night-school requirements. Unless the whole course is considered in a broad manner—with due consideration to proper cultural values as well as to the requirements of practical professional work—the pass-degree course as suggested will, we fear, tend to attempt too many things, and fail in most of them. It certainly will not provide adequately the desired high standard of qualification or training for admission to the ranks of a great profession.

Summary of Recent Judgments.

COURT OF APPEAL
Wellington.
1934.
Sept. 17, 18;
Oct. 12.
Myers, C.J.
Herdman, J.
Blair, J.
Kennedy, J.
Fair, J.

SCOONES
v.
GALVIN AND THE PUBLIC TRUSTEE.

Gift—Memorandum of Transfer of Land by way of Gift—Constructive delivery of Memorandum of Transfer by Donor to Donee—Relative Certificate of Title held by Donor's Solicitors—Death of Donor before Registration—Imperfect Gift—Offer by Donor to transfer to Infant Donee, if latter's Father paid all Expenses, accepted by Father—Effect thereof—Land Transfer Act, 1915, s. 38.

There is a perfect gift of land under the Land Transfer Act, 1915, if a memorandum of transfer from the donor and the relevant certificate of title are both delivered to the donee or to someone on his behalf, for then there is nothing more which it is necessary for the donor to do to perfect the gift.

So Held by *Myers*, C.J., *Herdman*, *Blair*, and *Kennedy*, JJ., *Fair*, J., expressing no opinion upon the point,

Per Curiam,

Such a gift of land is, however, imperfect if, as in the present case, the donor delivers the memorandum of transfer to the donee's solicitors, but himself retains possession of the relevant certificate of title, as, until the donor has produced it, he may revoke the gift and refuse to do anything more.

Thus, where a donor, shortly before his death, made constructive delivery to the donee's solicitors, who were acting for both donor and donee, if a memorandum of transfer of remainder after termination of the life estate which the donor was retaining, and the relevant certificate of title was held by the donor's solicitors on his behalf and registration had not been effected, there was not a complete gift prior to the donor's death.

Macedo v. Stroud, [1922] 2 A.C. 330, followed.

Principle enunciated in **Milroy v. Lord,** (1862) 4 De G. F. & J. 264, 45 E.R. 1185; **O'Regan v. Commissioner of Stamp Duties,** [1921] St. R. Qd. 283; and **Commissioner of Stamps v. Todd,** [1924] N.Z.L.R. 345, applied.

Anning v. Anning, (1907) 4 C.L.R. 1049; **Smith v. Smith,** (1915) 21 D.L.R. 861, and **Wadsworth v. Wadsworth,** [1933] N.Z. L.R. 1336, referred to.

Commissioner of Stamps v. Erskine, [1916] N.Z.L.R. 937, and **Commissioner of Stamp Duties v. Halliday,** [1922] N.Z.L.R. 507, discussed and distinguished.

Semble, per *Herdman*, J., A gift of land under the Land Transfer Act is never complete until registration of the transfer is actually effected.

The donor before he signed the transfer said that if G., the father of the infant donee, would pay all expenses the donor would sign the transfer. G. accepted the offer and such acceptance was communicated to the donor before he signed the transfer. The donor died before the transfer was stamped. G. paid the duty, £22, but after the transfer had been deposited for registration, and before it was actually registered, a caveat was lodged on which the present proceedings were based.

Held, by *Myers*, C.J., *Blair* and *Kennedy*, JJ., That the transaction was a gift by the donor to the donee of land and a gift to the donee by his father of a sum equivalent to the costs and gift duty. As between the donee and donor, the donee was a mere volunteer and this character was not affected by the gift that his father was to make—whether in the event of the donor refusing to complete the gift, the father could claim by way of damages on the grounds of breach of contract any expense to which he had been put was not considered.

Fair, J., suggested, but without deciding the question, that the circumstances appeared to approach, or perhaps to cross the border-line that separated a contract of which G., as promisee, could enforce specific performance from a *nudum pactum*.

Counsel: Levi, with him **Yaldwyn,** for the plaintiff; **O'Leary,** for the defendant, Galvin.

Solicitors: Levi and Yaldwyn, Wellington, for the plaintiff; **Bell, Gully, Mackenzie, and O'Leary,** Wellington, for the defendant, Galvin.

NOTE:—For the Land Transfer Act, 1915, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, 1908-1931, Vol. 7, title *Real Property and Chattels Real*, p. 1161.

Case Annotation: *Macedo v. Stroud*, E. & E. Digest, Vol. 17, p. 206, para. 172; *Milroy v. Lord, Ibid.* Vol. 25, p. 530, para. 206; *O'Regan v. Commissioner of Stamp Duties, ibid.* Vol. 38, p. 746, note *ff*; *Anning v. Anning, ibid.* Vol. 25, p. 550, para. 357*i*.

SUPREME COURT
Wellington.
1934.
Sept. 12, 19.
Ostler, J.

IN RE FRANKS (A BANKRUPT), EX PARTE OFFICIAL ASSIGNEE.

Chattels Transfer—Mortgage of insufficiently described Chattels—Such Chattels seized by Grantee and taken out of Grantee's Possession prior to Grantor's Bankruptcy—Grantee's Title to possession thereof—Chattels Transfer Act, 1924, s. 23.

Motion by Official Assignee for the opinion and direction of the Court as to whether certain chattels seized by the grantee of a bill of sale passed to the Official Assignee.

Section 23 of the Chattels Transfer Act, 1924, is as follows:—

"Every instrument shall contain, or shall have endorsed thereon or annexed thereto, a schedule of the chattels comprised therein and, save as is otherwise expressly provided by this Act, shall give a good title only to the chattels described in the said schedule, and shall be void to the extent and as against the persons mentioned in sections eighteen and nineteen hereof in respect of any chattels not so described."

Putnam, in support; **Marsack,** to oppose.

Held, That section means that an instrument shall give a good title to the grantee as against the persons mentioned in ss. 18 and 19 only to the chattels sufficiently described which are in the possession or apparent possession of the grantor, and that the instrument in respect of chattels not sufficiently described is void only to the extent and as against the persons mentioned in those sections.

Therefore, the grantee under a chattel security who had seized goods insufficiently described therein and had taken them out of the possession or apparent possession of the grantor before the latter's bankruptcy, was held entitled to the possession of the goods.

John v. Mulinder, [1916] N.Z.L.R. 422, dissented from.

Solicitors: Fell and Putnam, for the Official Assignee; **McKenzie and Marsack,** for Mrs. Herbert, the grantee.

NOTE:—For the Chattels Transfer Act, 1924, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, 1908-1931, Vol. 1, title *Bills of Sale*, p. 644.

FULL COURT.
Wellington.
1934.
Sept. 21;
Oct. 10.
Myers, C.J.
Herdman, J.
Blair, J.
Kennedy, J.
Fair, J.

BODDIE v. ARMSTRONG AND SPRINGHALL, LTD., and SIEVWRIGHT.

Practice—Appeals to Court of Appeal—Costs—Appeals in forma Pauperis—Solicitor acting for Pauper in Successful Appeal—Not entitled to participate in Judgment except as to Allowance made by Order of the Court for Out-of-pocket Expenses—Court of Appeal Rules, R. 43.

Rule 43 of the Court of Appeal Rules, which is as follows,

"Whilst a person appeals as a pauper, no person shall take or agree to take or seek to obtain from him, or from any person on his behalf, or for his benefit, or in his interest, any fee, profit, or reward for the conduct of his business in the Court; and, further, no person acting as solicitor or counsel for such pauper shall take any payment, fee, or reward for any business whatever done for such person out of the Court, or for any past services rendered or alleged to have been rendered to such person in respect of any matter whatsoever. Any person who takes or agrees to take or seeks to obtain any such fee, profit, or reward shall be guilty of contempt of Court"

forbids the taking of any payment, fee, or reward for any business done, and deprives a solicitor of a vested right in costs already earned before leave to appeal *in forma pauperis* is granted, if such solicitor acts for a pauper on appeal. Such solicitor is however, entitled to his out-of-pocket expenses.

The rule upholds the principle that a solicitor should not be in any wise concerned in the financial results of a pauper's appeal, except in so far as the Court may by its order direct that the solicitor may participate by way of allowances in the nature of disbursements.

Counsel: Evans-Scott, by leave of the Court, for his firm, **J. A. Kennedy and Arndt,** for the judgment creditor.

Solicitors: Menteath, Ward, Macassey, and Evans-Scott, Wellington, in support of appeal; **J. A. Kennedy,** Christchurch, for the judgment creditor.

SUPREME COURT
Auckland.
1934.
Aug. 17; Sept. 25.
Fair, J.

FRANKLIN v. FRANKLIN.

Divorce and Matrimonial Causes—Constructive Desertion—Conduct justifying and resulting in Withdrawal from Cohabitation—Whether constituting such Desertion—Divorce and Matrimonial Causes Act, 1928, s. 10 (b).

A spouse is not guilty of constructive desertion, whose conduct, although such as to justify the other spouse in withdrawing from cohabitation and resulting in such withdrawal, is accompanied by acts which show that the former did not intend to put an end to matrimonial relations, or cannot be deemed to have contemplated that a permanent withdrawal from cohabitation would be the probable result of his acts.

Bain v. Bain, [1923] V.L.R. 421, aff. on app. (1923) 33 C.L.R. 317, and **Jackson v. Jackson,** [1924] P. 19, applied.

Counsel: C. G. Lennard, for the petitioner; **Respondent** in person.

Solicitors: Lennard and Lennard, Auckland, for the petitioner.

NOTE:—For the Divorce and Matrimonial Causes Act, 1928, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, 1908-1931, Vol. 3, title *Husband and Wife*, p. 865.

COURT OF APPEAL
Wellington.
1934.
Oct. 4, 5, 12.
Myers, C.J.
Herdman, J.
Blair, J.
Kennedy, J.
Fair, J.

BATT
v.
THE NAPIER WATERSIDE WORKERS' INDUSTRIAL UNION OF WORKERS.

Industrial Conciliation and Arbitration—Industrial Union—Limitation of Membership by Rules—Rule providing that Union shall consist of Men "who are, in the opinion of the executive, of good character and sober habits"—Whether Rule valid—Industrial Conciliation and Arbitration Act, 1925, s. 5 (1) (viii).

The limitation of membership of an industrial union to a class of persons by a rule which states "The Union shall comprise, men over twenty years of age, who are, in the opinion of the executive, of good character and sober habits" is a valid "term on which persons shall become members" within the meaning of s. 5 (1) (viii) of the Industrial Conciliation and Arbitration Act, 1925.

Wellington Waterside Workers' Industrial Union of Workers v. Hargreaves, *Ante*, p. 231, followed.

Judgment of *Reed, J.*, affirmed.

Counsel: J. Mason, for the appellant; **P. J. O'Regan,** for the respondent.

