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"In the darkness of secrecy, sinister interest and evil in every shape have full swing. Only in proportion as publicity has place can any of the checks applicable to judicial injustice operate. . . . Publicity is the very soul of justice. It is the keenest spur to exertion and the surest of all guards against improbity. It keeps the judge himself while trying under trial."

—JEREMY BENTHAM.

Vol. XII. Tuesday, March 3, 1936. No. 4

Hearings in Open Court.

IN a recent judgment of the Judicial Committee, in which the question at issue was whether a decree *nisi* not made in open Court was voidable, Lord Blanesburgh in delivering their Lordships' opinion said this appeal was of wide general importance—of interest in some of its respects to the whole of Canada, from one of whose Provinces the appeal had come, and even beyond the boundaries of that Dominion, for, as he said,

> "Publicity is the authentic hall-mark of judicial as distinct from administrative procedure."

The primary function of any Court is to administer equal justice to all suitors in open Court. In *Scott v. Scott*, [1913] A.C. 417, 440, the Earl of Halsbury said: "Every Court of justice is open to every subject of the King." This dictum was recalled in the opinion of the Judicial Committee in the recent judgment to which we have referred, *McPherson v. McPherson*, [1936] W.N. 17, which recalls the firm stand for publicity of Court proceedings made over twenty years ago by Fletcher Moulton, L.J., as he then was, in *Scott v. Scott*, [1912] P. 241, which was heard by the Full Court of Appeal; and Vaughan Williams, L.J., joined in dissent with Lord Moulton. Admitting that proceedings relative to infants and lunatics might be in camera, on the special ground of the Crown's guardianship as *parens patriae* over them, Lord Moulton insisted that in other cases the Courts must be open to the public. He characterized the contention by counsel that all branches of the Supreme Court have jurisdiction to hear cases in camera if they think fit so to do, as against the weight of authority and a most dangerous one.

The view of the minority was supported on the appeal to the House of Lords, [1913] A.C. 417. Viscount Haldane, L.C., drew a distinction between matrimonial suits, in which the public are interested, and cases where all that is at stake is the individual right of the parties. In the latter, the persons concerned are free to waive publicity and agree to a private hearing, but the Judge then becomes an arbitrator, and, though the right to invoke the assistance of a Court of Appeal may be affected, parties are at liberty to do what they please with their private rights. He pointed out, however, that the rule of publicity is not absolute and will give way to the paramount requirements of justice. He went on to say that the principle that a case should only be heard in camera where justice could not otherwise be done in that particular case is a general principle which applies in all Courts, and that, provided the principle is not stretched to cases where there is not a strict necessity for invoking it, he did not dissent from that view of the existing law, as to exclude it would in certain classes of litigation (such as the case of wards of Court, or lunatics, and litigation as to a secret process), mean a denial of justice. He then said:

> "While the broad principle is that the Courts of this country must, as between parties, administer justice in public, this principle is subject to apparent exceptions, such as those to which I have referred. But the exceptions are themselves the outcome of a yet more fundamental principle that the chief object of Courts of justice must be to secure that justice is done. In the two cases of wards of Court and lunatics, the Court is really sitting primarily to guard the interests of the ward or the lunatic. Its jurisdiction is in this respect paternal and administrative, and the disposal of controverted questions is an incident only in the jurisdiction. It must often be necessary, in order to attain the primary object, that the Court should exclude the public. The broad principle which ordinarily governs it therefore yields to the paramount duty, which is the care of the ward or the lunatic. The other case referred to, that of litigation as to a secret process, where the effect of publicity would be to destroy the subject-matter, illustrates a class which stands on a different footing. There it may well be that justice could not be done at all if it had to be done in public."

The Lord Chancellor concluded, therefore, that

> "To justify an order for hearing in camera it must be shown that the paramount object of securing that justice is done would really be made doubtful of attainment if the order were not made."

The Earl of Halsbury, while he agreed with the Lord Chancellor generally in the principles he had laid down, guarded himself against the proposition that a Judge may bring a case within the category of enforced secrecy because he thinks that justice cannot be done unless it be heard in secret, and he said that, while not denying it, he would want before him a concrete case before expressing his opinion on it. Although he was far from saying such a case could not arise, he hesitated to accede to the width of the language used, which might be applied to what, in his view, would be an unlawful extension.

Lord Loreburn said he did not think that the higher Courts had an unqualified power in their discretion to hear civil proceedings, including petitions for divorce or nullity, with closed doors, as the inveterate rule is that justice shall be done in open Court. In speaking of exceptions to this rule, he referred to circumstances where the closing or clearing of the Court is necessary for the administration of justice, as in times of tumult or disorder or the first apprehension of it; the exclusion of witnesses; or where, as in nullity suits, insistence on publicity would make the Court a place of moral torture. As to the closing of Courts in the interest of public decency—for which our own Divorce legislation provides, but the English parallel legislation does not—the noble Earl said that the remedy must be found by the Legislature or not at all:

> "Though the traditional law, that English justice must be administered openly in the face of all men, is an almost priceless inheritance, it does seem strange that it may be relaxed in order to save property, but cannot be relaxed to safeguard public decency against even the foulest contamination."

He concluded that Courts of justice, who are the guardians of public liberties, ought to be doubly vigilant against encroachments by themselves.

The judgments of Lord Atkinson and of Lord Shaw of Dunfermline, who treats the subject historically, are of great interest but impossible of quotation here in detail.

