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"The creation of public bodies which are not State organs may be regarded as the half-way house between the former clear-cut issue of individualism and collectivism."

—MR. E. C. S. WADE in the *Law Quarterly Review*, (1935), Vol. 51, p. 243.

Vol. XI. Tuesday, October 1, 1935. No. 18

The Risks of Paying Spectators.

THE legal position of spectators, who for a money payment go to theatres, sports, and other pastimes, and receive personal injuries during their attendance, was recently considered in relation to new facts arising out of injury resulting from a racehorse kicking a person who was attending a race-meeting: *Moloughney v. Wellington Racing Club* (*post*, p. 255).

Actions of this nature fall to be decided on the respective duties of invitors and invitees. An invitee, said Willes, J., in *Indermaur v. Dames*, (1866) L.R. 1 C.P. 274, 288, comes within the class of persons

> "who go not as mere volunteers, or licensees, or guests or servants, or persons whose employment is such that danger may be considered as bargained for, but who go upon business which concerns the occupier, and upon his invitation, express or implied."

The duty of invitors was laid down by Buckley, L.J., as he then was, in *Norman v. Great Western Railway Co.*, [1915] 1 K.B. 584. Following a line of good authority, he said that the invitor's duty was to use reasonable care to prevent damage from unusual danger which he knows, or ought to know; and, if the danger were such that he ought not to know of it, there was no duty to protect.

It follows that where an invitor invites an invitee on to his premises, there is an implied duty that the invitor shall take reasonable care to see that the invitee is not exposed to any unusual or unexpected danger, which the proprietor of the premises knew of, or ought to have known; but, on the other hand, there is no implied warranty that he shall be immune from all danger: *Readhead v. Midland Railway Co.*, (1869) L.R. 4 Q.B. 379.

In *Cox v. Coulson*, [1916] 2 K.B. 177, where the lessee of a theatre had arranged with the manager of a touring company for the performance of a play, and during the performance one of the actors fired off a pistol containing a loaded cartridge, which by some unexplained reason had got into it, and it struck one of the spectators who was sitting in the dress circle, the question arose whether, in the circumstances, the proprietor of the theatre was liable. The Court of Appeal, reversing the judgment of the Court of first instance, where judgment was given for the plaintiff, and ordering a new trial, quoted with approval the *dictum* of Buckley, L.J., to which reference has been made:

> "The duty of the invitor towards the invitee is to use reasonable care to prevent damage from unusual dangers which he knows or ought to know. If the danger is not such that he ought to know it, his liability does not extend to it."

It will be noted that in this passage the learned Lord Justice referred to "unusual danger"; so that if the danger is one that might be expected, the principle of *Volenti non fit injuria* applies, as the spectator is deemed to have taken the risk, and will be unable to recover damages. This is well illustrated in the case of *Hall v. Brooklands Auto-Racing Club*, [1933] 1 K.B. 205, where the plaintiff went to see the motor-racing at Brooklands where the cars were travelling at the rate of a hundred miles an hour, and during the races one car struck another car with such force as to hurl it over the fence among the spectators, killing three of them and injuring the plaintiff. Lord Justice Scrutton, at p. 212, formulated the issues involved by asking the following questions:

> "(1) What is the duty of the defendant company, who take money from the spectator for their permission to him to view the racing on their premises?
>
> "(2) This duty being ascertained, was there evidence on which a jury could reasonably find that the defendants had not complied with it?"

There was no evidence that there was anything wrong with the racing-track, which had been in use for more than twenty years, and before the accident no spectator had been injured through a car leaving the track. The Court of Appeal, in giving judgment for the defendants, reversed McCardie, J. Lord Justice Scrutton referred to the *dictum* of Buckley, L.J. (*supra*), and stated that he thought that

> "to all those statements there must be added a term that there was no obligation to protect against a danger incident to the entertainment, which any reasonable spectator foresaw and of which he took the risk."

It follows, as Slesser, L.J., pointed out in the *Brooklands* case, that whatever obligation there may be to guard against an accident which may reasonably be assumed possibly to happen, there cannot be an obligation on the invitor to guard against that which cannot reasonably be assumed to be likely to happen. *Nemo tenetur ad impossibilia.* Where the inquiry has been whether reasonable precautions have been taken to guard against danger, it has been assumed that the danger was one which the defendant knew or ought to have known: thus, the plaintiff succeeded, as the unusual danger was one which the defendants knew or ought to have known might happen, in *Welsh v. Canterbury and Paragon, Ltd.*, (1894) 10 T.L.R. 478 (where Blondin, the tight-rope walker, dropped a chair from the tight-rope upon a spectator); *Chatwood v. National Speedways, Ltd.*, [1929] St. R. Qd. 29 (where in the course of motor-cycle races a racing-cycle went over a fence, a similar accident having previously occurred); and *Balne v. Sunnyside Amusement Co., Ltd.*, [1931] 4 D.L.R. 487 (where there was a failure to provide an emergency safety-device on a "Whoopee-wheel" in an amusement park).

It is important to remember that the duty to take reasonable care is not avoided by showing that the invitor employed an independent contractor to do the work, as in *Francis v. Cockrell*, (1870) L.R. 5 Q.B. 184, where an independent contractor was employed by the defendant to erect a grandstand for the purposes of viewing some races. It turned out to have been negligently and improperly constructed, and the plaintiff, a spectator, was injured. The defendant was held liable. On the other hand, in *Humphreys v. Dreamland (Margate), Ltd.*, (1930) 100 L.J. K.B. 137, the evidence showed that the proprietors of a piece of land, known as "Dreamland," by advertisement invited spectators to go there to view different shows,

among which was a machine known as the "Atlantic Flyer." The arrangement was that the landowners were to receive a portion of the gross receipts, but the actual control of the show was in the hands of the owner of the machine. One of the spectators using the machine was killed. It was held that as the owners of the machine alone had the right to invite the spectators to make use of it, and as the proprietors of the land neither had the right in law and did not in fact invite the deceased man to incur the risk resulting in his death, as they did no more than invite people to the area of land owned by them, the proprietors of the land were not liable; and see also *Sheehan v. Dreamland (Margate), Ltd.*, (1923) 10 T.L.R. 155, in respect of another side-show.

With the exception of a case reported only in the *Times* newspaper (March 12, 1932), accidents resulting from horses on racecourses do not seem to have come before the Courts; in that case, *Pidington v. Hastings*, where a polo pony ran through a hedge and injured a spectator, the owner of Ranelagh was held not liable. But, we hear, there is now pending in the Sydney Courts and action against the Rosehill Racing Club on facts similar to those in *Moloughney's* case.

The recent case, *Moloughney v. Wellington Racing Club (supra)*, was an action for damages for injuries sustained by a horse kicking the plaintiff, a paying visitor to a race-meeting held by the defendant club, which is the owner of a racecourse at Trentham, where the saddling-paddock is an area of about an acre and a half; and the conditions surrounding it are of the usual kind on racecourses. Plaintiff was walking on a footpath bordering the saddling-paddock when he was kicked by one of two horses, Kamal Pasha and Cyclonic, owned by other defendants. As he was unable to identify the horse that kicked him, he was nonsuited in respect of those defendants. As to the action against the club, Mr. Justice Reed, in his judgment, applied to the facts before him the questions formulated by Scrutton, L.J., in *Hall v. Brooklands Auto-Racing Club*, as set out above. He referred to the words of Greer, L.J., at p. 224, in that case:

> "A man taking a ticket to see the Derby would know quite well that there would be no provision to prevent a horse which got out of hand from getting amongst the spectators, and would quite understand that he was himself bearing the risk of any such possible but improbable accident happening to himself."

And he cited the concluding words of the judgment of Slesser, L.J., at p. 230, in respect to the duty of the invitor:

> "The obligation is to guard against dangers which might reasonably be anticipated—not against all and every danger."

The learned Judge, in applying the judgments in the *Brooklands* case to the facts, stated that a saddling-paddock is an adjunct to every racecourse, and that it is well known to all persons frequenting racecourses that throughout a meeting horses are being led up and down it, usually preparatory to engaging in a race. The plaintiff admitted that just prior to being kicked he observed some eight or ten horses being paraded in the paddock; that he noticed one of them was fractious and was pulling away from the stable-boy in charge; and that he moved over to the outer side of his wife partly to protect her, placing himself so that he would be between her and the horse as they passed it. Yet he continued in close proximity to the horse while there was ample room to keep clear, there being the full width of the footpath (eight to nine feet) and the grass on the farther side.

