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"The common law of England is not a compendium of mechanical rules written in fixed and indelible characters, but a living organism which has grown and moved in response to the larger and fuller development of the nation. The common law of England has been, still is, and will continue to be, wherever English communities are found, at once the organ and the safeguard of English justice and English freedom."

—The late EARL OF OXFORD AND ASQUITH.

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Can There be a Highway Where There is no Thoroughfare?

IN our last issue the question of user as evidence of dedication of a right of way was discussed. The interesting question sometimes arises as to whether there can be a highway at all where there is no thoroughfare, such as a way ending at the sea or in a *cul de sac*, which is a blind alley or way that has only one outlet.

At one time it appeared to be doubtful if such a right of way could become dedicated to the public; but authority for the proposition that there can be a highway in such circumstances is found in *Bateman v. Bluck* (1852) 18 Q.B. 870; 118 E.R. 329, where the question was directly in issue. It was proved that the city court in question had one opening only into a public street; that it contained some fifteen houses belonging to one person, but occupied by different tenants; that it was paved by the Commissioners at the request of the plaintiff, and had always been lighted by the parish. The jury found there was a public highway through it, and there was evidence for them, both of dedication to, and user by the public. Lord Campbell, C.J., said:

> "We are bound to assume that finding to be good, unless, as is contended, there cannot, in law, be a highway through a place which is no thoroughfare. It seems to me that such a doctrine is incorrect. There may or may not be a highway under these circumstances . . . I cannot see any legal impossibility as has been suggested. It has been suggested that the way through such a place as this must be assumed to be for the use of the inhabitants only; but surely it is for the jury to say whether there has or has not been a dedication and user. More or less user may be proved according to the size and character of the place; but the principle does not vary."

This judgment, in which Erle and Crompton, JJ., concurred, has been repeatedly followed. In *Bourke v. Davis* (1889) 44 Ch.D. 110, Kay, J., suggested that these cases may apply only in urban localities; for reasons already given (p. 137, *ante*), questions of dedication by user cannot now arise in boroughs in New Zealand, but there does not seem any reason for so limiting the application of the principle to urban areas. But in *Whitehouse v. Hugh* [1906] 2 Ch. 283, 285, Romer, L.J., observed that it is very difficult to make out dedication by user where the road, so far as the public are concerned, is a *cul de sac*; and see the observations of Salter, J., in *Oldham v. Sheffield Corporation* (1927) 136 L.T. 681, 684, to the same effect. The question arose in *Wellington City Corporation v. A. and T. Burt, Ltd.* [1917] N.Z.L.R. 659, where the *locus in quo* was a way 110 ft. long, York Street, which was a continuation of an existing street and was made between the years 1876 and 1878 by the owner of adjoining land and houses fronting this extension. It was used by the occupiers of the houses, and occasionally by persons going to the section at the dead-end of York Street, and access to this vacant section was through a gate or door which was kept locked. On the question of user, the Full Court (Stout, C.J., Edwards, Cooper, Sim, and Stringer, JJ.) in a judgment delivered by the learned Chief Justice, held that such evidence was insufficient to prove user, as it was occupational, *i.e.*, by persons living in houses fronting the way and persons occasionally going to the adjoining section; and that such user, in the case of a *cul de sac*, did not lead to a presumption of dedication or that it was a public way. They applied a judgment of the Court of Appeal where the user had been proved to be more frequent and prolonged: *Wellington City Corporation v. Corich* (1910), reported in the Supreme Court in 12 G.L.R. 535, but not reported in the Court of Appeal, where the *locus in quo* was a *cul de sac*, and a similar decision had been reached.

Mr. Justice Williams (as reported in *Burt's* case at p. 671) said in *Corich's* case in the Court of Appeal:

> "Nor do I think, where a man lays out an occupation road, which is also a *cul de sac*, in order to give purchasers from him access to a public road, that there is in law or in fact any offer by him to dedicate to the public a road so laid out. I can find no authority in support of such a proposition. Where there is a *cul de sac*, dedication will not be presumed merely from user by the public: *Attorney-General v. Antrobus* [1905] 2 Ch. 188; *Whitehouse v. Hugh* [1906] 1 Ch. 253; 2 Ch. 383 . . . Although a *cul de sac* may be open so that the public can use it, and they have used it, no intention of the owner to dedicate it is presumed."

Mr. Justice Chapman supported his judgment by reference to the two cases cited by Williams, J., and also by *Bourke v. Davis* (1889) 44 Ch.D. 110, 192, and *Kirkwood v. Wilson* (1908) 27 N.Z.L.R. 1051. He said:

> "These authorities show that ordinary user does not give rise to a presumption of dedication in the case of a *cul de sac*, that something much stronger is required in that case, and that what must be looked for is the expenditure of public money as showing dedication and acceptance of dedication."

It is, however, no longer the law—if it ever was the law—that a highway must end in another public highway. In *Moser v. Ambleside Urban District Council* (1925) 89 L.J. 118, Pollock, M.R., in reference to *Attorney-General v. Antrobus* (*supra*), said:

> "I find it difficult to accept as true in all cases that you must find a right of way from one public place to another public place, and that you cannot have a right of way to what is called a *cul de sac*, unless it be in a town. I do not think that is what was intended, and I do not think if that is what was intended that that is correct.
>
> "It seems to me that there may be a number of cases in which the public have a need to go to a particular point, and there may well have been a dedication to them for their use for the purpose of reaching that point, although the return journey might be precisely the same route from the terminus *ad quem* to which the right of access is granted."

In *Williams-Ellis v. Cobb* [1935] 1 K.B. 310, Lord Wright, sitting as an additional Judge of the Court of Appeal, at p. 320 said :

> " I think *Moser v. Ambleside Urban District Council* is now an authority for the proposition that a right of way may be proved, even though it does not lead to a public place."

The fact that a way leads to nowhere is a point for consideration by the Judge of fact, but is no legal bar to an inference of dedication : *Bateman v. Bluck* (*supra*). Thus, a public right of way may be established to a place of natural beauty : *Eyre v. New Forest Highway Board* (1892) 56 J.P. 517 ; or to such a point as a church (the *Southampton* case), or to the sea (the *Whitby* case), or to a river (the *Medmenham* case) : see *Tyne Improvement Commissioners v. Imrie* (1899) 81 L.T. 174, 179 ; or to the verge of land where it abuts the sea at high water : *Behrens v. Richards* [1905] 2 Ch. 614, 623. But there can be a church-way to a parish church without its becoming a public way by user, as the public, as such, had no right, since none but a parishioner could legally be entitled to use a church way, though, as a fact, the number of other users in one period of six weeks was more than 13,000 : *Attorney-General v. Mallock* (1931) T.L.R. 107. It is immaterial whether the public have a *need* or urge to go to a particular point : it appears that if people are continuing to use a certain way openly and as of right, the motive of such user is irrelevant. For, as Tomlin, J., as he then was, said in *Hue v. Whiteley* [1929] 1 Ch. 440, 445,

> " Does it make any difference that it is desired to use the way for business or social purposes, or for walking to benefit health, or for a stroll through a beauty spot ? I cannot see that it has anything to do with the matter. A man passes from one point to another believing himself to be using a public road, and the state of his mind as to his motive in passing is irrelevant."

In *Davies v. Stephens* (1836) 7 Car. & P. 570 ; 173 E.R. 251, Lord Denman, C.J., left the case to the jury where the way claimed was a footpath from a public road down to the sea. Lord Wright, in the *Williams-Ellis* case (*supra*) said he did not read Buckley, J., in *Behrens v. Richards* (*supra*) to be hostile to the view that there may, in appropriate cases, be such a terminus, but His Lordship did not express any decided opinion on the difficult question of the extent of the rights of the public over the foreshore. He referred to *Blundell v. Catterall* (1821) 5 B. & Ald. 268 ; 106 E.R. 1190, followed by the Court of Appeal in *Brinckman v. Matley* [1904] 2 Ch. 313, where it was decided that the public have no right to use the foreshore for purposes of bathing or to pass and repass over it ; and, he concluded,

> " It seems to me sufficient in law that the way claimed is a way ending at the sea, which has been recognized as a good terminus of a public way ; on any other view the sea could never be such a terminus."