In *McPherson v. McPherson* (*supra*), which was an appeal by special leave from the Appellate Division of the Supreme Court of Alberta, the question of the publicity of the proceedings was raised in an action to set aside decrees *nisi* and absolute, one of the grounds alleged being that the trial had been secret. The trial Judge, Tweedie, J., it appears, had heard the case in the Judges' library in the Court House at Edmonton during the noon recess, and, to quote from the report, "neither the Judge nor the counsel was robed. When he took his seat the Judge announced that he was sitting in open Court," and the Judge gave evidence that he had selected the library as the place of trial on his own motion and without any intention of shutting anybody out. But the facilities for access to the Court rooms and to the Judges' library were different, and though the library could be approached by double doors, one of which was a swing-door and unfastened, the other was fixed and marked "private." There was no actual exclusion of the public, although there was no public attendance. In affirming their Lordships' belief in the complete *bona fides* of the Judge in everything he did, Lord Blanesburgh said that it emerged in the last analysis that the actual exclusion of the public resulted only from the word "private" on the outer door. In the opinion of the Judicial Committee, the Judge, though unconsciously, was denying his Court to the public in breach of their right to be present. Lapse of time forbade the decrees being set aside on this ground and the wife's appeal was dismissed; but otherwise the Judicial Committee would, it seems, have allowed the appeal. Publicity being the authentic hall-mark of judicial as distinct from administrative procedure, a divorce suit is no exception, and in accordance with the view we have quoted above from *Scott v. Scott*, Lord Blanesburgh pointed out that it affects

> "not only the status of the two individuals immediately concerned, but, not remotely when taken in the mass, the entire social structure and the preservation of a wholesome family life throughout the community."

Although the highest Court in Great Britain, in *Scott v. Scott*, and the highest Court in the Empire in *McPherson v. McPherson* are at one in upholding the major principle of the necessity and value of publicity in the Courts, we have to consider local legislation which may modify its application.*

In our Divorce and Matrimonial Causes Act, 1927, it is provided that proceedings may be heard in camera, s. 55 being as follows:—

> The Court, on the application of either the petitioner or the respondent, or at its discretion, if it thinks proper in the interests of public morals, may hear and try any such suit or proceedings in Chambers;

and the section goes on to empower the Court to make an order forbidding the publication of any report or account of the whole or any part of the evidence or other proceedings.

After referring to *Scott v. Scott* (*supra*), and pointing out that no section such as s. 55 of our Act existed in English divorce legislation, Mr. Justice Cooper, in *C., otherwise W., v. C.*, (1915) 34 N.Z.L.R. 626, 627, said:

> "It is, in my opinion, desirable from respect to public decency, that a suit alleging sexual impotence should be heard in camera, and I have no hesitation in exercising the power which the Court has under section 65 [now s. 55 in the 1927 Act], and ordering this suit to be heard in camera."

In a case heard in 1903, *A. v. Z.*, 5 G.L.R. 546, Mr. Justice Edwards refused an application to hear in Chambers a husband's evidence in a suit for dissolution of marriage on the ground of the wife's adultery. He said:

> "There are grave objections to the trial of divorce proceedings in Chambers, and the power to order such a trial ought never to be exercised without strong reason to show that a trial in Chambers is really in the interest of public morals, as the statute requires. This is especially the case where the respondent has not been personally served and does not appear."

Some years later, the same learned Judge refused an application for the trial in camera of a wife's suit for dissolution on the ground of adultery: *T. v. T.*, [1917] G.L.R. 334, where he said:

> "Apart from the interest of the children, it can very rarely be in the interest of public morals that a divorce suit shall be heard behind closed doors. The certainty of the shame of public exposure may possibly deter from the commission of matrimonial offences some persons who are not restrained by moral considerations. At all events it cannot be in the interest of public morals that persons, because they are well known, and because their offences are gross, should be assisted by the Court to hush up, so far as possible, the knowledge of their offences."

From these various dicta the principle emerges that it is in the interests of justice and public policy that all proceedings in divorce should be heard in public, and that the Court's power to order a hearing in camera should be exercised rarely (such as in a nullity suit on the ground of impotence), and then only for strong reasons which show that such a trial in camera is really in the interest of public morals. A mere desire to consider feelings of delicacy or to exclude from the public details which would not be desirable from the viewpoint of the parties, is not enough as the law now stands.

It may be taken, therefore, that subject to the Court's power to hear matrimonial suits in private if, in the particular cases, it considers such a course proper in the interest of public morals, the effect of the decision in *McPherson v. McPherson* (*supra*) is in general, that, in the spirit of the Divorce and Matrimonial Causes Act, 1927, as well as on principle, the hearing of all divorce proceedings should be open to the public, and, as was said in *Scott v. Scott*, the Judge must treat the question as one of principle, and as turning, not on convenience, but on necessity.