Plaintiff contended that the saddling-paddock should have been fenced so as to protect persons passing along the footpath; but the learned trial Judge said there was no evidence that such a precaution is ever taken on a racecourse, to which a saddling-paddock is always an adjunct. It was further contended that it was the duty of the club to ensure that horses parading in the paddock were kept under proper control; but His Honour pointed out that the horse that caused the injury did not escape from the boy in charge, and he was strong enough to control it; and there was no evidence that the horse was more fractious than ordinary racehorses; that it was a kicker; or that it required more strength to restrain it than any other horse would require. Moreover, there was no evidence that a similar accident had occurred on any racecourse before, and the course-superintendent swore that during his thirteen years' charge of the club's course no such accident had occurred there. Even if the accident could have been attributed to negligence on the part of the stable-boy in charge of the horse, then, provided the club had exercised reasonable care and supervision in the conduct of its premises, it was not liable for any carelessness or want of skill on the part of horse-owners or their employees in the management of their horses. The club does not warrant that there shall be no such negligence or want of skill: *Cox v. Coulson (supra)*; *Hall v. Brooklands Auto-Racing Club (supra)*.

Mr. Justice Reed discussed the nature of the action taken by a spectator who is an invitee for damages for injury sustained on the invitor's premises. After referring to *Salmond on Torts*, 8th Ed. 502, where it is stated that the question arising in such an action is closely related to a question of pure tort, he cited the *dictum* of Martin, B., in *Francis v. Cockrell (supra)*:

> "It is one of those implied contracts, which, in point of fact, is the same as a duty."

His Honour preferred to discuss it as a "duty" owing by the defendant club to the plaintiff. He referred to the *Brooklands* case, where *Scrutton*, L.J., who appears to have favoured the matter being dealt with on the basis of its being an action in tort, did not suggest a wider responsibility than his brother Judges who considered it from the viewpoint of an implied contract. The convenient way to discuss it was, in His Honour's opinion, on the basis of a "duty" owing by the club to the plaintiff, such term to be taken as comprehensively including and indicating the implied terms of the contract which arises from the payment by the plaintiff to see the races. His Honour then stated the legal position of a racing-club in regard to its duty to its invitees:

> "That duty would appear to be to see that the premises were as free from danger as reasonable care and skill could make them, but the club are not insurers against accidents which no reasonable diligence could foresee, or against perils which the ordinary spectator might be expected to appreciate and take precautions against, or against perils incidental to the ordinary conduct of a racecourse which a reasonable spectator can foresee and of which he takes the risk."

Applying that test to the facts, as stated, His Honour said it was clear that the conditions surrounding the position and conduct of the saddling-paddock were similar to those on racecourses generally; that for at least thirteen years there had been no accident of a similar nature on the course; and that it was an unlikely and improbable accident against which it would be unreasonable to expect the club to endeavour to provide, and which would not have occurred had the plaintiff exercised ordinary reasonable care. His Honour could see no evidence of any breach of duty on the part of the club, or failure to comply with any terms or implications arising from the contract.

It remains to be added that where the contract so far as it is evidenced by a ticket of admission contains no written terms, the terms to be implied are for the Court: *In re Comptoir Commercial Anversois and Power, Son and Co.*, [1920] 1 K.B. 868, 898; *Tournier v. National Provincial and Union Bank of England*, [1924] 1 K.B. 461, 483, both in the Court of Appeal.

Summary of Recent Judgments.

SUPREME COURT
Wellington.
1935.
Sept. 10, 17.
Reed J.

MOLOUGHNEY v. WELLINGTON RACING CLUB AND OTHERS.

Negligence—Race-course Saddling-paddock—Spectator Admitted to Course for Payment—Duty of Owner to Invitees—Implied Contract—Reasonable Care for Safety—Unforeseen Accident.

In an action by an injured spectator, who was a paying visitor to the course, the question for the Court was whether or not he was entitled to recover damages in respect of the injuries sustained by him, from the Racing Club itself.

Rollings, for the plaintiff; **D. M. Findlay**, and **Foot**, for the defendants.

Held, That it was the duty of the club to see that its premises were as free from danger as reasonable care and skill could make them, and it was not an insurer against accidents which no reasonable diligence could foresee, or against perils which the ordinary spectator might be expected to appreciate and take precautions against, or against perils incidental to the ordinary conduct of a race-course which a reasonable spectator can foresee and of which he takes the risk.

Hall v. Brooklands Auto Racing Club, [1933] 1 K.B. 205, followed.

Francis v. Cockrell, (1870) L.R. 5 Q.B. 184, **Cox v. Coulson**, [1916] 2 K.B. 177, and **Maclenan v. Segar**, [1917] 2 K.B. 325, mentioned.

As the conditions surrounding the position and conduct of the saddling-paddock were similar to those on race-courses generally and for at least thirteen years there had been no accident on the course in the nature of the present one, which was an unlikely and improbable accident against which it would be unreasonable to expect the club to provide and which would not have occurred if the plaintiff had taken ordinary reasonable care, there was no breach of duty on the part of the club, or failure to comply with any terms or implications arising from the contract.

Solicitors: **W. P. Rollings**, Wellington, for the plaintiff; **D. M. Findlay and Foot**, Wellington, for the defendants.

COURT OF ARBITRATION
Nelson.
1935.
Aug. 21, 31.
Page, J.

TURNER v. DUNCAN.

Workers' Compensation—Average Weekly Earnings—Worker Employed on Father's Farm for Eleven and a Half Months—Accident occurring in fortnight when otherwise employed Mustering Sheep—Computation of Average Weekly Earnings—Workers' Compensation Act, 1922, s. 6.

Plaintiff, aged twenty-two years, was employed as farm hand on his father's farm, and in return for his labour was given board and lodging, clothes, and pocket-money, being in all equivalent to £2 a week. He worked for his father for eleven and a half months in the year, and in the remaining fortnight assisted other farmers with their sheep-work. In the course of the latter occupation, at which his earnings were £6 a week, he met with an accident and claimed compensation.

C. T. Smith, for the plaintiff; **Fell**, for the defendant.

Held, That compensation was payable on the basis of the employment at £6 per week, in the course of which the injury was sustained.

Densem v. Speden, (1905) 8 G.L.R. 58, **White v. Borrie**, [1923] N.Z.L.R. 797, and **Blenkiron v. Westport-Stockton Coal Co., Ltd.** [1934] N.Z.L.R. 474, followed.

Solicitors: **C. T. Smith**, Blenheim, for the plaintiff; **Fell and Harley**, Nelson, for the defendant.

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

SUPREME COURT
Hamilton.
1935.
Sept. 7, 9.
Callan, J.

FLEMING v. TRANSPORT CO-ORDINATION BOARD AND OTHERS.

Transport Licensing—Application for License—Matters for Consideration of Licensing Authority and Co-ordination Board—Physical Condition of Roads—Matters made by way of Representation and not as Evidence on Oath—Duty of Licensing Boards—Transport Licensing Act, 1931, s. 26 (2) (i), (j).

The dominant thing the Licensing Authority has to consider under s. 26 (2) (i) of the Transport Licensing Act, 1931, is the physical condition of the road, as well as any lawful restrictions, including those arising out of classification, should any exist.

Section 26 (2) (j) of that Act is authority for the view that the Licensing Boards under the Statute are allowed by law—are in fact told by law—to take into account matter which comes before them from certain sources merely by way of representation and which has not the character of sworn evidence.

Counsel: **M. H. Hampson**, for the plaintiff; **C. H. Taylor**, for the Government Railways Board; **Potter**, for the third defendants.

Solicitors: **Hampson and Davys**, Rotorua, for the plaintiff; **Crown Law Office**, Wellington, for the Government Railways Board; **R. A. Potter**, Rotorua, for the third defendants.

NOTE:—For the Transport Licensing Act, 1931, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, 1908-1931, Vol. 8, title *Transport*, p. 832.

SUPREME COURT
In Chambers.
Wellington.
1935.
Sept. 10.
Myers, C.J.

AUSTRALASIAN TEMPERANCE AND GENERAL MUTUAL LIFE ASSURANCE SOCIETY, LIMITED v. MOUNT ALBERT BOROUGH.

Practice—Issues—Question of Law—Principles on which Order made for Argument of Point of Law before Trial—Code of Civil Procedure, R. 154.

There is no absolute rule that questions of law should not be ordered to be stated for argument under R. 154 if they are hypothetical. In an action where there is a counterclaim and where important questions of law arise on the claim which ought to be stated for argument under R. 154, considerations of convenience and justice may require the inclusion of a question of law that arises on the counterlaim though such question may be put hypothetically.

Quaere, Whether, if a question of fact may arise in respect of which the evidence may be shaped according to the way in which the question of law is determined, the question of law should be ordered to be argued before trial.