Solicitors: Mason and Dunn, Napier, for the appellant; **O'Regan and Son,** Wellington, for the respondent.

NOTE:—For the Industrial Conciliation and Arbitration Act, 1925, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, 1908-1931, Vol. 3, title *Industrial Disputes*, p. 939.

SUPREME COURT
Auckland.
1934.
Oct. 1, 5.
Ostler, J.

BURKE v. BURKE.

Destitute Person—Maintenance—Husband and Wife—Maintenance Order for benefit of Wife and Children—Whether rendered void by Decree Absolute in Divorce Proceedings—Power of Supreme Court to make Order for Permanent Maintenance even if original Maintenance Order still good—Election by Wife—Destitute Persons Act, 1910, s. 17—Divorce and Matrimonial Causes Act, 1928, s. 33.

A wife who had obtained a maintenance order under the Destitute Persons Act, 1910, for the benefit of herself and her children for £1 17s. 6d. a week against her husband, took divorce proceedings against him and obtained a decree absolute.

On motion founded on a petition for permanent maintenance by the wife against the husband after such decree,

A. A. Coates, in support; **Hall Skelton,** to oppose,

Held, That, even if the original order were good, the wife could apply for the permanent maintenance of herself and her children, such application being an election to abandon her rights, if any, under the former order and to rely upon the order of the Supreme Court.

An order was accordingly made by the learned Judge for £2 per week permanent maintenance.

Quaere, Whether such a maintenance order under the Destitute Persons Act, 1910, is rendered void by the final decree in divorce of the parties.

Ellmers v. Ellmers, (1894) 13 N.Z.L.R. 242, **Sutherland v. Sutherland,** (1896) 15 N.Z.L.R. 177, **Liversey v. Liversey,** [1926] N.Z.L.R. 117, **Buzza v. Buzza,** [1930] N.Z.L.R. 739, **Busch v. Busch,** (1912) 32 N.Z.L.R. 49, **Bragg v. Bragg,** [1925] P. 20, and **May v. May,** [1929] 2 K.B. 386, referred to.

Solicitors: J. C. Tole, Auckland, for the petitioner; **Hall Skelton and Skelton,** Auckland, for the respondent.

Annotations: *Bragg v. Bragg*, 13 E. & E. Digest, p. 565, para. 6242; *May v. May*, E. & E. Digest Supplement, title *Husband and Wife*, No. 2039a.

NOTE:—For the Divorce and Matrimonial Causes Act, 1928, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, 1908-1931, Vol. 3, title *Husband and Wife*, p. 865, and for the Destitute Persons Act, 1910, see *ibid.*, Vol. 2, title *Destitute Persons*, p. 896.

SUPREME COURT
In Chambers.
Auckland.
1934.
Sept. 4.
Fair, J.

TELFORD v. TELFORD AND ANOTHER.

Husband and Wife—Jurisdiction—Disputes between Spouses—Decision thereof in a Summary Way—Whether Court has Jurisdiction to hear the Dispute after Death of a Spouse—Married Women's Property Act, 1908, s. 23.

Motion to discharge an order made *ex parte* adding parties.

When the proceedings were issued under s. 23 of the Married Women's Property Act, 1908, both husband and wife were alive, but the former died sixteen days after the proceedings were served on him and the wife sought to continue the proceedings against the executors of his estate. After the husband's death, an order was made *ex parte* by Mr. Justice *Herdman*, adding his executors as defendants.

H. R. Cooper, in support; **R. N. Moody,** to oppose.

Held, That s. 23 of the Married Women's Property Act, 1908, which provides for the decision in a summary way of disputes between husband and wife, applies only where a dispute commences and continues between spouses. If those conditions cease to exist—*e.g.*, by the death of a spouse—then the jurisdiction conferred on the Court to hear the dispute under the said section ceases at the same time.

Solicitors: R. D. Bagnall, Auckland, agent for **Cooper, Rapley, and Rutherfurd,** Palmerston North, for the executors of W. J. Telford, deceased; **R. N. Moody,** Auckland, for Mrs. Telford.

NOTE:—For the Married Women's Property Act, 1908, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, 1908-1931, Vol. 3, title *Husband and Wife*, p. 851.

COURT OF APPEAL
Wellington.
1934.
Sept. 18; Oct. 10.
Herdman, J.
Blair, J.
Kennedy, J.
Fair, J.

BANNERMAN v. HARMAN.

Practice—Appeals to the Court of Appeal—Appeals *in forma Pauperis*—Admission to Appeal as a Pauper—"On proof that he is not worth £25"—Burden of proof—Test to be adopted—Court of Appeal Rules, R. 27.

The burden is upon the applicant for leave to appeal *in forma pauperis* to prove "that he is not worth £25, his wearing apparel, and the subject of the cause or matter excepted" in terms of R. 29 of the Court of Appeal Rules.

Thus, when an applicant is a single man, receiving a wage of £3 11s. 3d. net per week, and owning a motor-cycle, it must be possible for him to save out of his salary the small amount required to bring his property beyond £25, and applying the test adopted in *Kydd v. Watch Committee of Liverpool*, (1908) 24 T.L.R. 772, viz., that the expression "worth £25" means, "not that a man actually had £25, but what a banker meant when he might say in answer to an inquiry that a customer was good for £25," the applicant was worth more than £25, and leave to appeal *in forma pauperis* was refused.

Counsel: C. A. L. Treadwell, for the applicant.

Solicitors: Treadwell and Sons, Wellington, for the applicant.

SUPREME COURT
Wellington.
1934.
Oct. 8, 11.
Reed, J.

T. & W. YOUNG AND COMPANY
v.
McRAE.

Licensing—Offences—Labels descriptive of Contents of Bottles containing Liquor—Words "Bottled in New Zealand" and Name of Bottler not imprinted thereon—Possession of such Labels an Offence—Affixing a Separate Additional Label with those Words not a compliance with the Statute—Licensing Act, 1908, s. 209.

Some hotelkeepers in New Zealand bottle their own wines, which they buy in casks from their merchants who have in their possession quantities of printed labels descriptive of the wine so sold in the casks and supply such labels to the hotel-keepers intending to bottle from the casks sold to them. The appellants, a firm of wholesale wine and spirit merchants, invariably instructed each purchaser of casks of wine that the labels which they supplied were descriptive only, and must be overprinted with the words "Bottled in New Zealand" and the bottler's name, or a further label to that effect must be affixed at the time of bottling, otherwise he would be committing an offence.

Appellants, who did not themselves use the labels as supplied to the purchasers of the wine in casks, were convicted of having such labels in their possession or under their control.

On appeal from such conviction,

A. T. Young, for the appellant; **Evans-Scott,** for the respondent,

Held, affirming the conviction, That s. 209 of the Licensing Act, 1908, absolutely prohibits the mere possession, etc., of labels similar to those in question unless there is imprinted on them the words "Bottled in New Zealand" and the name of the intended bottler.

It is not a sufficient compliance with the section to affix a separate label with the bare words "Bottled in New Zealand" and the name of the bottler, as it is the label descriptive of the contents that must bear that inscription.

Solicitors: Young, White, and Courtney, Wellington, for the appellant; **Crown Solicitor,** Wellington, for the respondent.

NOTE:—For the Licensing Act, 1908, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, 1908-1931, Vol. 4, title *Intoxicating Liquors*, p. 234.

SUPREME COURT
Dunedin.
1934.
Mar. 9; June 29.
Kennedy, J.

BELL v. GIBSON.

Mining—Prospecting License—Disregard of Conditions—Forfeiture or Fine—"Special Circumstances"—Proper Exercise of Warden's Discretion—Mining Act, 1926, s. 193.

The respondent on this appeal from the Warden was one of the "objectors" (W. H. Gibson) referred to in the case of *Bell v. Baker*, reported *ante*, p. 177. After the plaintiff's application for a claim had been filed and resumption proceedings instituted by the defendant, the plaintiff wrote to the Inspector of Mines referring to the pending proceedings and, in effect, asked for an extension of time beyond the month in which to commence operations. The Inspector replied that "prospecting operations should be started when the position is clearly defined."

On an application for a decree of forfeiture, the Warden held that the extension granted by the Inspector was no protection against non-compliance with the conditions of the license. The defendant had an area that he could have prospected unaffected by the litigation, and the institution of resumption proceedings carried no right to cease or not to commence prospecting operations.

The Warden held, therefore, that the license was liable to forfeiture, but that he was justified in inflicting a fine in lieu of decreeing a forfeiture by the following "special circumstances"—viz., plaintiff by his act in applying for a claim and refusing defendant on to and prospecting his land comprised in the license jeopardised defendant's position and involved him in litigation and forced him into resumption proceedings to protect himself: in applying to the Inspector, defendant acted on a condition none too clear, and was misled by the Inspector into the belief that he was protected.

The Warden, therefore, inflicted a nominal fine.

On appeal from the Warden's decision,

Parcell, for the appellant; **J. S. Sinclair,** for the respondent,

Held, That, the prospecting license to the respondent having been issued for a short period and upon the condition of vigorous and continuous work, a complete disregard of those conditions called for forfeiture and not a fine; and that, having regard to the special circumstances found by the Warden, his discretion in inflicting a fine was wrongly exercised.

The appeal was, therefore, allowed and forfeiture decreed.

Cooper v. Komata Gold-mining Co., Ltd., (1895) 14 N.Z.L.R. 66; **Ewing v. Scandinavian Water-race Co. (Regd.),** (1904) 24 N.Z.L.R. 271; **Manorburn Sluicing Co., Ltd. v. Rivers,** (1909) 28 N.Z.L.R. 1082, referred to.

Solicitors: Brodrick and Parcell, Cromwell, for the appellant; **Duncan and Jamieson,** Ranfurly, for the respondent.

NOTE:—For the Mining Act, 1926, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, 1908-1931, Vol. 5, title *Mines, Minerals, and Quarries*, p. 943.

SUPREME COURT
Wellington.
Sept. 15, 21.
Ostler, J.

SELLER
v.
MINISTER OF PUBLIC WORKS.

Public Works—Compensation—Land taken and Land injuriously affected—Claim in respect of Land taken disallowed as Land of no value—Claim for Injurious Affection in respect of Parcel of Land of which a Part taken—Injurious Affection caused partly by Work done on Land taken and partly on other Land—Whether Claimant entitled to Compensation and on what Principle.

Respondent took a small strip of claimant's land (of no value to the claimant) below the surface for the construction of a railway tunnel, which construction, partly on claimant's land and partly on other land, had the effect of drying up several springs which rose to the surface on claimant's land. Claimant made a claim for the value of the land taken (subsoil), which was disallowed, and for injurious affection of the remaining land (the surface).