There is, however, a wider application of the judgment in *McPherson v. McPherson*. There has been considerable agitation here, as in Great Britain, that the public should be excluded from the lower Courts exercising jurisdiction in affiliation, maintenance, and separation matters. There is a strong body of opinion which considers that the arguments for publicity in inferior Courts are greater than for publicity in the higher Courts. In commenting on the judgment in *McPherson v. McPherson*, the *Justice of the Peace and Local Government Review* (London), in its issue of January 11 of this year, says, in relation to what it terms "the dangerous heresy that Courts of summary jurisdiction should exercise, behind closed doors, their power to hear matrimonial cases":

> "The Judicial Committee heavily discounts the stock argument for privacy. Open court, 'in the fullest sense,' says the judgment, in words most applicable to police court proceedings, is a necessity. 'That requirement must be insisted on because there is no class of case in which the desire of the parties to avoid publicity is more widespread. There is no class of case in which, in particular circumstances, it can

* *Cf.* the Crimes Act, 1908, s. 432 ("in the interests of public morality"); the Justices of the Peace Act, 1927, s. 128 (juvenile offenders); and the Destitute Persons Amendment Act, 1926, s. 10 ("in the interests of public morality"). The power conferred by these sections is not to be so exercised as to exclude the prosecutor, the accused, or his counsel or solicitor, or any accredited newspaper reporter.

be so clearly demonstrated, even to a Judge, that privacy in that instance would be both harmless and merciful.'

" If husband and wife can settle their matrimonial disputes privately, clearly they ought to do so, and however angry with one another, be merciful enough to withdraw their disagreements from the public gaze. But if they invoke the public courts, the public is entitled, healthily and properly entitled, to have the check of publicity on what is done."

With this we agree, without, however, in any way receding from the views expressed in these pages in regard to the necessity for regulating, in the interests of decency, newspaper publication of the mephitic details of these classes of cases. In the hearing of divorce and nullity suits, there is a Judge, trained in the rigid traditions of the Bar ; and the likelihood of irregularity from personal bias in favour of one sex or of one view of the matrimonial relation is infinitely greater, in our contemporary's view, in the lower courts.

The salutary publicity given by the public administration of justice, in particular the hearing in open Court of divorce suits, again to quote Lord Blanesburgh in *McPherson v. McPherson*, " affects the entire social structure and the preservation of a wholesome family life throughout the community."

Summary of Recent Judgments.

SUPREME COURT
Wellington.
1935
Dec. 2.
1936.
Feb. 13.
Smith, J.

COLLIER & BEALE, LIMITED v. COMMISSIONER OF STAMP DUTIES.

Public Revenue—Stamp Duties—Instrument whereby License Granted to use and Exercise all or any Inventions the Subject of Patent Rights owned by the Grantor—Whether a " Conveyance "—Stamp Duties Act, 1923, ss. 77, 88—Patents, Designs, and Trade-marks Act, 1921-22, s. 122 (2).

A personal, non-exclusive, non-assignable license to use and exercise inventions which are the subject of letters patent, which neither transfers to nor confers upon the licensee any interest in the inventions or in the letters patent, is distinguishable from a license of the kind referred to in s. 122 (2) of the Patents, Designs, and Trademarks Act, 1921-22, and from the grant of a *profit à prendre*. It is a proprietary right within the definition of " property " in s. 2 of the Stamp Duties Act, 1923,—a new right created by the grantor in respect of his separate property—but it is not a transfer of that property or of any interest in it.

Such an instrument which merely creates such a proprietary right does not constitute a " conveyance " within the meaning of s. 77 of the Stamp Duties Act, 1923.

New Era Printers and Publishers, Ltd. v. Commissioner of Stamp Duties, [1927] N.Z.L.R. 438, **Standard Porcelains (N.Z.), Ltd. v. Commissioner of Stamp Duties,** [1928] N.Z.L.R. 138, and **Smelting Company of Australia, Ltd. v. Commissioners of Inland Revenue,** [1896] 2 Q.B. 179 ; [1897] 1 Q.B. 175, referred to.

Counsel: J. B. F. Stevenson, and **James,** for the appellant ; **E. S. Smith,** for the respondent.

Solicitors: Izard, Weston, Stevenson, and Castle, Wellington, for the appellant ; **Crown Law Office,** Wellington, for the respondent.

Case Annotation: *Smelting Company of Australia, Ltd. v. Commissioners of Inland Revenue*, E. & E. Digest, Vol. 36, p. 676, para. 1577.

NOTE :—For the Stamp Duties Act, 1923, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, 1908-1931, Vol. 7, title *Public Revenue and Expenditure*, p. 402 ; Patents, Designs, and Trade-marks Act, 1921-22, *ibid.*, Vol. 6, title *Patents, Designs, and Trade-marks*, p. 656.

SUPREME COURT
Wellington.
1935.
Aug. 29.
1936.
Feb. 26.
Myers, C.J.

NEW ZEALAND FISHERIES LIMITED v. McCOURTIE McHUGH v. McCOURTIE.

By-law—Street Obstruction—Provision for such Privilege as Council thought proper—Severability—Validity—Motor-vehicles Regulation prohibiting Motor-vehicle on Footpath—Subsequent Regulation permitting access across Footpath by Motor-vehicle—Validity of Prohibition—Municipal Corporations Act, 1933, ss. 175, 203, 364—Motor-vehicles Act, 1924, s. 36—Motor-vehicles Regulations, Reg. 13 (6), (7), *1933 New Zealand Gazette 357.*

A city corporation by-law provided, *inter alia*, that any person shall be guilty of an offence against the by-law who erects, without the prior written authority of the Council so to do, any obstruction whatsoever in, over, or upon any street, private street, or public place, whether the same shall or shall not interfere with the traffic thereon or with the public use thereof.

von Haast, and **Sladden,** for the appellants ; **O'Shea,** for the respondent.

Held, That such by-law, so far as it applied to the circumstances, was valid as it had not interfered with any private right but merely made provision for a privilege or concession in such cases as the Council might think proper.