So held, on a summons for an order for, *inter alia*, the following question to be argued before trial of this action and counterclaim:

If the rate of interest is reduced by the provisions of named Victorian statutes and the payment of interest on debentures given by the defendant to the plaintiff were made in ignorance of the effect of the provisions of the said statutes relating to the reduction of interest and of the possibility of the application of such provisions to the said debentures, is the defendant entitled to a refund of payment of interest made since October 1, 1931, in excess of the reduced rate on the ground of mistake?

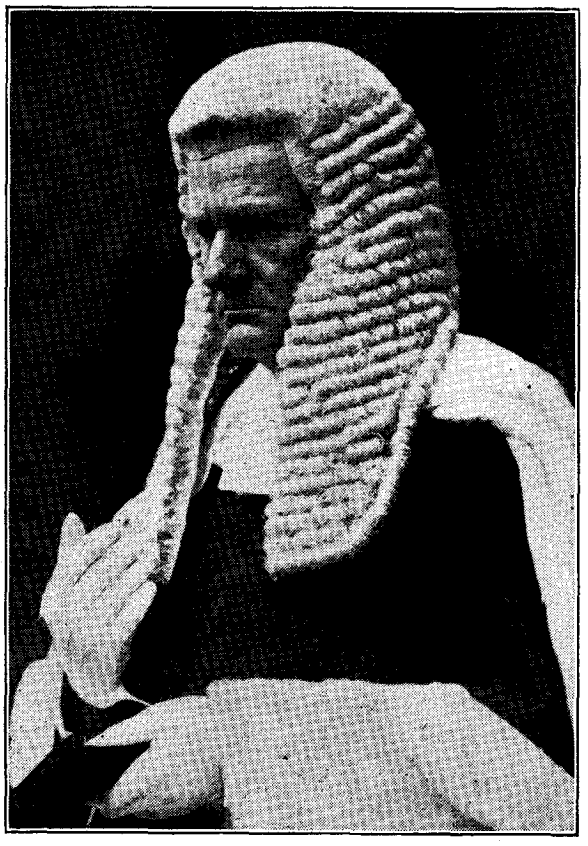
Counsel: **O'Shea**, with him **Hurley**, in support; **Bunny**, to oppose.

Solicitors: **Bunny and Barrett**, Wellington, for the plaintiff; **Martin and Hurley**, Wellington, for the defendant.

The late Baron Tomlin of Ash.

A Distinguished Career.

Of the seven Lords of Appeal in Ordinary, only two (if one excepts Lord Russell of Killowen, of Beaumont College) received any part of their education in an English public school—and one of them—Lord Thankerton—is a Scotsman. The other was Lord Tomlin, whose death on August 13 is a distinct loss to the House of Lords. There is not an old Etonian in the crowd of eminent persons who sit in the Judicial Committee of the Privy Council; although Sir George Lowndes, like Lord Thankerton, is of Winchester. The Lord Chancellor is a public school boy. He was of Eton, which, though a distinguished member, is of a class of school that has been praised and blamed for its part in making England what it is. All the Lords of Appeal in Ordinary, however, were University men. Wright and Thankerton are of Cambridge, Macmillan of Edinburgh and Glasgow; the remaining four being Oxford men. Moreover, every one of them achieved distinction in his University career.



The late Baron Tomlin.

It will be observed, therefore, that Baron Tomlin, alone of the seven, and assuming that Harrow is at least as glorious as Eton, had had the academic course most nearly conforming to the ideas of English educational perfection prevalent before the War. What was supposed to be the typical product of that public school and University education was far from popular outside the limits of England itself. In Scotland, Wales, Canada, the States, Australia and elsewhere he was unpopular, not because of his undisputed merits and perfections, but because his attitude of body, mind, and speech appeared to those who did not quite understand the species to savour of condescension. He suggested the atmosphere which Lord Oxford once described concerning the attributes of the Balliol man (as contrasted with the undergraduates of other Oxford Colleges), "the serene consciousness of effortless superiority."

This educational matter is mentioned somewhat at length, because Lord Tomlin, possessing all the merits of the public school man, did not have the defects supposed to be characteristic of members of his class. Like many an old Harrovian, he was a good "mixer" in the best sense of that expressive word from overseas; and he was not, and never had been, a snob. He was a scholar and a gentleman—as that phrase was used when it had a good and definite meaning. Moreover, in addition to the undisputed fact of his great legal learning in all the complicated matters with which the Courts of Chancery in England have to deal, it had been said of him that "he can speak English"; meaning thereby that he used the language as a man with a sense of literature—and not only a knowledge of law—would use it: for example, the language as used and enriched by such men as Lord Coleridge, Maule, J., and Lord Macnaghten. Apart from his judgments, Lord Tomlin was always one of the four of the best after-dinner speakers of Bench and Bar—and any London journalist will tell you that as a class Judges and lawyers are far and away the best post-prandial speakers; far better (as a class) than authors, actors, journalists, scientists, or even Members of Parliament. In legal authorship he, too, performed two notable tasks as joint author of the Seventh and Eighth Editions of *Lindley on Partnership*, including the supplement to the Seventh Edition, on the Limited Partnership Act of 1907.

His career was steady, sure, and distinguished. Luck played but little part in his life; every promotion was earned by sheer merit, generally a good while after it was due; the only swift advancement being his promotion to the rank of Law Lord in 1929. Born at Canterbury on May 6, sixty-eight years ago, he had an excellent record at school and as an undergraduate of New College, Oxford, and he held the M.A. and the greatly coveted degree of B.C.L. of that University. He had since been elected an Honorary Fellow of his College. When twenty-four years of age, in 1891, he was called to the Bar by the Benchers of the Middle Temple and, very remarkably, he was called also at Lincoln's Inn. He went into Chancery Chambers and, slowly at first, but afterwards swiftly, acquired a practice. After a few years he had a large practice on the Chancery side. A wise young man, he did not make marriage wait upon financial success. He married when he was twenty-six—and of that marriage there are one son and two daughters. He was twenty years a junior; and during that time he acquired, one after another, a number of highly honourable and lucrative appointments. He was Junior Equity Counsel to the Board of Inland Revenue; to the Board of Trade in foreshore cases; to the Commissioners of Woods and Forests; to the Charity Commissioners; and to the Board of Education (Charity Jurisdiction). These

appointments were good; but they were not the Chancery Junior's "best of all." With his record and ability he might reasonably expect to be appointed to that post most coveted by Equity barristers—Junior Equity Devil. There is no doubt that Tomlin was disappointed by reason of the failure of the authorities to offer him this appointment.

After this disappointment Tomlin took silk in 1913 and was one of the big batch of twenty-five appointed in that year. Of the silks made at that time Tomlin, Maugham, Hawke, and Charles became High Court Judges, the two former in the Chancery and the two latter in the King's Bench Division. Tomlin outstripped them all.

From the time he took silk, until the day, ten years later, when he was appointed Judge, Tomlin had his full share of work; as he took upon his shoulders, over age for the soldier's full equipment and army service, the full burden of voluntary service and effort during the War. He had his own share of legal work; but he did even more, voluntarily, for his younger brethren on active service War. In 1918 he was made a Bencher of his Inn, was appointed Counsel to the Royal College of Physicians in 1922, and in 1923 was Vice-chairman of the Trevethin Committee. In the same year he was made a Judge.

His merits were now fully recognized and during the six years of his Judgeship he was in constant demand and use as Chairman of important Committees. In the year of his appointment he was made Chairman of the Royal Commission on Awards to the inventors who had done so much to win the war and were finding it difficult to obtain financial recognition and reward; he was Chairman of the Child Adoption Committee—a problem made acute as a result of war deaths; this was in due course followed by the Adoption of Children Act. In 1929 he was appointed Chairman of the Royal Commission on the Civil Service.

And then, suddenly, early in 1929, Tomlin, J., after a short six years as a puisne, was appointed direct to the Law Lordship over the heads of his brethren in the Chancery Division and the Lords Justices in the Court of Appeal. This jump over the Court of Appeal has been performed by a few—and only a few—Lord Blackburn, Lord Palmer, and Lord Wright. The occasion arose because of s. 2 of the Appellate Jurisdiction Act, 1929, passed early in the year and authorizing the appointment of a seventh Lord of Appeal in Ordinary. Lord Tomlin was chosen: and, by universal consent, his selection was held to be wholly justified. He delivered many first-class judgments; and even in the Judicial Committee, where nine out of every ten appeals are from India, he was in these Indian Appeals often selected by his brethren to deliver the judgment of the Board. A writer was inclined to be amused at the sight of Tomlin's first case after his appointment in the Judicial Committee, where, fresh from the Chancery, he had to give ear to the intricacies of Indian law in a case where the dispute was as to whether an idol in a Jain Temple should be draped.