After argument on questions of law,

S. W. Fitzherbert, for the claimant; **A. E. Currie,** for the respondent,

Held, 1. That by reason of the fact that part of claimant's land, *although of no value*, had been taken, the principle established in **In re Stockport, Timperley, and Altringham Railway Co.,** (1864) 33 L.J. Q.B. 251, confirmed in **Cowper Essex v. Acton District Local Board,** (1889) 14 App. Cas. 153, applied, and that enunciated in **Chamberlain v. Minister of Public Works,** [1924] N.Z.L.R. 96, did not apply—*i.e.*, that where the claim is in respect of injurious affection only, no claim can be made except for injury to lands which, but for the statutory powers of the promoter, would have been actionable as a tort, but that this rule does not apply where the claim is for land taken as well as for land injuriously affected.

2. That the principle that compensation cannot be given for injurious affection in respect of a separate parcel of land physically separated from the land taken has no application where only one parcel of land is in question and the claim for injurious affection is in respect of the very parcel of land of which a part has been taken.

Holditch v. Canadian Northern Ontario Railway Co., [1916] 1 A.C. 536, distinguished.

3. That the rule as to user of the public work after construction, laid down in **Sisters of Charity of Rockingham v. The King,**

[1922] 2 A.C. 315, extended to construction—*viz.*, if the injurious affection to a claimant's land is caused by the construction of a public work not on land taken from him but on other land the claimant has no right to compensation for such injurious affection only; but where the injurious affection is caused partly by the work done on land taken from the claimant and partly on other land, the claimant is still entitled to some compensation for his injurious affection but not to the full amount he could have recovered if the construction causing the injurious affection had all been on the land taken by him.

Solicitors: **O. and R. Beere and Co.,** Wellington, for the claimant; **Crown Law Office,** Wellington, for the defendant.

Case Annotation: *In re Stockport, Timperley, and Altringham Railway Co.*, E. & E. Digest, Vol. 11, p. 134, para. 213; *Cowper Essex v. Acton District Local Board, ibid.*, p. 135, para. 216; *Holditch v. Canadian Northern Ontario Railway Co., ibid.*, p. 131, note *z*; *Rockingham Sisters of Charity v. The King, ibid.*, Supplement No. 9 to Vol. 10, title *Compulsory Purchase of Land*, p. 6, para. 216a.

SUPREME COURT
Wellington.
1934.
Sept. 12, 21.
Ostler, J.

IN RE BALMFORTH (DECEASED), PUBLIC TRUSTEE v. RICHARDS AND OTHERS (No. 2).

Will—Construction—Real Estate as to which Testatrix died intestate—Destination of Income thereof—Administration Act, 1908, s. 11—Wills Act, 1837 (7 Will. IV and 1 Vict., c. 26), s. 6.

The originating summons in *In re Balmforth (deceased), Public Trustee v. Richards*, p. 84, *ante*, contained the following question:—

"3. Is the equitable doctrine of acceleration applicable in respect of the share in the residuary estate of the said deceased by her will given to Thomas Charles Richards, and, in particular—(*a*) When, to whom, and in what proportions is the one-third share of income from the said residuary estate by such will given to the said Thomas Charles Richards distributable? (*b*) When, to whom, and in what proportions is the one-half share of the capital of the said residuary estate by such will given to the said Thomas Charles Richards distributable?"

Question 3 (*a*) was not specifically referred to in the judgments of the Court of Appeal, except in that of *Smith, J.*, and was not specifically answered in the order embodying the Court of Appeal's decision.

On motion by the Public Trustee asking the Supreme Court for further directions, pursuant to leave reserved to any party so to apply,

Broad, for the Public Trustee; **North,** for the defendants, C. E. Richards and Mrs. Taylor; **Weston,** K.C., with him **Bishop,** for S. Jones, representing all next-of-kin.

Held, 1. That the answer to question 3 (*b*) supplied the answer to question 3 (*a*), and the reasons given for the answer to the one applies equally to the other.

2. That s. 6 of the Wills Act, 1837, which deals with estates *pur autre vie*, had no application.

Berry v. Public Trustee, (1890) 9 N.Z.L.R. 563, and **In re Wilkins, Robinson v. Wilkins,** [1922] N.Z.L.R. 644, followed.

In re Walpole, Public Trustee v. Canterbury, [1933] Ch. 431, referred to.

Solicitors: **The Solicitor,** Public Trust Office, Wellington, for the Public Trustee; **Horner and North,** Hawera, for C. E. Richards and Mrs. Taylor; **Weston, Ward, and Lascelles,** Christchurch, for S. Jones.

Case Annotation: *In re Walpole, Public Trustee v. Walpole*, E. & E. Digest, Supplement No. 9 to Vol. 23, title *Executors and Administrators*, p. 5, para. 1187a.

NOTE:—For the Administration Act, 1908, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, 1908-1931, Vol. 3, title *Executors and Administrators*, p. 128.

FULL COURT
Wellington.
1934.
Sept. 21;
Oct. 10.
Myers, C.J.
Herdman, J.
Blair, J.
Kennedy, J.
Fair, J.

POWELL v. HAYSTON AND THE WELLINGTON HOSPITAL BOARD.

Hospitals and Charitable Institutions—Statutory Charge for Cost of Relief to Injured Person—Whether Hospital Board protected for Cost of such Relief given after Judgment for Damages in favour of Injured Person or after Settlement of a Claim out of Court—Hospitals and Charitable Institutions Amendment Act, 1932, s. 15.

The cost of relief granted by a Hospital Board after judgment has been obtained by an injured person upon a claim for damages in respect of his injuries is not a charge, as imposed by s. 15 (1) of the Hospitals and Charitable Institutions Amendment Act, 1932, on the moneys payable in satisfaction of the judgment. Similarly, where there is a settlement out of Court of a claim for damages for bodily injury, if the conditions of subs. (4) of the same section are satisfied, the charge operates in respect of hospital expenses only up to the date of the agreement for settlement in respect of the payment so made.

Counsel: **Rollings,** for the plaintiff; **O. C. Mazengarb,** for the first-named defendant; **W. H. Cunningham,** for the Wellington Hospital Board.

Solicitors: **W. P. Rollings,** Wellington, for the plaintiff; **Mazengarb, Hay, and Macalister,** Wellington, for the first-named defendant; **Luke, Cunningham, and Clere,** Wellington, for the second-named defendant.

SUPREME COURT
Auckland.
1934.
Oct. 3, 5.
Ostler, J.

RE THE PREMIER TOBACCO COMPANY (NEW ZEALAND) LIMITED (IN LIQUIDATION), EX PARTE CHAMBERS AND OTHERS, LIQUIDATORS.

Practice—Interrogatories—Summons by Liquidators for Leave to Administer Interrogatories on Misfeasance Summons—Whether Misfeasance Summons an "action"—Judicature Act, 1908, s. 2—Code of Civil Procedure, R. 155—Companies Act, 1908, s. 254 (Companies Act, 1933, s. 269).

A misfeasance summons brought by the liquidators of a company under s. 254 of the Companies Act, 1908, against a promoter of the company is an "action" within the definition in s. 2 of the Judicature Act. Therefore, a summons by such liquidators for leave to administer interrogatories on such misfeasance summons is within the scope of R. 155, which provides that "either party may at any time *after the commencement of an action*, by leave of the Court, deliver interrogatories for the examination of the offending party; and the Court accordingly has jurisdiction to give leave to deliver such interrogatories.

Kiwi Polish Co. Pty. v. Kempthorne, Prosser and Co.'s New Zealand Drug Co., Ltd., [1922] N.Z.L.R. 177, followed.

In re the Auckland Piano Agency, Ltd., [1928] G.L.R. 249; **In re City Equitable Fire Insurance Co., Ltd.,** [1925] 1 Ch. 407; **Re Mercantile Trading Co., Stringer's Case,** (1869) L.R. 4 Ch. 475; **Re Merchants' Fire Office,** [1899] 1 Ch. 432, referred to;

Counsel: **R. H. Mackay,** in support; **J. N. Wilson,** to oppose.

Solicitors: **Joseph Stanton,** Auckland, for the liquidators; **Goldstine, O'Donnell, and Wilson,** for the opposing promoter.

Case Annotation: For *In re City Equitable Fire Insurance Co., Ltd.*, see Supplement to the E. & E. Digest, Vol. 9, title *Companies*, No. 432a; *Re Mercantile Trading Co., Stringer's Case*, 10 E. & E. Digest, 889, para. 6048; *Re Merchant's Fire Office, Ibid.*, p. 900, para. 6144.

SUPREME COURT
Dunedin.
1934.
Mar. 5, 7; July 12.
Kennedy, J.

SAMUEL AND ANOTHER
v.
HARDING.

Mining—Prospecting License—Lease of Small Grazing-run—Whether "unalienated Crown land"—Whether License should be granted without requiring Security—Mining Act, 1926, ss. 4, 75.

Appeal on point of law from a decision of a Warden in which he granted a prospecting license to Robert Ellis Harding without requiring security to his satisfaction for payment of all claims for compensation as they should arise in terms of s. 75 (*c*) of the Mining Act, 1926.

The respondent applied for an ordinary prospecting license over land occupied by appellants and held by them under a lease for a small grazing-run granted under the Land Act, 1924. The lease was dated March, 1931, and was in renewal of a lease in similar terms which had been granted on February 25, 1910. Prior to that date the land had formed part of a larger block which had been occupied as from March 1, 1896, under a pastoral license issued under the Land Act, 1892. What preceded that was not stated in the case.

The appeal was made upon two grounds: First, that the respondent entered upon the appellants' land and marked out the land included in his application without first obtaining the consent of the Warden and giving the notice required, in the case of private land, by s. 93 (*b*) (ii) of the Mining Act, 1926. The further ground taken was that the land in question was not unalienated Crown land and that security in terms of s. 75 should have been required for the payment of all claims for compensation before the issue of the license.

The small grazing-run comprised an area of 7,420 acres of national-endowment land.

F. B. Adams, for the appellants; **Parcell,** for the respondent.

Held, That leases of small grazing-runs are not "unalienated Crown lands" as defined in s. 4 of the Mining Act, 1926. Therefore, a prospecting license relating thereto should not be granted by the Warden without security being required under s. 75 (*c*) of the Act for payment of claims for compensation to the owner or occupier of the land comprised therein.

Solicitors: Adams Bros., Dunedin, for the appellants; **Brodrick and Parcell,** Cromwell, for the respondent.

COURT OF APPEAL
Wellington.
1934.
Sept. 27, 28.
Myers, C.J.
Herdman, J.
Blair, J.

HARDING
v.
SAMUEL AND ANOTHER.

Mining—Appeal—Seven Prospecting Licenses on separate Applications granted by Warden but cancelled on appeal to Supreme Court—Agreement to abide by result of Appeal in respect of one License only—Whether Appellant entitled to take Aggregate Value of all seven Licenses for purpose of Appeal to Court of Appeal—Mining Act, 1926, s. 376 (*e*).