Regulation 13 (6) made under the Motor-vehicles Act, 1924, provided that

" No person shall permit any part of a motor-vehicle or its load to be on or over any footpath, except in the case of a motor-car which is being stopped or is stationary at any place on a road established by a local authority as a stand for motor-vehicles, and the wheels of which are resting against or adjoining the kerb of a footpath."

Held, That the regulation was valid, as Reg. 13 (7) recognises the private right of access of an owner to his premises.

Solicitors: Sladden and Stewart, Wellington, for the appellants ; **John O'Shea,** City Solicitor, Wellington, for the respondent.

NOTE :—For the Motor-vehicles Act, 1924, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, 1908-1931, Vol. 8, title *Transport*, p. 800.

SUPREME COURT
Wellington.
1936.
Feb. 4, 5.
Ostler, J.

IN RE THE WAIRARAPA CO-OPERATIVE RURAL INTERMEDIATE CREDIT ASSOCIATION, LIMITED.

Rural Intermediate Credit—Co-operative Rural Intermediate Credit Association—Winding-up—Whether Association a Limited-liability Company under the Companies Acts—Whether Existence of Statutory Reserve-fund a Bar to Winding-up Order—Rural Intermediate Credit Act, 1927, ss. 39, 40, 77 (1) (b).

A Rural Intermediate Credit Association incorporated under Part II of the Rural Intermediate Credit Act, 1927, has the status and the rights and liabilities of companies incorporated under the Companies Act, the provisions of which as to winding up apply, except such portions as the Governor-General by Order in Council has excluded.

Although s. 39 of the Rural Intermediate Credit Act, 1927, provides for a reserve-fund to meet losses, such provision cannot prejudice a creditor's rights in respect of a petition for a winding-up order.

Counsel: Buxton and **Blundell,** for the Rural Intermediate Credit Board, in support ; **Macfarlane Laing,** for the Association, to oppose.

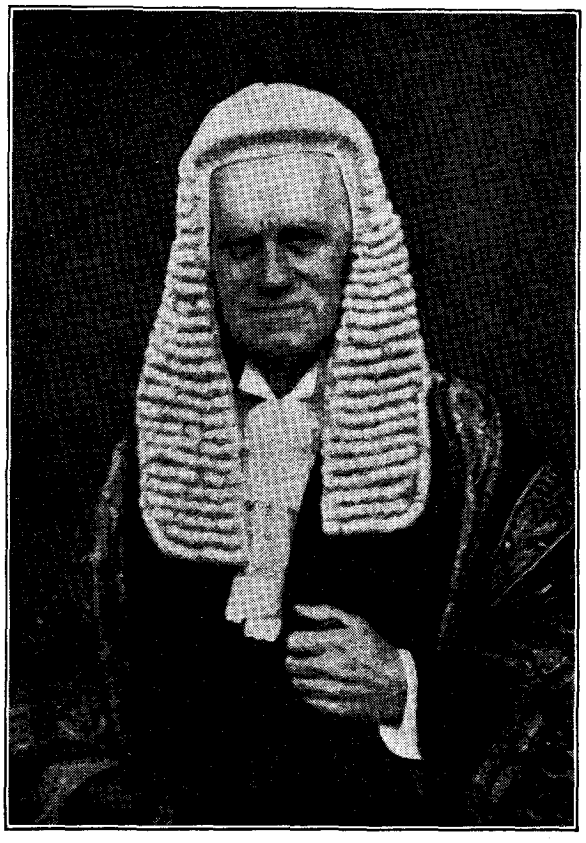
Solicitors: Bell, Gully, Mackenzie, and Evans, Wellington, for the petitioning creditor ; **J. Macfarlane Laing,** Masterton, for the Association.

NOTE :—For the Rural Intermediate Credit Act, 1927, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, 1908-1931, Vol. 8, title *Rural Intermediate Credit*, p. 63.

Judicial Committee of the Privy Council.

BARON RUSSELL OF KILLOWEN.

Of the famous Russell family, great in law and in politics, the most brilliant living member is undoubtedly Frank, the fourth son of the famous Lord Chief Justice of England. Endowed with gifts which would have made him successful in any calling, and particularly in politics, he chose the Law early, and renouncing all other, devoted himself to it with gladness and singleness of mind. As a lawyer it is no exaggeration to say that he has at least equalled his grandfather. The fact that he is so little known to the public is a matter of small consequence or significance. In legal circles his reputation has always been of the highest; his judgments are universally cited and considered with profound respect, and they are generally followed as authoritative statements of the law.



Baron Russell of Killowen.

As an advocate he was unsurpassed; clear and cogent in argument, eloquent without a trace of verbosity; he could illuminate his points with flashes of wit and enliven the legal encounters with his unusual powers of repartee. His performance in one of the many big cases in which he was engaged will long be remembered; and confirmed his reputation as an advocate and lawyer of the first rank. That was the Privy Council reference in *Re Southern Rhodesia*, [1919] A.C. 211, in which the chartered company sought to limit the rights of the Crown in the territories of Lobenguela, brought under the British flag by the soldiers of the company. Frank Russell, K.C., was led by P. O. Lawrence, K.C., for the elected members of the Council of Southern Rhodesia. The case involved extremely difficult points of constitutional law; and the eminent counsel employed in the case included, in addition to P. O. Lawrence, those who afterwards were known as Lord Birkenhead, Lord Hewart, and Lord Clyde. The contribution of Russell was admittedly the best and most helpful; his contentions were in substance accepted by the Board, who laid down the principle that a proclamation of annexation is not necessary to make the Crown sovereign of territory acquired by conquest; just as a proclamation of war is not essential to constitute a state of war; and that a manifestation of intention by the Crown, as by Order in Council, to exercise sovereignty, is sufficient to establish the Crown's dominion over the territories concerned. His judgments in the Chancery Division, in the Court of Appeal, in the House of Lords, and in the Privy Council, have had on English law an influence as great as that of any living Judge.

