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*"The Law is at once the fairy-godmother and the wicked uncle of contemporary English life."*
—PHILIP GUEDALLA.

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# Reserving Questions of Law in Criminal Cases.

THE Court of Appeal, at its last sitting, had to consider the reservation of questions of law arising at or out of a criminal trial with special reference to ss. 442, 443, and 446 of the Crimes Act, 1908: *The King v. Batchelor* (*No.* 2) *post*, p. 285.

Section 442 of the Crimes Act, 1908, is in part as follows:

(1) The Court before which any accused person is tried may, either during or after the trial, reserve any question of law arising either on the trial or on any of the proceedings preliminary, subsequent, or incidental thereto, or arising out of the direction of the Judge, for the opinion of the Court of Appeal in manner hereinafter provided.

(3) Either the prosecutor or the accused may during the trial apply to the Court to reserve any such question as aforesaid, and the Court, if it refuses so to reserve it, shall nevertheless take a note of such application, unless it considers the same to be frivolous.

(5) If the result of the trial is conviction the Court may in its discretion respite the execution of the sentence, or postpone sentence till the question reserved has been decided, and in either case shall in its discretion either commit the person convicted to prison or admit him to bail with one or two sufficient sureties, in such sums as the Court thinks fit, to surrender at such time as the Court directs.

(6) If the question is reserved, a case shall be stated for the opinion of the Court of Appeal, to be approved and signed by the Judge who presided at the trial.

As there has been some misunderstanding of these provisions, the recent judgment is of importance.

In *R. v. Joseph Taylor*, (1903) 5 G.L.R. 291, the question arose under the provisions of s. 412 of the Criminal Code Act, 1893 (which are now subss. 1 and 3 of s. 442 of the Crimes Act, 1908) as to whether a Judge could reserve questions of law after the conclusion of the sitting at which a prisoner was tried and sentenced, the trial having taken place at Nelson and the subsequent application being made at Wellington. Mr. Justice Edwards held that the provisions of the statute went no further than to refer to questions raised at the trial, and the powers given to the Court can only be exercised by the Court which tried the prisoner, and at or immediately after the trial. He said in part:

"Questions intended to be raised by the prosecutor or the accused can only be raised during the trial. In the event of a conviction, the Court has to exercise a discretion which can only be exercised before the prisoner has been sentenced. The power to reserve a case after trial is obviously intended to enable the Court to leave the matter open until after the verdict of the jury."

On the question whether there is power to reserve a question of law after sentence, His Honour did not express a concluded opinion; he said,

"I doubt whether I should have had power to reserve a case after sentence, even during the continuance of the circuit sitting of the Court. After sentence the trial had determined, and the provisions of the statute clearly indicate that the intention was that all questions of law should be raised before sentence. . . . The context appears to me, however, to show that the word 'trial' in the first subsection of section 412 means proceedings prior to sentence."

The question again arose in *R. v. Parkinson*, (1915) 34 N.Z.L.R. 636, when an application to reserve questions of law was made after sentence but before the conclusion of the same sitting of the Court. Stout, C.J., held that s. 442 of the Crimes Act, 1908, gave him power to entertain the application during the continuance of the same sitting of the Court.

The facts in *R. v. Batchelor* (*supra*) were that the prisoner was tried before Mr. Justice Johnston at Christchurch at the sitting for the dispatch of criminal and civil business which commenced on February 6. He was found guilty on February 9, and remanded for sentence until February 14, when he was sentenced. A new sitting of the Court began on May 1. On July 11, a motion was filed on behalf of the prisoner purporting to be made under s. 442 of the Crimes Act, 1908, for an order reserving for the opinion of the Court of Appeal a number of questions of law said to be "arising on the trial or on any of the proceedings, preliminary, subsequent, or incidental thereto, or arising out of the directions of the trial Judge." This motion was dismissed by Mr. Justice Johnston for want of jurisdiction: [1935] N.Z.L.R. s. 118. His Honour approved and followed *R. v. Joseph Taylor* (*supra*), and he distinguished *R. v. Parkinson* (*supra*), because, although Stout, C.J., held he had jurisdiction to reserve questions of law even after sentence, that was at the same sitting and by the trial Judge.

The prisoner then moved, under s. 443 of the Crimes Act, 1908 (as amended by s. 3 of the Crimes Amendment Act, 1920), subs. 1 of which is as follows:

"If the Court refuses to reserve the question the party applying may move the Court of Appeal for leave to appeal as hereinafter provided."

The whole question of when a question of law may be reserved thus came before the Court of Appeal for consideration.

The Court of Appeal, Myers, C.J., and Reed, Smith, and Fair, JJ., agreed that Batchelor's application was out of time on July 11, when it was made to Johnston, J., as that learned Judge had then no jurisdiction to reserve questions of law. Their Honours further held that s. 443 (1) does no more than enable an application to be made to the Court of Appeal, where the Supreme Court has refused an application made under s. 442 (3) to reserve questions of law; it does not give the prosecutor or the accused any right to move the Court of Appeal if the Judge of his own motion has not reserved any question of law.

When it came to considering the provisions of s. 442 in detail, there was some divergence of opinion in their Honours' views. The learned Chief Justice considered that s. 442 (3) provides that questions of law intended to be raised by the prosecutor or the accused can only be raised during the trial, *i.e.*, an application to reserve them must be made during the trial; but, when such an application is made, the Court is not bound to deal with it at once. If the Court of its own motion thinks fit to reserve any question of law, it must act under s. 442 (1) before the end of the sitting (for the dispatch of civil and criminal business) at which the prisoner is tried. Consequently, on the facts, the learned trial Judge on July 11 had no jurisdiction to entertain an application under s. 442 (3), because no application

was made to him during the trial, and he had no jurisdiction of his own motion to reserve any question of law under s. 442 (1) because the sitting at which the prisoner was tried had ended.

Mr. Justice Smith took the view that after sentence the functions of the Court before which the prisoner is tried are at an end; and the right of the prosecutor or the accused to apply to the Court, *i.e.*, the Court held at the duly appointed circuit sitting, and not the Supreme Court sitting in Banco, to reserve a question of law cannot extend beyond the passing of sentence. His Honour took the view that, when s. 442 (3) says that either the prosecutor or the accused "may during the trial apply to the Court to reserve such question as aforesaid," "such question" is a question specified in s. 442 (1) comprising "any question of law arising either on the trial or on any of the proceedings preliminary, subsequent, or incidental thereto." Moreover, subss. 2 and 3 of s. 442 speak of the acquittal or conviction of the accused as "the result" of the trial, and s. 442 (5) shows that the sentence is not a part of the trial, but a separate and subsequent matter: this being confirmed by subss. 5 and 7 of s. 443, which are substantive provisions enabling the Court of Appeal to interfere in matters of sentence upon a direct motion of the Court of Appeal, independently of any reservation of a question of law by the Court before which the prisoner was tried. His Honour thought that the effect of s. 442 (3) may be to preserve the right of the prosecutor or the accused to apply to the Court to reserve a question of law until the passing of sentence; but he was of opinion that the right cannot extend beyond that. He agreed with the view expressed by Edwards, J., in *R. v. Joseph Taylor* (*supra*) on this point. He was also of opinion that the words, "the Court before which any accused person is tried," in s. 442 (1) mean the Court held at the duly appointed circuit sitting, which may either of its own motion or on application by the prosecutor or the accused reserve questions of law, and not the Supreme Court sitting in Banco.

Mr. Justice Fair concurred with the view expressed by the Chief Justice as to the time-limit for reservation of questions of law by the Court, as he considered the terms of s. 442 (1) to be wide enough to give the Court power to reserve of its own motion such a question, even after sentence, at any time prior to the conclusion of the sittings at which the accused is tried. As he thought the section, being a remedial one, should be construed liberally, he considered the fact that the word "trial" is used in a narrow sense in subss. 3 and 4 of s. 442 does not justify the same meaning being placed upon it in subs. 1 of that section. His Honour considered that s. 442 did not confer on the prosecutor or the accused the right to apply to the Court to reserve a question of law after sentence has been imposed.

The distinctions made by their Honours may be summarized as follows:

As to the application under s. 442 (3), the prosecutor or the accused must make the application during the trial, though the Court is not bound to deal with it at once (Myers, C.J., without defining the limit of the term of the "trial"*); during the trial and before sentence (Fair, J.); before sentence (Smith, J., who makes the distinction that "the sentence is not a part of the trial, but is a separate and subsequent matter").

As to the Court's power under s. 442 (1) of its own motion to reserve a question of law: It may reserve such question at any time, even after sentence, before conclusion of the sitting (for the dispatch of civil and criminal business) at which the accused is tried (Myers, C.J., and Fair, J.); the functions of the Court before which a prisoner is tried are at an end after the passing of sentence (Smith, J.).

There remains a doubt as to whether the right of the Court of its own motion to reserve a question of law has gone, if the Judge postpones sentence at the end of the current sitting at which the accused was tried but does not adjourn the sitting: this raises the question as to whether the postponement of sentence involves the continuation of that sitting until delivery of sentence. Again, can an application be made under s. 442 (3) by the prosecutor or the accused at any time before sentence, or must it be made during the trial, *i.e.*, before the jury's verdict, if sentence is not part of but subsequent to the trial, as stated by Mr. Justice Smith? Lastly, can the Judge sit in Banco after the close of the criminal sessions, but during the continuance of the civil sessions of the same duly appointed sitting of the Court, (*a*) after sentence has been delivered, or (*b*) before sentence has been delivered, to deal with questions of law raised by the prosecutor or the accused during the trial and before sentence?

These questions, and more precise definition of the word "trial" in the different collocations of subs. 1 and subs. 3 of s. 442, will no doubt be considered as and when they arise; but the Court of Appeal in *Batchelor's* case has given little indication as to how they may then be answered.

* *Cf.* Edwards, J., in *R. v. Joseph Taylor* (*supra*) at p. 292: "The context appears to me however to show that the word 'trial' [in, now, s. 442 (3)] means the proceedings prior to sentence."

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# Summary of Recent Judgments.

SUPREME COURT
Christchurch.
1935.
Oct. 8, 10.
*Northcroft, J.*

**IN RE RICHARDS (DECD.), RICHARDS v. RICHARDS AND OTHERS.**

**Will—Annuity—"Free of all deductions whatsoever and free from all duties and taxes"—Whether free of both Income-tax and Unemployment-relief Tax.**

An annuity given "to be paid clear and free from all deductions whatsoever and free from all duties and taxes" is to be paid free of both income-tax and unemployment-relief tax.

**In re Shrewsbury Estate Acts, Shrewsbury v. Shrewsbury,** [1924] 1 Ch. 315, and **In re Reckitt, Reckitt v. Reckitt,** [1932] 2 Ch. 144, applied.

**In re Crawshay, Crawshay v. Crawshay,** [1915] W.N. 412, and **In re Bates, Selmes v. Bates,** [1925] Ch. 157, distinguished.

**Counsel: Hunter,** for the plaintiff; **Cottrell** and **Dawson,** for the defendants.

**Solicitors: Hunter and Ronaldson,** Christchurch, for the plaintiff; **Joynt, Andrews, and Cottrell,** Christchurch, for the defendants.

**Case Annotation:** *In re Shrewsbury Estate Acts, Shrewsbury v. Shrewsbury,* E. & E. Digest, Vol. 28, p. 75, para. 407; *In re Reckitt, Reckitt v. Reckitt, ibid.,* Supp. No. 10, Vol. 39, No. 592*a*; *In re Crawshay, Crawshay v. Crawshay, ibid.,* Vol. 28, p. 105, para. 652; *In re Bates, Selmes v. Bates, ibid.,* p. 112, para. 691.

COURT OF APPEAL
Wellington.
1935.
Sept. 30; Oct. 18.
*Myers, C.J.*
*Reed, J.*
*Smith, J.*
*Johnston, J.*
*Fair, J.*

**AUCKLAND CITY CORPORATION**
**v.**
**ST. JOHN'S COLLEGE TRUST BOARD.**

**Rating—Collegiate Institution where Education a Preparation for Holy Orders—Whether Education thereat sufficiently General to constitute Institution a "School"—Rateable Property—Rating Act, 1925, s. 2 (*g*).**

A collegiate institution, where the education given is a preparation for Holy Orders and nothing more, is not exempt from rating as "lands and buildings used for a school not carried on exclusively for pecuniary gain or profit" within the meaning of para. (*g*) of the exceptions to the definitions of rateable property contained in s. 2 of the Rating Act, 1925, as the institution does not give a sufficiently general education to constitute it such a school.