A Warden granted on separate and distinct applications seven prospecting licenses, but these were cancelled on appeal to the Supreme Court in *Samuel v. Harding, supra.* When the licenses were granted and the present respondents took proceedings to appeal to the Supreme Court it was in effect agreed by the parties that there should be an appeal in respect of only one of the applications and that the fate of the licenses issued in respect of the other applications should abide by the result of the appeal in the one case. The respondent moved to dismiss the appeal to the Court of Appeal in that case, on the ground that the appeal was not competent by reason of s. 376 (*e*) of the Mining Act, 1926, which provides that

> "the decision of the appellate Court shall be final and conclusive except where the amount claimed or the *value of the property in dispute exceeds three hundred pounds,* in which case there shall be a further right of appeal to the Court of Appeal whose decision shall be final and conclusive."

The appellant in the Court of Appeal attempted to show that the seven licenses taken together were of a value exceeding £300, but made no attempt to place any value upon any individual license.

Harding, appellant, in person; **F. B. Adams,** for the respondents.

Held, That for the purposes of s. 376 (*e*) of the Mining Act, 1926, the only matter that could be taken into consideration was the matter of the particular application or which was the subject of the appeal to the Supreme Court.

The appeal was, therefore, held to be not competent, and was dismissed.

Macfarlane v. Leclaire, (1862) 15 Moo. P.C.C. 181, 15 E.R. 462, distinguished.

Solicitors: Meek, Kirk, Harding, and Phillips, Wellington, for the appellant; **Adams Bros.,** Dunedin, for the respondent.

Case Annotation: *Macfarlane v. Leclaire,* 16 E. & E. Digest, p. 143, para. 419.

NOTE:—For the Mining Act, 1926, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, 1908-1931, Vol. 5, title *Mines, Minerals, and Quarries,* p. 943.

SUPREME COURT
Wellington.
1934.
July 11;
Sept. 26.
Myers, C.J.

IN RE SIR DOUGLAS McLEAN (DECD.)
CONWAY AND OTHERS
v.
FOUNTAINE AND OTHERS.

Executors—Remuneration—Bequest of £500 each to Executors acting—Payment thereof accepted before final Passing of Accounts—Whether Executors thereby disentitled to Allowance or Remuneration—Administration Act, 1908, s. 20.

Testator by his will made the following bequest:

> "I bequeath to each of the said [named] executors and any other executor or trustee appointed by any codicil hereto provided he acts in the trusts of this my will the sum of five hundred pounds (£500) free of all estate succession or other death duties."

All executorial duties had been completely performed and discharged. One of the named executors had not proved, and one had retired from the trusts of the will after the discharge of his duties as executor. Each executor who had proved had received the legacy of £500 not long after the grant of probate.

On originating summons asking whether the executors, by taking payment of their legacies, became disentitled to any allowance or remuneration for their pains and trouble beyond the amounts of the legacies,

Hadfield, for the plaintiffs; **Cooke** and **Christie,** for all the defendants,

Held, That the executors had not thereby become *ipso facto* disentitled to apply to the Court under s. 20 of the Administration Act, 1908, for further remuneration.

The rule in **In re Allan McLean,** (1911) 31 N.Z.L.R. 139, applied notwithstanding acceptance of payment of the legacies—which distinguished the present case therefrom.

Semble, 1. If the executors have to rely upon an order of the Court under s. 20 of the Administration Act, 1908, that section contemplates that the commission is to be allowed to them on the final passing of their account—that is, when they have completed their work as executors.

2. The burden of satisfying the Court that the remuneration allowed is inadequate, or that there are special circumstances in connection with the administration which were probably not in the testator's contemplation when he fixed the amount of the legacies, and were not in their own contemplation when they accepted it, must necessarily be a heavy one.

3. In a case where a legacy is given to an executor for his services, and that legacy is paid to him, and later on he applies for and succeeds in obtaining an order granting him remuneration under s. 20 of the Administration Act, 1908, credit must be given for the legacy, and interest on the paid legacy credited or taken into account.

In re Langlands, (1901) 21 N.Z.L.R. 100, explained.

Re Murphy, [1928] St. R. Qd. 1; **Re Dolbel and Dolbel,** (1911) 30 N.Z.L.R. 478; **In re Chavannes,** (1898) 16 N.Z.L.R. 639; and **Yates v. Yates,** (1913) 15 G.L.R. 623, mentioned.

Solicitors: Hadfield and Peacock, Wellington, for the plaintiffs; **Chapman, Tripp, Cooke, and Watson,** Wellington, for the defendants.

NOTE:—For the Administration Act, 1908, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, 1908-1931, Vol. 3, title *Executors and Administrators,* p. 128.

Insurance by Parents.

On the Lives of Children.

By G. R. POWLES, LL.B.

Insurance policies on the lives of children—*i.e.*, all under twenty-one—fall into two main classes : (*a*) where the policy is in the name of the child, and (*b*) where the policy is in the name of the parent for the benefit of the child. The intention in each case is the same—to make some provision for the child—but in some circumstances policies of the second class do not carry this intention into effect. The well-meaning parent who has taken out such a policy believes that when the policy-moneys become payable the erstwhile child (or his estate) will be entitled to receive them ; but, unless the insurance company has been vigilant in assisting the parent to carry out his intention, such a happy result may not be achieved.

In *In re Englebach's Estate*, [1924] 2 Ch. 348, the facts were as follows : In 1902 Mr. Englebach took out an endowment policy to provide for the payment of £3,000 to his daughter when she attained the age of twenty-one. If she died before then, the premiums were to be returned to the father. The proposer was stated to be ". . . Englebach for his daughter . . ." Mr. Englebach died in 1916. In 1923 his daughter became twenty-one and collected the moneys due under the policy, but she paid them to a firm of solicitors on account of such persons as might be held entitled to them. A summons was taken out by the trustees of the father's will to determine whether the moneys belonged to them or to the daughter. Romer, J., said that the daughter could successfully claim the moneys only if, at the death of her father, she had a legal right to them (whether given voluntarily or not) ; or if her father had in some way constituted himself a trustee of the policy for the daughter. On both points he felt bound to follow the dicta in *Cleaver v. Mutual Reserve Fund Life Association*, [1892] 1 Q.B. 147, and hold that the daughter could not succeed. She was a complete stranger to the contract between her father and the insurance company, which could have been put an end to by both of the contracting parties without her consent, and she could not have herself enforced this contract against the insurance company. Further, the mere fact that the policy-moneys were expressed to be payable to her did not make the father a trustee for her of the policy or of the policy-moneys.

Cleaver's case arose from curious circumstances. James Maybrick insured his own life under a policy which provided that the policy-moneys were to be paid to his wife if then living ; if not, to his own personal representatives. James Maybrick was then murdered by his wife. The Court had to determine whether or not the wife was entitled to the moneys, and the case turned upon the effect under the circumstances of the statutory trust imposed by the Married Woman's Property Act, 1882, but both Lord Esher, M.R., and Fry, L.J., dealt first with the situation apart from the effect of this Act. Lord Esher said, p. 151,

> "The contract is with the husband and with nobody else. The wife is no party to it. Apart from the statute, the right to sue on such a contract would clearly pass to the legal personal representatives of the husband. The promise is one which could only take effect upon his death, and therefore it must be meant to be enforced by them . . . It does not seem to me that apart from the statute such a policy would create any trust in favour of the wife."

In *Englebach's* case it was argued on behalf of the daughter that the policy-moneys clearly belonged to her because there was a presumption of advancement ; but Romer, J., pointed out that, although this would be the case if the daughter had the legal estate, yet, as she did not, for the reasons already stated, the presumption could not apply. It was also argued that the policy had really been taken out by Mr. Englebach as agent for his daughter, but Romer, J., felt himself unable to accept this contention. He said :

> "It appears to be extraordinarily unlikely that a father would purport to enter into such a contract as this as agent for his daughter who was one month old, a contract which involved, if the father and the daughter were to get any benefit out of it, the continuous payment of a premium by the father."

Further, although the circumstances did not arise in *Englebach's* case, it should be noted that even if, as sometimes happens, the child after becoming twenty-one paid the premiums on the policy, this fact alone would not help the child. In the absence of special contract, the person who pays the premiums upon a policy of which he is not the owner obtains thereby no interest in the policy : *Re Leslie, Leslie v. French*, (1883) 23 Ch. D. 552.

Thus, such a policy would appear to be merely an imperfect gift of the policy-moneys, and there is "no equity to perfect an imperfect gift" : *Milroy v. Lord*, (1862) 4 DeG. F. & J. 264. In order to render a gift valid and effectual in law the donor must have done everything which was necessary to be done in order to transfer the property. But, there is a further principle : where there is a clear intention to make a gift, and the donee by some means, not necessarily to the knowledge of the donor, obtains a legal transfer of the property intended to be given, then the gift is perfected. Thus, if the policy-moneys become payable in the father's lifetime and the child is fortunate enough to collect them from the insurance company, then the gift will be complete and unassailable. Unfortunately, however, the father may die before the maturity of the policy, and the question arises as to what extent this principle is applicable after the death of the would-be donor. It seems clear that if the child becomes executor of the father's will and thus gets the legal estate the principle applies and the gift is completed—*Strong v. Bird*, (1874) L.R. 18 Eq. 315 ; but if the child does not get the legal estate in this manner, but is merely fortunate enough to collect the cash from the insurance company, is the gift then completed so that the child can retain the money against the parent's representatives ? This contingency is by no means unlikely, for payment in accordance with the terms of the policy is a good discharge to the insurance company, which is not concerned with nice questions as to the ownership of the policy-moneys and would be quite willing to pay direct to the child even if the parent had died—*e.g.*, *O'Reilly v. Prudential Assurance Co.*, [1934] 1 Ch. 519.

It is suggested that in the unhappy event of the parent's representatives claiming the money from the child the principle of *Strong v. Bird* could be invoked in the child's favour. It has been held that this principle is not to be extended : *In re Innes, Innes v. Innes*, [1910] 1 Ch. 188, *Bai v. Wilson*, (1915) 34 N.Z.L.R. 619 ; but in these cases the imperfection of the alleged gift had extended to the definition of the property to be the subject of the gift, whereas the policy in question seems to fall within Mr. Justice Parker's dictum in *In re Innes*,

> "What is wanted to make the principle applicable is certain definite property which a donor has attempted to give to a donee but has not succeeded."