His career, and his choice of roads, when it came to a selection of alternatives, were interesting and showed his independence and his determination to succeed in the legal profession on his own merits. The gifted son of so great a man as the first Lord Russell of Killowen could not fail to derive some advantage from such parentage; the fact that Sir Charles Russell was head of one of the greatest firms of solicitors in London was not a handicap; but Frank Russell proved, as he desired to prove, that he could succeed without such aids. In gifts and temperament he was in many respects remarkably like his father; and like his father he was a sportsman. Of the tales told in Barry O'Brien's "life" of Lord Russell of Killowen, two may be told. He relates that the only time one of the Lord Chief Justice's daughters saw her father angry was "when Frank let a horse down—a just cause, it will be confessed" says Mr. O'Brien "to a racing man." Then there was the occasion when Frank, as a law student, was in need of money and addressed the customary appeal to the old man. The Lord Chief Justice's reply was brief: "Dr. F. Ck. Work. C.R." The "Ck." was enclosed.

Russell is a Catholic. Before going to Oriel College, Oxford, he was educated at Beaumont College, the famous Catholic School. It is told of this school that on one occasion when its cricket programme was being arranged, a well-known public school was invited to arrange a fixture. The first reply was: "We have heard of Harrow, but what is Beaumont?" Came the answer in due course: "We are what Eton was once: a school for the sons of Catholic gentlemen." Of the many famous "old boys" of this school, Russell is assuredly by no means the least.

At Oxford he worked hard and did well, taking a First in law. He rowed for Oriel; and he was also a brilliant debater at the Union, his most notable performance being a speech delivered in 1887 in defence of Gladstone's policy of Home Rule. His chief opponent was a leading Conservative statesman of the day. His success was such that most people believed that he would do as other Union speakers with such a record usually do, and choose politics for his career. But he did not; Mr. Russell's name was never in the long list of those

who were not only K.C.'s, but M.P.'s. After he was called to the Bar at Lincoln's Inn in 1893, when he was twenty-six years of age, it was supposed that he would practice in the King's Bench Division, as his father did before him. His eloquence and argumentative power would, so the common lawyers declared, be thrown away on the Chancery side where those great qualities are rarely needed or appreciated. Russell did not take this view. He became a Chancery barrister; was soon in good practice, and confounded the prophets. The public knows little of its Equity lawyers; they advance on their merits without the aid of publicity and the glamour which surrounds the lawyers engaged in sensational murder trials and libel actions at the Old Bailey and the Courts of Common Law.

Seven years after his call, when he was well established as a Junior, and thirty-three years of age, he married Miss Mary Ritchie, the fifth daughter of the first Baron Ritchie of Dundee, and of that marriage there are one son and two daughters. In 1908, six years after the wedding, Frank Russell took silk.

It was the practice and wont of leaders in the Chancery Division to attach themselves to the Court of a particular Judge and to continue in the same until the Judge of that Court was removed by death, promotion, or retirement, or until the silk in question "went special," that is to say, joined the select number of those who could take cases, with suitably enlarged fees, in any of the Courts. The Court chosen by Russell was that of Swinfen Eady, a good, and at the same time an exacting Judge. Russell was deservedly in great favour with that great man; and he was in a position to "go special" not many years after he had been called within the Bar. On October 19, 1919, when Younger, J., as he then was, was elevated to the Court of Appeal, Mr. Frank Russell was appointed puisne in his stead—the first Catholic Judge to be promoted to the Bench since the death of that famous lawyer and wit, Lord Justice Mathew. His judgments showed the quality of those which may, and indeed must, be cited; the most famous of them, delivered by him in the Chancery Division, being perhaps the great Annesley Will case judgment in the year 1926. In 1928 he was made a Lord Justice of Appeal; and Lord of Appeal in Ordinary in the year following.

Fifteen years as a junior; eleven as a silk; sixteen on the Bench and in the Lords and the Judicial Committee; he has forty-two years of legal service to his credit; and at sixty-eight years of age he is still in the heyday of his career, with promise of long years of usefulness to come. It is a pity that he eschewed politics. Men of his quality, in Parliament and in the Cabinet, are sadly needed to-day.

An Essay Competition.—The New History Society, of New York, forwards conditions of the Fifth International Essay Competition offered to anyone up to the age of thirty years, who is resident in the zone comprising Africa, Alaska, Australia, Newfoundland, New Zealand, and the islands belonging to these continents and countries. Already competitions have been held in other zones—the United States of America, Europe, Latin America, and Asia—on subjects relating to world-peace. The subject for the competition under notice is, "How can Youth develop Co-operative and Harmonious Relations among the Races of the Earth?" Entries, limited to 2,000 words, must be posted before April 1, 1936. The prizes are $300, $200, and $100, respectively.

The Law Relating to Motor-vehicles.

Noteworthy Decisions in 1935.

By W. E. Leicester.