Well, Tomlin attended, and now, in many an Indian Appeal, especially those which deal with mortgages, clogs on the Equity of Redemption, Company Law, fiduciary relationships and the like, we find Lord Tomlin's contributions invaluable. He was a member of the Board during most of the appeals from New Zealand in recent years. His loss, at the age of sixty-eight years, is a severe one in the ranks of the Lords of Appeal in Ordinary and in the Judicial Committee.

The Production of Police Statements.

In Civil Actions.

By A. K. Turner, M.A., LL.B.

(*Concluded from p. 246.*)

Although the matter must have come up many times before in New Zealand Courts, there is no fully-reported decision, but Sim, J., seems to have come very near to making a deliberate decision in *Paterson v. Bowrie*, a case referred to in the editorial columns of the New Zealand Law Journal, Vol. 4, p. 71, where he ordered a statement to be produced. There had previously been three New Zealand cases which touched upon the points involved, though they hardly went to the root of the matter. These were: *Barrett v. Minister of Railways* (*No.* 1), (1902) 21 N.Z.L.R. 511, 4 G.L.R. 392; *Barrett v. Minister of Railways* (*No.* 2), (1902) 21 N.Z.L.R. 511, 4 G.L.R. 395, and *Coe and Simmonds v. Simmonds* (*No.* 2), (1911) 30 N.Z.L.R. 488. In *Barrett v. Minister of Railways* (*No.* 1), (*supra*), it was sought by the plaintiff to obtain production of departmental files for the defendant Minister, and in the first case the order for discovery was resisted generally on the ground of public policy. Stout, C.J., said that the Department should distinguish between the different documents on the file, and say which were confidential. In the second phase of this action (see p. 514) the Minister filed an affidavit of discovery which stated:

> "I object to produce the said book and file of papers or any of them or any portion thereof, on the ground that to produce the same or any of them is, and would be, contrary to State policy and would be prejudicial to public interests. . . ."

Stout, C.J., in ordering further discovery to be made, said that "there is no absolute privilege that would make all documents in the offices of the Railway Department free from discovery." This still left it open, apparently, for the Minister to produce what documents he thought fit and to object specifically to all the others. It was not considered, however, whether the Minister would have to object specifically to each single document or not.

In *Coe and Simmonds v. Simmonds* (*No.* 2), (1911) 30 N.Z.L.R. 488, it was sought to have produced in a libel action a document containing information given to the police as to the commission of a crime: the Commissioner of Police objected to the production of the particular document, alleging that it was "privileged on the ground that it was a matter of State that should not be disclosed." Stout, C.J., upheld this claim of privilege on the ground that "the Department is not bound to produce that document if the head of the Department says it ought not, in the interests of the State, to be produced." Here again, since the Commissioner certified that the production of a specific document would prejudice State interests, the distinction subsequently raised before Macnaghten, J., was not considered.

(Note, too, that this was a libel action, and a much stronger case from the point of view of State interest than is a running-down case, since there is no doubt in the former class of case that unless the statements were well known to be absolutely privileged they would never be made to the police at all: this can hardly be said of statements in running-down actions.)

Altogether, therefore, the position in New Zealand cannot be at present stated with certainty, and it may be hoped that an authoritative pronouncement will be made in the not too-distant future. It is submitted, however, that the following rules will be found to summarise the position correctly:

(1) Where a head of a Department personally certifies that he has perused the particular document and that its production will prejudice the public interest his certificate is conclusive: *Hughes v. Vargas*, (1893) 9 T.L.R. 551; *Beatson v. Skene*, (1860) 5 H. & N. 838, 157 E.R. 1415; *Ankin v. London and North Eastern Railway Co.*, [1930] 1 K.B. 527.

(2) Where a subordinate officer attends the Court and objects to produce on the general grounds of privilege, but it does not appear that the document has been the subject of ministerial perusal, the Court will itself examine the document and see if the public interest will be prejudiced by its production: *Beatson v. Skene*, (1860) 5 H. & N. 838, 854, 157 E.R. 1415, 1422; *Spigelmann v. Hocker and Austin*, (1933) 50 T.L.R. 87, 90, 150 L.T. 256, 261.

(3) Where the ground of objection taken is that the document is one of a class the production of which is contrary to the public interest, the Court will itself examine the document to see if the public interest is prejudiced by its production: *Paterson v. Bowrie*, (1928) 4 N.Z.L.J. 71; *Robinson v. State of South Australia*, [1931] A.C. 704, 145 L.T. 408; *Spigelmann v. Hocker and Austin*, (1933) 50 T.L.R. 87, 150 L.T. 256.

(4) It makes no difference whether the production or nonproduction of the document will vitally affect the Court's decision in the action: the public interest is paramount, and the effect of the production or nonproduction on the actual litigation will not be considered: *Anthony v. Anthony*, (1919) 35 T.L.R. 559.

(5) The objection, if sustained, will extend to all secondary evidence of the document as well as to originals: *Home v. Lord Bentinck*, (1820) 2 Brod. & B. 130, 129 E.R. 907; *Ankin v. London and North Eastern Railway Co.*, [1930] 1 K.B. 527, 533; and to documents belonging to and in the custody of private persons, as well as those in the custody of the State: *Asiatic Petroleum Co., Ltd. v. Anglo-Persian Oil Co., Ltd.*, [1916] 1 K.B. 822.

(6) It might be added that if a *subpoena duces tecum* is served on the police officer in charge of the documents he is bound to bring them to Court, even if privilege is to be claimed; and presumably if he does not do so he is liable to imprisonment for contempt: *James v. Cowan, In re Botten*, (1929) 42 C.L.R. 305.

By way of conclusion it may be observed, reverting to the general question of principle raised in the introduction to these observations, that it is difficult to see, in the general run of statements made to the police by parties to running-down actions, how the Minister could genuinely certify that upon a perusal of the particular document he was satisfied that its production would prejudice the public interest. It seems clear that in these cases the Ministerial objection must almost always rest upon the general ground that the document is one of a class (*viz.*, police statements) that should not be disclosed. This being so, it should be open to the Court, following on the rule in *Spigelmann's* case, to inspect the documents; and there is little doubt that if the Court does so, it will invariably order their production.

In the case where it was sought to produce the statement of a stranger to the action (*e.g.*, a mere witness), the public interest might well forbid its production, as such statements might not be forthcoming if secrecy were not ensured for them. But the statements of parties are surely in a different category: they would be made to the police whether secrecy were ensured or not. Since, therefore, secrecy does not afford any reason for their being furnished, it should not, it is submitted, operate as a reason for their non-disclosure.

Obituary.

Mr. Alfred Lyon, Marton.

The oldest practitioner in Marton, Mr. Alfred Lyon, died on September 22. He was born in Wanganui in 1864, and went to Marton with his parents in 1896. He joined the staff of Messrs. Cash and Esam, and was admitted in 1898. Upon the death of the late Mr. T. R. Cash, Mr. Lyon commenced practice on his own account, and he remained in practice until his death.

For several years the late Mr. Lyon was a member of the Marton Borough Council and was also a member of the A. and P. Association. He contested the Rangitikei seat at the general election in 1925 in the Liberal interest. He was an authority on the early history of Rangitikei, and in his early years was an enthusiastic student of astronomy. He had a great love of poetry, and some of his own compositions showed talent. He leaves one sister and three brothers, Miss Lyon (Marton), Mr. Edward Lyon (Melbourne), Mr. Egbert Lyon (Rotorua), and Mr. Harold Lyon (Marton).

Mr. Allan F. Hogg, Wellington.

Practitioners in various parts of the Dominion will regret to hear of the death of Mr. Allan F. Hogg, which occurred at Wellington on September 24. The deceased was in practice in Carterton in the firm of Messrs. Hart and Hogg, and then at Wanganui, as partner in the firm of Messrs. Burnett, McBeth, and Hogg. On medical advice he removed to Auckland, where for some years he was senior partner in the firm of Messrs. Hogg, Tong, and Player. Still in search of better health, he went to Invercargill, where he practised successfully on his own account. The change was unsatisfactory, as regards climate, so he commenced practice on his own account in Wellington in 1932. During the last year he further declined in health, and the last six months were spent in a nursing-home. His death at the comparatively early age of fifty-two years will be regretted by a large number of friends to whom his happy disposition endeared him. He leaves a widow and three daughters.

The New Law Practitioners Amendment Bill.

Some of the Provisions Considered.

(*Concluded from p. 244.*)

There remain for consideration the provisions affecting the Solicitors' Fidelity Guarantee Fund, and Miscellaneous Provisions.

THE SOLICITORS' FIDELITY GUARANTEE FUND.

Every solicitor, who is in fact employed by any solicitor or firm of solicitors and is held out as a partner, is to be deemed for the purposes of Part III of the principal Act to be practising as a partner of the solicitor or of the firm (Cl. 21 (1)).