**Girls' Public Day School Trust, Ltd. v. Ereaut,** [1931] A.C. 12, **Blake v. City of London Corporation,** (1887) 19 Q.B.D. 79, and **Invercargill Borough v. Pearce and Froggatt,** [1923] N.Z.L.R. 1134, applied.

**Counsel: Stanton,** for the plaintiff; **Johnstone,** K.C., and **Macarthur,** for the defendant.

**Solicitors: J. Stanton,** Auckland, for the plaintiff; **Hesketh, Richmond, Adams, and Cocker,** Auckland, for the defendant.

**Case Annotation:** *Girls' Public Day School Trust v. Ereaut,* E. & E. Digest, Supp. No. 10, *Education,* No. 182*a*; *Blake v. City of London Corporation, ibid.,* Vol. 19, p. 585, para. 178.

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

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COURT OF APPEAL
Wellington.
1935.
Sept. 26, 27;
Oct. 18.
*Myers, C.J.*
*Reed, J.*
*Smith, J.*
*Fair, J.*

**SHAW v. HILL.**

**Deaths by Accidents Compensation—Pecuniary Loss sustained by Wife by Death of Husband—Principles on which Compensation estimated—Whether Damages awarded by Jury excessive—Deaths by Accidents Compensation Act, 1908, s. 5.**

In a running-down action, the jury awarded the respondent £1,750 damages for the death of her husband. The action was brought under the Deaths by Accidents Compensation Act, 1908, under which the right to recover damages in respect of death occasioned by a wrongful act, neglect, or default is restricted to the actual pecuniary loss sustained by her.

On an appeal from the dismissal of *Johnston,* J., of a motion for a new trial, on the ground, *inter alia,* that the damages awarded were excessive, to which ground the report is restricted,

**Thomas,** for the appellants; **Morgan,** for the respondent,

**Held,** by *Myers,* C.J., *Reed,* and *Fair,* JJ., That, as there was no reasonable proportion between the amount awarded and the loss sustained, there must be an order for a new trial confined to the one issue—the quantum of damages.

**Taff Vale Railway Co. v. Jenkins,** [1913] A.C. 1, applied.

*Per Smith,* J., That there should be a new trial of the whole case and therefore it was unnecessary to consider whether the damages awarded were excessive.

**Solicitors: C. S. Thomas,** Christchurch, for the appellants; **Morgan and Scully,** Westport, for the respondent.

**Case Annotation:** *Taff Vale Railway Co. v. Jenkins,* E. & E. Digest, Vol. 36, p. 133, para. 885.

NOTE:—For the Deaths by Accidents Compensation Act, 1908, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, 1908-1931, Vol. 6, title *Negligence,* p. 427.

SUPREME COURT
Auckland.
1935.
Sept. 26;
Oct. 4, 7.
*Callan, J.*

**WALTERS AND ANOTHER v. SUPREME COURT REGISTRAR AND MANUKAU COUNTY.**

**Rating—Sale by Registrar—Crown Mortgage on title—Whether Land can be sold for unsatisfied judgment for rates subject to such Crown Mortgage—Valuation—"Each separate property"—Property in several blocks divided by roads in same ownership and farmed as one farm—Whether correctly assessed as one separate property—Rating Act, 1925, s. 79—Acts Interpretation Act, 1924, s. 5 (k)—Counties Act, 1920, s. 219—Valuation of Land Act, 1925, s. 7.**

A local authority may make use of the procedure provided by s. 79 of the Rating Act, 1925, which authorizes the sale of the fee simple free from encumbrances of a property in respect of which it has an unsatisfied judgment for rates, notwithstanding the fact that, before the rating charge arose, a mortgage had been given to the Crown, provided it sells subject to the Crown mortgage which postpones the rating charge from a first to a second charge.

**The King v. Mayor, etc., of Inglewood,** [1931] N.Z.L.R. 177, applied to State Advances mortgages and county rates.

**Finlayson v. Hobson County Council,** (1899) 9 N.Z.L.R. 385, mentioned.

The Valuer-General correctly assesses as one separate property, as directed by s. 7 of the Valuation of Land Act, 1925, a property owned and farmed as one farm by the same person, although (as here) it is divided by roads into three blocks, and contained in four certificates of title, as the words "each separate property" in that section must be construed in their popular sense, the expression not being defined in the statute.

The Valuer-General is not bound to retain a piece of land as the subject of a separate assessment, if while it is in that state it is made the whole of the land in a mortgage, so long as it remains subject to that mortgage.

**Counsel: Barrowclough,** for the plaintiffs; **Prendergast,** for the defendant County.

**Solicitors: Russell, McVeagh, Macky, and Barrowclough,** Auckland, for the plaintiffs; **Brookfield, Prendergast, and Schnauer,** Auckland, for the defendant County; **Goodall and Kayes,** Auckland, for the Registrar of the Supreme Court at Auckland.

NOTE:—For the Rating Act, 1925, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, 1908-1931, Vol. 7, title *Rating and Valuation of Land,* p. 977; Acts Interpretation Act, 1924, *ibid.,* Vol. 8, title *Statutes,* p. 568; Counties Act, 1920, *ibid.,* Vol. 5, title *Local Government,* p. 180; Valuation of Land Act, 1925, *ibid.,* Vol. 7, title *Rating and Valuation of Land,* p. 1030.

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SUPREME COURT
Wellington.
1935.
Oct. 23.
*Reed, J.*

**THE KING v. McREYNOLDS.**

**Criminal Law—Obtaining Goods by False Pretences—Possession of Goods obtained under Hire-purchase Agreement induced by False Representations—Meaning of "obtains"—Crimes Act, 1908, s. 252.**

The word "obtains" in s. 252 of the Crimes Act, 1908, which provides in part as follows:

"Every one is liable to three years' imprisonment with hard labour who,—

(*a*) With intent to defraud by any false pretence, either directly or through the medium of any contract obtained by such false pretence, *obtains* anything capable of being stolen . . ."

means "obtains possession of," and it makes no difference whether any title to the goods is or is not obtained by the offender.

**R. v. Cox,** [1923] N.Z.L.R. 596, referred to.

**R. v. Kilham,** (1870) L.R. 1 C.C.R. 261, distinguished.

**Counsel: Macassey,** for the Crown; **Neal,** for the accused.

**Solicitors: Crown Solicitor,** Wellington, for the Crown; **Levi and Yaldwin,** Wellington, for the accused.

**Case Annotation:** *R. v. Kilham,* E. & E. Digest, Vol. 15, p. 982, para. 10,997.

NOTE:—For the Crimes Act, 1908, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, 1908-1931, Vol. 2, title *Criminal Law,* p. 182.

SUPREME COURT
In Chambers.
Palmerston North.
1935.
May 10;
Sept. 10.
*Smith, J.*

**IN RE HORI TE WEHI (DECEASED).**

**Law Practitioners—Solicitor and Native Client—Costs—Methods of Taxation—Law Practitioners Act, 1931, s. 22—Native Land Act, 1931, ss. 25, 545.**

Subject to the exception hereinafter stated, the provisions of s. 22 of the Law Practitioners Act, 1931, (*a*) apply to all costs charged by a solicitor, whether acting as a solicitor or a Native agent, to his Native client for work done in any Court, including the Native Land Court and the Native Appellate Court; and (*b*) make these costs liable to taxation and review by a Judge of the Supreme Court in a summary way. The exception is this: that where such costs are the subject of an order of the Native Land Court under the independent provisions of s. 25 of the Native Land Act, 1931, such costs are only taxable pursuant to the provisions of that order and are not "liable to taxation" under s. 22 of the Law Practitioners Act, 1931.

Where the solicitor's costs are chargeable to a Native for work done before Parliament or any Committee thereof (neither Parliament nor the Committee being a Court) such costs are taxable under s. 545 of the Native Land Act, 1931.

**So held** by *Smith*, J., in a judgment with which *Myers*, C.J., agreed.

**Counsel and Solicitor: P. W. Dorrington,** Dannevirke, in support of application for taxation of costs.

NOTE:—For the Law Practitioners Act, 1931, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, 1908-1931, Vol. 4, title *Law Practitioners*, p. 1060; for the Native Land Act, 1931, *ibid.*, Vol. 6, title *Natives and Native Land*, p. 103.

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SUPREME COURT
Auckland.
1935.
Aug. 26, 27;
Sept. 30.
*Smith, J.*

**STANLEY WORKS**
**v.**
**STANLEY IRONWORKS, LTD.**

**Trade Name—Action to restrain use of Name of Defendant Company—Similarity of Names—Probability of Deception or Confusion—Whether Defendant Company succeeded to Goodwill of Business in Manufacture and Trade of present Kind in Name sought to be restrained—Injunction granted.**

The plaintiff company, incorporated in the United States of America in 1852, and one of the largest manufacturers of wrought steel hardware and tools in the world, has registered trademarks of "Stanley" and "S.W.," and its goods are and have been long known both in the wholesale and retail trade in New Zealand as "Stanley" goods.

The defendant company, incorporated in 1931 with a capital of £600 under the name of "Stanley Ironworks, Ltd.," took over the business of engineers, etc., carried on at Stanley Street, Auckland, by S. and known as the Stanley Ironworks. The business originally established by W. about forty-one years ago as that of a shoeing and general smith and carried on later by his nephew from whom S. acquired it in 1929, when it was a general jobbing engineering business, specializing in the production of bolts and hinges and all classes of builders' ironwork, was moved about thirty-six years ago to Stanley Street, Parnell, and the premises called "Stanley Ironworks," but up to about 1930 the goodwill of the business was attached to the name W. in respect of a jobbing and engineering business and not of a manufacturing and trading business which made articles for stock and sent out travellers to sell quantities of that stock. The defendant company, when incorporated, became definitely a manufacturing and trading company making for stock, and employed a New Zealand representative and distributor of its products and is manufacturing and selling articles of hardware which are also made by the plaintiff company and sold in New Zealand.

On a motion for a perpetual injunction restraining the defendant company from carrying on business under the name of "Stanley Ironworks, Ltd,"

**Johnstone,** K.C., and **Cresswell,** for the plaintiff; **Dr. McElroy,** for the defendant,

**Held,** 1. That the defendant company had taken the whole name of the plaintiff and inserted the word "iron," a common ingredient, because both companies manufacture with it and deal in the products.

2. That the use of the defendant's name was calculated to deceive and so either to divert business from the plaintiff to the defendant or to lead to the belief that the defendant is a branch of or otherwise connected with the plaintiff to the latter's prejudice.

3. That the defendant had not succeeded to the goodwill of an existing business carried on in Auckland in the name of Stanley Ironworks, Ltd., in a manufacture and trade of the kind which it is now doing, so as to entitle it to the use of that name.

**Ouvah Ceylon Estates, Ltd. v. Uva Ceylon Rubber Estates, Ltd.,** (1910) 103 L.T. 416, 27 R.P.C. 753, **Ewing v. Buttercup Margarine Co., Ltd.,** [1917] 2 Ch. 1, 34 R.P.C. 232, **Harrods, Ltd. v. R. Harrod, Ltd.,** (1923) 41 R.P.C. 74, **F. W. Woolworth and Co., Ltd. v. Woolworths (Australia), Ltd.,** (1930) 47 R.P.C. 337, applied.

**Solicitors: R. L. A. Cresswell,** Wellington, for the plaintiff; **Lovegrove, George, and McElroy,** Auckland, for the defendant.

**Case Annotation:** *Ouvah Ceylon Estates, Ltd. v. Uva Ceylon Rubber Estates, Ltd.*, E. & E. Digest, Vol. 9, para. 221, p. 67; *Ewing v. Buttercup Margarine Co., Ltd., ibid.*, para. 240, p. 70; *Harrods, Ltd. v. R. Harrod, Ltd., ibid.*, Vol. 43, para. 1205, p. 294; *F. W. Woolworth and Co., Ltd. v. Woolworths (Australia), Ltd., ibid.*, Supplement to Vol. 43, *Trade Marks*, para. 1137*a*.

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SUPREME COURT
Napier.
1935.
Aug. 27, 28;
Sept. 11;
Oct. 1.
*Reed, J.*

**JANE**
**v.**
**STANFORD AND ANOTHER.**

**Practice—Trial—Jury—Facts insufficient to support Verdict—Duty of Trial Judge to enter Right Judgment instead of granting New Trial.**

A mere scintilla of evidence is insufficient to support the verdict of a jury. Where there is no evidence upon which fair and reasonable men can find that the defendant in a running-down action had done or omitted anything which a person of reasonable care and skill would have done or omitted, then, as a matter of law, the jury has no right to find a verdict for the plaintiff because there were not the materials on which to find it.

In such a case, if a Judge is judicially of opinion that upon the case as a whole—upon the evidence of both the plaintiff and the defendant—there is no case, then it is his duty to enter what he thinks is the right judgment—namely, judgment for the defendant—not because he finds the facts, for that is the province of the jury, but because he finds there are no facts sufficient to support a verdict in favour of the plaintiff.