The two cases referred to by Lord Wright were followed by Mr. Justice Reed in another connection in *Jarrett v. Mayor of Birkenhead* [1925] N.Z.L.R. 158, where he said that it was true the sea may be said to be a public highway, but the words " public highway " *simpliciter* (as in the definition of " road " in s. 110 of the Public Works Act, 1928) had not been shown to include the sea. He pointed out that the plaintiff's property, by virtue of s. 35 of the Crown Grants Act, 1908, was bounded on the side by " the line of high-water mark at ordinary tides," interpreted by Cooper, J., to be " the line of the medium high tide between the springs and the neaps " : *Attorney-General v. Findlay* [1919] N.Z.L.R. 513. Mr. Justice Reed continued :

> " It follows, therefore, that at certain states of the tide there is an appreciable amount of foreshore uncovered by water between plaintiff's property and the sea. Now, the public have no common-law right to the full use of the foreshore except when that foreshore is covered by water—that is, when the tide is in."

The judgment in *Jarrett's* case, however, does no more than state that where sections of land are sold with no road frontage other than a sea-beach, such sections have no frontage to an existing road, street, or private street within the meaning of ss. 125 and 126 of the Public Works Act, 1928, which affect the sale of land not having a frontage to an existing road, street, or private street, and the owner must dedicate a strip of not less than sixty-six feet in width which will give access from some existing road, street, or private street. But it indicates that, in New Zealand, a *terminus ad quem* of a right of way may not be " the line of high-water mark at ordinary tides," where private ownership ends. A right of way from a highway *terminus a quo* could not, therefore, have the sea as a *terminus ad quem* for the reason that at certain times the public would be cut off from the sea by land over which private rights prevailed, subject, of course, to express dedication by the owner of such intervening land. And this amounts to what Lord Wright said on the matter in *Williams-Ellis v. Cobb*.

It appears, therefore, that it is difficult but not impossible in law to establish a public right of way from a highway over land ending in a *cul de sac*, whether such ending be constituted of land or of water. In order to establish dedication in such circumstances, it is necessary to prove (*a*) that there has been user as of right according to the size and character of the place, or (*b*) that public money has been expended on it as showing dedication and acceptance of dedication—both of which are questions of fact : the circumstance that the way is not a thoroughfare is not a bar to dedication by user and acceptance.

A New King's Counsel.

The congratulations and good wishes of the profession go out to the President of the New Zealand Law Society, Mr. H. F. O'Leary, on his taking silk. With the short and simple ceremony that distinguishes the accepted New Zealand manner of initiating a new King's Counsel, Mr. O'Leary made the customary declaration before His Honour the Chief Justice, the Rt. Hon. Sir Michael Myers, K.C.M.G., on May 31, in the Supreme Court, Wellington, where a large number of practitioners had assembled to show their appreciation of the new status achieved by one with whom they had worked and striven over a long period.

In our issue of April 23 last, p. 100 *ante*, we took the opportunity of Mr. O'Leary's election as President of the New Zealand Law Society to give a résumé of his career, and this is fresh in mind. We, therefore, on this occasion, wish the new King's Counsel many years of successful practice within the Bar, and a happy continuance of his service and usefulness to the profession whose interests he has so much at heart.

Summary of Recent Judgments.

FULL COURT
Wellington.
1935.
April 4;
May, 18.
Myers, C.J.
Johnston, J.
Fair, J.

BLACKWATER MINES, LTD. v. FOSTER.

Mining—Holder of Miner's Right cutting Timber for its own use for Mining Purposes from a State Forest within a Mining District, being Unalienated Crown Land—Whether entitled to cut and take such Timber—Mining Act, 1926, ss. 18, 22, 66(*f*)—Forests Act, 1921-1922, s. 24—Forests Amendment Act, 1926, s. 5—Mining Regulations (1926 New Zealand Gazette, 3173), Regs. 105 and 106.

The holder of a miner's right is entitled, by virtue of the combined effect of ss. 22 and 18 and s. 66 (*f*) of the Mining Act, 1926, to cut timber for his own use for mining purposes from land which is a State Forest reserve within a mining district, and is unalienated Crown land open for mining.

There is nothing inconsistent in s. 5 of the Forests Amendment Act, 1926, with those sections of the *Mining Act, 1926*, and it cannot be invoked to limit their plain language, as the effect of s. 5 of the Forests Amendment Act, 1926, is to confer a special and wide power upon the Commissioner of State Forests in conjunction with the Minister of Mines.

Otago Land Board v. Higgins (1884) N.Z.L.R. 3 C.A. 66, distinguished.
The King v. Lawry (1926) G.L.R. 206, referred to.

So Held by *Myers*, C.J., and *Johnston* and *Fair*, JJ., allowing the appeal from the decision of the Stipendiary Magistrate at Reefton, who held that certain timber cut by appellant from Provisional State Forest No. 132 situate in the Westland Mining District was owned by the Crown; and declaring such timber to be the property of the appellant.

Counsel: O'Leary, and **L. E. Morgan,** for the appellant; **Solicitor-General, Cornish,** K.C., and **A. A. Wilson,** for the respondent.

Solicitors: L. E. Morgan, Reefton, for the appellant; **Crown Solicitor,** Westport, for the respondent.

NOTE:—For the Mining Act, 1926, see THE PUBLIC ACTS OF NEW ZEALAND (REPRINT), 1908-1931, Vol. 5, title *Mines, Minerals, and Quarries*, p. 943; and for the Forests Act, 1921-22, and the Forests Amendment Act, 1926, *Ibid*, Vol. 3, title *Forests*, pp. 425, 451.

SUPREME COURT
Greymouth.
1935.
March 5;
May 23.
Johnston, J.

GOLDEN SANDS, LIMITED
v.
BOURKE BROTHERS.

Mining — Appeals — "Hereafter" — "Proceedings" — Action partly heard before coming into force of Amending Act, but Judgment and Notice of Appeal given subsequently thereto—Whether Amending Act applicable to Appeal—Mining Amendment Act, 1934, s. 34.

An action was commenced in the Warden's Court in June, 1934, and partly heard in July, 1934, and finally on December 19, 1934, judgment being delivered on January 21, 1935, and notice of appeal being filed on January 29, 1935.

On November 7, 1934, the Mining Amendment Act, 1934, came into force. Section 34 of that Act provides as follows:

"(1) Subsection 2 of section 164 and sections 165, 166, and 167 of the Magistrates' Courts Act, 1928, shall, with the necessary modifications, apply with respect to every appeal hereafter made under the authority of section 366 of the principal Act, and for that purpose references in those sections to a Magistrate or Justices shall be read as references to the Warden, references to the Clerk as reference to the Clerk of the Warden's Court, and references to the Magistrate's Court as references to the Warden's Court.

(2) Sections 368, 369, and 371 of the principal Act are hereby consequentially repealed:

Provided that all proceedings instituted under the principal Act before the passing of this Act shall continue and be heard and determined in all respects as if this section had not been passed . . ."

On motion to strike out the appeal on the grounds, *inter alia*, that the appellant had not complied with the provisions of the Mining Act, 1926, as amended in 1934, relative to appeals, and that the appeal had not been properly brought and constituted,

Kitchingham, in support; **Brosnan,** to oppose.

Held, dismissing the motion, 1. That the meaning of the word "proceedings" in the proviso to subs. 1 of s. 34 of the Amendment Act, 1934, is found in subs. 1, the enacting part of the section, where appeals dealt with are "appeals hereafter made"; and the effect of enacting for appeals to be made "hereafter" reacts so as to save those then made.

Dictum of *Fletcher-Moulton*, L.J., in *R. v. Dibdin*, [1910] P. 57, 125, referred to.

2. That the language used in the proviso to subs. 2 is applicable to appeals in course, continuing, and to be determined, and includes appeals in all actions instituted prior to the Amendment Act.

Solicitors: Joyce and Brosnan, Greymouth, for the appellant; **Guiness and Kitchingham,** Greymouth, for the respondents.

COURT OF APPEAL
Wellington.
1935.
March 21;
April 17.
Myers, C.J.
Reed, J.
Johnston, J.