The case of *Carter v. Hungerford*, [1917] 1 Ch. 260, supports the view that the principle of *Strong v. Bird* could be applied to the case of a donee who gets the legal estate after the donor's death, but who is not the representative of the donor. The facts in this case were somewhat complicated: suffice it to say that by a letter of directions a settlor directed the trustees of a voluntary settlement to hold a certain property subject to a mortgage, although by the deed of settlement he had covenanted to pay the mortgage off, and he undertook to assign to the trustees three reversions he had purchased. He died without assigning the reversions, but the trustees, with the knowledge of the settlor's executors, paid off a mortgage on one of the reversions and took a reconveyance of it from the mortgagee. Later the executors claimed the reversion on the ground that the undertaking to assign was only an imperfect voluntary gift. Astbury, J., found that there was actual consideration for the letter of directions; but he considered *Strong v. Bird*, and quotes a long passage from the judgment of Jessel, M.R., and then says, p. 273,

> "This passage shows that if a donor makes an incomplete gift of real estate and afterwards, though unintentionally, includes it in a conveyance of real estate to the donee, that conveyance perfects the intended gift, and prevents the donor from reclaiming it on the ground of resulting trust or otherwise. I agree that the present case goes a little further, as the legal interest in the Baker reversion was got in after the donor's death, not by persons entitled to the equity of redemption therein but by persons to whom the donor intended to give that equity of redemption. It was got in with full knowledge of the donor's executors, at all events to the extent that they told the trustees they had no claim and left them to act accordingly. The point is interesting, and if it were necessary to decide it I should hold that the plaintiff's contention was correct."

It should be noted, however, that if the principle enunciated by Jessel, M.R., in *Strong v. Bird* is fully applicable, acquiescence on the part of the deceased parent's executor in the payment of the policy-moneys to the child is apparently not necessary, and receipt by the child would perfect the gift.

In practice, the difficulties which have been pointed out are usually either avoided or overcome. They can be avoided by issuing the policy in the name of the child, the child thus being insurer and insured. While it is beyond the scope of this article to consider the whole question of child insurance, it may be said that a policy in the name of the child—that is to say, a contract of insurance directly between the child and the company—is open to several objections, the chief of which is that to a large extent the parent loses control over the policy and with it over his own savings. Although by statute dealings with such policies are made subject to the approval of the Public Trustee (Life Insurance Act, 1908, ss. 69-75), a parent would probably much prefer to have the policy in his own name, great as may be his confidence in the paternal aegis of the Public Trustee.

The difficulties mentioned may also be avoided by an assignment by the parent to the child, either when the child comes of age, or before, and, if before, the insurance company cannot refuse to register the assignment on the ground that the assignee is an infant: *Dolph v. Government Insurance Commissioner*, (1900) 19 N.Z.L.R. 157; but the policy then becomes subject to the restrictions imposed by s. 69 of the Act.

The best method adopted in practice to overcome these difficulties seems to be to follow the second of the alternatives stated by Romer, J., in *Englebach's* case and to constitute the parent a trustee for the child of the policy and its proceeds. This is done both in the proposal and in the policy, the policy expressly declaring that the insurance is held on trust for the insured. Another method is to declare in the proposal that the policy is effected by way of advancement to the child, and providing that the policy is to vest absolutely in the child on his attaining twenty-one years of age. This latter method has the advantage of being clear and definite from the point of view of the insurance company, but it is submitted that it does not effectively remove the difficulties referred to. The insured still has no actual right to the policy-moneys. The presumption of advancement does not apply until there has been a completed gift, and for the reasons stated in this article it would seem that in such a case there would not be a complete gift—the proviso for the vesting of the policy on the attainment of the child's majority cannot itself complete the gift unless it is carried into effect by an assignment of the policy.

It must, however, be admitted that the trustee method is not so simple for the insurance company; for the company becomes concerned with the rights as between father and child, and may be placed in an awkward position if the father dies and nothing is done until the policy matures many years later. Nevertheless, this type of policy does confer on the child definite rights—the rights of a beneficiary under a properly constituted trust—while the parent has reserved to him a large measure of control. It seems to be an excellent practical compromise between the opposing ideas of control of the policy by the parent, on the one hand, and complete and unconditional gift to the child, on the other, while in the odd case in which awkward questions may arise these will be solved by application at the Court, where the parent and the child will each have a definite *locus standi* and the insurance company will have its costs out of the fund.

The Tercentenary of Lord Coke.—The tercentenary of the death of Sir Edward Coke, perhaps the most famous of English lawyers and Judges, was celebrated last month. "Of all the long line of Judges who have rendered England famous among the nations for the excellence and impartiality of the administration of justice, the chief place has unhesitatingly been awarded to Coke." So wrote Lord Birkenhead when, in his *Fourteen English Judges*, he attempted to collect what was most noteworthy in the annals of the Bench. For the real property lawyer Coke is best remembered for *Coke upon Littleton*, which became for over two centuries the guide to the intricacies of Real Property Law. To constitutional lawyers Coke is known for the firm stand he took for the supremacy of the law, giving it in one case as his opinion that "the laws and customs of England are the inheritance of the subject which he cannot be deprived of without his assent in Parliament." But after a famous struggle with the Court of Chancery he found that the Common Law had a successful rival in Equity, and thenceforth the two flourished side by side until the jurisdictions came to be united by the Judicature Acts, though under the rule of the prevalence of equity. But Coke's influence continues most of all in his Reports, where he boldly assumed that, in his own words (*Calvin's Case*, 7 Rep. 4a), it was the reporter's function to present the arguments in such form as "to be fittest and clearest for the right understanding of the true reasons and causes of the judgment and resolution of the case in question."

London Letter.

Temple, London,
August 31, 1934.

My dear N.Z.,

This is my holiday letter. In other words, we are all on vacation and there is remarkably little legal news for you. The Temple is deserted; and so are the Law Courts, except on the few days when the Vacation Court is sitting. Even then the Law Courts Building seems more like a monastery, so quiet and dark are its long passages and so empty the Great Hall. I had occasion to attend the Vacation Court the other day and was kept until nearly 4.30, when I found the place being locked up, and was, apparently, only just in time to extricate my hat from the robing-room.

Lord Justice Scrutton.—All the legal profession must have been shocked by the sudden death on the 17th of this month of Lord Justice Scrutton at the age of seventy-seven. He was taken ill whilst on a holiday in Norfolk and, although rushed to a nursing-home in Norwich, he died within a day or two of admittance.

It is scarcely necessary to say that Lord Justice Scrutton had a long and distinguished career at the Bar and on the Bench. Called to the Bar in 1882, he began by writing various legal text-books, in particular a work on copyright and a work on charter-parties and bills of lading, which latter has since gone through many editions. Meanwhile he acquired a very large practice in the Commercial Court. He was elevated to the Bench in 1910 and to the Court of Appeal in 1916. Many famous cases were tried before him, both civil and criminal, in the latter class being the "Brides in the Bath" case. Of his judgments, and of the exceptional intellectual powers displayed in them, you probably know as much as we. He had a vast knowledge of law and, moreover, a remarkable memory. In the Court in which he presided, the usual practice by which counsel call the attention of the Bench to the relevant judicial decisions on the point before the Court was frequently reversed by Lord Justice Scrutton, who would remind counsel of decisions which seemed somehow to have escaped their notice in preparing their cases.

By way of recreation the late Lord Justice was a keen golfer. He was at one time captain of the Bar Golfing Society and presented the Scrutton Challenge Cup, which is competed for annually by the four Inns of Court.

His loss will be seriously felt in the Court of Appeal, and more especially in view of the extra duties which, as from October next, the Court of Appeal has to undertake. For the Administration of Justice (Appeals) Act, 1934, is now in force, under which all appeals from County Courts will in future be heard by the Court of Appeal instead of the Divisional Court.

The Court of Appeal.—In order to deal with the extra appeals from the County Courts, the Court of Appeal will sit in three divisions next term. It is understood that, except to fill the vacancy caused by the death of Lord Justice Scrutton, no new Lord Justices of Appeal are to be created at present; but that, while the new system of appeals is in its experimental stage, the third Court of Appeal will be made up of puisne Judges.

Road-traffic Problems.—The road-traffic problems in this country, so far from being solved, are now, it seems, increasing in number. For there is now added to the serious questions of road accidents and ribbon development the question of noise. An experiment is being tried this week in London with what are known as "zones of silence," and it is now an offence (punishable by fine) to blow the horn of your car within five miles of Charing Cross between 11.30 p.m. and 7 a.m. It is said that people are prevented from getting their proper quota of sleep and that, more important than that, the inmates of London hospitals and nursing-homes are disturbed by the screeching of motor-cars at corners and cross roads. No doubt there is something in this; but it seems a little strange that the question, if as serious as it is made out, did not arise long ago. Few motor-cars, I fancy, could compete with a coach and four rattling down a cobbled street, yet we have no record of any complaints by our forefathers.

In fact, with personal experience of residence in London to back me, I believe that people who are used to such noises do not hear them. Ask anyone who lives in a house backing on to a railway-line if the trains disturb his slumbers, and he will tell you that he never hears them. I am told that about the only noise that people cannot get used to is that of a pneumatic drill. Now, the energies of the Ministry of Transport and of the Police would, in my humble opinion, be much better directed to the prevention of dangerous driving and so to the reduction of accidents on our roads. In spite of special safety campaigns, in spite of almost daily warnings on the wireless and in the Press, in spite of the introduction of special pedestrian crossing-places and the multiplication of traffic lights, the weekly total of deaths from road accidents averages higher than ever. I can only hope that in New Zealand you are more successful than we are.

The Inner Temple Library Clock "On Strike."—Taking advantage, perhaps, of the absence of most of the members of the Inner Temple and the closing of the Library for the month of August, the clock in the Library tower last Sunday evening continued striking after it had chimed 8 p.m. for, I am told, 167 strokes, and after chiming 9 p.m. for something over 400 strokes, until in fact the porter went up into the tower and stopped it. No doubt this was the clock's method of calling attention to its need for a vacation.

An unusual event.—Recently the Judicial Committee were asked to pronounce an opinion in a case in which there was, and could be, no appeal to the Privy Council. The question arose as a result of a decision of the Full Court in Hong Kong, who had held a person could not be found guilty of piracy unless there had been an actual robbery, and that a frustrated attempt at robbery on the high seas was not sufficient to constitute the offence. The Judicial Committee has now delivered a long and carefully considered opinion, in which, after reviewing all the authorities, they came to the conclusion that actual robbery was not an essential ingredient of the offence of piracy. No doubt you will see this interesting case more fully reported elsewhere.

Yours ever, H. A. P.

Memorial Tablet to the Earl of Oxford.—Recently, Mr. Baldwin unveiled a tablet to the memory of Lord Oxford in Westminster Abbey. Nearly all the later part of his career Lord Oxford gave to politics; but he did not receive a peerage till 1925, when his active public life was over, and it is as Mr. Asquith that he is remembered both at the Bar and in politics. It is no new speculation how Asquith would have filled the office of Lord Chancellor, had he not been Prime Minister.

New Zealand Law Society.