**Banbury v. Bank of Montreal,** [1918] A.C. 626, **Bist v. London and South Western Railway Co.,** [1907] A.C. 209, **Benson v. Quong Chong,** [1931] N.Z.L.R. 81, **Skeate v. Slaters, Ltd.,** [1914] 2 K.B. 429, and **Clouston and Co., Ltd. v. Corry,** [1906] A.C. 122, followed.

**Counsel: H. B. Lusk,** in support; **Hallett,** to oppose.

**Solicitors: Kennedy, Lusk, and Morling,** Napier, for the plaintiff; **Hallett, O'Dowd, and Morrison,** Napier, for the defendants.

**Case Annotation:** *Banbury v. Bank of Montreal*, E. & E. Digest, *Practice*, para. 3446, p. 780; *Skeate v. Slaters, Ltd., ibid.*, para. 3467, p. 783; *Clouston and Co. v. Corry, ibid.*, para. 3465; *Bist v. London and South Western Railway Co.*, Vol. 34, para. 2748, p. 340.

SUPREME COURT
Auckland.
1935.
Oct. 16, 17, 23.
*Callan, J.*

**BREMNER v. MEREANA TE PAA.**

**Landlord and Tenant—Tenant holding over after Expiration of Term with Landlord's Consent—Tenancy determinable by One Month's Notice in writing—Demolition of Dwellinghouse by Landlord during holding-over Period—Basis of assessing Damages—Property Law Act, 1908, s. 16.**

Where, after the expiration of the term of a tenancy, the tenant holds over with the landlord's consent, there is a tenancy and no agreement as to its duration, and it is, therefore, deemed to be a tenancy determinable by one month's notice in writing.

**Tod v. McGrail,** (1899) 18 N.Z.L.R. 568, and **Heron v. Yates,** (1911) 31 N.Z.L.R. 197, followed.

After the expiry of the term of the lease and during the period of the tenant's holding over with the landlord's consent, the defendant landlord demolished the dwelling on the demised land and damaged plaintiff's furniture, &c., to the amount of about £13. The basis upon which damages should be assessed in such circumstances is that the tenant had suffered deprivation of the use of his residence during the balance of his occupation, and had suffered great annoyance and humiliation. The Court, in such a case, ought not to measure the damages nicely, but should give such judgment as will discourage parties from venturing to take the law into their own hands in the reckless and inconsiderate manner of which the defendant had been guilty.

**How v. Mansfield,** [1925] N.Z.L.R. 91, applied.

**Counsel: A. L. Spence,** for the plaintiff; **Astley,** for the defendant.

**Solicitors: A. L. Spence,** Auckland, for the plaintiff; **Webb, Ross, Astley, and Worsley,** Dargaville, for the defendant.

NOTE:—For the Property Law Act, 1908, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, 1908-1931, Vol. 7, title *Real Property and Chattels Real*, p. 1077.

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COURT OF APPEAL
Wellington.
1935.
Sept. 27; Oct. 18.
*Myers, C.J.*
*Smith, J.*
*Fair, J.*

**THE KING v. BATCHELOR (No. 2).**

**Criminal Law—Prisoner's Application to Trial Judge (after sentence and after Conclusion of Sittings at which Tried) to reserve Questions of Law for Opinion of Court of Appeal—Application Refused on Ground of Want of Jurisdiction—Application to Court of Appeal for Leave to Appeal—Time within which Supreme Court may Reserve Questions of Law—Crimes Act, 1908, ss. 442, 443 (1).**

B. was tried before *Johnston*, J., and a jury on February 8 and 9, 1934, at the sitting for the dispatch of criminal and civil business which commenced at Christchurch on February 6. Found guilty on February 9, he was remanded for sentence until February 14, when he was sentenced. The February sitting had ended and another sitting had commenced before July 11, when the prisoner filed a motion under s. 442 for an order reserving for the opinion of the Court of Appeal a number of questions of law. This motion *Johnston*, J., dismissed on the ground of want of jurisdiction, *ante*, p. 227. The prisoner then applied to the Court of Appeal under s. 443 (1) for leave to appeal.

**Saunders,** for the prisoner, in support; **Solicitor-General, Cornish,** K.C., to oppose.

**Held,** *per Curiam*, dismissing the application, 1. That s. 443 (1) of the Crimes Act, 1908, does no more than enable an application to be made to the Court of Appeal where the Supreme Court has refused an application made under s. 442 (3) to reserve questions of law. It does not enable the prosecutor or the accused to move the Court of Appeal on the ground that the Judge should on his own motion have reserved questions of law.

2. That the Supreme Court had no jurisdiction to reserve questions of law on July 11.

**R. v. Joseph Taylor,** (1903) 5 G.L.R. 291, and **R. v. Parkinson,** (1915) 34 N.Z.L.R. 636, considered.

Per *Myers*, C.J., and *Fair*, J., That the Supreme Court had no jurisdiction on July 11, either upon an application made in due time under subs. 3 of s. 442 or on its own motion, to reserve any question of law under subs. 1, because the sittings of the Court at which the prisoner was tried had ended.

Per *Smith*, J., That, if the effect of subs. 3 is to preserve the right of the prosecutor or the accused to apply to the Court to reserve a question of law until the passing of sentence, the right cannot extend beyond that because the right of the Court to reserve a question is then at an end.

*Semble*, per *Myers*, C.J., and *Fair*, J., While subs. 3 requires an application to reserve questions raised by the prosecutor or the accused to be made during the trial, the Court is not bound to deal with such an application at once but may reserve either during or after the trial any such question or any question which it may of its own motion think fit to reserve; but reservation must be made before the end of the sitting at which the prisoner is tried.

*Semble*, per *Fair*, J., Section 442 (1) confers on the Court the right after sentence but before the conclusion of the sittings at which the accused was tried, to reserve questions of law on its own motion or questions of law raised by the prosecutor or accused before sentence.

**Solicitors: Crown Law Office,** Wellington, for the Crown; **R. L. Saunders,** Christchurch, for the prisoner.

NOTE:—For the Crimes Act, 1908, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, 1908-1931, Vol. 2, title *Criminal Law*, p. 182.

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COURT OF APPEAL
Wellington.
1935.
Sept. 18; Oct. 11.
*Myers, C.J.*
*Reed, J.*
*Smith, J.*
*Johnston, J.*
*Fair, J.*

**TEMPLETON v. GEORGESON.**

**Industrial Conciliation and Arbitration—Award—Construction—"Country Work."**

Appellant, a contractor carrying on business in Wellington, was bound by the Wellington Industrial District (Except Hawke's Bay) Builders, Contractors, and General Labourers' Award of September 12, 1930, 30 *Book of Awards*, 68, Cl. 8 of which is in part as follows:

8. (*a*) "Country work" means work at which a worker is required to sleep away from home.

(*b*) Any worker employed upon country work shall be conveyed by his employer to and from such work free of charge, or his travelling-expenses going to and returning from such work shall be paid by his employer, but once only during the continuance of the work if such work is continuous and the worker is not in the meantime recalled by his employer.

Appellant entered into a contract with the Wellington City Council in September, 1934, for construction of a sewer outfall at Makara, the situation of such work being from twelve to fifteen miles from Wellington. He complied with the terms of the contract, including payment of 1s. 10½d. per hour and provision of lodging of a standard not less than that provided by the Public Works Department. General labourers were employed under those conditions.

Later, a demand was made by the General Labourers' Union secretary that appellant should, in addition to lodging, provide meals for the workers at his own expense. He thereupon called the workers together on October 20, 1934, and told them he could not give the wages and working conditions stipulated by the City Council contract, and also give them board. He offered to pay the award rate of wages (1s. 8d. per hour) and an addition of 3s. 9d. per day for board and lodging, and if they accepted they would have to find their own accommodation. The offer not being acceptable to the men, they were all discharged and notified that such as applied for work under the terms of the City Council contract would be re-engaged. On the next

working day, October 23, all the men were re-engaged at the same rate of wages and with the same conditions under which they had formerly been employed on the works.

Respondent then claimed to recover from appellant the sum of £10 as a penalty for a breach of the above-named award, in that, between October 8 and December 13, 1934, he employed certain workers at the Makara sewerage job, such work being "country work," which means work at which a worker is required to sleep away from home, and did fail to pay the said workers an additional sum of 4s. 2d. per day or in lieu thereof provide them with suitable board and lodging as provided by Cl. 8 (*a*) of the said award.

The learned Magistrate found a breach had been committed by appellant, and ordered him to pay costs. On appeal to the Court of Arbitration from this judgment, a case was stated pursuant to s. 105 of the Industrial Conciliation and Arbitration Act, 1925, for the opinion of the Court of Appeal.

In answer to the following question submitted: "Was the decision given in the Magistrates' Court as aforesaid correct or erroneous in its application of law and in its inference (so far as such inferences are questions of law) from proved facts?"

**A. J. Mazengarb,** for the plaintiff; **A. E. Currie,** for the defendant.

**Held,** *per totam Curiam.* That there was no breach of the award subsequently to October 20, 1934.

**Held,** by *Myers,* C.J., *Smith* and *Fair,* JJ., (*Reed* and *Johnston,* JJ., dissenting), That there was a breach of the award prior to October 20, 1934.

**In re Auckland District Carpenters and Joiners' Award (Dominion Portland Cement Co.'s Case),** (1915) 16 Bk. of Awards 464, **In re Auckland District Carpenters and Joiners' Award (Langland and Co.'s Case),** (1917) 18 Bk. of Awards 293, **Inspector of Awards v. John Burns and Co., Ltd.,** (1929) 29 Bk. of Awards 589, **In re Canterbury Carpenters and Joiners' Award,** (1909) 10 Bk. of Awards 663, **In re Hawke's Bay Carpenters and Joiners' Award,** (1912) 13 Bk. of Awards 1060, **Inspector of Awards v. Parkinsons (N.Z.), Ltd.,** (1924) 25 Bk. of Awards 74, **In re Wanganui-Rangitikei Electric-power Board's Electrical Workers' Award,** (1927) 27 Bk. of Awards 348, **Auckland Branch of the Amalgamated Society of Carpenters and Joiners' Union v. Clements,** (1930) 30 Bk. of Awards 993, referred to.

**Solicitors: Mazengarb, Hay, and Macalister,** Wellington, for appellant; **Crown Law Office,** Wellington, for respondent.

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COURT OF APPEAL
Wellington.
1935.
Sept. 19; Oct. 25.
*Myers, C.J.*
*Reed, J.*
*Smith, J.*
*Johnston, J.*
*Fair, J.*

## STEWART v. BRIDGENS.

**Motor-vehicles—Insurance—Third-party Risks—Thief driving Stolen Motor-car intentionally Dislodging and Injuring Constable on Car endeavouring to Stop it and Arrest Thief—Whether Constable "being conveyed in" or "entering" or "about to enter" car—Extension of Common Law Liability to make Owner of Motor-vehicle Liable for Acts of Unauthorized Person—Whether extends to case of Thief driving Stolen Car—Such Liability Co-extensive with Indemnity given—Whether Injury caused by Intentional Criminal Act of Driver of Car an "accident"—Whether "use" includes Criminal Misuse—"Within the Scope of his authority in relation to . . . motor-vehicle"—Interpretation of—Motor-vehicles Insurance (Third-party Risks) Act, 1928, ss. 3 (1), 6.**

The plaintiff, a constable, in an endeavour to recover a stolen motor-car owned by defendant and to arrest the thief, grasped the rear door-handle, placed one foot on the running-board, and called on the driver, the thief, to get out. The driver started the car, the plaintiff swung himself onto the running-board and tried to get into the car. The driver, after swerving the car at high speed in order to dislodge the plaintiff, eventually crashed against a stationary car. The plaintiff fell to the ground and was severely injured. He sued the defendant for damages.

**Hubble,** for the plaintiff; **Finlay,** for the defendant.

**Held,** *per Curiam,* 1. That, adopting the decision of *Myers,* C.J., in *Findlater v. Public Trustee and Queensland Insurance Co., Ltd.,* [1931] G.L.R. 403, 405, s. 3 of the said Act extends the common-law liability of the owner of a motor-vehicle by making him liable for the acts of an unauthorized person in charge of a motor-vehicle.

2. That such liability is limited to such acts of the unauthorized person as the owner is indemnified against by the insurance company under s. 6 of the Motor-vehicles Insurance (Third-party Risks) Act, 1928.

Per *Myers,* C.J., *Smith, Johnston,* and *Fair,* JJ., (*Reed,* J., dissenting) That plaintiff could not recover as he was a person specified in s. 6 (4) (*c*), who was either "being conveyed in" or "entering" or "about to enter" the car.