Section 76 of the principal Act now reads as follows:

> "There shall from time to time be paid out of the fund, as required,— . . .
>
> "(*f*) Any other moneys payable out of the fund in accordance with this Part of this Act or with rules made under the authority of this Part of this Act."

Paragraph (*f*) is repealed, and the following paragraph is substituted:

> "(*f*) All other moneys payable in respect of any matter for which payment is required or deemed necessary by the Council for the purposes of this Part of this Act or the rules made thereunder."

Provision is made that, where a solicitor liable to pay the prescribed fee or levy relative to the fund remains in practice for less than three months of the payment year, the Council may refund such portion as it thinks fit; and if a solicitor commences practice during the last three months of any payment year, the Council may accept in full satisfaction such portion of the fee as it thinks fit (Cl. 23). Section 80 of the principal Act is accordingly amended by inserting a new subsection to give effect to such provision.

No right of action is to lie against the fund in relation to any loss suffered by the wife or by the partner of any defaulting solicitor or by reason of the theft of a servant of the solicitor or the firm of which he is a partner (Cl. 24).

If the Council is satisfied that any moneys entrusted to a solicitor have been stolen by him, or his servant or agent, it may serve on his banker a notice requiring the banker to pay to the Council all moneys held in any trust account of the solicitor, in the name of such solicitor or of the firm of which he is a partner. "Bank" includes the Post Office Savings-Bank and any savings-bank established under the Savings-banks Act, 1908. The Council must notify the solicitor of the amount received, etc., and, within fourteen days after the notice has been served or posted, the defaulting solicitor or any partner of his may apply to a Judge in Chambers for an order directing the Council to repay such moneys into the bank or for such other order as the Judge thinks fit. The moneys received by the Council, so far as they are held by the solicitor on behalf of any person, shall be held by the Council in trust for such person (Cl. 27). Similar provisions apply in respect of all ledgers, books of account, and records relating to any moneys or property entrusted to such solicitor in the course of his practice (Cl. 28). The Council is given power to inspect all ledgers, books of account, pass-books, cheques, or records relating to any moneys received by a defaulting solicitor, whether paid into a private or trust account at a bank or not (Cl. 29).

The Council of any Law Society may appoint the secretary or a member of the New Zealand Law Society or of any District Law Society, or a qualified registered accountant, to examine the accounts of any specified solicitor or firm of solicitors and to furnish to it a confidential report as to any irregularity in accounts or as to any other irregularity that should be further investigated (Clause 30 replaces s. 92 of the principal Act, which is repealed).

The Council of the New Zealand Law Society or of any District Law Society, for the committee of management of the fund, are protected against any criminal or civil proceedings in respect of anything done in accordance with the provisions of Part III of the principal Act (Cl. 31).

The Council may apply *ex parte* to the Court or a Judge for an order that no payment be made without leave of the Court by any banker out of any trust account of a solicitor who is reasonably believed to have been guilty of theft or of any improper conduct in relation to the money or property of any other person (Cl. 32).

MISCELLANEOUS PROVISIONS.

No application need be made for membership of a District Law Society, but a practitioner while in practice is to be deemed a member of the Law Society of every district in which he is in practice, and will cease to be a member when he ceases to practise in any district. Anyone enrolled as a barrister or solicitor, but not in active practice, may be retained or admitted as a member of a District Law Society in accordance with its rules (Cl. 34).

Any District Law Society, if authorized by its rules, may by resolution impose on its members an annual levy not exceeding £2 2s. per member (Cl. 35).

An offence is committed by any person (including a corporation), who, not being a barrister or solicitor, for or in expectation of any fee, gain, or reward, direct or indirect, draws or prepares any instrument relating to any real or personal property, or otherwise affecting or intended to affect the legal rights, obligations, or status of any person; or advises any person as to the legal rights, obligations, or status of himself or of any other person, or searches any title to land. Exemptions from this clause have been or are in the course of being made. The penalty for any breach of these provisions on conviction is a fine of £50 (Cl. 38 (1)).

The above clause, by para. 2, provides that, notwithstanding anything to the contrary in s. 213 of the Land Transfer Act, 1915, no license shall hereafter be granted to any person who on the passing of the Act is not the holder of a land-broker's license granted under that section.

Any Judge or Magistrate may on an *ex parte* application authorize a solicitor to commence an action for the recovery of fees, charges, or disbursements before the expiration of a month after rendering a bill (in terms of s. 23 of the principal Act), on proof that there is reasonable cause for believing that the person chargeable is about to leave New Zealand or to do any act which would prevent the solicitor from receiving payment (Cl. 39, which replaces and repeals s. 30 of the principal Act).

Out of the annual practising fee, 16s. (instead of 10s., as at present) will be payable to the New Zealand Law Society; and 5s. (instead of 11s.) to the Council of Law Reporting (Cl. 40, which accordingly amends s. 45 of the principal Act).

A postal ballot of the members of a District Law Society is provided as an alternative to election at an annual meeting of the president, vice-president, and Council of such Society (Cl. 41).

The Council of the New Zealand Law Society shall be elected annually as follows: four members of the Council of the Auckland District Law Society; three members of the Council of the Wellington Law Society; two members of the Council of the Canterbury and Otago District Law Societies respectively; and each other District Law Society shall elect one member (Cl. 43, which replaces and repeals s. 64 of the principal Act).

Information in respect of any offence against the principal Act or the Amendment Act may be laid at any time within two years after the date on which the offence was committed (Cl. 44).

A benevolent fund may be established by the New Zealand Law Society for the purpose of affording pecuniary and other assistance to members of the Society, or to the wife or children of any member or deceased member, who are in need of such assistance. The fund shall consist of such part of its income as the Society sets aside for such purpose and any donations, gifts, or bequests made for the purposes of the fund, interest from investment of the fund, and other moneys coming to the fund (Cl. 45).

The Council of the New Zealand Law Society was of opinion that s. 10 of the principal Act, relating to King's Counsel, should be repealed; but the Rt. Hon. the Prime Minister would not consent to such a repealing clause being inserted in the Bill. Such a clause may, however, be introduced during the progress of the Bill through the Legislature.

If any additions or amendments to the Bill are introduced or made before it becomes law, a note of such alterations will appear in a later issue.

Correspondence.

[*It is to be understood that the views expressed by correspondents are not necessarily shared by the Editor.*]

Law Reporting.

THE EDITOR,
N.Z. LAW JOURNAL.
Wellington.

Sir,—It is a matter for the observation of the profession and particularly of subscribers to the *N.Z. Law Reports* that the *Reports* are published with the expedition with which they are produced.

I notice a special case which is worthy of special comment as indicating how promptly our official reports are brought out.

Barton v. Moorhouse was reported in the Privy Council in the April number of our *Reports*, p. 162, with the customary references in the reports to the argument and judgment in the Court of Appeal. The same judgment was reported in the *Law Reports*, [1935] A.C., p. 197, in the July number of the A.C.

The reports are indistinguishable. The only point is one of time. The *N.Z. Law Reports* were published in April. The A.C. which is generally recognised as the best series in the English Law Reports in July.

Yours faithfully,

September, 13, 1935. C. H. TREADWELL.

London Letter.

[By Air Mail.] Temple, London,
September 2, 1935.

My dear N.Z.,

Once again the time has come round for me to write what I call my holiday letter to you. It is a holiday letter not only because we are all on holiday this month, but also because in this letter you get a holiday from the ordinary legal news of the month for the simple reason that there is none. At the present time the Temple is wearing its usual vacation appearance, the Law Courts are covered in scaffolding, and Fleet Street is "up." No parliament is sitting to make new laws. No Royal Commission has issued any report. Even the Ministry of Transport had failed to make any new regulations under the Road Transport Act until this morning, when they issued regulations relating to the form and position of director-indicators and stop lights on motor-vehicles. Rather have the minds of all those connected with the law turned to holiday pursuits, and few there can be who are not satisfied with the sort of weather we have had this year. As far back as late in June the sun has shone daily almost without a break. We have recorded the highest day-temperature for many years, and I personally have certainly done things this year that I have never found pleasure in doing before in this country. For instance, although I am a lover of warmth, I have bathed late in the evening and been thankful for the refreshing coolness of sitting in a wet bathing-costume in the evening air. This wonderful weather is a joy to us all, and it is particularly gratifying that the Old Country should have shown itself at its best for the many New-Zealanders who have come over to visit us this Jubilee year.

Lord Tomlin.—The one piece of real news I have to refer to this month is unfortunately of a sad nature. It is the death of Lord Tomlin, a Lord of Appeal in Ordinary, who, sitting as he did so often as a Member of the Judicial Committee of the Privy Council, must have been well known to many of you. Lord Tomlin, who died on August 13, near his country house in Kent after an operation for appendicitis, was a great equity lawyer. Lord Tomlin was not only a great lawyer but also a great Freemason for he was a Past Grand Warden of England. His death at the comparatively early age of sixty-eight years is a great loss.