NEW ZEALAND TOWEL SUPPLY AND LAUNDRY, LIMITED v. N.Z. TRI-CLEANING COMPANY, LIMITED AND OTHERS.

Practice—Evidence abroad—Commission to Australian Court—"Fancy Name"—Witnesses familiar with use and description of Process in Australia but not in New Zealand—Whether their Evidence material to Issue Raised in Pleadings.

In order to justify the issue of a commission to take evidence abroad, it must be shown that the evidence is directly material to the issue raised.

The appellant's statement of claim alleged that for the use of "Trichlorethylene" for dry-cleaning the appellant had installed special machinery and had been trading in New Zealand under the fancy name of "Tri-cleaning" and that the respondent company had been formed under its name "Tri-cleaning" Company with a view to causing confusion to the public and obtaining a portion of the goodwill that had been built up by the appellants, or, alternatively, that the name of the respondent company was calculated to deceive the public into believing that that company was the appellant company or a subsidiary thereof. The respondents' defence was a bare denial of the allegations in the statement of claim from which it might possibly be inferred that the issue raised was whether "Tri-cleaning" was a fancy name.

The evidence sought to be taken in Australia was sworn to be material because it was from persons familiar with the trade of dry-cleaning by Trichlorethylene and the manner in which the same is described or referred to. These witnesses could only speak as to conditions in Australia, but not as to those in New Zealand.

Johnstone, K.C., and **Cresswell,** for appellant; **Northcroft** for respondents.

Held, That such evidence could not be material in the action.

The order made by *Fair*, J., for the issue of the commission was therefore set aside and the appeal from that order allowed.

Cellular Clothing Co. v. Maxton and Murray, [1899] A.C. 326, applied.

Case Annotation: *Cellular Clothing Co. v. Maxton and Murray*, E. & E. Digest, Vol. 43, title *Trade Marks, Trade Names and Designs*, para. 1090, p. 276.

Solicitors: Bamford, Brown, and Leary, Auckland, for appellant; **Earl, Kent, Massey, and Northcroft,** Auckland, for respondents.

Examination of Witnesses.

And Questions from the Bench.

Mr. Claud Mullins, of London in his useful article on "Cross-Examination" in a recent issue of the JOURNAL, invites comments from practitioners on the subject of the examination of witnesses, particularly in the lower Courts. Although Mr. Mullins's article deals more particularly with the question of cross-examination by litigants in person, his article opens up a much wider field of inquiry which appears worthy of exploration.

With respect to the appearance of parties without counsel in defended cases this is, in New Zealand, hardly "a daily problem of a Magistrate" except perhaps in the centres. We are all familiar with the spectacle of a party delivering a rambling account of his case when invited to cross-examine the other side. We are also, unfortunately, familiar with the case where such a litigant is not treated with the consideration described by Mr. Mullins, but is snubbed with some such comment as this: "You were not invited to make a speech. Please confine yourself to asking questions. If you have no questions to ask, then sit down and wait your turn."

The problem for the Magistrate in such a case is a simple one, and Mr. Mullins has suggested what appears to be the best solution. If the position is kindly explained to the litigant by the Bench, and the litigant finds himself unable to ask questions, then there is nothing to do but to inform him (again kindly, in view of the fact that he is on unfamiliar ground and a little nervous about it) that his statement will be heard at the proper time. It may be, of course, that his case suffers through lack of a competent cross-examination. There seems no way of avoiding this. It is not, in the writer's view, the province of the Magistrate to act as advocate for the defence and assume the duty of cross-examination. If the assistance of counsel did not add to the efficiency of a Court of Justice in determining matters of fact, then counsel's appearance in such cases would hardly be necessary.

But there is another aspect of procedure in the Courts, particularly the lower Courts, which merits examination and free discussion. To what extent is a Judge or a Magistrate justified in examining a witness himself when both parties are represented by counsel?

Every practitioner has had the experience of having his witnesses taken out of his hands, so to speak, by the Bench. The diversity of practice in the case of different Judges or Magistrates is remarkable. There are, perhaps, three main types:

1. The Judge who never speaks to a witness, or addresses him but rarely, and only for the purpose of enlightenment as to an answer which he has not properly understood. Very often this Judge will not speak directly to a witness, but will ask through counsel, or will speak to the witness only after a polite, "Excuse me, Mr. Smith."

2. The Judge who will wait until the formal examination by counsel has been concluded and will then, and then only, set to work to ask the witness questions as to some aspect of the evidence upon which he desires further information.

3. The Judge who in the middle of examination-in-chief or cross-examination will take the witness entirely out of counsel's hands for a while and examine or cross-examine him personally.

The term "Judge" is intended here to cover the presiding authority of any tribunal; and, in fact, the lower Courts provide many more examples of the second and third types than does the Supreme Court.

No practitioner would deny the right of the Bench to ask questions of parties or witnesses. The object of a trial in Court is to determine the truth of the matter, and to apply the appropriate legal principles to the true facts when they are found. If questions from the Bench assist in ascertaining the truth then they are properly put. Doubtless there are many cases when timely questions from the Bench have cleared up a situation left obscure by counsel's examination, and thus materially helped to attain the ends of justice.

But should there not be some rules, of etiquette if not of law, defining the occasions upon which witnesses may be interrogated by the Bench, and the manner in which the questions may be put? Obviously no exception can be taken to the class of questioning referred to as type No. 1. Type No. 2 also should cause no dissatisfaction to counsel engaged, even though it may to some extent be a reflection on their capabilities in that they have not fully covered the relevant facts. If a counsel—by inadvertence, faulty judgment, or incompetence—has failed to elicit from a witness all the evidence which might assist the Court to come to a decision, then he should not complain if the Judge supplies the omission.

The practice of the third type of Magistrate or Judge, however, would appear to call for justifiable criticism. The purpose of the employment of counsel is to assist the Court in forming a true judgment of the facts. If counsel is incompetent then, of course, a rebuke from the Bench is both merited and justified; but counsel must be allowed a certain amount of latitude (provided that he conforms with the rules of evidence and procedure) in the manner in which he handles a witness.

Every practitioner has had the experience of finding opposed to him a witness whose evidence, taken at its face value, will be fatal to his case. He may feel certain that the witness is either lying or making an honest mistake. The purpose of his cross-examination must be to prove to the Court that the witness's evidence is unreliable. In nine cases out of ten this can not be done by putting the plain statement to the witness and inviting him to deny what he has previously affirmed. It becomes necessary to take the witness step by step through a series of questions, leading naturally one from the other, so that when the series is completed the witness finds himself confronted with a situation from which he cannot escape: either he has answered all these questions incorrectly or his evidence in chief is wrong. It is essential that the witness should not have an inkling in the early stages of cross-examination of what is in counsel's mind. It is precisely in cases of this sort that questions from the Bench will often break down counsel's carefully constructed plan. It must be said quite frankly that this does not often happen in the Supreme Court, but in the Magistrate's Court cases are of almost daily occurrence. The Magistrate will see the end at which counsel is aiming, and through impatience or for some other reason will ask the witness the crucial question before the necessary intervening steps have been completed. The witness is warned in time; answers the question with an emphatic affirmation of what he has previously said; the Magistrate

sits back with a satisfied air and counsel disgustedly wonders whether to sit down or to try another plan with, now, little prospect of success.

There does not appear to be any set of rules compiled for the guidance of Magistrates and other judicial officers in this very important matter. The recognised text books lay down no rules. *Halsbury's Laws of England* says that a witness is examined in chief; cross-examined; and then re-examined. Not a word is said as to the examination of the witness by the Bench, though the procedure of examination by counsel is discussed in detail. A Magistrate of the writer's acquaintance, who had had considerable experience at the Bar prior to his appointment, told the writer that before sitting in his first Court he had taken one of the "Silence!" notices from the library and placed it in front of him on the Bench. Frequently when he had felt like interfering with an examination or cross-examination his eye had fallen upon the notice and he had refrained. There is, in the writer's view, a good moral to be drawn from this story. It is suggested that when competent counsel are handling a case it should, in most instances, be preferable for the Bench to leave the witnesses to them.