Per *Reed,* J., dissenting, That the said words were inapplicable to the circumstances of this case, where the constable was doing his best to stop the vehicle and to arrest the driver.

Per *Reed,* J., That the Act is for the benefit of the person injured by the use of the motor-vehicle, that "accident" includes any injury which is not expected or designed by the injured person, even a deliberate and wilful criminal act.

**Trim Joint District School Board of Management v. Kelly,** [1914] A.C. 667, applied.

Per *Fair,* J., *Semble* to the like effect.

**Tinline v. White Cross Insurance Association, Ltd.,** [1921] 3 K.B. 327, **James v. British General Insurance Co., Ltd.,** [1927] 2 K.B. 311, and **Haseldine v. Hosken,** [1933] 1 K.B. 822, distinguished.

Per *Reed,* J., That the liability of the owner in cases of unauthorized user of his motor-vehicle, attaches on every such user, even if the person using the motor-vehicle had stolen it.

Dictum of *Adams,* J., in **Anderson v. Lehrke,** (1931) 7 N.Z.L.J. 57, approved and followed.

*Semble,* per *Myers,* C.J. (*Johnston,* J., concurring), 1. Assuming that the extension of the owner's liability includes the case of an injury being caused by the driving of a person who has stolen the car, the statutory policy insures not the third-party but the owner of the vehicle; therefore, a criminal act intended by the insured or one deemed by statute to be his authorized agent, according to the principle of public policy, cannot so far as the owner is concerned be regarded as an accident.

**Tinline v. White Cross Insurance Association, Ltd.,** [1921] 3 K.B. 327, **James v. British General Insurance Co., Ltd.,** [1927] 2 K.B. 311, and **Haseldine v. Hosken,** [1933] 1 K.B. 822, (as to non-protection of third-party accident risk in case of intentional act on part of insured) applied.

**Trim Joint District School Board of Management v. Kelly,** [1914] A.C. 667, distinguished.

2. The word, "use," in s. 3 refers to negligent use and does not include criminal misuse.

3. Section 3 (1) assumes that the person in charge of the car is authorized to be in charge of it and to drive it, and makes the owner (and the insurance company by way of indemnity) liable accordingly for the driver's negligence whilst driving it; but an intentional criminal act not in any way concerned with the owner's affairs cannot be deemed to be either authorized by the owner or "within the scope of the driver's authority."

*Semble,* per *Fair,* J., The statute applies equally to authorized as to unauthorized agents in extension of the liability of the owner and to cover by insurance all accidents caused by deliberate acts, although outside the scope of the authority expressly given by the owner. Every act done by the agent in using the car is deemed for the purposes of the statute to have been done with the authority of the owner.

**Solicitors: Meredith, Hubble, and Meredith,** Auckland, for the plaintiff; **Nicholson, Gribbin, Rogerson, and Nicholson,** Auckland, for the defendant.

**Case Annotation:** *Trim Joint District School Board of Management v. Kelly,* E. & E. Digest, Vol. 34, p. 238, para. 2040; *Tinline v. White Cross Insurance Association, Ltd., ibid.,* Vol. 29, p. 408, para. 3214; *James v. British General Insurance Co., Ltd., ibid.,* Supp. No. 10, Vol. 29, title *Insurance,* No. 3214*a*; *Haseldine v. Hosken, ibid.,* No. 3289*b*.

NOTE:—For the Motor-vehicles Insurance (Third-party Risks) Act, 1928, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, 1908-1931, Vol. 8, title *Transport,* p. 822.

# The late Lord Carson.

## A Remarkable Personality.

Ireland is of all countries in the world the chosen nursery of orators and of lawyers. These are not, of course, its only titles to fame: Erin has also in its time been termed in European literature, the "Island of Saints and of scholars:" it was in the early Middle Ages when Erigena introduced Platonism into the scholasitic learning of Europe; the home of great soldiers, such as Wellington, Roberts, and Kitchener; and the finest training-ground in both hemispheres for the racehorse or the polo-pony. But dearer than all of these things to the heart of the average Irishman, whether Celtic or Anglo-Irish, is the rhetoric of debate in the Senate and at the Bar. And certainly Ireland has given to the English Bar a whole galaxy of famous men. Earl Cairns, Lord Russell of Killowen, Lord Macnaghten, Timothy Healy, and Lord Carson are only a few of the most celebrated in what might easily be extended into a long and impressive list; and of those Edward Carson was certainly not the least interesting.

*En passant* it may be remarked that great Irishmen who are also successful members of the Bar are nearly always much more than mere able members of a great profession. Usually, the successful barrister concentrates on the vocation by which he earns his bread; in England, if he goes into Parliament, it is usually because a seat in the House of Commons is the indispensable condition precedent, or at any rate an extremely useful adjunct, to high legal preferment; and frequently eminent advocates are comparative failures in the legislative assembly. It is quite otherwise with Irish advocates who have tried their fortune in England. Lord Cairns was the greatest debater on the Conservative side during the Parliamentary days of Palmerston and Derby, and he was elevated to the House of Lords as a life-peer before he attained the Woolsack in order that he might be the deputy-leader of his party in that House. Lord Russell of Killowen and Mr. Healy were powerful partisans of the Home Rule cause. And Lord Carson was for thirty years the last hope of the Anglo-Irish residents in Ireland who struggled against the grant of self-government to the Sister Isle.

But Lord Carson was much more than merely a famous political personage and a great advocate. He was also the fortunate owner of one of the most remarkable personalities our generation has furnished to the pages of the historian. Tall and commanding in stature, handsome, and dominating lesser personalities by his virile vigour and force of character, daring, brilliant, fascinating, he was essentially one of those men who at once claim the admiration of the crowd, awake the curiosity of the casual spectator, and attract the pencil of the painter. Austere and a trifle fanatical in temperament, yet genial and richly dowered with humour; a romantic visionary and somewhat quixotic in outlook, yet an able organiser and a masterful driver of keenly practical men; an advocate whose grip of his case had all the tenacity of the bulldog, yet essentially a generous, clean, and fair-minded fighter.

Partly of Italian extraction, Edward Henry Carson was born in Ireland, and he was eighty-one years of age when death claimed him on October 22, after a long illness. He was educated, like a great number of his Protestant contemporaries at the Irish Bar, at the Irish public school of Portarlington, which in the Victorian age used to receive most boys of ancient Irish-Anglican parentage whose fathers did not care to send them across the Channel to an English Public School. From Portarlington he went on to Trinity College, Dublin, but he is not one of those eminent lawyers who in their college days achieved a great academic career.

It was not until he had left the University and entered into practice at the Irish Bar that Carson displayed his great abilities and astonished old friends by the remarkable gift of powerful, yet persuasive, oratory which he seemed able to exert at will in every class of case from the most important to the humblest. He had great rivals at the Irish Bar in those days: O'Hagan, afterward Irish Chancellor, Joe Ronayne, who died in obscurity, Peter O'Brien, afterwards Lord Chief Justice of Ireland and an English Peer, Tom O'Shaugnessy, afterwards Recorder of Dublin, and many another whose memory still lives in the Emerald Isle. But Edward Carson, by the agreement of all observers, carried off the palm almost as soon as he entered the forensic arena. Juries could not resist his high appeal to their hearts and their passions. Witnesses trembled under his incredibly searching cross-examination. Judges feared him and hesitated to enter into controversy with so redoubtable a fighter. He jumped into a large practice almost at once, and in a very few years it became clear to himself and his friends that the Irish Bar did not afford wide enough scope for so tremendous a personality. He entered himself as a student of the Middle Temple soon after he had taken silk at the Irish Bar in 1889. And in 1894, within a twelvemonth of his call to the English Bar, he was granted rank as an English King's Counsel: this, of course, constituted a unique honour for which there has never been a precedent.

Meanwhile, however, Carson had entered into politics. It was in Ireland that he rose to fame as an unbending opponent of Home Rule. In 1892 he was returned to Parliament as member for Dublin University, and in the same year Mr. Balfour, the Irish Secretary, gave him office as Solicitor-General for Ireland. His fearlessness in prosecutions of boycotters and of cattle-maimers, notwithstanding daily and hourly threats of assassination, and his success in achieving convictions—partly due to the packing of juries from which Home Rulers had been eliminated by a ruthless exercise of the Crown's right to challenge—made him rapidly the hero of one Irish party, the Diabolus of another, and the protagonist in many a fierce wordy battle with the Irish members across the floor of the House of Commons. After the Unionist Government fell at the end of the year, Edward Carson, previously almost unknown in England, had become one of the best-known figures in Press and Parliament.

From 1892 to 1895 the Liberal Cabinet of Mr. Gladstone and Lord Rosebery was in office, and Carson found himself in opposition. He at once threw himself with all his energy into the sphere of the English Bar. He came at an auspicious moment. Lord Chief Justice Coleridge was on the verge of retirement to be succeeded by Lord Russell of Killowen, a man of the most masterful character. The leaders of the day, men whose great qualities had been attuned to the gentle, elegant, and scholarly personality of Lord Coleridge, were not well-suited to the personality of the new Chief. Solicitors were looking around for a leader who could be relied on not to let himself be overawed by Russell—but Russell's demeanour on the Bench showed the precaution to be quite unnecessary; and Edward Carson

at once showed himself to be the man required. But this was only a contributory cause of the success which gave him the leading practice at the Common-Law Bar, a position which he won back twelve years later when released from the shackles of law office in 1906, and which he retained, despite the great gifts of such redoubtable men as Rufus Isaacs, F. E. Smith, and John Simon, until his elevation to the Bench as a Lord of Appeal in Ordinary in 1921.

The first period of his fame as an advocate, however, came to an end in 1900, when he accepted the office of Solicitor-General and thereby lost his right to private practice. In 1906 he was released by the accession to power of Sir Henry Campbell-Bannerman and the Liberal Party, and the years from 1906 to 1915 proved the heyday of Carson's practice. He had never been in such great request. He had never earned larger fees. Although aggrieved by some of his incisive criticisms, solicitors recognised his great talents and did not allow resentment of these criticisms to deter them from employing so useful an advocate.

During the Great War, Carson won the respect and admiration of all parties by his patriotic devotion to the public service and his absolute personal disinterestedness. In 1908, when Earl (then Mr.) Balfour retired from the leadership of the Conservative Party, Carson might have succeeded him; but he declined nomination because he wished to escape the trammels of party-ties which might prevent him fighting the cause of Ulster by any methods likely to succeed, whether constitutional or unconstitutional. He had devoted himself to the organisation of resistance to the inclusion of Ulster within a separated Ireland, and had made speeches which were alleged by his political opponents to savour strongly of "Constructive Treason." But when the war came he entered into an Eirenicon "for the duration of the war," with his Hibernian opponents in Parliament, and devoted his talents to the vigorous prosecution of the war.

In 1915 Carson was Attorney-General in the first or Asquithian Coalition Government. In 1917 be became First Lord of the Admiralty and afterward one of the five members of the War Cabinet in the second—the Lloyd-Georgian—Coalition. In 1918 he relinquished office, but gave independent support to the Home Rule Bill which provided for the exclusion of Ulster, although he opposed vigorously the Treaty and the creation of the Irish Free State which followed three years later. Finally, in 1921, the failure of his health compelled this doughty fighter to abandon the ranks of the Bar Militant and to accept a legal seat in the House of Lords.

Lord Carson was one of those strong and daring characters about whom the partisans of opposed creeds have always held contrary views. But no one ever doubted his magnificent courage, his transparent sincerity, and the high disinterestedness which at all of its stages marked his career. He was ever a lawyer who lived up to a lofty and honourable creed, and attempted to make Law an instrument which promotes Natural Justice and Equity rather than to use it as a device for defeating or delaying a well-founded claim. Whether, in political matters, he always acted wisely is a matter of controversy on which opinions will continue to differ. It is enough to say that by his precept and example he furnished a refutation to those cynics who complain that every successful lawyer is necessarily a formalist and a time-server.

# London Letter.

[By Air Mail.] Temple,
October 2, 1935.

My dear N.Z.,

Here we are back again at the Temple preparing for the opening of the new term on October 7. The figures showing the state of the Cause Lists have just been published and for the most part show a considerable decline on the figures published at the same time last year. The number of appeals is 152 as against 229 last year; the number of actions set down in the King's Bench Division is 810 as against 1,102; and the number of causes in the Chancery Division is 213 as against 312. The Divisional Court's list shows a slight increase from 121 to 128, but only the Divorce Division shows any appreciable increase of work, the number of causes in that Division having risen by 329. Taken as a whole, there are 63 fewer causes set down for hearing at the beginning of this term than at the same time last year. I think I dared to prophesy some little time ago, when there was an agitation for yet more Judges, that with the present staff arrears of work would soon decrease, and it looks as if that is in fact happening. But I feel sure that the decrease would be much more rapid if only some means could be devised to obviate the waste of a Judge's time when a list collapses, as it so frequently does, comparatively early in the day.