New Reporter at the Privy Council.—It may interest you to hear that a new reporter for the *Law Reports* has recently been appointed by the Council of Law Reporting to act at the Privy Council. A. M. Talbot, who for many years occupied that not unimportant post, has recently been forced by failing health to retire, and his place has been taken by Charles Clayton, who had already had the experience of reporting for the *Times* in that Court.

The Abolition of the Actio personalis Rule.—The provisions of the Law Reform (Miscellaneous Provisions) Act, 1934, by which damages in personal actions may now be recovered on behalf of the estate of a deceased person, have been receiving quite a lot of attention in the Courts, and a number of interesting points have recently been raised in this way. For instance, in a case heard one day towards the end of last term, a woman, whose husband had died without recovering consciousness following a motor accident, sued the defendant for damages suffered by herself and her family as dependents under the Fatal Accident Act, and also for

damages as representatives of the deceased under the Law Reform (Miscellaneous Provisions) Act. One of the things for which damages may be recovered under the latter Act is pain and suffering, and, although it had been decided that where a person was killed instantaneously his representatives could not recover under this heading, the plaintiff contended that as her husband lived some twenty-four hours or more after the accident she could claim compensation on his behalf, but the Court held that as he never recovered consciousness he could not have had any pain or suffering and refused to give any damages in that respect.

Cats and Dogs.—While waiting for my case to be called in a Police Court a short while ago, I heard the following. A man was summoned for keeping a ferocious and dangerous dog. In the course of his examination the Bench expressed a desire to see the dog and asked him if he had brought it to the Court. "Yes" replied the man, "but the Court cat wouldn't let it come in." This unexpected statement was explained when the dog was finally produced and turned out to be a small meek-looking fox terrier puppy.

Yours ever,
H. A. P.

New Zealand Conveyancing.

By S. I. Goodall, LL.M.

Restrictive Covenants.

4. As to leasehold land.

1. **The Lessee's Estate.**—At common law covenants affecting leasehold interests were said to "run with the land and not with the reversion"—*Muller v. Trafford*, [1901] 1 Ch. 54—so that, with the above qualifications, they passed on an assignment of the lease but not on an assignment of the reversion. If the lease were assigned, whether by the original lessee or by a mesne owner of the lease, the assignee became bound to the lessor by the like burdens and became entitled from the lessor to the like benefits in respect of the covenants in the lease as the original lessee: *Spencer's case*, (1583) 5 Co. Rep. 16a, 77 E.R. 72.

(*a*) *The burden of the covenant.*—In its refinement the rule relating to the burden of a lessee's covenant was expressed in three propositions:—

(i) If the covenant relates to a thing in existence, part of the demise, it goes with the land and binds assigns even if assigns are not bound by express words—*e.g.*, a covenant not to assign: *Goldstein v. Sanders*, [1915] 1 Ch. 549 (*contra Wilkie v. Commercial, etc., Co., Ltd.*, (1890) 8 N.Z.L.R. 385); or a covenant to repair;

(ii) If the covenant relates to something not in existence at the time of the demise, but is to be on the land, or touches or concerns the land, it will run with the land and bind assigns only if assigns are bound by express words—*e.g.*, a covenant to build a new house on the land: *Spencer's case* (*supra*);

(iii) If the covenant is for something merely personal or collateral, not touching or concerning the land, assigns are not bound thereby even if expressly mentioned and covenanted for—*e.g.*, a covenant to repair houses on other land: *Dewar v. Goodman*, [1909] A.C. 72.

It has been held that a covenant which was not a covenant absolutely to do a new thing, but to do something conditionally—namely, that if new buildings should be erected on the land to repair them, the assignee of the lease was bound, although not named, for the buildings when erected would become part of the land demised: *Minshull v. Oakes*, (1858) 2 H. & N. 793, 157 E.R. 327. In the same case it was said by Pollock, C.B., that no doubt the resolution in *Spencer's case* had been repeatedly cited, but the difference between the first and second propositions reproduced above never seemed to have been acted on; and in *Re Robert Stephenson and Co., Ltd.*, [1915] 1 Ch. 802, it was said that the distinction must be taken to have been obliterated as unreasonable.

Although ill-founded and adversely criticised, the distinction seems to have existed at law in England before 1926: See *Cheshire on Modern Real Property*, 3rd Ed. 219-220.

There is no statutory provision in New Zealand corresponding to s. 79 of the Law of Property Act, 1925 (Imp.), (cited *supra*), and accordingly the rule of law founded upon the distinction between the second and third resolutions in *Spencer's case* (*supra*) seems still to prevail in New Zealand in the case of a deed of lease. Where, however, the land is under the Land Transfer Act the description of a person as lessee in a memorandum of lease is deemed to include his executors, administrators, and assigns and the effect is the same as if "assigns" had been expressly mentioned: s. 222 (*supra*); *Clark v. Seymour*, (1910) 13 G.L.R. 28; *White v. Akroyd*, [1919] N.Z.L.R. 813. Where a tenancy in possession of Land Transfer land is held under an informal instrument according to the doctrine of *Walsh v. Lonsdale*, (1881) 21 Ch.D. 9, no doubt the execution of a formal instrument by the parties in pursuance of the earlier agreement would extend the lessee's covenants to cover his executors, administrators, and assigns, unless there were an intention to the contrary: *Miller v. Jenner*, [1921] N.Z.L.R. 841, 848, *per* Hosking, J.

On registration of a transfer of lease of Land Transfer land the transferee becomes subject to and liable for all and every the same requirements and liabilities to which he would have been subject and liable if named in the transfer as lessee: Land Transfer Act, 1915, s. 89. But this does not enlarge the liability of the transferee to the lessor to cover breach of covenant before or after the period of the former's registered proprietorship. His liability continues even under this system to depend upon privity of estate: *Wilson and King v. Brightling*, (1885) N.Z.L.R. 4 C.A. 4.

(*b*) *The benefit of the covenant.*—As already stated, the benefit of the lessor's covenants which touch and concern the land runs with the land at common law, declared in the fourth resolution in *Spencer's case* (*supra*). Supplementary to this proposition is the statutory rule, already referred to, that a covenant relating to land, whether expressed or implied, is deemed to be made with the covenantee, his executors, administrators, and assigns, and has effect accordingly.

It is declared by s. 89 (2) of the Land Transfer Act, 1915, that upon registration of a transfer of lease the estate of the transferor with all rights, powers, and privileges shall pass to the transferee.

(*To be continued.*)

"Devil's Own" Golf Tournament.

Another Successful Gathering.

The fourth "Devil's Own" Golf Tournament, expressed to be for the relaxation and rejuvenation of the legal profession, was held on September 21, 22, and 23, at the Hokowhitu Golf Links, Palmerston North.

At each Tournament held over the past four years there has been an increasing number of entries, and this year the total reached fifty-five, which included practitioners from Dunedin, Auckland, and Hamilton districts, which hitherto had not been represented. Mr. W. F. Stilwell, S.M., of Wellington, was the only representative from the Bench, Mr. Justice Page being unable to be present to defend the title which he won last year. Excellent weather conditions prevailed throughout the tourney and the greens and fairways left nothing to be desired.

The main event, the "Devil's Own" Cup, was won by Mr. J. Graham, of Feilding, with Mr. F. J. Christensen, of Marton, as runner-up. For this event a handsome trophy, consisting of a mounted figure of His Satanic Majesty about to drive a golf-ball, has been presented by a number of Wellington legal firms. A replica is available for the winner each year. The "Mortgagors' Relief" Stakes was won by Mr. C. N. Armstrong, of Wellington, while the winner of the "Pauper Appeal" Stakes was Mr. E. C. Wiren, also of Wellington. The following are the results of the semi-finals and finals :—

"*Devil's Own*" *Cup.*—Semi-finals: J. Graham (Feilding) beat S. K. Siddells (Pahiatua); F. J. Christensen (Marton) beat N. G. Whiteman (Masterton). Final: Graham beat Christensen.

"*Mortgagors' Relief*" *Stakes.*—Semi-finals: C. N. Armstrong (Wellington) beat E. D. Blundell (Wellington); K. Kirkcaldie (Auckland) beat S. A. Wiren (Wellington). Final: Armstrong beat Kirkcaldie, 1 up.

"*Paupers' Appeal*" *Stakes.*—Semi-finals: E. C. Wiren (Wellington) beat W. H. Cunningham (Wellington); T. P. McCarthy (Wellington) beat J. R. E. Bennett (Wellington). Final: Wiren beat McCarthy, 4 and 3.