This article is written in much the same spirit as that of Mr. Mullins. It is intended to invite discussion on a point of considerable importance to practitioners, particularly those engaged daily in the lower Courts. It is not intended in any sense as a criticism of the Bench in either the higher or the lower Courts. New Zealand is particularly fortunate in its judiciary. But it is suggested that only by open and frank discussion among the interested parties is it possible to achieve a constantly improving standard in the practice of the administration of justice.

Wellington Law Students' Society.

Annual Meeting.

The annual General Meeting of the Wellington Law Students' Society was held recently. During a very successful year many interesting addresses were given and moots were held, and the Society wishes to thank those who helped it in this way.

The following officers were elected for the ensuing year:—Patron: The Right Hon. the Chief Justice; President: The Hon. Mr. Justice Blair; Vice-Presidents: The Hon. Mr. Justice Smith, The Hon. Mr. Justice Fair, The Hon. Mr. Justice Callan, Hon. W. Perry, M.L.C., Messrs. H. H. Cornish, K.C., C. H. Weston, K.C., W. H. Cunningham, C. Mason, H. F. O'Leary, P. J. O'Regan, H. F. Von Haast, G. G. G. Watson, and Professor Williams; Chairman: Mr. M. R. Jackson, LL.M.; Secretary: Mr. A. R. Perry; Treasurer: Mr. A. G. Wicks, LL.M.; Committee: Messrs. R. C. Connell and B. G. Phillips, LL.B.; Hon. Auditor: Mr. R. J. Nankervis, M. Com., A.P.A.N.Z.; and Liason Officers: Messrs. R. S. C. Agar and D. W. Arcus.

A new constitution was discussed and adopted. The membership of the Society showed a list of 59 active members and this number has since been increased.

Blood Tests as Evidence.

Blood grouping tests are now admissible in evidence in civil and criminal proceedings in New York's courts by the statutory authority of three new laws finally enacted by the New York legislature and signed by the Governor last month.

The legislative affirmation of the scientific value of blood as evidence, for such purposes as, in paternity cases, to disprove paternity, or, in the identification of criminals, to eliminate certain suspects, thus settles, so far as the State of New York is concerned, a legal problem which recently has had the attention of the courts of that State as well as that of those in other States. Blood tests have been accepted in European countries as evidence in paternity cases.

The Appellate Division of the Supreme Court of New York had held last year that the defendant in a civil action for carnal assault was not entitled to an order subjecting both the plaintiff mother and her child to blood tests for the purpose of determining whether the defendant was the father of the child. The court did not hold, however, that blood tests were not admissible in any case.

The Supreme Court of South Dakota has also ruled that a trial court, in a rape prosecution, did not abuse its discretion in denying the defendant's application to subject the prosecutrix and her child to blood tests for the purpose of using them as evidence on the issue of paternity.

Recently, a trial court in Pennsylvania, in a case of first impression in that State: (*Commonwealth v. Visocki*), held that, in an action for non-support for an infant child which was defended on the ground that the defendant was not the father although the child was born at a time when the defendant and the mother were husband and wife, blood-test testimony of expert witnesses who had analysed the blood of the mother, the child, and the defendant, is sufficient to overcome the presumption of legitimacy created by the birth of the child in wedlock after the separation of the mother and the defendant.

A physician testifying for the prosecutrix stated that he was familiar with human blood tests and that in his opinion such tests were not conclusive.

"Comparing the positive, not to say aggressive, circumstantial, and particular testimony of the witnesses for the defendant with that of the witness for the prosecution, which seems to us to be more general, lacking in individual and concrete authority for his position, the strong weight of the evidence upholds the contention of the defendant, who has sustained the burden which the law casts upon him, he being the husband of the woman who gave birth in lawful wedlock to a child, that he is not the father of the child."

The question of the conclusiveness of blood-tests in proving paternity is one of first impression in Pennsylvania. However, the theory as advanced by the defendant's experts, that in 14¾ per cent. of blood grouping cases it is possible to determine conclusively that an alleged father is not in fact the father of a child, is decisive.

The judgment stated: "The blood groupings of the three individuals involved in this case fell in that 14¾ per cent. of cases where it was possible to state definitely that the blood group as found in the child was definite evidence of the fact that the man, with the group that he had, could not have been the father."

The New Lord Chancellor.

THE RT. HON. VISCOUNT HAILSHAM.

Few of England's public men have had a career as unbroken by misadventure as that of Lord Hailsham, who now becomes Lord Chancellor for the second time in Mr. Baldwin's re-arranged Cabinet; and few have so well deserved success. The greatness of his qualities is well known and recognised by every lawyer and politician in the Old Country; and his fame is increasing abroad. At every stage of his swift advance his appointments have been universally approved; not a single snarl of criticism could be heard in the ranks either of friends or foes. Indeed the only sound of lamentation arose when he was made Lord Chancellor in 1928 on the death of Lord Cave; and the cause thereof was not a doubt that he would make, as during his short tenure he proved himself to be, a Lord Chancellor who could bear comparison with the best of his predecessors, but because, in moving to the Woolsack and the Lords it was thought that he had killed the fair prospect of becoming leader of the Conservatives, and, in the fulness of time, Prime Minister. For most politicians and every lawyer — not excluding Sir John Simon — regard the Premiership as a crown exceeding the Woolsack in glory and renown.

Viscount Hailsham of Hailsham.

That he was regarded by the best critics, within and outside of his own party, as a possible future Premier, must have been known to himself when, with open eyes, he chose to become Chancellor. Sir John Simon, during the War, told Asquith that he would have "the sack rather than the Woolsack," and received what was then a minor post in the Cabinet. Sir Douglas Hogg did not seem to hesitate. Perhaps he thought that a Chancellorship in the hand was worth two Premierships in the bush. But he knew what people thought of his political future.

It is not wholly impossible that a Lord and an ex-Lord Chancellor might become Premier; so the lost leader may be found again. He is still a mere youth of sixty-two. In his early days as Law Officer there was of sixty. In his early days as Law Officer there was perhaps too much of inflexibility and unbending quality in his make-up, but he has improved vastly in that respect without losing anything of consistency and firmness of principle.

Consider now his antecedents and his career. His father was that great philanthropist, Quentin Hogg, founder of the Polytechnic, the great work of which has been carried on by his son, however busy his life, for at least twenty-eight years. Educated at Eton, where he was Captain of Oppidans, he did not go to the University, choosing rather the commercial and "colonial" life. For eight years he was with the West India firm of Hogg, Curtis, Campbell, and Co., and spent most of that time on sugar plantations in the West Indies and British Guiana. Thereafter, realising the true objective of his gifts and inclinations, he became a law student; but he went through the South African War with the Lothian and Berwick Yeomanry. For his services in that remote and historic struggle he received a medal with four clasps. He was full thirty years of age when, at the end of the War in 1902, he was called to the Bar at Lincoln's Inn. Thereafter he practised on the Common Law side, first slowly and then apace; when the Great War broke out he had a huge practice as junior. Ineligible for active service abroad, he did what he could, and was Captain and Group Adjutant of the County of London Volunteer Regiment from 1914 to 1919 At the height of his practice as Junior, he took silk in 1917, and immediately acquired big work as a leader. He had been loyal in the letter and in the spirit to those Juniors who were at the front, doing their work and reserving for them their practice and their clients.

It may be noted in passing that when, in 1902, Douglas Hogg was called to the Bar he was of the same age as F. E. Smith and John Simon, who, with six years' start, were then well-established in practice. The notion that anybody could give these two brilliant men a flying start of such extent and draw abreast of them seemed for some years an utter impossibility. But Lord Hailsham has done it. The measure of his achievement in comparison with theirs is an interesting subject for study.

For some years after the War he and Sir John Simon were in almost every big Common Law case, usually as opponents. A remarkable pair, very different in style and method and, after due allowance is made for those differences, very little between the totals of their abili-

ties and achievements; although many "silks" have declared—two of them are now on the Bench—that they always preferred to be "up against" Simon rather than Hogg. Hogg always gave the impression—as was the fact—of terrific concentration, resistance and undeviating aim: a man whose facial expression was apt to be misleading. Regard him. You will understand why his features have often been compared to those of a cherub; and why in his early days at the Bar a certain Judge on Circuit mentioned him to a brother Judge, after dinner, as "A pleasant bucolic-looking fellow who did his case remarkably well." But he will bear comparison also with a great battleship; impregnable, moving towards his objective with swift, orderly, and irresistible force. On the seas of politics and law there are no guns made that could sink him.