**More Suggestions for Law Reform.**—The delay in the trial of actions has, amongst other matters, been the subject of discussion by a Provincial Meeting of the Law Society, which has just been held at Hastings. There it was suggested that actual trials could be considerably shortened without detriment to justice. One way to do that, it was said, would be to have a shorthand writer in every Court, so as to obviate the necessity for the Judge to take notes in long hand. This, of course, is not a new suggestion, and it has been pointed out that even a shorthand writer would not altogether relieve the Judge from having to take some notes. Nevertheless the idea is, I think, generally approved.

Another matter referred to at this meeting was the cost of litigation. It appears that the expenses of our Supreme Court are more than covered by the amount of Court fees received, so that the State actually makes a profit out of the administration of justice at the expense of litigants and others who necessarily have recourse to the various departments of the Supreme Court. It was pointed out that justice is administered for the benefit of the community as a whole, and not of litigants merely, and it certainly does seem wrong that the State should make a profit out of a department to the expense of which the taxpayer might, I think, fairly be asked to contribute at any rate a small share.

Still another question touched upon was the question of the powers and duties of Courts of Summary Jurisdiction in this country. One speaker referred to some of the absurd anachronisms that still exist with respect to such Courts, such as that which gives them power, with the consent of the accused, to deal at once with a case of theft of a motor car, however valuable, while a case of theft of a donkey must be committed for trial to the Sessions or Assizes. There is no doubt that there is much in the law governing our Courts of Summary Jurisdiction that needs revision in the light of modern conditions, but while the speaker at Hastings seemed to favour an increase of jurisdiction for these

Courts, I for my part am not convinced that the time is yet ripe for such a move. Many of these Courts are presided over by laymen and are advised as to the law by the Clerk of the Court, who is usually a local solicitor, and although this arrangement works well enough in the case of minor offences, more serious cases need a more serious inquiry. This is the business of Quarter Sessions and Assizes, and although the calendars at Assizes are still moderately well filled, those at Quarter Sessions are in many parts of the country almost empty. I am not advocating the putting of more work on Assize Courts, which already keep the King's Bench Judges too long out of London, but I do suggest that Quarter Sessions should be given the work which was intended for those Courts.

**The Bench and the Bar.**—In connection with the Meeting I have already referred to, a dinner was given at Hastings at which many distinguished members of the legal profession, including four Judges, were present. The toast of "The Bench and the Bar" was proposed by Sir Reginald Poole, who referred to the spirit of trust which exists between the Bench and the Bar in this country. That such spirit exists there is no doubt, although its nature and origin are obscure. It may be because the members of the Bench have themselves been members of the Bar; it may be because of the social relationship that still exists between the Bench and the Bar. There may be many other reasons, but there it is, and it is a spirit of which I think we may be justly proud. Although your legal system is different, I believe you have it too, and it may be for the very reasons that I have already mentioned.

**His Majesty's Judges.**—The toast of "The Bench and the Bar" was responded to by the Lord Chief, who referred to a rumour as to his early retirement. This he strongly contradicted, and said that he hoped that it would be another twenty years before he took such a step. He also referred to the independence of the Judges as the basis of our system of justice, remarking that the Judges were "His Majesty's Judges" and received their letters from the King himself, and not from any Government Department.

Apropos of "His Majesty's Judges," you may or may not know the story of Huddleston, J., and Manisty, J., at Liverpool Assizes, who, according to custom, were dining with the Lord Mayor. When the Queen's health was proposed, Mr. Justice Manisty stood up to drink it with the rest of the company, but Baron Huddleston remained seated, and, catching hold of his brother Judge's sleeve, said, "Sit down, Manisty, you fool. We are the Queen."

Yours ever,
H. A. P.

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**Strange Bedfellows.**—In the course of an address at the recent Provincial Meeting of the Law Society at Hastings, Sir Harry Goring Pritchard, the President, said: "Lawyers are accustomed to hear abuse of the profession taken as a whole. I do not know why this should be, but we share the stigma with plumbers and mothers-in-law. Plumbers are useful and harmless people, and mothers-in-law, if viewed in the particular and not in the general, are often the most admirable people. Similarly, there is no one in whom a man places greater trust than in his own particular lawyer."

# Legal Literature.

## Motor Insurance.

**The Law of Motor Insurance.** By C. N. Shawcross, of Gray's Inn and the Midland Circuit, with an introduction by D. P. Maxwell Fyfe, K.C. Pp. lxii, 767+Index, 68. Butterworth & Co. (Publishers) Ltd.

A Review by W. E. Leicester, LL.B.

Ten years have passed since the late Judge Roberts and Mr. A. D. Gibb, as joint adventurers, launched their *Law of Collisions on Land* with a degree of trepidation, excusing themselves on the ground that no legal text-book published in England had dealt exclusively with the law of negligence as illustrated by cases of collision on land between persons, animals, and vehicles, despite the spate of litigation that had arisen out of such occurrences.

In the interval, with the introduction of the streamlined era, this litigation has rapidly increased and given rise to a large number of motor-insurance problems, which in turn have been elaborated upon in different text-books. In this field we may refer to the second edition of *Welford's Accident Insurance*, with its helpful citation of Scottish, Irish, and colonial cases; Terrell, with his more practical exposition of *Running-Down Cases*; the fourth edition of "Beven," which gives more space than other works on negligence to the vagaries of motor-vehicles and their drivers; and the third edition of "Mahaffy and Dodson," in which the authors concern themselves with the never-ending rules and regulations for the control of traffic that constitute a sense of mystery for even the most law-abiding motorist.

The latest contribution to this complex subject is *The Law of Motor Insurance*, a volume of almost eight hundred pages, written by Mr. C. N. Shawcross in a most scholarly and comprehensive manner. The assiduity with which the author deals with the numerous problems he encounters, the minute scrutiny to which he subjects them, and the extent to which he goes in making tests to help in the formulation of principles, all assist to make his book of exceptional value to the student and a model of its kind.

In England, the scheme of compulsory insurance against accidents to third parties differs widely from that adopted in this country, although each has much the same objective. Our statute creates the contract of insurance from the nomination and the payment of the requisite fees, and we are not concerned with defences by the insurers based upon the breach of the terms of such contract, or upon non-disclosure or misrepresentation, innocent or fraudulent, nor with frequent applications, as in England, under s. 10 of the Road Traffic Act, 1934, for declaratory judgments to void the policy. Indeed, it was given what may be described as a trial run in the last session of the Court of Appeal, being freely cited by counsel in *Stewart v. Bridgens* (*ante*, p. 286) and cited with approval in the Chief Justice's judgment.

It is therefore pertinent to inquire, if this reviewer is to concern himself more with the utility of the work than with its literary merit, whether and to what extent

it is likely to be of service to the New Zealand practitioner in connection with the principal problems that confront him from day to day. While it is true that Mr. Shawcross devotes a certain amount of space to the English legislation of 1930 and 1934 and its special relevance to injuries to third parties—a part of his subject with which he deals with the keenest analysis—the major portion of the book should be found to have as great a value here as in England.

The principal aim of the writer, and one which he has achieved with conspicuous success, has been to give a full and complete account of every branch of law dealing with motor-insurance. He has supported many of his references to decided cases with extracts from the judgments. In the first chapter, he deals with the general principles of the law of contract, with the principles of the law of arbitration and those affecting liability from the use of motor-vehicles, devoting special attention to a consideration of common-law torts, liability under statutory provisions, and vicarious liability. His observations on the maxim *actio personalis moritur cum persona* are of particular interest in view of the suggestion of Myers, C.J., in *Findlater v. Public Trustee*, [1931] G.L.R. 403, 407, that the anomaly in the Motor-Vehicles Insurance (Third-party Risks) Act, 1928, is really in the nature of a draftsman's omission which only the Legislature can cure. So far the relatively simple amendment has constituted a task apparently too terrifying to tackle, while in England, where remedial legislation is more difficult to pass, the cure of this matter was one of the recommendations contained in the Law Revision Committee's report of March, 1934, which Mr. Shawcross discusses in an appendix to his book, and which was promptly given legislative effect in the Law Reform (Miscellaneous Provisions) Act, 1934.

A number of chapters deal exhaustively with the making of the contract of insurance, the terms of the policy, its operation, termination, or repudiation, and with the position of estoppel and waiver in insurance law. In the second chapter, which deals with peculiarities in contracts of insurance in general and of motor-insurance contracts in particular, there are some useful references to *Vandepitte v. Insurance Corporation of New York*, [1933] A.C. 70, in which it was held that the person effecting a motor-policy has no insurable interest in the driving of the insured car by some person who drives with his consent. The judgment of the Privy Council in this case, although a decision upon Canadian law, and although not binding upon the English Courts, throws considerable doubt upon the authority of *Williams v. Baltic Insurance Association of London, Ltd.*, [1924] 2 K.B. 282, and has an especial interest to motorists in this country who may have reason to believe that they are covered when driving a car they do not own, under an extension of benefits contained in the policy. The matter has not been the subject of express decision in our Courts, but the application of *Vandepitte's* decision here would deprive them of the supposed indemnity.

The portion of this work that concerns the position of parties in regard to legal proceedings covers subrogation, contribution, and questions of costs and settlement. The author also deals with confidential communications between the insurers and the insured, and with the duty of counsel not to mention insurance to juries. The history of this rule in practice appears to arise from the early days of motor running-down cases, when a barrister in the peroration of his opening speech exhorted the gentlemen of the jury to waste no sympathy upon the rascally motorist who had inflicted such terrible injuries upon his client since he had proved his depravity in advance by insuring with a large and wealthy company against its consequences. When the commotion created by this announcement amongst other lawyers present had subsided, the advocate blandly informed the Judge that before coming to Court he had carefully ascertained that telling the jury of the defendant's insurance would not be a ground for granting a new trial, but merely a gross breach of professional etiquette. This story, thus told by Mr. Shawcross, is ascribed to counsel in *Askew v. Grimmer*, (1927) 43 T.L.R. 354. Mr. Shawcross holds the view that it is doubtful whether the rule has the same force now that insurance is compulsory, and it may be that the true position now is that the jury should not be told by either party that the defendant is *not* insured. However, on the authorities it would seem that telling the jury of insurance gives the Judge power in his discretion to discharge the jury; but a new trial will not be granted if he does not do so, unless he fails to exercise his discretion or fails to direct the jury that they must disregard insurance in assessing damages. In *Wilson v. George Kent and Sons, Ltd.*, [1928] N.Z.L.R. 166, a new trial was ordered; and the case contains interesting observations upon the propriety of questions tending to show that the defendant was indemnified.

The case of *Barrett v. London General Insurance Co., Ltd.*, [1935] 1 K.B. 238, affords a useful illustration of the thoroughness of the author's method. This decision of Mr. Justice Goddard gives judicial sanction to the conception of "road-worthiness" as applicable to motor-insurance and it assimilates motor-insurance law to marine-insurance law in respect of the analogy with "sea-worthiness." In this case a brake cable snapped, either before or at the moment of an accident, and there was no evidence as to its being broken when the journey started. It was held that the insurers had not sustained the onus of showing that the car was "unroadworthy" and were liable under the policy. It will be remembered that the Court of Appeal in *Trickett v. Queensland Insurance Co., Ltd.*, [1932] N.Z.L.R. 1727, held that the absence of lights amounted to a "damaged or unsafe condition" within the terms of the policy, and that the policy was not to be read as requiring such condition of the car to be with the knowledge of the insured. The appeal from this decision is listed in the present sessions of the Privy Council (the accident giving rise to the case will have its fifth anniversary next month, thus showing that we still retain on occasions a pleasant flavour of Victorian legal languor); and it will be interesting to see how far *Barrett's* case assists the appellant. Mr. Shawcross deals extensively with *Barrett's* case under such headings as non-fundamental conditions, exceptions to liability, wear and tear of vehicles, implied conditions, unroadworthy conditions (where the decision is tested by various illustrations), and hire-driver policies.

Amongst the Appendices are to be found references to changes in the law relating to recovery of interest on damages, and in the law relating to damages following *Flint v. Lovell*, [1935] 1 K.B. 354, which decided that damages were recoverable by an injured person for the shortening of his prospects of life; and, as if to show that he is nothing if not modern, Mr. Shawcross in Appendix E discusses coming changes in the law relating to contribution between tortfeasors. An excellent index places the final seal of value upon a first-rate book.