Council Meeting.

The Council of the New Zealand Law Society held its quarterly meeting on Friday, September 28, 1934, at Wellington, the President (Mr. C. H. Treadwell) being in the chair.

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

Apologies for absence were received from Messrs. C. A. L. Treadwell and F. B. Adams; and Mr. A. H. Johnstone, K.C., was granted three months' leave of absence.

Solicitors Receiving Money on Deposit.—Messrs. J. B. Callan, K.C., and E. F. Hadfield, in the absence of Mr. A. H. Johnstone, K.C., reported very fully on the questions raised by the Christchurch solicitors.

The Committee were of opinion that the Regulations should not be amended to cover the instances cited, as it would be unwise for the Society to encourage or facilitate such business, which was really a department of banking business.

The Council unanimously decided to adopt the report.

Intoxicated Persons.—(*a*) Right when arrested to have examination by own doctor without police being present; (*b*) Whether solicitor should be prevented from interviewing client until latter considered sober by police.

The following report was received, and the Council decided to await the Commissioner's reply before taking further action:—

"A deputation consisting of Messrs. H. F. O'Leary, A. T. Donnelly, and the Secretary interviewed the Commissioner of Police on Thursday, 6th September, 1934, in connection with the questions raised by Auckland concerning intoxicated persons.

"After the general principles involved had been put forward by the deputation, Mr. Wohlmann pointed out that last year he had issued instructions to the police in connection with charges against intoxicated motorists, which showed that he was anxious to see that the accused were justly treated, and which to some extent met the objections raised by the Auckland Society. Details of these instructions were confidentially given and cannot be repeated.

"Mr. Wohlmann maintained that a policeman should be present when a doctor examined the accused: most doctors in such a case regarded themselves as employees of the accused and it was necessary to have some check on the tests which they might state they had applied. If the doctor's evidence was going to be impartial, there seemed no reason why the police should not be present.

"Mr. O'Leary and Mr. Donnelly agreed with the Commissioner that it seemed reasonable that the police should be present to check the tests, but asked that an instruction should be issued that the duty of the police was to hear only the directions as to the tests and not to get further evidence by admissions made by the accused to his doctor.

"As to the remaining question, all parties agreed that if an accused were so intoxicated that the police could arrest him for drunkenness, then he could not ask for a solicitor until he had sobered, the normal time fixed being four hours; if however, he was merely in a condition which made him liable to prosecution for being in charge, etc., "while in a state of intoxication," then he should have the right to call his solicitor immediately. It was thought that a distinction should be made in the two cases.

"The Commissioner promised to go into the points raised and let the Society have his decision in a few days."

Limited Land Transfer Titles—Requisitions.—The following report was unanimously adopted:—

"The question submitted has produced an almost equal division of opinion in the Auckland Council, and, after careful consideration, we find it impossible to formulate any rule which we could regard as justified by established legal principles. Limited certificates of title are a new departure, and there are no decisions as to the respective rights of vendor and purchaser under an open contract where the vendor tenders such a title. We have expended considerable time on the subject, but do not think a detailed discussion would be useful. It will be sufficient, in order to illustrate the difficulties, to say that the fundamental point seems to be whether a purchaser can be compelled to accept a limited title at all, and, if so, what are the limitations he must submit to. A decision of this question is necessary before one can say who must bear the cost of removing any particular limitation. There are, however, many cases where the point arises merely as a matter of routine conveyancing, and we believe that it would be of assistance to the profession if the Council were to give a qualified ruling, which we suggest might take the following form:—

"The Council considers that the vendor's solicitor should prepare and lodge at the cost of the vendor any declaration required for the removal of limitations as to title under the 'Land Transfer (Compulsory Registration of Titles) Act, 1924.' This does not apply to survey, and is intended merely for the guidance of practitioners in routine matters, and not as laying down any rule of law."

"Our choice of the vendor as the person to pay is determined by our view that, even assuming that a purchaser must be content with something less than a fully guaranteed certificate, he should at least be entitled to as good a title as the vendor can furnish without unreasonable trouble or expense. He should not be called upon to accept a title with limitations upon it which the vendor, as a prudent owner, might have been expected to remove in his own interest, instead of allowing them to remain until he can escape expense by throwing the burden on a purchaser.

"We may add that the legislation for compulsory issue of certificates of title takes no account of questions arising between vendor and purchaser. The result is unsatisfactory, and we think it would be advantageous if the law were amended so as to cast upon the vendor, in the absence of a stipulation to the contrary, the obligation of removing all limitations on the title except as to parcels."

C. L. CALVERT.
F. B. ADAMS.
H. S. ADAMS.

Dunedin,
22nd September, 1934.

Leasehold Titles—Cost of Certificate of Title.—It was decided to defer till the next meeting consideration of the following majority and minority reports from the sub-committee:—

Report of Committee.

"In our opinion the fees for leasehold titles issued by the Registrar under s. 3 of 'The Land Transfer Amendment Act, 1925,' after the presentation for registration of a transfer of the lease, are as between the transferee and his vendor or mortgagee payable by the transferee.

"We do not think that the obligation of a vendor under the Land Transfer Act with reference to the payment of fees involuntarily incurred goes further than the provision, up to the moment of settlement, of a title against which the transfer may be registered, and the fact that the Registrar subsequently exercises his discretion by issuing a leasehold title ought not to be regarded as imposing a new liability on the vendor. After the settlement the purchaser has become the real owner and the vendor has ceased to have any interest in the title. If a mortgage is registered concurrently with the transfer, the mortgagee, having paid the fee, will be entitled to recover it from his mortgagor, and it is immaterial if the mortgagee is also the vendor. The alternative to this view would involve making the fee payable by such one of the successive lessees as might be selected in the arbitrary

discretion of the Registrar. We think the position would be different if the Registrar acted before the settlement. In that case the person liable for the fee would be the registered proprietor for the time being."

F. B. ADAMS.
C. L. CALVERT.

Dunedin,
22nd September, 1934.

Minority Report.

"In the case of lease No. 1, I think that, as between the Registrar and the parties, the title fee is payable by S. and him only. As between the parties, all that can be said is that S. was under a duty to do all that was required to enable the transfer to M. to be registered. As the leasehold certificate was not in existence when registration was effected, I do not think that S. owes any obligation to M. in regard to the fee.

"After the presentation and acceptance of the documents for registration, I do not think that the Registrar, having in the meantime decided to issue a certificate of title to S., could have refused to proceed with the registration of the transfer to M. and subsequent documents until the title fee was paid by the transferee. When registration had been effected, I think the title then belonged to the transferee subject to the statutory or contractual rights of the mortgagees, and I do not think that the Registrar, having registered the transfer to M., could as against him refuse delivery of the title until the fee was paid.

"The crux of the matter is whether the Registrar can compel M. to pay the fee. I do not think it follows that M. can be called upon to pay simply because he cannot compel his vendor to do so. It is not really a question between vendor and purchaser, but between the Registrar and the separate parties.

"I regret that I have not been able to agree with the report presented by the other members of the Committee."

H. S. ADAMS.

Dunedin,
22nd September, 1934.

War Regulations Continuance Act, 1920 (Assisted Discharged Soldiers).—The Solicitor-General wrote, pointing out that the War Regulations Repeal Bill had been introduced in the House of Representatives, and that if the Bill became law it would effect the repeal of the Soldiers' Protection Regulations.

It was decided to thank the Solicitor-General for his letter.

Rules Committee—Election of Member.—It was decided to nominate Mr. P. B. Cooke as a member of the Rules Committee in place of Mr. H. H. Cornish, who had been appointed Solicitor-General.

Council of Legal Education—Election of Members.—A letter was received from the Chief Justice, pointing out that the original appointments had expired, and asking for further nominations by the Society.

It was unanimously decided to re-appoint Messrs. A. H. Johnstone, K.C., and P. Levi as members of the Council of Legal Education.

Law Practitioners Act, 1931—Proposed Amendments.—The Committee of Managers (Messrs. A. M. Cousins, A. T. Donnelly, and H. F. O'Leary) reported that they had interviewed the Attorney-General (The Right Hon. G. W. Forbes) on July 12, had explained to him the various amendments which were desired, and had been given a sympathetic reception.

The amendments had then been immediately sent to Mr. Christie, the Parliamentary Law Draftsman, to be drafted into a Bill, and the Committee had been in constant touch with him ever since. On September 5 an unofficial rough draft of the main portions of the amendments had been received, and the Committee had interviewed Mr. Christie and discussed each clause in detail. It was expected that the printed Bill would very shortly be available.

The President read a letter which he had just received from Mr. Christie, in which the latter stated that he expected to have the printed Bill ready during the next week.

Messrs. Donnelly and O'Leary gave members some further information concerning the progress of the Bill, and Mr. G. P. Finlay pointed out the necessity for forwarding printed copies as soon as these were available in order to allay the fears of some practitioners who appeared to be concerned as to the powers sought by the Society and had been given a very exaggerated account of these.

Section 13, Arbitration Act, 1908.—The Wanganui District Law Society wrote as follows:—

"The Council of my Society has had under its consideration the enforcement of awards on a submission to arbitration under the Arbitration Act, 1908.

"Section 13 of the above Act lays it down that: 'A submission may, by leave of the Court, be enforced in the same manner as a judgment or order to the same effect.'

"'Court' by virtue of s. 2 means the Supreme Court or a Judge thereof.

"Thus, where there is a submission of the matter in dispute to arbitration, and an award is duly made, and one party refuses to be bound thereby, the other party must either apply to the Supreme Court for the leave to issue execution under s. 13, or he may take action in the Supreme Court or Magistrates' Court and have the whole matter retried, when, of course, the actual terms of the submission might be pleaded.

"In a case where only a small sum is involved, and one of the parties repudiates the award, the other party must, if he desires to issue immediate execution, first spend quite a large sum in applying for leave in the Supreme Court. To a country practitioner and his client this may be a severe hardship, as in addition to Court fees he must arrange with his client for payment of Counsel's fee on the appearance in the necessary summons for leave. It might well be that in a small case he has to find say £5 to £7 in outlay, where only 10s. would be necessary if application for leave could in such cases be made to a Magistrate. My Council considers that the Act should be amended so that in cases where the amount of the award is within the jurisdiction of the Magistrates' Court that Court should be empowered to grant leave to enforce the award as if it were a judgment or order of the Magistrates' Court to the same effect.

"I was, therefore, instructed to bring the matter before your Council with a view to having steps taken to obtain an amendment of the Act."

It was decided to ask the Minister of Justice to amend the Act as suggested by the Wanganui Society.

Bankruptcy Practice—Uniformity throughout Empire.—The Otago District Law Society forwarded a letter from the Associated Chambers of Commerce in which it was suggested that the bankruptcy law of the Empire should be brought into uniformity with the English bankruptcy law.