As one of the two most "fashionable" silks he was briefed not only in the K.B.D. but in all Divisions of the High Court; and it was when he was engaged in the famous Russell divorce appeal in the House of Lords, in 1924, that Lord Dunedin paid him a notable compliment concerning "as able and concise a speech as I have ever heard in your Lordship's house." Lord Dunedin, an old man not given to idle compliments, had then been eleven years a Law Lord, and as barrister had many more years' experience of their Lordships' House and of the greatest advocates of his time.

His progress in Parliament was extraordinary. He first became an M.P. during the General Election of 1922, when he was fifty years of age, and he had the rare if not unique distinction of making his maiden speech, and his mark, from the Treasury Bench as Attorney-General. He did not lack opportunities thereafter, and showed amazing skill in his piloting of the Electricity Bill through the Commons, and, after the General Election in 1926, the Trades Disputes Bill. In the early days of his law officership he made a mistake or two; but he went on and gained increasingly the respect of the House and of his own party. The men who in our own or any time can claim such a record are exceeding few: after only six years as a Member of Parliament, he became Lord Chancellor and had then earned a political reputation of such magnitude that he was regarded as a person fit and proper to become leader of a great Party and Prime Minister.

In his life outside law and politics he is a happy man, despite the blow, so deeply felt, when the brilliant Marjoribanks, his step-son, died tragically at his Sussex home at Hailsham. His son and heir, Quentin Hogg, is a charming youth of great ability and promise, beloved by all who know him, and the apple of his father's eye. It was once observed jestingly, of Lord Hailsham, that he is not, like Tony Weller of "Pickwick" fame, "afraid of vidders." He has married two. His first wife, daughter of Judge Brown of Tennessee, was the widow of the Hon. A. J. Marjoribanks. His present wife, whom he married in 1929, was the widow of the Hon. Clive Lawrence.

Writing of Lord Hailsham in 1927, while he was still Attorney-General, an English barrister said:

> "Sir Douglas Hogg has shown a genius for, so to speak, slipping into the top of the queue. He leaps over the heads of the other fellows like a spring-heeled Jack. A very few years sufficed to set him up in a big commercial practice. When he took silk—the only silk granted during the War—there was never any dubiety about his position; he was at once one of the big men. In Parliament he has never sat but on a Front Bench. When he first took his seat he did so as a Law Officer, and what is even more remarkable, as an Attorney who had never been Solicitor. Lawyers, as a rule, are not first-class Parliamentarians, even after years of experience. Sir Douglas Hogg, on the other hand, was born into Parliamentary life like Athena, fully armed. Now he is Attorney-General for the second time. One wonders what he will be in the next Conservative administration. It is a fascinating speculation. One never knows. That genius for getting to the head of the queue . . . You never can tell."

Since these prophetic words were written, Lord Hailsham has been Acting-Prime Minister of England (August-September, 1928) and Lord Chancellor, 1928-29. The following two years found him Leader of the Opposition in the House of Lords, and on the formation of the National Government he became Minister for War and Leader of the House of Lords, and so remained until Mr. Stanley Baldwin's recent reconstruction of the Ministry, when he returned to the Woolsack. In addition, he was chairman of the British delegation to the Institute of Pacific Relations meeting at Kyoto in 1929, and member of the British delegation to the Ottawa Conference in 1932, when occasion was taken of his presence in Canada for securing him to address the Annual Meeting of the Canadian Bar Association. He was a British Delegate to the World Economic Conference in 1933, and he has represented Great Britain on occasions on the League of Nations Council. Apart from legal and national affairs, Lord Hailsham takes a keen interest in cricket. He was President of the Sussex County Cricket Club for a term, while last year, as President of the M.C.C., he played a part in the "Body-line bowling" controversy.

To Lord Hailsham, as one of the most distinguished lawyers of his day, were entrusted in 1931 the duties of Editor-in-Chief of the second edition of *Halsbury's Laws of England*. He has since applied himself to the onerous task of following where another distinguished Chancellor, the Earl of Halsbury, had led. In his own Preface, Lord Hailsham says:

> "Since the law of England is a living system it is in a constant state of development and growth; and any code must undergo periodic revision if it is to maintain its position as an accurate and complete statement of the law. During the twenty-four years which have passed since the publication of the first volume marked changes have taken place in English law. The activity of the Legislature has resulted in the modernisation and consolidation of various branches of statute law as well as in a considerable output of new legislation. In addition there has been an unceasing accretion of thousands of reported cases, many of them of great importance. New principles have been evolved; exceptions have been created; older doctrines have been recast to accord with modern ideas."

Lord Hailsham is accordingly fully aware of the responsibility that is his, in bringing out the present Edition. He says:

> "To maintain the high standard set by the late Lord Halsbury and the other lawyers who compiled *The Laws of England* is a heavy task, but no effort has been spared to achieve it. It is my hope and belief that this new edition will be found worthy of the great reputation which the first edition has established for itself, and that it will prove to be, in the language of the first Editor, 'a complete statement of the laws of England.'"

The new *Halsbury* bears the sub-title of "The Hailsham Edition." It accordingly forms a close link between the New Zealand practitioner who profits by its accurate statement of the law and the highest judicial officer of His Majesty's Dominions, the man who is responsible for that accuracy and its up-to-date quality.

Bench and Bar.

Messrs. W. A. Scott and J. P. Stevens, lately of the staff of Messrs. Tripp and Rolleston, have commenced practice at Timaru.

Mr. James A. McBride, LL.B., of Raetihi, was admitted as a barrister and solicitor of the Supreme Court at Wanganui, on June 1, by His Honour Mr. Justice Callan.

Mr. W. W. King, Associate to His Honour Mr. Justice Johnston, and formerly in practice in Auckland, has been appointed Registrar of the Court of Review of Mortgagors' Liabilities.

Mr. C. F. Jones, LL.B., for several years on the staff of Messrs. Wilding and Acland, Christchurch, and now Accountant with The Farm Accounting Association of N.Z., Dunedin, was admitted by Mr. Justice Kennedy as a barrister and solicitor, on June 7.

Mr. A. K. North, LL.M., of the legal firm of Messrs. Horner and North, Hawera and Eltham, has accepted an invitation to join the Auckland firm of Messrs. Earl, Kent, Massey, and Northcroft, to take the place of Mr. E. H. Northcroft, who has been elevated to the Supreme Court Bench. The firm will be known as Earl, Kent, Massey and North.

Mr. M. J. Burns, LL.B., has retired from the Christchurch firm of Messrs. Livingstone and Burns and has joined the Hawera firm of Messrs. Horner and North. The firm will in future be known as Messrs. Horner and Burns at Hawera, and Messrs. Horner, Burns, and Coleman at Eltham.

Mr. R. H. Livingstone, Christchurch, has admitted into partnership Mr. L. T. H. Hensley, LL.B., formerly of the staff of Messrs. Duncan, Cotterill, and Co., in place of Mr. M. J. Burns. The new firm will be known as Livingstone and Hensley.

Keen appreciation was expressed at the last meeting of the council of the New Zealand Golf Association of the services rendered to the association by His Honour Mr. Justice Page whilst he was a member of the council, particularly in regard to his guidance in arriving at decisions respecting the laws of the game. Mr. J. C. Peacock, of Wellington, of the firm of Messrs. Hadfield and Peacock, has been elected a member of the council, replacing Mr. Justice Page, who has resigned his seat.

In the recent Birthday Honours, the Hon. F. V. Frazer, until lately Judge of the Court of Arbitration, was created Knight Bachelor. The Hon. Sir James Parr, formerly of the Auckland firm of Parr and Blomfield, became G.C.M.G. Brigadier-General Hart, who was in practice at Masterton before his appointment as Administrator of Western Samoa, was made a K.B.E. Other members of the profession whose names appeared in the honours list were Mr. T. C. A. Hislop (C.M.G.), Mr. W. H. Cunningham, the present President of the Wellington District Law Society (C.B.E.), and Dr. Craig, LL.D. (I.S.O.)