# New Zealand Conveyancing.

By S. I. Goodall, LL.M.

## Restrictive Covenants.

(*Concluded.*)

### 5. As to Freehold Interests.

1. **At Common Law.**—At common law the benefit but not the burden of a covenant may run with the land. This may be effected quite apart from the creation of an easement or other servitude. Indeed, if the transaction can be reduced to a recognised form of easement or *profit à prendre* the rights and obligations incident to the grant may readily be put in due form for enforcement by and against the parties' respective assigns.

(*a*) **The Benefit of the Covenant.**—The benefit of a covenant will run with freehold land if (i) it touch or concern the land: *Rogers v. Hosegood*, [1900] 2 Ch. 388; (ii) it be duly annexed to the land by reason that the covenantee had the legal estate to be benefited: *Formby v. Barker*, [1903] 2 Ch. 539; and (iii) the person seeking to enforce the covenant is a successor in title to the freehold and not merely, *e.g.*, a lessee: *Keppell v. Bailey*, (1834) 2 My. & K. 517, 39 E.R. 1042, *per* Lord Brougham. Covenants for title afford an illustration.

(*b*) **The Burden of the Covenant.**—The burden of the covenant does not run with the freehold land of the covenantor so as to enable the covenantee to sue at law the successors in title of the covenantor. In *Austerberry v. Oldham Corporation*, (1885) 29 Ch.D. 750, a piece of land was conveyed for valuable consideration to trustees for the purpose of making a road, and the trustees covenanted with the vendor, his heirs and assigns, that they, their heirs and assigns, would make the road and at all times keep it in good repair and allow the public to use it on payment of tolls. After the road had been duly formed the vendor sold to the plaintiff part of his land on both sides of the road, and the road was taken over from the trustees by the defendant Corporation. The plaintiff failed to enforce the covenant against the Corporation by reason that his covenant did not touch and concern the land, but was meant to confer on the public a right of passage along the road; but Lindley and Fry, L.JJ., expressed the opinion that, apart from the case of landlord and tenant, the burden of a covenant can never be made to run at law with the land of the covenantor.

2. **In Equity.**—It is readily apparent that the system of passing rights and liabilities under covenants to the respective successors in title of the covenantor and covenantee is defective not only in the case of leasehold interests, but even more so in the case of freehold interests; and at this stage the equitable doctrine applies under which a purchaser of land, whether freehold or leasehold, with notice of a restrictive covenant may be bound thereby.

(*a*) **Restrictive Covenants in Equity, or the Doctrine of Tulk v. Moxhay.**—This proposition is known as the rule in *Tulk v. Moxhay*, (1848) 2 Ph. 774, 41 E.R. 1143. In that case, the plaintiff sold a piece of land forming a square, along the sides of which he owned houses. The square was a pleasure-ground, and the purchaser covenanted to keep it so and to allow the tenants of the surrounding houses to use it on payment of a reasonable rent. In the course of time the square devolved upon Moxhay, who had notice of the covenant. Upon the defendant's expressing his intention to build upon the square, an injunction was granted preventing him from doing so.

There has been considerable argument and difference of opinion as to the real nature of the interest created by a covenant of this kind. Originally the doctrine was based upon notice, and from that, after being likened to an easement, the right has been judicially said not to be an equitable easement. The doctrine is now said to rest upon general equitable principles recognising a restrictive covenant in the prescribed circumstances as creating an equitable interest enforceable against assignees with notice. The doctrine is wide, for it affects persons who are not necessarily assignees within the accepted definitions: *Frost v. King Edward VII Welsh, etc., Assn.*, [1918] 2 Ch. 180; and on the other hand it is narrow, in that it prevails not against all the world, but against those merely who have notice: *Carter v. Williams*, (1870) 9 Ex. 678; *Wilkes v. Spooner*, [1911] 2 K.B. 473.

The negative nature of the covenant has already been remarked upon. Equity declines similarly to enforce a positive covenant, or one involving the doing of an act or expending of money, which constitutes a further limitation of the scope of the principle. Further, the covenants must be made in respect of two parcels of land in proximity if they are to bind purchasers, even with notice. If a vendor sell the whole of his land subject to restrictive covenants, those covenants are purely personal to the parties and not enforceable by or against assigns: *Formby v. Barker*, [1903] 2 Ch. 539. A similar rule applies where a covenantee has no land at all when the covenant is made: *Milbourn v. Lyons*, [1914] 2 Ch. 231; *London County Council v. Allen*, [1914] 3 K.B. 642.

(*b*) **Restrictive Covenants and the Land Transfer Act.**—No instrument can be registered which purports to transfer or deal with land under the Act except in manner provided, nor unless the instrument is in accordance with the Act: s. 39. A memorandum of transfer permits of the transfer of any estate or interest in land, or the creation of any right of way or other easement or any *profit à prendre*, but throughout the statute no provision is made for restrictive covenants and the like entered into upon a sale of land or otherwise. Indeed, when land is first brought under the Act, a restrictive covenant disclosed by the preceding deeds title may not be brought forward as an outstanding interest, and neither will it support a caveat: See *Wellington and Manawatu Railway Co. v. Registrar-General*, (1899) 18 N.Z.L.R. 250; *Staples and Co. v. Corby*, (1900) 19 N.Z.L.R. 517; (*contra*: *Mayor, etc., of Wellington v. Public Trustee*, [1921]: N.Z.L.R. 423, 434, *per* Salmond, J.).

If, however, a restrictive covenant be validly created between the parties by means of unregistered documents, it may be binding *inter partes* and, just as under the Deeds system, so here again it may be binding in equity upon a purchaser with notice: *Staples and Co. v. Corby*, (1900) 19 N.Z.L.R. 517, 538, *per curiam*. To this strict rule there is but one exception, a statutory one, which authorises the registration of a covenant or agreement relating to fencing between owners of adjoining lands, modifying or varying their statutory rights and liabilities: Fencing Act, 1908, s. 7.

(*c*) **Restrictive Covenants and Building Schemes.**—The enforcement of restrictive covenants is carried to its limits in connection with building schemes. Such a scheme may come into existence where land is laid out in lots and these are sold or leased to different persons so that there is ultimately a reciprocity of obligation

between the successive purchasers or lessees, any one of whom, under a properly established scheme, may enforce the essential restrictive covenants of the scheme against any other owner or lessee for the time being of another lot included in the subdivision. That reciprocity of obligation may arise from express contract, as where the respective purchasers each execute a deed binding themselves one with another in respect of the restrictions: *Whatman v. Gibson*, (1838) 9 Sim. 196, 59 E.R. 333. Secondly, the reciprocity of obligation may be based on an implied contract between the respective purchasers or upon an express or implied assignment of the benefit of the restrictive covenants by a vendor to each purchaser: *Renals v. Cowlishaw*, (1875) 9 Ch. 125, 129; on app. (1879) 11 Ch.D. 866. Thirdly, apart from express or implied contract, the obligation may be founded upon a doctrine that when the existence of a building scheme has been established for the development of the entire piece of land included in the subdivision, the community of interest between the purchasers or lessees imports in equity the reciprocity of obligation contemplated by each purchaser at the time of his purchase: *Spicer v. Martin*, (1888) 14 A.C. 12, 25.

In order that a building scheme should come into existence, (1) there should be an area of land to which the scheme extends defined or ascertainable with reasonable definiteness: *Torbay Hotel, Ltd. v. Jenkins*, [1927] 2 Ch. 225; (2) the area should be subdivided upon the basis of a defined plan or scheme for the benefit of the whole area: *Nottingham Patent Brick and Tile Co., Ltd. v. Butler*, (1886) 16 Q.B.D. 778; (3) the vendor must have intended that the restrictions should be imposed on each respective purchaser: *Elliston v. Reacher*, [1908] 2 Ch. 374, 385; on app. [1908] 2 Ch. 665; (4) the purchaser of each lot must have bought on the understanding that the other lots would carry with them the benefit of the restrictions: *Ibid.*; (5) the person seeking to enforce the restriction and the person against whom it is sought to enforce the obligation should both claim from a common vendor: *Ibid.*

The right to enforce a restrictive covenant may be lost by acquiescence in breach of it, or by a complete change of circumstances and character of the neighbourhood, so that the restrictions are no longer applicable according to the spirit and intent of the original contract, the object for which the restriction was imposed can no longer be attained, and the benefit of the covenant is valueless to the plaintiff: *Chatsworth Estates Co. v. Fewell*, [1931] 1 Ch. 224.

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**Good Advice.**—"As far as The Guardian Company is concerned, for the last few years we have spent large sums in bringing under the notice of the community the necessity for the revision of wills in the light of present-day conditions. It is largely due to this fact that many of our testators have consulted us and have taken the precaution of having provisions included in their wills which have widened the field of investment beyond the usual trustee's limit, or have given us discretion to retain such investments, and so have avoided the necessity of a sacrifice of assets during periods when values were low.

> "'It has been stated, 'Civilization permits you and me to make a private law for the disposition of our property after death. We call that private law our last will and testament.'"

"The prudent testator, with a sense of his responsibility, will consult his solicitor and see that his will is drawn to suit modern conditions."—From the recent annual report of the Guardian Trust and Executors Company of New Zealand, Ltd.

# New Zealand Law Society.

## Council Meeting.

A meeting of the Council of the New Zealand Law Society was held at the Supreme Court Library, Wellington, Friday, September 20. The President, Mr. H. F. O'Leary, K.C., occupied the Chair.

The Societies were represented as follows: Auckland, Messrs. G. P. Finlay and A. H. Johnstone, K.C.; Canterbury, Messrs. K. M. Gresson and A. F. Wright; Hamilton, Mr. J. F. Strang; Hawke's Bay, Mr. H. B. Lusk; Marlborough, Mr. P. B. Cooke; Nelson, Mr. W. V. Rout; Otago, Messrs. P. S. Anderson and R. H. Webb; Southland, Mr. S. A. Wiren; Taranaki, Mr. J. H. Sheat; Wanganui, Mr. R. A. Howie; Westland, Mr. A. M. Cousins; and Wellington, Messrs. H. F. O'Leary, K.C., C. H. Treadwell, and G. G. G. Watson.

The Treasurer, Mr. P. Levi, was also present, an apology for absence being received from Mr. C. A. L. Treadwell.

The President welcomed Mr. K. M. Gresson, Canterbury, who was taking his seat as a delegate for the first time.

**Conveyancing Scale of Costs.**—The Otago subcommittee forwarded their Report, suggesting a considerable number of amendments to the present Scale.

After some discussion, it was decided that a Committee consisting of three Wellington practitioners and a representative from any of the other District Law Societies which desired to be represented, should be set up with power to finally settle the Scale after obtaining the opinions of the various Societies on the Otago report. Messrs. R. H. Webb, P. Levi, and C. H. Treadwell were appointed the Wellington members of the Committee, of which Mr. Webb was appointed Convener.

It was also decided that any new Scale adopted should not be printed until after the March Council meeting next year.

**National Mortgage Corporation—Scale of Costs.**—The Report from the Vigilance Committee, setting out the Scale of Costs adopted by the Corporation, was placed before the meeting, the Report having been previously circulated among the District Societies. See page 223, *ante*.

Attention was drawn to the charge of £1 11s. 6d. for execution by the Corporation of discharge of a mortgage, as an Auckland firm had been informed that this £1 11s. 6d. was payable to the Corporation itself irrespective of any fee payable to the solicitor. The President mentioned that he had told the Corporation officials that the Scale would come before this meeting, and the point raised might well be taken up with them.

The Council decided to thank the Vigilance Committee for their excellent work, and to inform the Mortgage Corporation that the Scale meets with the approval of the Society, which desires to express its satisfaction with the Corporation's action.

The Secretary was instructed to see the General Manager with a view to having rectified the anomaly of the release fee mentioned by Mr. Johnstone.

**Administrators' Accounts.**—Messrs. Wright, Taylor, and H. D. Andrews presented the following report:—

Report of subcommittee appointed to consider proposal of Rules Committee to amend the present Rules and Forms relating to Administrators' Accounts.

"The subcommittee was enlarged under the authority given to it upon appointment by the addition of Mr. H. D. Andrews, who kindly consented to act.

We have considered the draft amended rules and forms submitted to the New Zealand Law Society by the Rules Committee and recommend that the same be approved.

It is common ground that RR. 531 (*o*) and 531 (*p*) of the Code of Civil Procedure are very infrequently complied with. The onerous liability cast upon executors and administrators by such rules might well be alleviated as suggested by the Rules Committee. We consider the proposed new rules would accomplish this object and would afford ample protection to beneficiaries. Our procedure would then be brought into line with the English practice as provided in the Administration of Estates Act, 1925, s. 25. We would, however, respectfully suggest that notwithstanding anything contained in the suggested new rules, any executor or administrator desiring to do so, may at any time after grant of probate or letters of administration file an inventory and/or accounts.