In this streamline era, the harrassed pedestrian, scuttling from safety-zone to safety-zone, is driven to the irrevocable conclusion that the motorist is a law unto himself. Whatever be the justification for so fatalistic a viewpoint, his instrument of destruction is demanding each year an increasing amount of judicial attention, and in 1935 there were a considerable number of cases dealing with phases of motor-vehicle traffic.

The most important of those concerned with negligent control was *Bourke v. Jessop and Another* (*No. 3*), [1935] N.Z.L.R. 246, in which the appellant made up in litigious pertinacity what he lacked in the instinct of self-preservation. He was a passenger riding pillion on an unlighted motor-cycle driven by his brother. On a dark night, this collided in the middle of the road with an approaching motor-car, also unlighted. Knowing that the night was dark and the cycle had no lights, appellant had been persuaded to wait until picture-theatre traffic was over, and then it was agreed that the journey would be slow and the cycle pulled off the road if traffic was met. On reaching a particularly dark part, he urged his brother to stop and push the cycle until they got out of it, but his brother reduced speed and persuaded him to continue riding. Then the collision occurred, and appellant subsequently admitted that he knew he was doing a dangerous thing. The case came first before Reed, J., in May, 1933, and he gave judgment against the injured pillion-rider upon the ground that the maxim *volenti non fit injuria* applied, and that he and his brother were engaged in a common purpose or a joint adventure involving risk of collision, it being immaterial which was driver or passenger. On appeal, the Court of Appeal, applying *Woods v. Davison*, [1930] N.I. 161, considered that the driver of the cycle would be entitled to succeed if the real cause of the collision was that the car, owing to the negligence of its driver, was on the wrong side of the road. It sent the case back to trial in order that there might be ascertained where the vehicles were, and on what side of the road the collision took place. At the second trial, the jury found for the defendants, and, on a motion to enter judgment for the plaintiff, MacGregor, J., considered that both drivers were equally aware of the foolhardy and dangerous nature of their undertaking and were engaged in "concerted action towards a common end." He considered that the negligence of the driver must be attributed to the passenger.

In *Bourke v. Jessop* (*No. 3*) (*supra*), the Court of Appeal held that on the evidence the appellant was himself guilty of contributory negligence, and that, as he and his brother were joint wrongdoers, the rule of non-identification had no application. This case, in the course of its legal career, was distinguished in *Horning v. Sycamore and Flexman*, [1935] N.Z.L.R. 581. Here, the lights on a bus failed on a dark and wet night when the bus was within a quarter of a mile of a well-lighted concrete road. As some of the passengers were anxious to catch a train, it was generally agreed that the bus should proceed in the dark, a male passenger on each dash-board holding an electric torch. The

plaintiff was one of the two who volunteered, and in the course of the journey observed, in time to warn the driver, that the bus was proceeding too close to the left-hand side of the road. The driver knew the nature of the surface and knew of the existence of a dangerous slope in the road and of loose gravel which constituted a trap. The bus skidded in the gravel and overturned, the plaintiff being pinned underneath and suffering injury. The case cannot be said to repair the ravages made by *Bourke v. Jessop* (*supra*) upon the non-identification doctrine, because it was held that, whether or not the plaintiff had made himself a party to the driver's act in proceeding onwards with defective lights, the decisive cause of the accident was the driver's final act of negligence in driving onto the loose metal on the slope in the road with only one hand on the wheel. It was upon that principle that the plaintiff was held entitled to succeed.

Concerned with both the cases just discussed, Reed, J., also made two valuable contributions to our law of motor negligence in *Pearce v. Hardiman*, [1935] G.L.R. 57, and in *Carlyon v. Roguski*, [1935] N.Z.L.R. s. 188. The former dealt with the common instance of a motorist coming out of an intersection with the " off-side " rule in his favour. He was travelling so fast that when he noticed the other car was crossing his front he was unable to pull up in time to avoid a collision, which he would have done if travelling at a reasonable speed. Reed, J., regarded it as a typical case of the class which constitutes a fruitful source of accident, because the driver had acted on the view unfortunately held by some drivers that because of the right-hand rule a motorist was entitled to ignore a car crossing his front from the left, and barge ahead, regardless of the action of the driver of the other car. On the subject of the " off-side " rule, it may be commented in passing that whatever its utility in cities—and some of its adversaries recall that it is a relic of the days when traffic drove on the right-hand side of the road—it is an anachronism, under conditions of bitumen and fast-moving traffic, that it should have application to country districts where the main-road driver who slows down to regulation limits at small crossroads is regarded as slightly eccentric. The value of *Carlyon v. Roguski* (*supra*) lies in the doubt it throws on some of our earlier decisions based on the " dilemma test." (" Either he saw the tram-car and took his chance of crossing the intersection in front of it, or else he did not see the tram-car. If he saw the tram-car, it was his duty to stop his motor-car and not to attempt to cross the intersection. If he did not see the tram-car he could not possibly have been keeping a lookout ") *Hanna v. Wellington City Corporation*, [1931] N.Z.L.R. 825, 829. It follows *Tidy v. Battman*, [1934] 1 K.B. 319, in which Macnaghten, J., gave an important judgment fully approved by a Court of Appeal consisting of Lord Hewart, C.J., Lord Wright, and Slesser, L.J., and pointed out that at night-time the visibility of an unlighted obstruction to a person driving a lighted vehicle along the road must necessarily depend on a variety of facts, such as the colour of the obstruction, the background against which it stands, and the light coming from other sources. In the New Zealand case, the motor-cycle collided at night with a stationary motor-lorry, and it was held that, in the circumstances, the facts did not raise a presumption of negligence on the part of the motor-cyclist to the effect that, if he had been keeping a proper lookout, he would have had the lorry in view from the distance his lights cast a beam up to the point of impact.