"*Final Adjustment.*"—Semi-finals: K. C. Clayton (Palmerston North) beat R. McKenzie (Masterton); R. E. Tripe (Wellington) beat R. McCaw (Hamilton). Final: Tripe beat Clayton.

LAW JOURNAL CUP.—The LAW JOURNAL Cup presented by Messrs. Butterworth and Co. (Aus.), Ltd., originally for competition in a four-ball handicap event at the Annual Legal Conference but during the last two years competed for at the "Devil's Own" Tournament, was won by Mr. A. B. Buxton, Wellington, and Mr. K. C. Clayton, Palmerston North, with a score of 4 up. This cup will be next competed for at the Conference at Dunedin next Easter.

In a foursome competition played in connection with the Tournament, Mr. S. W. Rapley, of Palmerston North, and Mr. C. C. Marsack, of Masterton, returned the best card, their net score being 67.

The standard of golf this year was somewhat higher and more even than usual, and this is indicated by the fact that both the winner and the runner-up in the "Devil's Own" Cup each won three matches by a margin of 1 up. However, serious golf is not the most important aspect of this gathering. It is the object of those promoting the tournament to provide an opportunity for practitioners from all parts of New Zealand to meet and learn to know one another, and the attainment of this object is materially assisted by the pains which the members of the Palmerston North Bar take to entertain the visitors from other centres. A cheerful dinner at the Manawatu Club was provided on the Saturday evening, and at other times the hospitality of their homes was extended to the visitors. The success of this last Tournament should lead to an even greater attendance next year.

Practice Precedents.

The Chattels Transfer Act, 1924.

Application to extend Time for Registration.

Section 5 of the above Act provides the mode of registration of an instrument under the above Act in the Supreme Court. The instrument is registered in the *Provincial District* within which the chattels comprised in the instrument are situate at the time of the making or the giving thereof. There are certain exceptions to this enactment as therein provided.

Section 8 limits the time for registration. With the exception of the Chatham Islands, where there is a time limit of ninety days, instruments are registered within twenty-one days from the day of execution.

Section 13 of the above Act provides, *inter alia*, that a Judge of the Supreme Court, on being satisfied that the omission to register an instrument or an affidavit of renewal thereof within the time prescribed by this Act, or according to the form or effect required by this Act, . . . was accidental or due to inadvertence, may order such omission or misstatement to be rectified by extending the time for such registration, . . . on such terms and conditions as he thinks fit.

It is to be noted that the extension is granted by a Judge of the Court and not the Court itself. The form of order used, in general, is to be found in *In re J. and J. Byers*, (1905) 24 N.Z.L.R. 903, but in the Wellington District an alternative form of order is often used.

The order is made on terms such as will protect those who might be injuriously affected by the granting of such extended time. In the form of order hereunder at the end thereof appears the usual undertaking by counsel acting for the grantee or other applicant. In practice this is signed *before* the order is made. His Honour then makes the order and fills in the extended time in the order. It is usual to procure a signed *copy* of the order to lodge with the instrument that is to be registered under the order.

MOTION FOR ORDER EXTENDING TIME FOR REGISTRATION.

IN THE SUPREME COURT OF NEW ZEALAND.

.....District.

.....Registry.

IN THE MATTER of the Chattels Transfer Act 1924

AND

IN THE MATTER of an instrument by way of security purporting to be given by A.B. etc. to C.D. etc. bearing date the day of 19 .

Mr. of counsel for the above-named C.D. TO MOVE in Chambers before the Right Honourable the Chief Justice Sir at the Supreme Courthouse at on day the day of 19 at 10.30 o'clock in the forenoon or so soon thereafter as counsel may be heard FOR AN ORDER:

That the time for registration of the above-mentioned instrument by way of security be extended UPON THE GROUNDS that the prescribed time for registering the said instrument expired on the day of 19 and that the omission to register the said instrument within the prescribed time was accidental and due to inadvertence AND UPON THE FURTHER GROUNDS appearing the affidavit of filed in support hereof.

Dated at this day of 19 .

Solicitor for the said C.D.

Certified pursuant to rules of Court to be correct.

Counsel moving.

Reference: His Honour is respectfully referred to s. 13 of the Chattels Transfer Act, 1924, and to *In re J. and J. Byers*, (1905) 24 N.Z.L.R. 903.

AFFIDAVIT IN SUPPORT.

(*Same heading.*)

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

1. That I am a law clerk in the employ of X.Y. solicitor for the above-named C.D.

2. That the instrument by way of security bearing date the day of 19 aforesaid was given to secure the payment of the sum of £ .

3. That the execution of the said instrument was duly witnessed by me and I prepared an affidavit of due execution which was sworn on the close of office hours on the day of 19 .

4. That the day following on the day of 19 was the last day prior to the long vacation of this Honourable Court and I overlooked registering the instrument aforesaid on that day.

5. That the Registry of this Honourable Court was reopened after the vacation on the 4th day of January 19 but the legal vacation did not expire till the 14th day of January 19 on which date it was too late to effect registration.

6. That the omission to register the instrument was entirely my fault and was accidental and due to inadvertence.

7. That the moneys for which the instrument by way of security was executed are still due and owing.

Sworn etc.

ORDER EXTENDING TIME FOR REGISTRATION.

(*Same heading.*)

day the day of 19 .

On the motion of Mr. of counsel for the above-named C.D. (hereinafter called "the said grantee") and on reading the affidavit of E.F. filed herein and being satisfied that the omission to register the said instrument was accidental or due to inadvertence and the said grantee undertaking by his counsel that this order shall not prejudice or affect any rights or interests which may have accrued to any other person or persons corporation or corporations prior to the actual registration of the said instrument and also undertaking by counsel not to raise any objection to the jurisdiction of any Judge of this Honourable Court to set aside vary or discharge this order upon any motion which may hereafter be made whether by any person or persons corporation or corporations claiming under any right or interest which may have accrued or come into being or by any creditor or creditors of the said A.B. (hereinafter called "the mortgagor) or by the Official Assignee in Bankruptcy of the property of the mortgagor or by any other person or persons corporation or corporations claiming to be prejudicially affected by this order I DO ORDER that the time for the registration of the said instrument shall be and the same is hereby extended up to and inclusive of the day of 19 but so nevertheless that this order shall in no way prejudice or affect any right or interest accrued to or arising in any person or persons corporation or corporations prior to the actual registration of the said instrument and so that it shall be competent for any person or persons corporation or corporations whether claiming under or in respect of any right or interest accruing to or arising in any such person or persons corporation or corporations or claiming as or being a creditor or creditors of the mortgagor or claiming as the Official Assignee in Bankruptcy of the property of the mortgagor or otherwise for any reason whatsoever claiming to be prejudicially affected by this order to move before any Judge of this Honourable Court to set aside vary or discharge this order and so that it shall be a condition of this order inseparable therefrom that the said grantee shall not raise any question as to or make any objection to the jurisdiction of any Judge of this Honourable Court to set aside vary or discharge this order.

Judge.

I X.Y. as counsel for and on behalf of the above-named grantee hereby undertake as is mentioned in the foregoing order.

As witness my hand this day of 19 .

Counsel for the said grantee.

(ALTERNATIVE) ORDER FOR EXTENSION OF TIME FOR REGISTRATION.

(*Same heading.*)

day the day of 19 .

On the motion of counsel for the said C.D. (hereinafter called "the grantee") and on reading the affidavit of E.F. filed herein and being satisfied that the omission to register the said instrument was accidental or due to inadvertence and the said grantee undertaking by his counsel that this order shall not prejudice or affect any rights or interests which may have accrued to any other person or persons corporation or corporations prior to the actual registration of the said instrument and also undertaking by his counsel not to raise any objection to the jurisdiction of this Honourable Court or any Judge thereof to set aside vary or discharge this order upon any motion which may hereafter be made whether by any person or persons corporation or corporations claiming under any right or interest which may have accrued or come into being or by any creditor or creditors of the said A.B. (hereinafter called the mortgagor) or by the Official Assignee in Bankruptcy of the property of the said mortgagor or by any other person or persons corporation or corporations claiming to be prejudicially affected by this order and further undertaking that the grantee will not further rely upon or seek to enforce this order if upon such motion this Honourable Court or a Judge thereof should be of opinion that this order should not in the circumstances have been made I DO ORDER that the time for registration of the said instrument shall be and the same is hereby extended up to and inclusive of day the day of 19 PROVIDED ALWAYS that the security conferred by the said instrument for whose registration the time is extended shall not as against any creditor of the mortgagor who shall have become a creditor after the date when the said instrument ought to have been registered and before the time when it shall be actually registered or against the Official Assignee in Bankruptcy of the property of the said mortgagor in so far as concerns the claims of any such creditor be of any greater validity than if this order had not been made (the intent of this order being that so long as the claims of such creditors remain unsatisfied by the said mortgagor the grantee shall have no greater priority as against such creditors in respect of the assets of the said mortgagor than if this order had not been made and the said instrument had remained unregistered) and so that it shall be competent for any person or persons corporation or corporations whether claiming under or in respect of any right or interest accruing to or arising in any such person or persons corporation or corporations or claiming as or being a creditor or creditors of the said mortgagor or claiming as the Official Assignee in Bankruptcy of the property of the said mortgagor or otherwise for any reason whatsoever claiming to be prejudicially affected by this order to move before this Honourable Court or any Judge thereof to set aside vary or discharge this order and so that it shall be a condition of this order inseparable therefrom that the said grantee shall not raise any question as to or make any objection to the jurisdiction of this Honourable Court or any Judge thereof to set aside vary or discharge this order and will not further rely upon or seek to enforce this order if upon such motion this Honourable Court or a Judge thereof should be of opinion that this order should not in the circumstances have been made.