As to the rate of interest (ten pounds *sterling* per centum per annum) that may now be chargeable under R. 531 (*p*), and under the proposed new rule (531 (*o*) – (*d*) ) against an executor or administrator in default, we are of opinion that provision should be made by which the Court in the exercise of its discretion may impose a lower rate than ten per cent. sterling per annum."

After some discussion concerning the position of a bondsman under the present rules, it was decided that the Report should be adopted and forwarded to the Rules Committee, and that the attention of that Committee should be called to the fact that the present Rules do not appear to cover the point of allowing a bondsman to require the Administrator to file accounts.

**Apportionment between Capital and Income on sale of Government Stock.**—A letter was received from the solicitors to the Accountants' Society, stating that Messrs. M. S. Spence and W. A. Smith had been appointed to confer with the New Zealand Law Society, but as Mr. Spence was out of New Zealand until the end of the year a meeting could not be held until then.

**Safeguards as to Granting and Exercise of Judicial and Quasi-judicial Powers by Ministers of the Crown.**—The Associated Chambers of Commerce wrote as follows:

16th August, 1935.

I enclose copy of a further letter in regard to legislation by Orders in Council, which we have addressed to the Acting Prime Minister, and which I think is self-explanatory.

We would be pleased to know if your Society would accord support to our representations and advise the Acting Prime Minister of such support.

[Letter Enclosed]. Wellington,
9th August, 1935.

The Hon. the Acting Prime Minister,
Wellington.

Sir,— **Ministers' Powers.**

On February 28th of this year we wrote the Prime Minister conveying to him a resolution carried at the latest Annual Conference of my Association, as follows:—

'That this Conference is of opinion that principles and safeguards as to the granting and exercise of judicial and quasi-judicial powers by Ministers of the Crown, similar to those recommended in the recent report of the Committee on Ministers' powers presented to the Imperial Parliament, should obtain and be adopted in New Zealand.'

In a letter dated March 9, 1933, on the subject of Orders in Council, the Prime Minister advised us that the report of the British Committee on Ministers' Powers had not escaped the notice of the Government. We would now be pleased to learn how far consideration of this matter by the Government has progressed.

The subject was again under discussion at the latest meeting of my Executive, which is desirous of drawing attention to particular passages and recommendations from the report of the Committee above referred to:—

'We have, therefore, arrived at the conclusion that the time has come to establish in each House a Standing Committee charged with the duty of scrutinising—

(1) Every Bill, containing any proposal for conferring legislative powers on Ministers, as to when it is introduced;

(2) Every regulation, made in the exercise of such powers and required to be laid before Parliament, as and when it is laid.

'Except when Parliament expressly requires an affirmative resolution, there should be uniform procedure in regard to all regulations required to be laid before Parliament, namely, that they should be open to annulment—not modification—by resolution of either House within twenty-eight days on which the House has sat, such annulment to be without prejudice to the validity of any action already taken under the regulation which is annulled. The resolution itself should *ipso facto* annul.

'Standing Orders for both Houses should require that every Bill presented by a Minister which proposes to confer law-making power on that or any other Minister should be accompanied by a memorandum drawing attention to the power, explaining why it is needed and how it would be exercised if it were conferred, and stating what safeguards there would be against its abuse.

'Standing Orders of both Houses should require that a small standing committee should be set up in each House of Parliament at the beginning of each Session for the purpose of—

(*a*) Considering and reporting on every Bill containing a proposal to confer law-making power on a Minister;

(*b*) Considering and reporting on every regulation and rule made in the exercise of delegated legislative power, and laid before the House in pursuance of statutory requirement.'

My Association would point out that a certain precedent is already provided by s. 72 of the Sales Tax Act, 1933, as follows:—

'(1) Every Order in Council made under this Act shall be laid before both Houses of Parliament within fourteen days after the making thereof if Parliament is then in session, and if not, then within fourteen days after the commencement of the next ensuing session;

'(2) If the House of Representatives resolves that any such Order in Council should be revoked or varied, it shall thereupon be revoked or varied in accordance with the terms of the resolution.'

This section is a partial recognition and observance of the principles and safeguards set out in the report of the British Committee on Ministers' Powers, and my Association would be pleased to hear from you in regard to the general application through the Standing Orders, of the recommendations of the Committee above referred to.

The Council approved the recommendations made by the English Committee, and decided that the President and Mr. Wright should draft a suitable memorandum to forward to the Prime Minister on the subject, and that the Chambers of Commerce should be thanked for their letter and informed of the Council's action.

**Production Fees—Land Transfer (Compulsory Registration of Titles) Act.**—The Otago Society wrote as follows:

My Society is desirous of obtaining a ruling from the New Zealand Society on the question of whether production fees are payable to the solicitors for a mortgagee who is requested by the mortgagor to produce titles held by the mortgagee on the bringing of land under the Land Transfer (Compulsory Registration of Titles) Act, 1924.

My Council feels that it would be just as well to have a definite ruling with a view to having a uniform practice throughout New Zealand. We understand that it is the practice in some centres for the solicitor for the mortgagee to charge a production fee for the surrender of documents affecting the title to the land being brought under the Act, but in practice the mortgagee does not as a rule concern himself with the notice received by him and the documents are usually surrendered at the request of the mortgagor.

Will you please arrange, if possible, to have the matter placed on the agenda paper for the next meeting.

It was unanimously decided that no production fee should be payable in such cases.

(*To be concluded*).

# Practice Precedents.

## Grant of Letters of Administration in a Chinese Estate.

There are very few cases in New Zealand where the will of a Chinese has been proved. It seems that it is not the law or custom for a Chinese to make a will. The next-of-kin merely take possession of the property without the formality of a grant in any way. In New Zealand there are a number of cases where Letters of Administration are granted to one of the next-of-kin. It appears that in Chinese law the eldest surviving son has the prior right.

In accordance with R. 517 of the Code of Civil Procedure, *Stout and Sim's Supreme Court Practice*, 7th Ed., p. 327, if the deceased was not resident or domiciled in New Zealand the notice of motion, etc., for grant of administration must be filed in the principal Registry of the judicial district wherein is the property of the deceased; and, if such property is in more than one judicial district, then in the Registry at the City of Wellington or in such other Registry as the Court may on motion made prior to the filing allow. In every case of such an order being made, notice thereof shall be sent by the Registrar to the Registrar at Wellington.

Attention is directed to R. 531C of the Code (*supra*), p. 334, which shows that the Court may in its discretion dispense with such notice to, or consent of, such of the next-of-kin as are at the time of the application beyond the jurisdiction of the Court.

In the precedent following the motion asks, *inter alia*, for an order dispensing with the notice pursuant to R. 531C. Although this order was granted it is not usual in most of the Registries to seal the order, the Letters of Administration only being sealed. It may be that the order for administration restricts the grant to immovables, in which case the Letters of Administration would require to state the fact.

This precedent assumes that the eldest son is in New Zealand, that the deceased died in China, and that the other next-of-kin are resident in China. The New Zealand estate is limited to realty, no special order in regard to "movables" being contemplated.

### Motion for Letters of Administration.

IN THE SUPREME COURT OF NEW ZEALAND.
.....District.
.....Registry.

In the estate of A.B. late of in the Province of in the Republic of China merchant deceased.

Mr. of counsel for the applicant Y. of the city of in the Dominion of New Zealand TO MOVE before the Right Honourable Sir Chief Justice of New Zealand at his Chambers Supreme Courthouse on day the day of 19 at the hour of o'clock in the forenoon or so soon thereafter as counsel can be heard FOR AN ORDER that letters of administration of the estate of the abovenamed deceased be granted to the said Y. AND FOR A FURTHER ORDER dispensing with notice to or consent of such of the next-of-kin as are beyond the jurisdiction of this Honourable Court UPON THE GROUNDS appearing in the affidavits of W. and Z. filed herein.

Dated at this day of 19 .

Solicitor for applicant.

Certified pursuant to the rules of Court to be correct.

Counsel moving.

Memorandum for His Honour: The applicant herein is the eldest son of the deceased. Another son is now and has always been resident in China. The widow of deceased is resident in China. She is illiterate. It is respectfully suggested that this application comes within R. 531 C of the Code of Civil Procedure which enables the consent of the next-of-kin out of the jurisdiction to be dispensed with.

Counsel moving.

### Affidavit in Support of Motion.

(*Same heading.*)

I Y. of the city of in the Dominion of New Zealand merchant make oath and say as follows:—

1. That I knew A.B. of etc. now deceased when alive and the said A.B. was resident or was domiciled at the town of X. in the Republic of China beyond the jurisdiction of this Honourable Court and that the principal Registry of this Court in the Judicial District wherein is the property of the said A.B. is at .

2. That the said A.B. lived in New Zealand prior to the month of 19 when he left New Zealand to reside in China.

3. That the said A.B. died at in the Republic of China on or about the day of 19 as I am able to depose from having seen his dead body after death I being at that date on holiday in China.

4. That the said deceased was my natural and lawful father and that he left him surviving the following: myself this deponent aged years and [*widow*] and [*son*] aged years.

5. That my father the said deceased was married once only and that his wife my mother survives him.

6. That my said mother is resident in the Republic of China beyond the jurisdiction of this Honourable Court and is unable to read and write.

7. That since the death of the said deceased I have had access to his papers and repositories and that I have searched diligently therein for any will or testamentary writing made or signed by the said deceased and that I have been unable to find any such will or testamentary writing.

8. That I have made inquiry of all persons likely to know if the said deceased had made or signed any will or testamentary writing and I have been unable to learn that the said deceased ever made or signed any such will or testamentary writing.

9. That it is not the custom for a Chinese to make any will or testamentary writing or disposition whatsoever.

10. That I do verily believe that the said deceased died intestate and that I am one of the next-of-kin of the said deceased.

11. That to the best of my knowledge information and belief the estate effects and credits of the said deceased to be administered by me are under the value of six hundred pounds (£600) and consist of realty only.

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

13. That I have made inquiries of the Consul for the Republic of China in New Zealand who states that by the law of China I this deponent as the eldest son of the said deceased would be the person entitled to deal with the property of the said deceased for the benefit of myself and my said brother and that under the law of China there is no such formality as a grant of administration of the estate of a deceased person those entitled merely taking possession of the property.

14. That the said Consul does not desire to make an affidavit setting out the facts in the preceding paragraph as he is not an expert in Chinese law.

15. That other than an affidavit by filed herein I have been unable to obtain in New Zealand an affidavit by any person who is an expert in the law of China as to my right under the said law of China to administer the estate of the said deceased.

Sworn in the mode prescribed at the city of this day of 19 before me and I certify that I first read and explained the foregoing affidavit to the said deponent and that he appeared perfectly to understand the purport and nature of same. } Deponent.

A solicitor etc.

### Affidavit as to Chinese Law.

(*Same heading.*)

I of the city of in the Dominion of New Zealand clerk in Holy Orders make oath and say as follows:

1. That I am clerk in Holy Orders and the vicar of the Anglican Church at .

2. That I am a barrister and solicitor of New Zealand but have not practised since my admission in 19 .

3. That for fifteen years immediately preceding the six months prior to the date hereof I was a missionary in China.

4. That I can speak and write the Chinese language.

5. That during my sojourn in China I studied the laws and customs of China and am familiar with the laws and customs relating to descent of property on death.

6. That it is not customary for a Chinese to make a will or testamentary disposition.

7. That the eldest surviving son of a deceased Chinese is the person entitled by law to deal with the property for the benefit of those entitled by law and custom to a share in such property.

8. That under Chinese law there is no such formality as a grant of administration of the estate of a deceased person the person entitled merely taking possession of the property.

Sworn etc.

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LETTERS OF ADMINISTRATION.

(*Same heading.*)

To Y. of the city of in the Dominion of New Zealand merchant one of the next-of-kin of the said A.B. deceased. WHEREAS the said A.B. departed this life intestate on or about the day of 19 you are therefore fully empowered and authorised by these presents to administer the estate effects and credits of the said deceased and to demand and recover whatever debts may belong to his estate and pay whatever debts the said deceased did owe so far as such estate effects and credits extend you having been already sworn well and faithfully to administer the same and to exhibit a true and perfect inventory of all the estate effects and credits unto this Court on or before the day of 19 next AND ALSO to file a true account of your administration thereof on or before the day of 19 AND you are therefore by these presents constituted administrator of all the estate effects and credits of the said deceased.

Given under the Seal of the Supreme Court of New Zealand at this day of 19 .

Registrar.

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AFFIDAVIT OF JUSTIFICATION OF SURETIES.