Problems under the Motor-vehicles Insurance (Third-party Risks) Act, 1928, continue to arise. In *Stewart v. Bridgens*, [1935] N.Z.L.R. 948, the plaintiff had the merits, but not the law, in his favour. He was a constable who grasped the rear door-handle of a stolen motor-car and placed one foot on the running-board in an endeavour to prevent a thief from making off with the car. While he was trying to get into the car, the driver set off at a high speed and managed to dislodge the constable and severely injure him by brushing him off against a stationary motor-car. The majority of the Court of Appeal considered that he could not recover, as he was a person within the exceptions to liability under the Act, either " being conveyed in " or " entering " or " about to enter " the car. It would seem, from the views expressed by Myers, C.J., and Johnston, J., that 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. This is in accordance with the principle that the risk under the policy does not arise where there has been an intentional act on the part of the insured: *Tinline v. White Cross Insurance Association, Ltd.*, [1921] 3 K.B. 327; and it would seem that an intentional criminal act not in any way concerned with the owner's affairs cannot be deemed either to be authorized by the owner or " within the scope of the driver's authority." Amongst the criminal cases reported last year in England, is one where the driver of a motor-vehicle cultivated the habit of running down and injuring young women. He was indicted for murder and convicted.

The spectacle *ex facie* of an uneven contest between a motor-car and a trailer is found in *North British and Mercantile Insurance Co., Ltd. v. Public Mutual Insurance Co. of New Zealand*, [1935] N.Z.L.R. 678. The car and the trailer were being driven as a unit, and the presence of each entered into the collision. The respective owners were insured against third-party risks with different insurance companies. It followed, in the view of Smith, J., that, where both contributed separately to the cause of the injuries sustained, their respective owners were separately, but at the same time, indemnified against liability for the whole of the damages. The company indemnifying the driver was entitled to call upon the company indemnifying the trailer for contribution, as the loss, in the absence of clear indication to the contrary, was borne equally.

In *Watson v. Hinton*, [1935] N.Z.L.R. 52, it was held that the owner of a motor-car, registered under the regulations to the Act as a " private motor-car," whose duties were to travel and make personal calls with a view to the discovery of suitable agents for his principals (but not to sell goods or to take orders) was not a " commercial traveller " although he used his car on business for the purpose of carrying out his duties. The requirements in relation to the use and registration of demonstration registration-plates issued under s. 18 of the Motor-vehicles Act, 1924, were the basis of the judgment in *Parkes v. Thompson*, [1935] G.L.R. 181.

Staple Inn.—This, the " fayrest " of the old Inns of Chancery, is to be preserved by the present owners, the Prudential Assurance Company, as " trustees for the people of London."

A Traveller's Tale.

The Lord Chief Justice of England.

By Graham Crossley, LL.M.

"The things to be seen and observed are: the courts of princes, especially when they give audience to ambassadors; the courts of justice, while they sit and hear causes, and so of consistories ecclesiastic." Thus did Bacon, with the wisdom with which he is universally accredited, counsel young travellers.

On my arrival in London I decided to insure myself against failing to derive the maximum instruction from foreign parts, and so I carefully re-read this essay, which in the classical part of my education had been emphasised as of inestimable shrewdness and value.

The princes I found just a little retiring, except one of Russian extraction, who no longer appeared in the traditional princely manner. Apparently the genus is not now given to receiving audience from ambassadors in the same happy, cosmopolitan style of former times. But the Russian prince did certainly add to my small store of knowledge.

He told me of atrocities, lost fortunes, unbelievable hardships, the plight of refugees, and borrowed £2. So interesting a personality I not unnaturally wished to meet again, if possible in slightly more prosperous circumstances. I made enquiries and found that he was not exactly a Russian prince, though he might have been a Georgian. Even so, in my opinion my chances of ever seeing my £2 again would have been just as great if he had been a Plantagenet. I fancy that Bacon may have been misreported in the above quotation, and that a more helpful context would be evolved if the words "especially when" were read as "except when."

So much for the princes. The Law Courts are of course well known to many readers of the Journal, as also are some of their inhabitants. Perhaps the most interesting figure there is the Lord Chief Justice, both on account of the eminence of his office, and the range of his diversified talents. One would have thought that such a position would have occupied all the time of even the most energetic man, but Hewart, L.C.J., is a very accomplished classical scholar, and a most enthusiastic contributor to the week-end newspapers.

In the recently-published authorized biography of the late Sir Ernest Wild, K.C., Recorder of London, the learned author says that no one ever enjoyed his duties on the Bench more heartily than Sir Ernest did, "unless it was Lord Hewart, rejoicing in the supreme position of Lord Chief Justice of England."

I made an appointment to interview His Lordship one Friday afternoon at the rising of the Court, and I duly presented my introduction. I had thought on my way down how fortunate I was to secure this interview, and I even contemplated the guinea which I might make by disposing of my impressions to a discriminating newspaper.

His Lordship is an extremely engaging and hospitable personality. There was at that time a Commission sitting to discover ways and means of expediting legal business, so I briefly outlined the system of Associates in New Zealand. His Lordship was very interested in our method of typing the evidence, and in the other invaluable work which the Associates do for the *New Zealand Law Reports*. He was quite surprised to hear that there were no arrears of work at all in the Dominion, though I pointed out that this phenomenon was not entirely due to the Associates. The Judges here do not seem to find the time to indulge their literary propensities.