Judge.

(Undertaking as in prior order.)

Bills Before Parliament.

Administration Amendment.—Clause 2: Paragraph (*b*) of s. 11 of the Administration Act, 1908 (*Reprint of Statutes*, Vol. III, p. 132), provides that the real estate of any person who dies intestate in respect thereof shall be held upon trust for the same persons and in the same shares as if it were personal estate. At first sight the purpose of the provision would appear to be to remove all distinctions between real estate and personal estate in the distribution of the property of any person who dies without disposing of that property by will. The Courts have held, however, that the legal effect of the paragraph is such that if the deceased has left a will disposing of his personal estate but not referring to his real estate, the real estate must be distributed in accordance with the provisions of the will as to the disposition of the personal estate. This interpretation results in anomalies, and it is accordingly proposed by cl. 2 of the Bill to amend para. (*b*) so as to provide that, in the case of persons dying after the Bill is passed, real estate not disposed of by will shall be distributed as if it were personal estate *not disposed of by will*. Clauses 3 to 6: These clauses extend the operation of Part II of the principal Act (*Reprint of Statutes*, Vol. III, p. 142), which provides for probates and letters of administration granted in any part of His Majesty's dominions out of New Zealand being resealed by the Supreme Court of New Zealand and thereupon having the same effect as if originally granted in New Zealand. Clause 3 in effect authorizes the resealing in New Zealand of probates and letters of administration granted in British protectorates or in mandated territories, and also of instruments having the same effect as probates or letters of administration, such as confirmations in Scotland, and elections to administer filed by a Public Trustee. Clause 4 (which is in the same terms as s. 3 and the relevant provisions of s. 6 of the Colonial Probates Act, 1892 (Imperial), applies the provisions of Part II to probates and letters of administration granted by British Courts in foreign countries. Clause 5 re-enacts in a wider form the proviso to s. 44 of the principal Act. The original proviso was limited to the Public Trustee of England. Clause 6 enables rules of Court to be made prescribing the procedure on resealing, and imposing any conditions that can be imposed in the case of applications to the Supreme Court of New Zealand for original grants of probate or letters of administration.

Imprest Supply.—This Bill fixes supply for the year ending March 31, 1936.

Land and Income Tax (Annual).—This Bill fixes the rates of land-tax and income-tax for the year commencing April 1, 1935.

Mining Amendment.—This Bill amends the Mining Act, 1926. Clause 2 re-enacts the provisions relating to appeals from decisions of Wardens' Courts contained in s. 366 of the principal Act. Clause 3 restricts the operation of s. 66 (*f*) of the principal Act (relating to the cutting of timber from unalienated Crown land). Clause 4 provides for the increase of the extent of certain dredging claims from 600 acres to 1,000 acres. Clause 5 imposes conditions on the grant of special-site licenses in the Hauraki District.

War Veterans' Allowances.—This Bill provides for the grant of allowances to those persons who by reason of service in the Great War or the South African War are not fit physically or mentally to earn a living. The term "veteran" as used in the Bill refers only to those members of the forces who were in actual engagement with the enemy. Clause 3 provides for the grant of allowances to veterans who are unemployable and their dependants. Applications for allowances are to be made to the Commissioner of Pensions and the amount of allowances are prescribed in clause 5. The authority to grant allowances will be the War Pensions Board. Provision is made for the review of its decisions by the Board and for the forfeiture of allowances in cases of misdemeanour or other sufficient cause. The rights of persons under the War Pensions Act are not interfered with by the Bill.

War Pensions Amendment.—Clause 2 redefines "dependant" in relation to members of the Forces during the War. Clause 3 limits the rights of wives and children to receive pensions in respect of death or disablement of members of Forces. Clause 4 extends the benefits of war pensions to members of the Royal Naval Auxiliary Patrol.

Urban Farm Land Rating Amendment.—Clause 2 of this Bill provides that where the special rateable values of urban farm land is greater than the ordinary rateable value the special rateable value shall be reduced to the ordinary rateable value. Clause 3 provides for refund of rates in cases where rates paid on land subsequently reduced in value in accordance with clause 2. Clause 4 provides that where property is outside a borough the Urban Farm Land Rating Act, 1932, will apply only to rates in respect of that land levied by the borough.

Law Practitioners Amendment.—This Bill amends the Law Practitioners Act, 1931. Part I, Constitution and Functions of Disciplinary Committee of the New Zealand Law Society. Clause 2 constitutes Committee. Clauses 3 and 4 prescribe functions of Committee. Clause 6 specifies grounds upon which practitioner may be struck off roll or suspended from practice by Committee. Clause 7, right of practitioner to be heard. Clause 8, Committee may restore name of practitioner to roll. Clause 9, District Law Society may make preliminary inquiry prior to ultimate order by Committee. Clauses 10, 11, 12, 13, provision relating to evidence to be given at applications and inquiries, witnesses' expenses, and orders as to costs. Clause 14, power to make rules. Clause 15, orders of Committee to be filed in Supreme Court and to take effect as Court order. Clause 16, appeals against Committee's finding. Clause 17, publication of notices of orders striking off, removing, restoring, or suspending. Clause 18, protection of Law Societies and Committee. Clause 19, jurisdiction of Court not limited. Part II, Provisions affecting Guarantee Fund. Clause 20, this Part forms part of Part III of principal Act. Clause 21, interpretation. Clause 23, solicitor in practice less than three months in year may receive refund of part of guarantee fund levy. Clause 27, Council may require banker to pay over money in defaulting solicitor's trust account. Clause 28, Council to take possession of books of defaulting solicitor. Clause 29, Council may inspect books relating to moneys received by defaulting solicitor. Clause 30, authorized person may investigate affairs of solicitor. Clause 32, Court may prevent payment being made from defaulting solicitor's trust accounts. Part III, Miscellaneous. Clause 33, solicitors who become qualified after passing of Act not to commence practice without three years' practical experience. Clause 34, membership of District Law Societies. Clause 35, District Law Society may impose levy on members in practice. Clause 36, persons not qualified as solicitors on passing of Act cannot become qualified as barristers by virtue of five years' practice. Clause 37, offence for unqualified person to act as solicitor. Clause 38, offence (with certain exceptions) for unqualified person to perform, for reward, duties of solicitor. Clause 40, practitioner in practice less than three months in any year may receive refund of practising fee. Clause 43, constitution of New Zealand Law Society. Clause 45, Law Societies may establish benevolent funds.

Rules and Regulations.

Dairy Industry Act, 1908. Amended Regulations relating to the Manufacture and Export of Dairy-produce.—*Gazette* No. 66, September 12, 1935.

Orchard and Garden Diseases Act, 1928. Amended Regulations for removal of certain Plants and Bees from the North Island to the rest of New Zealand.—*Gazette* No. 66, September 12, 1935.

Post and Telegraph Act, 1928. Radio Amendment Regulations, 1935.—*Gazette* No. 66, September 12, 1935.

Fisheries Act, 1908. Amending Regulations for Trout and Perch Fishing in the Hawke's Bay Acclimatization District.—*Gazette* No. 67, September 19, 1935.

Crimes Amendment Act, 1910. Rules of Procedure under Section 5 of the Act.—*Gazette* No. 67, September 19, 1935.

Education Act, 1914. Amended Regulations under the Act.—*Gazette* No. 67, September 19, 1935.

Naval Defence Act, 1913. Regulations under the Act amended.—*Gazette* No. 67, September 19, 1935.

Exhibitions Act, 1910. Suspending the Operation of certain Statutes in connection with the Hutt Valley Exhibition Society, Ltd.—*Gazette* No. 67, September 19, 1935.

Fisheries Act, 1908. Rotorua Trout-fishing Regulations, Amendment No. 6.—*Gazette* No. 67, 19th September, 1935.