New Zealand Conveyancing.

By S. I. Goodall, LL.M.

Conditional Purchase Agreement.

2. Precedent.

(*Concluded from p. 144.*)

III. The owner agrees with the Conditional Purchaser as follows:

11. The condition and warranties directed by s. 14 of the Sale of Goods Act 1908 to be implied in a contract of sale shall be implied herein on the part of the Owner.

12. Unless and until the Conditional Purchaser shall make default in payment of any of the said calendar monthly instalments or in the performance and observance of any of the provisions herein expressed or implied and on the part of the Conditional Purchaser to be observed or performed the Conditional Purchaser may at any time complete the purchase of the said chattels by paying the whole of the balance of the said purchase price then remaining unpaid together with all other moneys or interest or otherwise (if any) payable to the owner hereunder.

IV. And it is hereby agreed and declared by and between the Owner and the Conditional Purchaser as follows:

13. If the said chattels or any of them shall be damaged by fire or any of the other causes hereinbefore mentioned but not so as to be beyond repair or so as to necessitate replacement then any moneys received or receivable under any insurance in respect of such damage shall be applied in and towards repair and reinstatement of the said chattels but if the said chattels or any of them shall be lost destroyed or so damaged as not to be capable of repair or so as to necessitate complete reinstatement or replacement then all moneys received or receivable under any insurance in respect of such loss damage destruction and liability as aforesaid shall be applied at the sole option of the Owner either in or towards reinstating or renewing or replacing the chattels so lost destroyed or damaged or in or towards payment to the Owner of the said purchase price or balance thereof then unpaid and interest thereon and other moneys (if any) payable to the Owner hereunder notwithstanding that the said moneys or any of them may not have accrued due under the terms hereof.

14. Unless and until full and complete payment to the Owner of the said purchase price and all interest and other moneys payable to the Owner hereunder and performance and observance by the Conditional Purchaser of all and singular the provisions herein expressed or implied and on the part of the Conditional Purchaser to be observed or performed the said chattels shall be and remain the sole and exclusive property of the Owner and the Conditional Purchaser shall have no estate or interest therein other than the right to retain possession thereof and use the same subject always to the due and punctual payment of the said moneys and the due and faithful observance and performance of the said provisions.

15. This agreement shall constitute the sole evidence of the contract between the parties hereto to the exclusion of all conditions and warranties statutory and otherwise not expressly incorporated herein and the Conditional Purchaser hereby admits and declares that he

enters into this agreement solely and exclusively in reliance upon his own judgment and not upon any representation condition or warranty made or alleged to have been made by the Owner or any agent of the Owner.

16. If the Owner shall be unable to supply the said chattels out of its stocks in the ordinary course of business or if the Owner shall be unable at the time and in the manner aforesaid to deliver the said chattels through strike lock-out accident fire non-arrival of shipment seizure detention or any cause whatsoever beyond the control of the Owner this agreement may at the option of the Owner be rescinded as from the day of the happening of any such event and the Owner shall not be liable upon any such rescission for whatsoever of such causes for any compensation costs or damages on account thereof other than the return to the Conditional Purchaser of the said deposit and other moneys (if any) theretofore paid hereunder to the Owner by the Conditional Purchaser.

17. If the Conditional Purchaser shall not duly pay all the said purchase price inclusive of each and every the said instalments thereof as and when the same shall become due or if he shall during the continuance of this agreement part with possession of the said chattels or any of them or make any breach of this agreement and the provisions hereof or if the Conditional Purchaser shall be or become bankrupt or shall assign his estate or the major or any substantial portion thereof for the benefit of his creditors or shall execute any security over any chattels or if in the event of the Conditional Purchaser being a corporation an effective resolution shall be passed or an Order of Court of competent jurisdiction be made for the winding-up or dissolution of the Conditional Purchaser or if the Conditional Purchaser shall suffer a judgment to be taken against him and to remain unsatisfied for the space of twenty-four hours or if distress or execution of any kind be issued or levied against the Conditional Purchaser or any chattels or any estate right title or interest of the Conditional Purchaser then all rights of the Conditional Purchaser hereunder shall be thereby terminated and the Conditional Purchaser shall forthwith return the said chattels to the Owner at its office or other agreed place of business free of all freight and charges whatsoever in good and working order and the Owner shall be entitled to immediate possession of the said chattels without refund or allowance or repayment to the Conditional Purchaser of any moneys whatsoever theretofore paid or payable by the Conditional Purchaser to the Owner hereunder and thereupon the Owner shall be entitled to enter by any person or persons at any time or times and if necessary from time to time upon any land building premises or place where the said chattels may be or may reasonably be supposed to be and to seize repossess and take away the said chattels absolutely and for that purpose to break open and enter upon any such lands buildings or premises without being liable to any suit action indictment or other proceeding whatsoever by the Conditional Purchaser or anyone claiming under the Conditional Purchaser and without releasing the Conditional Purchaser from any instalment of the said purchase money or interest thereon or other moneys theretofore accrued or accruing due hereunder or any antecedent breach of any provision herein expressed or implied.

18. The last preceding clause hereof shall be read and construed subject to the provisions of s. 3 of the Chattels Transfer Amendment Act 1931 and further in the event of the due and faithful return to or the seizure repossession and retaking by the Owner of the said chattels pursuant to the last-preceding clause the Conditional Purchaser shall have the right within days (but no longer) from such return or seizure repossession and retaking of purchasing the said chattels by paying to the Owner the sum of £ in addition to the costs and expenses of and incidental to such return or seizure repossession and retaking and interest on arrears of instalments of the said purchase price at the rate aforesaid and in that event credit shall be given for all previous payments made by the Conditional Purchaser by way of deposit and calendar monthly payments of instalments of purchase money but not for any payments on account of interest and except as by this present clause expressly provided no refund repayment or remission of or credit for any moneys whatsoever shall be claimed by the Conditional Purchaser or be allowable by the Owner.

19. In respect of all rights obligations and liabilities whatsoever on the part of the Conditional Purchaser hereunder time shall be of the essence of the contract.

20. The expression "the Owner" where herein used shall include the Owner and its successors and assigns and the expression "the Conditional Purchaser" shall include the Conditional Purchaser and his executors administrators and permitted assigns and in the case of two or more individuals shall include and bind each of them jointly and severally and their respective executors administrators and permitted assigns and in the case of a corporation shall include its successors and permitted assigns.

As witness etc.

Schedule.

(Parcels).
Signed etc.
Signed etc.

"**Name, Address, and Description.**"—Some revision of legal language appears to be needed. A commercial undertaking in the Dominion, having several branches, decided to form each one into a subsidiary company. In order to make up the required number of shareholders, employees were called upon as subscribers. To one branch, the memorandum of association was sent by post for execution and attestation. Above the appropriate columns appeared "Name Address and Description of Subscriber" and "Name occupation and address of Witness", as provided by Table D. in the Second Schedule to the Companies Act, 1933. The memorandum of association came back to the solicitors for the company, *not* according to *Morison*. This is what they read: (Subscriber's signature and address). Then, "Short and dark, Hazel eyes, Olive complexion"; "Tall and dark, Brown eyes, Dark Complexion"; "Short, fair, Grey eyes, Fair complexion", and so on, in each case appropriately to the subscriber. But the witness was not to be outdone by her fair (and dark) rivals. Ignoring the superscription, which did ask for "occupation", she wrote, seven times, "Tall, fair, Grey eyes, Olive complexion." Being a legal document, there was no charge for advertising; but search fees are charged by an unromantic Department to interested inquirers.

Australian Notes.

By Wilfred Blacket, K.C.

Beware of the Dog.—John Collins was nightwatchman for Metters Ltd., Sydney. He had been told to have a "good dog" with him when on duty so he brought along his own Irish terrier. For a time all was well but then one night the dog, being annoyed at something, bit the right hand of John Collins, injuring it very severely. The Compensation Commission held that he was entitled to receive from Metters Ltd. £1 a week until he recovered the full use of his hand. No doubt the award was right, although it may be doubted whether the dog that Collins brought along was a "good dog" within the meaning of the direction given, for a dog that "bites the hand that feeds it" would seem to be good for oratorical purposes only.