The Council could not see its way to taking any action in the matter.

Scale of Costs on Taxation of Bills of Costs.—The following letter from the Under-Secretary of Justice was received, and it was decided to delay further action until receipt of another memorandum on the matter:—

"Wellington,
27th July, 1934.

"Dear Sir,

"I have to acknowledge receipt of your letters of 26th October and 28th February last pointing out the desirability of uniformity of practice by the Registrars of the Supreme Court in the matter of taxation of solicitors' Bills of Costs, and suggesting that instructions be issued to the various Registrars to adopt the practice of the Auckland Registrar.

"In reply, I have to inform you that your representations have been carefully considered, but from a perusal of the Supreme Court Rules and standard works on Taxation, it would appear that Registrars in New Zealand, as well as Taxing Masters in England and the Dominion, have discretionary powers in the matter of taxation of costs. I hesitate, therefore, to issue instructions to the Registrars which might in any way tend to fetter their discretion in the matter.

"I quite agree with you that uniformity of practice is most desirable, and I am addressing a communication to the Secretary of the Rules Committee suggesting, for the consideration of his Committee, the making of suitable Supreme Court Rules formulating principles for the guidance of Registrars, to enable uniformity of practice to be attained.

"I will communicate with you again in this matter."

Instruments Executed out of New Zealand.—The following letter was received from a former New Zealand solicitor, now practising in Sydney :—

"Sydney, N.S.W.,
17th July, 1934.

"Dear Sir,

"With reference to our previous correspondence herein, I request that you be good enough to bring to the notice of your Council the fact that whilst Affidavits sworn before a Commissioner of the Supreme Court of New Zealand may be used in evidence in the Supreme Court of New Zealand, yet the attestation of instruments requires to be verified on Affidavit sworn before a Notary Public. (See, for example, s. 176 of the Land Transfer Act, 1915.)

"I am being continually asked the question by practitioners here why should not the execution of instruments attested by a Commissioner of the Supreme Court of New Zealand, or verified by the attesting witness on Affidavit sworn before a Commissioner of the Supreme Court of New Zealand, be accepted.

"I think it would be a great convenience if an amendment of the law could be put through to cover the point, both to practitioners and to the public. For example, a practitioner instanced a case of real hardship to me last week. He said that he had a client living in the North-west corner of this State, near a Commissioner of the Supreme Court of New Zealand, but hundreds of miles from the nearest Notary Public. I am quite sure that a great convenience in many parts of the world would be effected if an amendment along the lines suggested were brought in. There are many more Commissioners of the Supreme Court than there are Notaries Public, and moreover the fee is much less."

It was resolved to refer the letter to the Government and to request that an amendment should be made in the law to allow Land Transfer documents to be attested before a Commissioner of the Supreme Court of New Zealand.

Proper Place for Completion of Conveyancing Transactions.—The Wellington District Law Society forwarded the following letter :—

"A matter regarding the proper place for completion of conveyancing transactions has arisen, and we would like to obtain a definite ruling from the New Zealand Law Society on the point.

"The facts are as follows :—

"A. sells a piece of land to B. A.'s solicitors are at Palmerston North and B.'s at Wellington. There are no encumbrances on the title, but B. has arranged finance through C., whose solicitors are also at Wellington and the money is required for completion of the purchase. C.'s solicitors require the settlement to take place at their office and A.'s solicitors are agreeable to this but require Wellington agent's charges and exchange paid by B.

"B.'s solicitors claim that in view of the statement appearing at the end of Ruling 116 on page 59 of the consolidated Rulings of the New Zealand Law Society, they can insist on the transaction being completed at the Land Transfer Office at Wellington, and accordingly object to paying either Wellington agent's charges or exchange.

"As this is a matter of some importance to country practitioners and their clients, we think that a definite ruling should be given by the New Zealand Law Society. It will be noticed that the sub-committee refrained from expressing a considered opinion on the point."

The following ruling was adopted :—

"(*a*) That in the opinion of the Council, the law is that the only place for completion is at the Land Transfer Office ; and

"(*b*) The vendor's solicitor cannot demand agency costs and exchange."

(*To be concluded.*)

New Zealand Conveyancing.

By S. I. Goodall, LL.M.

Memorandum of Lease of Shop Premises by Mortgagee in Possession.

(The draftsman is referred to the Property Law Amendment Act, 1932, and to the Forms of Common Clauses in Leases, New Zealand Law Journal, Vol. 9, p. 286.)

Under the Land Transfer Act, 1915.

Memorandum of Lease.

Whereas A.B. of etc. hereinafter called "the Mortgagor" is registered as proprietor of an estate in fee-simple subject however to such incumbrances 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 bearing date the day of 19 registered Number from the Mortgagor to C.D. of etc. (hereinafter called "the Mortgagee").

And subject also etc. [*subsequent incumbrances if any*].

And whereas the Mortgagor having made default under the said recited mortgage the Mortgagee is now in possession of the said land.

And whereas the Mortgagee in exercise of his statutory power in that behalf has agreed with E.F. of etc. (hereinafter called "the Lessee") for the lease to him of the said land at the rental and upon and subject to the covenants and conditions hereinafter contained.

Now therefore in pursuance of the said agreement and in consideration of the rent hereby reserved and the covenants and provisions on the part of the Lessee herein expressed and implied the Mortgagee as mortgagee in possession of the said land and in exercise of the power for this purpose conferred upon him by the Property Law Amendment Act 1932 and all other powers enabling him in this behalf 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 [*seven*] 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 Mortgagee as follows :

1. [*To pay rent.*]

2. [*To pay rates and taxes.*]

3. The Lessee during the term hereby created will keep and at the end or sooner determination of the said term will yield up the interior of the demised premises in good clean serviceable and tenantable condition and repair depreciation from fair wear and tear weather or

natural causes and damage by fire earthquake tempest or inevitable accident without the neglect of the Lessee always and alone excepted.

4. The Lessee shall not nor will assign sublet or part with possession of the demised premises or any part thereof without the consent in writing of the Mortgagee first had and obtained PROVIDED always that such consent shall not be unreasonably or arbitrarily withheld in the case of a solvent and suitable proposed assignee or sub-lessee to whom no objection is taken by the company for the time being carrying the fire insurance cover in respect of the demised premises.

5. The Lessee will not without the consent in writing of the Mortgagee first had and obtained carry on or permit to be carried on in or upon the demised premises any business or trade other than that of a [*restaurateur*] *or eating-house proprietor*].

6. The Lessee in carrying on upon the demised premises the business of a [*restaurateur or eating-house proprietor*] shall and will comply with the provisions of the Health Act 1920 and the regulations thereunder and the by-laws of the City Council governing the conduct of [*restaurants and eating-houses*] in so far as the same relate to the keeping clean sanitary and tidy the interior of the demised premises.

7. The Lessee " will not carry on offensive trades " within the meaning ascribed to those words in the Sixth Schedule to the Land Transfer Act 1915 and shall not nor will do or suffer any act or omission in or about the demised premises which shall or may be a nuisance to the Mortgagee or the owners or occupiers of adjoining premises.

II. The Mortgagee DOTH HEREBY COVENANT with the Lessee as follows :—

8. The Lessee paying the rent hereby reserved and observing the covenants on the part of the Lessee herein contained and implied shall have quiet and undisturbed possession of the demised premises throughout the term hereby created without any interruption by the Mortgagee or any person claiming through under or in trust for the Mortgagee.

9. [*Special covenant if any.*]

III. AND it is hereby mutually agreed and declared by and between the parties hereto as follows that is to say :—

10. [*Provision as to insurance including plate-glass cover.*]

11. [*Proviso for abatement of rent on damage by fire etc.*]

12. [*Proviso for cesser of term in case of destruction by fire etc.*]

13. [*Negativing of implied covenants by Lessee.*]

14. [*Power of distress for rent rates in arrear and other sums if any.*]

15. [*Right of removal of Lessee's fixtures.*]

16. If and whenever the rent hereby reserved shall be in arrear and unpaid for the space of [*thirty*] days after any of the respective days hereinbefore appointed for payment thereof then whether the same shall have been legally or formally demanded or not or if and whenever the Lessee shall make breach in the performance or observance of any of the covenants conditions or agreements herein on the part of the Lessee expressed or implied then and in any such case it shall be lawful for the Mortgagee forthwith and without making any demand or giving any notice whatsoever to re-enter upon and take possession of the demised premises or any part thereof in the name of the whole whereupon the term hereby created shall cease and determine and that without releasing the Lessee from liability for any rent theretofore accrued due herein or either party for any antecedent breach of covenant hereunder.

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.

CORRECT etc.

Christchurch Practitioners at Golf.

The Annual W. J. Hunter Cup Contest.

The annual handicap medal match for the W. J. Hunter Cup was played at the Shirley Golf Links on October 2.

A very large gathering of members of the profession assembled to witness the contest. Among those present were Mr. Justice Johnston and Mrs. Johnston, Hon. A. S. Adams and Mrs. Adams, Mr. H. A. Young, S.M., Mr. E. D. Mosley, S.M., and Mr. H. P. Lawry, S.M.

Unfortunately a steady cold rain, which fell all day, made conditions for play very unpleasant. But the contestants were undaunted by this stroke of bad luck. They took the field gallantly, with and without umbrellas, and some of them returned very good cards, but for others, it was a chastening experience.

For the first time since the cup was given for competition in 1925, a Judge of the Supreme Court played in the match, Mr. Justice Johnston being warmly welcomed as a competitor, as was also Mr. H. P. Lawry, S.M.

Early in the afternoon two cards of 75 net and two of 74 net were handed in, and for a considerable time it seemed as if the competition would result in a tie. Then Mr. D. W. Russell, holing a long putt on the eighteenth green, completed the round in 73, a good performance under trying conditions, and won the match.

The cup has previously been held by Messrs. E. J. Corcoran, T. A. Wilson, D. E. Wanklyn, G. W. C. Smithson, C. A. Stringer, and R. L. Ronaldson ; while Mr. A. T. Donnelly has won it twice, in 1926 and in 1932, when he himself was president of the Law Society, and last year Mr. E. J. Corcoran and Mr. G. S. Branthwaite tied, with net scores of 73.

Mr. C. S. Thomas, president of the Canterbury Law Society, and Mrs. Thomas entertained the players and their friends in the club house. After tea, Mr. Thomas thanked the Christchurch Golf Club for lending the links for the match, and the executive for the help given in arranging the gathering. Mrs. Thomas then presented the cup to Mr. Russell.

Practice Precedents.

In Divorce—Intervention by Woman against whom Petitioner alleges Adultery.

Section 22 of the Divorce and Matrimonial Causes Act, 1928 (*Sim on Divorce*, 4th Ed. 30), provides that the Attorney-General or the Solicitor-General may oppose the petitioner obtaining a decree for divorce or show cause why a decree should not be made. (See also RR. 65, 66, and 67, *ibid.* 73, 74.)