(*Same heading.*)

We C. of the city of merchant and D. of the same place merchant severally make oath and say as follows:

1. That we are the proposed sureties on behalf of Y. of the city of in the Dominion of New Zealand merchant the intended administrator of the estate of the abovenamed A.B. deceased in the penal sum of six hundred pounds (£600) for his faithful administration of the said estate of the deceased A.B.

2. And I the said C. for myself make oath and say that I am after payment of all my just debts well and truly worth in real and personal estate at least the sum of £600.

3. And I the said D. for myself make oath and say that I am after payment of all my just debts well and truly worth in real and personal estate at least the sum of £600.

Severally sworn at Wellington by the said C. and D. this day of 19 .

A Solicitor etc.

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ADMINISTRATION BOND.

For form of Bond see *Stout and Sim's Code of Civil Procedure*, 7th Ed., p. 414, Form No. 42.

Note:—Care should be taken to see that the name of the Registrar for the District and the said District are properly inserted.

When the surety is an approved company no affidavit is required.

For list of approved companies see (1933) 9 NEW ZEALAND LAW JOURNAL 424.

# Acts Passed and Assented to.

**Agricultural Emergency Regulations Confirmation.**—This Act confirms regulations made under the authority of the Agriculture (Emergency Powers) Act, 1934.

**Appropriation.**—Appropriating supplies granted during the present session.

**Banking Amendment.**—S. 3 provides that banks are not required to close on the following day when Anzac Day falls on a Sunday. S. 5 amends the provisions of the Reserve Bank of New Zealand Act, 1933, as to monthly returns of banks. S. 6 provides for additional particulars to be contained in monthly returns of Bank of New Zealand.

**Finance (No. 2),** comprises thirty-seven sections dealing with a variety of matters. Of the sections of general interest, s. 3 amalgamates the Main Highways Revenue Fund and the Main Highways Construction Fund; ss. 6, 7, and 8 make certain amendments to the Unemployment Act found necessary in the administration of that Act; s. 9 provides that all Government accounts (whether subsidiary or otherwise) shall be kept, free of charge, by the Reserve Bank; s. 10 provides that for the purposes of s. 181 (*a*) of the Stamp Duties Act, 1923, every interest warrant or other instrument issued under s. 47 of the New Zealand Loans Act 1932, for the payment of interest on inscribed stock by the Reserve Bank of New Zealand as Registrar of Stock shall be deemed to be a cheque; s. 11 relates to the stamping of agreements by the parties; s. 12 provides that film-renting contracts are liable to stamp duty as agreements; s. 13 amends the provisions as to stamp duty on surrenders of leases where new leases are granted; s. 16 provides for the reduction of stakes duty payable by racing clubs and s. 17 provides for the refund to racing clubs of part of the totalizator duty received from them during the present racing year. Part II deals with local authorities and is not of general interest. S. 22 extends the provisions as to special pensions to miners' widows. S. 23 provides that income derived from the National Provident Fund shall not be "income" within the meaning of the Pensions Act, so far as those contributors to that Fund before the passing of s. 24 of the National Expenditure Adjustment Act, 1932, are concerned. Ss. 24 and 25 relate to actuarial examinations of various Government Superannuation Funds. S. 26 provides for the establishment of a sick-benefit fund by the Post and Telegraph Department.

**Greymouth Harbour Board Amendment,** makes provision for the assumption by the Government of direct liability for certain debentures issued by the Greymouth Harbour Board and guaranteed by the Government.

**Government Railways (Wellington to Johnsonville),** makes certain provisions relating to the carrying on by the Railways Department of a transport service for the Ngaio-Khandallah-Johnsonville district and is not of general interest.

**Housing Survey,** requires certain local authorities to make housing surveys preparatory to the inauguration of a Dominion housing scheme; and prescribes the obligations of local authorities and occupiers of houses in relation to the surveys and defines the powers of inspectors.

**Land and Income Tax Amendment.**—S. 4 gives the same exemptions as previously existed in respect of contributions towards the support of a widowed mother to contributions towards the support of a widowed mother-in-law. S. 5 provides that the distribution of bonus shares shall be deemed to be a payment of dividend for certain purposes. S. 6 makes special provision as to assessment for income-tax of co-operative dairy companies and co-operative pig-marketing companies. S. 7 makes special provisions for ascertaining the profits of co-operative companies. S. 8 authorizes the Commissioner to apportion interest as between vendor and purchaser where there has been a sale of securities. S. 9 extends s. 87 of the principal Act by providing that income derived from the carriage by air of merchandise, etc., embarked in New Zealand shall be deemed to be income derived in New Zealand. S. 10 extends the provisions of the principal Act relating to the transmission of moneys from New Zealand. S. 11 makes provision for reciprocal arrangements with other countries as to exemption from income-tax of non-resident traders. S. 12 amends the provisions as to the assessment of banking companies for income-tax (consequent on the establishment of the Reserve Bank).

**Land Laws Amendment.**—S. 3 authorizes the surrender of existing licenses to occupy land, pending completion of purchase, in exchange for new licenses. S. 4 authorizes the postponement of instalments of principal in respect of deferred-payment licenses. S. 5 makes a further extension of the time within

which owners of certain leases in perpetuity may acquire the fee-simple. S. 6 makes temporary provision for the extension of licenses for occupation with right of purchase. S. 8 revives the operation of s. 216 of the Land Act, 1924 (relating to revaluations), and of certain dependent sections.

**League of Nations Sanctions (Enforcement in New Zealand).** S. 3 authorizes the Governor-General to make regulations to enable effect to be given in New Zealand to sanctions imposed by the League of Nations under Art. 16 of the League Covenant. No regulations, however, may be made: (*a*) Requiring compulsory military training; (*b*) Requiring service overseas; (*c*) Prohibiting fair and reasonable expression of opinion as to the expediency of any regulation made under the authority of the Act. Regulations made under the Act are to be confirmed by Parliament.

**Local Legislation,** deals solely with local authorities and consists of forty-four sections authorizing and validating payments and actions of various local authorities. None of the sections is of general interest.

**Mortgage Corporation of New Zealand.**—S. 2 provides that on the transfer to the Corporation of securities pursuant to Part V of the principal Act the right to recover arrears of interest in respect of the securities is to become vested in the Corporation. S. 3 makes provision for losses in respect of interest on securities transferred to the Corporation. S. 4 provides for the protection of the Corporation in respect of expenditure incurred in safeguarding securities. S. 5 provides that the protection accorded to the Corporation in respect of mortgages transferred to it under the principal Act shall extend to mortgages given in substitution for transferred mortgages. S. 6 makes special provisions for cases where the Corporation lends on the security of leasehold interests in Crown lands or certain classes of Native lands. S. 7 provides that the Corporation may borrow on the hypothecation of its own securities. S. 11 authorizes an additional form of mortgage as security for loans granted by the Corporation. S. 15 exempts from stamp duty certain documents of the Corporation.

**Native Housing,** authorizes the Board of Native Affairs to make advances to Natives out of moneys appropriated by Parliament for the general purposes of improving the housing conditions of the Natives. Wide powers are given to the Board with respect to the securities on which advances may be given.

**Native Purposes,** is the Native washing-up Act and deals particularly with matters relating to Native land, none of which is of general interest.

**Public Works Amendment.**—Ss. 2-6 relate to aerodromes and authorize the taking under the principal Act of land for aerodromes. Provision is also made for the fixing of the maximum height of trees and buildings in the vicinity of aerodromes. Ss. 7-9 relate to irrigation and water-supply and extend the powers of the Minister of Public Works. Ss. 10 and 11 relate to gates across roads. S. 12 provides that notwithstanding any Statute of Limitation no adverse title to land taken for public works shall be acquired by user. S. 13 amends the provisions of the principal Act relating to the execution of contracts for Government works.

**Rating Amendment.**—S. 2 amends the provisions of the principal Act relating to the application of the proceeds of the sale or lease of lands pursuant to s. 79 of that Act. S. 3 makes special provisions as to special rates levied on a graduated scale for drainage or river protection purposes.

**Reserves and Other Lands Disposal,** contains twenty-four sections relating to various transactions with respect to specified Crown and other similar lands, and is not of general interest.

**Rural Mortgagors Final Adjustment Amendment,** makes various amendments to the Act passed early this year.

**Tobacco-growing Industry,** relates to the tobacco-growing industry. A Tobacco Board is constituted consisting of nine persons including one representative of the Government and eight other members, four each of which represent the growers and the manufacturers. Provision is made in the usual way for meetings, vacancies, etc. Tobacco is not to be grown, purchased, or manufactured except with the appropriate authority granted by the Board whose main function will be to exercise control over the whole industry. Provision is made for the transfer of the powers of the Board to the Executive Commission of Agriculture.

**Transport Licensing Amendment,** provides that passenger-service licenses shall remain in force for three years (instead of twelve months) but may be revoked at any time when the conditions existing when the license was granted have changed materially since the issue of the license.

**Trustee Amendment,** amending the Trustee Act, 1908, contains certain important amendments to the existing law. S. 2 makes a drastic alteration in the law relating to charitable trusts and provides that where a trust is created for several purposes some of which are charitable and valid, and others non-charitable and invalid, the trust is divisible so that the trust will be good for the charitable purposes. The section is copied from s. 131 of the Property Law Act, 1928 (Victoria). S. 3 brings New Zealand law into conformity with English law and authorizes trustees to purchase certain securities notwithstanding that they are sold at a premium. S. 4 re-enacts and extends s. 30 of the Mortgagors and Tenants Relief Act, 1933. Trustees were under a disability in that while they might hold mortgages which had ceased, by reason of a decrease in value of the land charged, to be authorized trust investments they could not renew such mortgages. S. 5 authorizes the Governor-General to declare to be trustee investments certain securities which comply with prescribed conditions.

[The assent dates of the above statutes are October 24-26.]

# Rules and Regulations.

**Finance Act, 1932-33** (No. 2). Motor-vehicle Special Taxation Regulations, 1933, amended.—*Gazette* No. 70, October 10, 1935.

**Poultry Act, 1924.** Infectious Laryngo-tracheitis declared to be a disease affecting Poultry.—*Gazette* No. 70, October 10, 1935.

**Land and Income Tax Act, 1923.** Date and Place for Payment of Income-tax.—*Gazette* No. 71, October 17, 1935.

**Health Act, 1920.** Regulations as to Drainage and Plumbing applied to the Borough of Morrinsville.—*Gazette* No. 71, October 17, 1935.

**Austria (Extradition: Commonwealth of Australia and New Zealand) Order in Council, 1935.** Extradition Treaty with Austria.—*Gazette* No. 71, October 17, 1935.

**Land and Income Tax (Annual) Act, 1935.** Land-tax payable on November 7, 1935.—*Gazette* No. 71, October 17, 1935.

**Government Railways Act, 1926.** Local Rates, Scales, Conditions, and Regulations.—*Gazette* No. 72, October 18, 1935.

**Nurses and Midwives Registration Act, 1935.** Regulations amended.—*Gazette* No. 73, October 24, 1935.

**Customs Amendment Act, 1921.—Air Navigation Act, 1931.** Customs (Aircraft) Regulations, 1935.—*Gazette* No. 73, October 24, 1935.

**Education Act, 1914.** Amended Regulations relating to Architectural Bursaries.—*Gazette* No. 73, October 24, 1935.

**Health Act, 1920.** Regulations as to Drainage and Plumbing applied to the Borough of Westport and the County of Buller.—*Gazette* No. 73, October 24, 1935.

**League of Nations Sanctions (Enforcement in New Zealand) Act, 1935.** Appointing Date on which Act comes into force. Financial Regulations under the Act. Exportation of Goods Regulations. Prohibiting the Exportation of Arms, Munitions, and Implements of War.—*Gazette* No. 74, October 25, 1935.

# New Books and Publications.

**Saving of Income Tax, Surtax, and Death Duties.** By Jasper More, B.A. (Butterworth & Co. (Pub.) Ltd.). Price 21/-.

**Phipson's Manual of Evidence.** By Roland Burrows, K.C., LL.D., assisted by O. M. Cahn, B.A., Eighth Edition, 1935. (Sweet & Maxwell, Ltd.). Price 17/6.

**Forensic Chemistry and Scientific Criminal Investigation.** By A. Lucas. Third Edition, 1935. (Ed. Arnold). Price 24/6.

**Workmen's Compensation in South Africa.** By M. Nathan, K.C., LL.D. (Butterworth & Co. (Pub.) Ltd.). Price 27/-.

**Notes for New Magistrates, 1935.** By Cecil Leeson, with an introduction by Rt. Hon. Viscount Sankey. (Magistrates' Assn.). Issued to members of Association only.