"**Whaffor** ?"—Mr. Flynn, S.M., at Balmain, N.S.W., when convicting a person whose name doesn't matter and fining him in an amount that is of consequence to him alone, said "Anyone in Court who has heard this case must be scandalised by the outrageous and villainous perjury that has been perpetrated." But why this loud uproar ? Has not Mr. Flynn, S.M., had many years experience in the Police Courts, and does he not know that witnesses are sworn in order that they may commit perjury if they desire to do so, and does he not know that there are many who take advantage of the opportunity so thoughtfully provided ? Then why this indignantly outspoken criticism ! The only way to prevent perjury is to do away with the oath ; if that were done witnesses would not be able to perjure themselves as so many are found to do now. The astonishment of Mr. Flynn reminds one of an incident of the ancient times in Sydney when Mr. Donaldson was S.M., and, when going through the "drunk and disorderly" list, was wont to say "Admonished and discharged" after each plea of guilty. And a man unused to Court procedure listened to many repetitions of these words and then asked a friendly constable, "What makes the old pot 'astonished' when a bloke gets inky ?"

The Long Vacation.—As always, the Australian daily papers in January last contained many fierce diatribes concerning the heartless conduct of the Judges who take a necessary holiday in January, but this year there is a comparatively small carry-over of cases in any of the Supreme Courts of the States. Divorce causes furnish the greater portion of the remarks, for in this jurisdiction there has been a constant increase of business, but civil causes in most States have fallen below the usual average. The complaint about the law's delay in the Long Vacation seems unreasonable when we consider that one month's holiday a year is not excessive for men who have to do the strenuous work imposed upon Judges. It is obviously more convenient that Their Honours should all take their holiday at the same time than that the Bench throughout the year should be one short of its full strength. But some men are very unreasonable in their complaints against the Judges. One day a junior rushed into my Chambers in a state of much excitement. He held a brief in the Criminal Appeal Court on behalf of a man who had been convicted at Quarter Sessions, and my young friend, finding that these appeals were not to be heard until the first Friday in Term, intended to sue the Chief Justice and all other Supreme Court Judges for false imprisonment in keeping his client in prison from Monday to Friday. His argument as to the cause of action was based on Magna Charta, the Habeas Corpus Act, and Broom's Commentaries, almost anywhere. I could not persuade him that he was an enormous fool ; but I did ultimately succeed in dissuading him from proceeding. Incidentally I may mention that when the appeal was heard the Court in cultured language expressed its firm opinion that the grounds were rotten.

The Misappropriated Cow.—Thomas Webb at Lithgow, N.S.W., was charged with "misappropriating a cow to his own use," and, being convicted thereof, was fined £2 and ordered to pay 15/- for expenses. What Thomas really did was to get a companion to hold and soothe Strawberry while he milked her. I should have thought it clear that a charge of stealing the milk could have been sustained against Thomas : whether he in law fraudulently misappropriated the cow is a more difficult question. And I doubt whether he could have been convicted of taking Strawberry without the consent of her owner for the purpose of "working" or "using" her, contrary to the prohibition of s. 131 of the Crimes Act, 1900.

That section has a curious history. In the early days, taking another man's horse for the purpose of riding it on a journey was regrettably frequent ; also the similar practice of "sweating" bullocks and using them in a team. It had been held that such taking for such purposes did not amount to stealing, and so an Act was passed to penalise an illegal taking for the purposes of working or using. Seeing the reasons for the passing of the Act prohibiting taking, I am doubtful whether drawing a quart or two of milk from a cow could be taken to be a "working" within the section. In England, such a taking and using of a horse was held to be larceny, a fact which led to the conviction and subsequent renown of Mary Haydock. She, when thirteen years old, in 1790, got onto a pony in a neighbour's paddock and rode it bareback down the road. She was convicted of horse-stealing and sentenced to ten years' transportation. Being a woman of admirable courage and virtue, she rose on stepping stones of her misfortune to a position of wealth, influence, and honour.

Short Matters.—Some years ago F. W. Tasker of Sydney was convicted on three charges relating to his step-daughter and sentenced to ten years' imprisonment, and after obtaining his release threatened to kill his wife, who had obtained a divorce from him, and her children, if she did not live with him. She complied with his request and he later threatened to line the whole family up against the wall and shoot them. This threat was several times repeated in varying form, and he also threatened to kill his wife with an axe and to stab her with a spear. These misdeeds met condign punishment at the Police Court, for the magistrate not only bound him over to keep the peace for six months but also ordered him to pay £2 10s. for costs—a dual penalty that should act as a terrible deterrent to wrongdoers.

Norman O'Neil and Rose, his wife, of Melbourne, were engaged for fifteen years. At last they married, and for ten years quarrelled fiercely and incessantly. Then she fixed three revolver bullets into his head as he slept and drowned herself in a handy waterhole. The whole business seems to have been hardly worth while.

Legal Literature.

Cumulative Digest of Cases in the New Zealand Law Reports, 1924-1933, inclusive, and Index of Cases Judicially Noticed in the same Reports. Under the General Editorship of H. F. VON HAAST, M.A., LL.B.; pp. lx + 244. Published for, and under the Superintendence and control of the Council of Law Reporting for New Zealand, by Butterworth & Co. (Aus.), Ltd., Wellington and Auckland.

The new Ten-Years' Digest of New Zealand cases reported in the *New Zealand Law Reports* during the years 1924 to and including 1933, is now to hand. A perusal of its pages shows the care with which the work has been compiled, and the general accuracy of its contents. But further examination discloses this to be something new in Digests of cases, and demonstrates its simplicity and readiness of reference to the busy practitioner.

It is something new for a Digest to give, in its cross-references and references to words and statutes, a direct reference to where the same may be found. Thus, it is unnecessary in this newest of digests to refer back or forward to the reference required in order to find it from the section of the law in which the particular case is given in full.

But that is by no means all that commends this Digest. For the first time, so far as can be ascertained, anywhere, the Digest is a compendium of all cases that have been reported in the previous Digests of the series. For every title or cross-title which had been included in the two earlier Digests, 1861-1902 and 1903-1923, has been inserted in the present Digest: if there are no cases for the last ten-years' period, the place where cases of the kind may be found in the earlier Digests is noted, so that immediate reference can be made to them; if, on the other hand, there have been cases of the class under notice in the present Digest, then a reference to where others may be found in the earlier Digests is added. Moreover, wherever possible, a reference to the *English and Empire Digest* gives immediate access to all British and overseas decisions, or, where the subject is one spread over a number of titles in that great work, then to wherever the cases on the subject may be found in its volumes.

To make the task of the practitioner easier still, each case in the ten-years' period covered by the new Digest is annotated with subsequent cases within that period in which it has been judicially noticed.

It will be seen from these features that the new Digest is unique in its completeness and readiness of reference. The cross-indexing, too, is comprehensive and facilitates research.

It is the intention of the Council of Law Reporting to issue Interim Digests between the Five-years' periods to be covered by the cumulative-digest system now in operation. It is proposed to issue interim digests of cases since the present cumulative volume, so that at the end of the present year a cumulative interim digest covering 1934 and 1935 will be issued, and so in 1936 and 1937; then, in 1939, the full cumulative digest for the previous fifteen years will appear. By this means, the use of the Interim Digest with the present Cumulative Digest will give in perspective all New Zealand cases since 1861.

Practice Precedents.

1. **Motion for Non suit or Judgment for Defendant or New Trial and Judgment thereon.**
2. **Special Partnerships.**

Motion for Non suit of Judgment for Defendant or New Trial and Judgment thereon.

The following precedent assumes that at the close of plaintiff's case defendant moves for a non suit (on the grounds that no cause of action has been established against him). The Judge declines to non suit but reserves leave to move. Issues are settled with counsel, they agreeing that, if any question is left uncovered by the issues, it should be left to the Judge to decide with power to draw inferences of fact. The jury answer the issues in favour of plaintiff, and the case is reserved for further consideration. Defendant files a motion that judgment of non suit be entered or in the alternative that there be judgment for the defendant or in the alternative that the jury's finding be set aside and a new trial had ON THE GROUND that they are against the weight of evidence and that the damages are excessive.