Section 23 of the same Act provides a stranger may be admitted in case of connivance to oppose divorce.

Rule 28 of the Divorce Rules (*Sim on Divorce*, 4th Ed. 63) provides that application to intervene in any cause must be made to the *Court* or a *Judge* thereof.

Rule 29 provides that every party intervening must join in the proceedings at the stage in which he finds them, unless it is otherwise ordered by the Court or a Judge thereof.

Rule 25 provides an appearance may be entered at any time before a proceeding has been taken in default or afterwards . . . or by leave of the Court or a Judge thereof.

In this precedent the appearance is entered after leave to intervene is granted.

As to costs, the general rule is that the unsuccessful party pays them. Where the unsuccessful party is a married woman with separate estate it is stated to be the uniform practice that she should pay costs: *Hyde v. Hyde*, (1888) 59 L.T. (N.S.) 523. In *Wade v. Wade*, [1903] P. 16, the wife as well as the respondent was ordered to pay the costs of a successful respondent who had intervened. In *Studley v. Studley*, [1913] P. 119, an order made against a married woman with separate estate in favour of a successful intervener was upheld and enforced by the Court of Appeal. In the New Zealand case of *Mills v. Mills*, [1923] N.Z.L.R. 30, the petitioner, who was possessed of separate estate, was ordered to pay the costs of the successful intervener and also the costs of the respondent.

The procedure adopted here is by way of summons and to illustrate the precedent more fully the grounds of the petition are set out.

PETITION.

IN THE SUPREME COURT OF NEW ZEALAND.
.....District. In Divorce. No.
.....Registry.
The day of 19 .

THE petition of A.B. of married woman showeth as follows:—

1.

2.

3. On the day of 19 and on divers other days the respondent committed adultery with one of the City of at the residence of the said at No. [*street*] in the City of

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HEADING.

Note after the citation is issued the heading adopted is as follows:—

IN THE SUPREME COURT OF NEW ZEALAND.
.....District. In Divorce. No.
.....Registry.
Between A.B. etc., Petitioner
and
C.D. etc., Respondent.

ANSWER OF RESPONDENT.

The respondent in answer to the petition herein says:—

1. He denies that he ever committed adultery with the said .

(For form of entry of appearance see Form No. 11, *Sim on Divorce*, 4th Ed. 95.)

(Rule 38 provides that every answer which contains matter other than a simple denial of the facts shall be accompanied by an affidavit by the respondent etc.)

SUMMONS FOR LEAVE TO INTERVENE.

(*Same heading.*)

Let all parties concerned appear before the Right Honourable Sir Chief Justice of New Zealand at his Chambers Supreme Courthouse on day the day of 19 at the hour of 10 o'clock in the forenoon or so soon thereafter as counsel can be heard to show cause why an order should not be made that be made a respondent in the above-mentioned cause UPON THE GROUNDS that she is named in the petition of the above-named as the person with whom the respondent is alleged to have committed adultery and that she is desirous of defending her name and reputation and of placing all the facts of the case before the Court AND FOR A FURTHER ORDER to show cause why an order should not be made that the petitioner do pay the costs of and incidental to this summons.

Dated at this day of 19 .

Registrar.

This summons is issued by "Y" of solicitor for whose address for service is at the office of Messrs. Solicitors.

AFFIDAVIT IN SUPPORT OF SUMMONS.

(*Same heading.*)

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

1. That I am a married woman and reside with my husband at No. in the City of .

2. That on the day of 19 I inspected the petition herein in the Registry of this Honourable Court at .

3. That I found that I had been named by the above-named petitioner in her said petition as the person with whom the respondent had committed adultery.

4. That the said allegations are untrue.

5. That I desire to defend my name and reputation and prove my innocence by placing certain facts before the Court.

6. That for the reasons aforesaid I desire to be made a respondent hereto.

Sworn etc.

ORDER GRANTING LEAVE TO BE MADE A RESPONDENT.

(*Same heading.*)

day the day of 19 .

UPON READING the petition for divorce filed herein the summons for leave to be made a respondent sealed herein and the affidavit in support and the affidavit of service filed in support of the said summons AND UPON HEARING Mr. of counsel for the petitioner Mr. of counsel for the respondent and Mr. of counsel for I DO ORDER that the said be made a respondent in the above-named cause AND I DO FURTHER ORDER that the costs of and incidental to this summons be reserved.

Judge.

ENTRY OF APPEARANCE BY INTERVENER.

ANSWER OF RESPONDENT INTERVENER.

The respondent in answer to the petition herein says:—

1. She denies the allegations contained in paragraph 3 of the petition herein.

WHEREFORE the respondent humbly prays—

1. That this Honourable Court will be pleased to dismiss the petitioner's allegations against her.

2. That this Honourable Court do order the petitioner to pay the respondent's (intervener) costs of and incidental to these proceedings.

Obituary.

Mr. C. H. Tripp, Timaru.

Mr. Charles Howard Tripp, senior partner of the firm of Messrs. Tripp and Rolleston, Timaru, died on October 9 in a hospital in Wellington. Mr. Tripp, who had been to England for his health, returned by the *Rangitata* on her last voyage. He was taken ill on board ship, and on arrival was removed to the hospital. He was operated on successfully some three weeks previously, and made good progress, but collapsed after an unexpected relapse.

Mr. Tripp was the oldest son of the late Charles George Tripp, of Orari Gorge, Canterbury, and the eldest grandson of the late Bishop Harper, the first Bishop of Canterbury. Mr. C. G. Tripp was the first pioneer to take up hill country in South Canterbury, and the deceased was one of the first children born in South Canterbury. He was born at Mount Peel on October 1, 1859, and received his education at Christ College, Canterbury, and Trinity Hall, Cambridge. He was called to the Bar at the Inner Temple, London, in 1887. On returning to New Zealand he was joined by Mr. F. J. Rolleston in practice in Timaru in 1901.

In his early days Mr. Tripp took a keen interest in yachting and rowing, and he made a study of navigation. He was a great admirer of Captain Cook, and often used to lecture on his life and voyages. He also made a study of the life of Samuel Butler. Samuel Butler was originally the owner of the Mesopotamia Sheep Station, which adjoined the Mount Peel Station where Mr. C. G. Tripp was born, his father, Mr. C. G. Tripp, and the late Hon. J. B. Acland, his partner, then owning the Mount Peel station. They were the first to put sheep on the hills in Canterbury. With Mount Peel and Mount Cook, Orari Gorge is one of three stations in South Canterbury which is still owned by the family which first settled it.

Mr. Tripp leaves a widow and two children, Mr. C. W. H. Tripp, Gore, and Mrs. Vivien Boyle, wife of Commander Boyle, who is now stationed at Weymouth, in England. Another daughter, Mrs. A. P. Boyle, died last year. Mr. L. O. H. Tripp, senior partner of the Wellington firm of Chapman, Tripp, Cooke, and Watson, is a brother.

Members of the South Canterbury Law Society, Mr. C. R. Orr Walker, S.M., and the staff of the Magistrate's Court were associated in the Court-house on October 10 to pay tribute to the memory of the deceased.

"It is with profound regret that I have to refer to the death of Mr. Charles Howard Tripp," said Mr. Knubley. "With the exception of myself he was the oldest practising solicitor in Timaru.

"Mr. Tripp was well known as a most diligent and conscientious worker in his profession, and amongst his fellow practitioners was always looked upon as the soul of honour. It was not because of his long service, but because of the respect in which he was held that he was appointed president of the South Canterbury Law Society in 1930, a position which he held until his death. While acting as president, he carried out most useful work on behalf of the profession.

"The whole of the practising membership of the Society feels Mr. Tripp's death acutely, and the sincere sympathy of members goes out not only to his wife and family, but also to his partner, Mr. Rolleston."

Mr. Rolleston thanked Mr. Knubley for his tribute to Mr. Tripp. His own association with Mr. Tripp had, he said, in partnership, been unbroken for thirty-four years. Mr. Tripp was characterised by unselfishness, forbearance, kindness, and generosity, and these qualities, with others, had endeared him to a large circle of friends. His life was full, long and active, and he had gone to his last rest leaving behind a record which would be an abiding memory and source of pride to all who had enjoyed his friendship. Mr. Rolleston said he associated himself with members of the Bar in expressing sympathy with the bereaved family.

In adjourning the Court, Mr. Orr Walker, S.M., said that he joined with the members of the Bar in mourning the loss of one who was a great ornament to the profession.

Rules and Regulations.

Sale of Food and Drugs Act, 1908. Amended Regulations.—*Gazette* No. 72, September 27, 1934.

Stock Act, 1908. Amended Regulations.—*Gazette* No. 72, September 27, 1934.

State Advances Amendment Act, 1922.—Finance Act, 1933. Fixing Rate of Interest on Loans.—*Gazette* No. 72, September 22, 1934.

Harbours Act, 1923. Regulations fixing Dues and otherwise with respect to the Chatham Islands County Council Wharf at Waitangi, Chatham Islands.—*Gazette* No. 72, September 27, 1934.

Unemployment Amendment Act, 1922. Reduction in Rate of the Emergency Unemployment Charge.—*Gazette* No. 72, September 27, 1934.

Post and Telegraph Act, 1928. Radio Interference Regulations.—*Gazette* No. 74, October 4, 1934.

Post and Telegraph Act, 1928. Telephone Regulations: Amendments to Part V (Toll Service).—*Gazette* No. 74, October 4, 1934.

Customs Act, 1913. Medicines permitted to be made with Methylated Spirit.—*Gazette* No. 74, October 4, 1934.

Customs Amendment Act, 1921.—Customs Acts Amendment Act, 1930. Altering Rate of Surtax on certain Goods. (C. No. 123).—*Gazette* No. 76, October 11, 1934.

Fisheries Act, 1908. Amending Regulations as to Licenses to fish for Atlantic Salmon (*Salmo Salar*) in the Southland Acclimatization District.—*Gazette* No. 76, October 11, 1934.

Arms Act, 1920.—Arms Amendment Act, 1934. Amended Regulations.—*Gazette* No. 76, October 11, 1934.

Native Purposes Act, 1931. Amending Taranaki Maori Trust Board Regulations.—*Gazette* No. 76, October 11, 1934.

Customs Acts Amendment Act, 1931. Exempting certain Goods from Primage Duty (C. No. 124).—*Gazette* No. 76, October 11, 1934.

Land and Income Tax Act, 1923.—Land and Income Tax (Annual) Act, 1934. Order in Council fixing the Date and Place for the Payment of Land-tax and Income-tax.—*Gazette* No. 76, October 11, 1934.

Air Navigation Act, 1931. Rules Amendment No. 1.—*Gazette* No. 76, October 11, 1934.