For the grounds on which a new trial may be had see Code of Civil Procedure, *Stout and Sim's Supreme Court Practice*, 7th Ed., pp. 211 *et seq.*

MOTION.

IN THE SUPREME COURT OF NEW ZEALAND.

.....District.

.....Registry.

BETWEEN A.B. etc. Plaintiff

AND

C.D. etc. Defendant.

TAKE NOTICE that counsel for defendant will move this Court on Wednesday the day of 19 at 10.30 o'clock in the forenoon or so soon thereafter as counsel can be heard pursuant to leave reserved at the trial of this action before the Honourable Mr. Justice and a common jury of twelve persons on the day of 19 that judgment of non suit be entered in this action with costs to the defendant UPON THE GROUNDS:

1. That there was no evidence of negligence on the part of the defendant to go to the jury as alleged in the statement of claim.

2. That the facts alleged by the plaintiff were at least equally consistent with the injury having been caused by negligence on the part of the plaintiff.

AND FURTHER TAKE NOTICE that counsel for the defendant will move in the alternative that judgment be entered in this action for the defendant with costs of this motion UPON THE GROUNDS AFORESAID

AND FURTHER TAKE NOTICE that counsel for defendant will move this Court in the alternative for an order that the findings and verdict of the jury given at the trial be set aside and a new trial be had between the parties and that the costs of the former trial abide the result on the grounds that the verdict was against the weight of evidence and that the damages are excessive or alternatively that judgment be entered in the action for the defendant with costs of the action and of this motion UPON THE GROUNDS that the said verdict is against the weight of evidence.

Dated at this day of 19 .

Solicitor for defendant.

To the Plaintiff A.B. and his Solicitors
and to the Registrar.

This Notice of Motion is sued out by etc.

JUDGMENT.

(*Same heading.*)

day the day of 19 .

THIS ACTION coming on for trial on the day of 19 before the Honourable Mr. Justice and a common jury of twelve persons AFTER HEARING Mr. of counsel for the plaintiff and Mr. of counsel for the defendant and the evidence then adduced on behalf of the plaintiff and the defendant respectively AND the jury having found for the plaintiff on the issues AND the action having been reserved for further consideration AND the notice of motion for non suit or judgment for defendant or new trial on behalf of the defendant having come on for hearing on the day of 19 AND the Court after hearing counsel for the said parties having ordered htat judgment be entered for the defendant THEREFORE IT IS THIS DAY ADJUDGED that the plaintiff recover nothing against the defendant and that the defendant recover against the paintiff the sum of for costs.

Registrar.

Special Partnerships.

Part II of the Partnership Act, 1908, deals with Special Partnerships: see *The Public Acts of New Zealand* (*Reprint*) 1908-1931, Vol. 6, 635 *et seq.*

Section 54 provides:—

(1) A special partnership shall not be deemed formed until such certificate as aforesaid [see the Act] is acknowledged by each partner before some Justice, and registered in the office of the Supreme Court in a book to be kept for that purpose by the Registrar of such Court, open to public inspection.

(2) Every such certificate shall be so registered at the Supreme Court Office at or nearest to the principal or only place at which the business of the partnership is to be transacted.

The following is a simple form of Special Partnership:

IN THE SUPREME COURT OF NEW ZEALAND.

.....District.

.....Registry.

IN THE MATTER of Part II of the Partnership Act, 1908

AND

IN THE MATTER of "A.B. and Company."

We the undersigned DO HEREBY CERTIFY that we have entered into partnership under the style of "A.B. and Company" which firm consists of C.D. residing at No. 1 Street in the City of as a Special Partner and E.F. residing at No. 2 Street in the City of aforesaid as a General Partner the amount of capital contributed by the said A.B. being £ (hundred pounds) and the said E.F. having contributed the sum of £ (hundred pounds) to the common stock. The business to be transacted is that of Indent Agents and Importers and the principal place at which the business is to be transacted is at No. 2 Street in the City of and the partnership commenced on the day of one thousand nine hundred and and is to terminate on the day of one thousand nine hundred and .

Dated at this day of one thousand nine hundred and .

Signatures.

Signed by the said C.D. and E.F. in the presence of:
G. H.
A Justice of the Peace in and for the Dominion of New Zealand.

Rules and Regulations.

Motor-vehicles Act, 1924. Amending Regulations relating to Registration-plates.—*Gazette* No. 37, May 17, 1935.

Motor-vehicles Act, 1924.—Amendment Act, 1934-35. Extending Definition of "Motor-vehicle" and Alterations to Taxation on Motor-vehicles.—*Gazette* No. 37, May 17, 1935.

Trade Agreement (New Zealand and Canada) Ratification Act, 1932. Extension of Agreement between Canada and New Zealand.—*Gazette* No. 39, May 23, 1935.

Rural Mortgagors Final Adjustment Act, 1934-35. Prescribing Fees of Court.—*Gazette* No. 39, May 23, 1935.

Noxious Weeds Act, 1928. Hemlock declared a Noxious Weed in Levels County.—*Gazette* No. 39, May 23, 1935.

Animals Protection and Game Act, 1921-22. Open Seasons for the taking and killing of Opossums in certain Districts.—*Gazette* No. 40, May 30, 1935.

Rural Mortgagors Final Adjustment Act, 1934-35. Remuneration and Travelling-allowances of members of the Court of Review.—*Gazette* No. 40, May 30, 1935.

Customs Amendment Act, 1931. Modifying Tariff Agreement with the Commonwealth of Australia.—*Gazette* No. 40, May 30, 1935.

Stock-remedies Act, 1934. Registration Regulations, 1935.—*Gazette* No. 40, May 30, 1935.

Stock-remedies Act, 1934. Board (Allowances) Regulations, 1935.—*Gazette* No. 40, May 30, 1935.

Government Railways Act, 1926. Alteration to Scale of Charges.—*Gazette* No. 40, May 30, 1935.

Rabbit Nuisance Act, 1928. Regulations relating to Destruction of Rabbits in Otorohanga Rabbit District.—*Gazette* No. 41, June 6, 1935.

Rabbit Nuisance Act, 1928. Regulations relating to Destruction of Rabbits in Mangaorongo Rabbit District.—*Gazette* No. 41, June 6, 1935.

New Books and Publications.

Motor Insurance. By C. N. Shawcross. (Butterworth & Co. (Pub.) Ltd.) Price 68/-.

Contribution in Fire Insurance, 1935. By H. S. Bell. (Stevens & Sons Ltd.) Price 21/-.

The Landlord and Tenant Act, 1927. Your Charter! Wake Up! By L. Z. H. Horton-Smith (Grocers' Gazette). Price 1/3d.

Studies in Psycho-Physics. By J. J. Cohen, 1935. (Bale Sons & Danielsson). Price 7/-.

Law Relating to Covenants in Restraint of Trade. By the late F. A. Gare, B.A., B.L.C. (Solicitors' Law Stationery Society). Price 15/-.

Gibson's Statute Law, 1934. 8th Edition. By A. Weldon and H. G. Revington. (Law Notes.) Price 53/-.

Lunacy Practice, 1934. By Grossman & Wontner (Pitman & Sons.) Price 15/-.

Road Traffic Manual, 1935. By Ernest Booth. (E. Booth). Price 4/6d.

Examination Notes in Criminal Law, 1935. By J. A. Balfour. (Pitman & Sons). Price 5/-.

Law of Wills, 1935. By S. J. Bailey, M.A., LL.M., (Pitman & Sons). Price 21/-.

Law and the Social Sciences. By Huntington Cairns, 1935. (Kegan Paul). Price 17/6d.

Principles of Mercantile Law. By J. Charlesworth, LL.D. (Lond.) Third Edition, 1934. (Stevens & Sons.) Price 12/6d.

Precedent in English and Continental Law. By A. L. Goodhart. Cloth. (Reprinted from Law Quarterly Review, Jan., 1924.) (Stevens & Sons.) Price 4/6d.