Arrears of work at Home are colossal, though the Lord Chief has himself indicated that they are not so pressing as they were when he took office. The other reason for this may be that the volume of fresh litigation has diminished. But whether there are arrears of work or not, every new case is very thoroughly dealt with, and is subsequently reviewed by the press just as critically as a new book.

A little elated, I left the Royal Courts of Justice, and shortly afterwards went to spend a week-end in the country. Imagine my surprise on opening the Sunday paper to see an article by the Lord Chief Justice which included a resume of my description of the colonial devices for speedier Court work. *Vigilantibus non dormientibus jura subveniunt*; and it is a geographical fact that where the Royal Courts of Justice end Fleet Street begins.

I also visited the celebrated new Bow Street Courts. Here everything possible is done to make things pleasant for the quarterly visitors, and the ceilings, instead of being a grey, smoky colour, are adorned with angels and cherubim.

The "consistories ecclesiastic," even plus the advocacy of Bacon, failed to attract—except St. Paul's. I had already noticed that London was bespattered with memorials to the first Duke of Wellington, but I was not a little disconcerted to find him buried in three separate places in this Cathedral.

After having followed the three precepts of Bacon, the traveller is finally advised "to maintain a correspondence by letters with those of his acquaintance of most worth." The young globe-trotter may find it more expedient to endeavour satisfactorily to correspond *before he goes* with those of his acquaintance of most worth; and after he has spent the money he will probably discover that the correspondence will drag along after he has returned without any impetus from him whatever.

Judicial Language.—In a recent book concerning the use and abuse of our language, Mr. A. P. Herbert, M.P., laments the fact that Lord Macmillan once said he would be "only too glad to believe" thereby becoming an "Only Too Gladder" and an abuser of the English tongue. In the recent judgment of the Judicial Committee, *Trickett v. The Queensland Insurance Co. and Others*, summarized in an earlier issue (p. 19), Lord Alness uses a somewhat deceptive phrase, here italicised, which requires a little working out, "All that their Lordships find it necessary to say regarding that judgment [*Barrett v. London General Insurance Co., Ltd.*, [1935] 1 K.B. 238] is that, while not questioning the conclusion reached by the learned Judge on the facts of the case, *they find great difficulty in agreeing* with the reasons on which that conclusion was based."

London Letter.

By Air Mail. Temple, London,
February 1, 1936.

My dear N.Z.,

I scarcely know what to say to you about the great loss that the Empire has suffered since I wrote my last letter to you by the death of our late King George the Fifth. No doubt you have read much of what has been written, by pens far abler than mine, of his history, his noble character, and his wonderful devotion to duty. You will also have been much touched by those incidents of the last day of his life which have been made public, how, after repeated efforts to sign his name to that last Order in Council, he turned to those around him and said, "I am sorry to keep you waiting, gentlemen," and how, towards the end, he awoke from a period of unconsciousness and said, "How is the Empire?" I can only say that by reason of his honest and true devotion to service, the legal profession throughout the Empire has lost a leader who was an example to all. His late Majesty was of course particularly closely associated with the Law, since he was a Bencher of Lincoln's Inn, while our present King is a Bencher of the Middle Temple and the Duke of York a Bencher of the Inner Temple.

The great sorrow and sense of loss which the nation has felt, and still feels, have been demonstrated in a way which must be quite unparalleled in history. From the moment when crowds surged round Buckingham Palace to read the latest bulletins to the time of writing this letter the people have evinced their affection and sympathy in a most striking manner. In the streets, scarcely a man is to be seen who is not wearing a black tie, or a woman without a black hat or at least a black band round her arm. The crowds who wished to pass through Westminster Hall to witness the Lying-in-State were so great that the Hall was kept open for many hours longer than had originally been arranged, while the waiting queue, eight and ten deep, frequently extended for over a mile, and some were content to wait for four or five hours through showers of rain in order to gain admittance. Finally the crowds that gathered to witness the funeral procession were so great that in more than one place disaster nearly occurred. At Marble Arch, for instance, the pressure was so great that the people broke through the troops and police lining the route and it was with difficulty that a passage was cleared barely wide enough to enable the procession to pass. As it was, some thousands of casualties occurred. I have seen no estimate of the numbers who gathered along the route, but it is said that the Underground Railways alone carried 2,000,000 passengers that day—considerably more than the total population of your country. I myself was privileged to witness the funeral procession at Windsor from the window of a house in the High Street, and it was a spectacle that I shall never forget. The Courts were closed that day, and most of the Judges attended the funeral service in St. George's Chapel.

As a last tribute to His late Majesty from the legal profession a memorial service was held in the Temple Church yesterday afternoon, in which the Archbishop of Canterbury took part. The service was attended by a very large number of members both of the Bench and of the Bar.

The Accession of King Edward VIII.—As you know, one of the first acts on the accession of a new King is to proclaim him, and this is done in London by reading the Proclamation in four places, one of which is Temple Bar. The reading of the Proclamation at Temple Bar requires a special ceremony, because Temple Bar is the entrance to the City of London into which even the King himself is not permitted to enter without the permission of the Lord Mayor: witness the ceremony at the Law Courts last May when, on the occasion of the Jubilee, the Lord Mayor met King George and handed over to him his sword. Last Wednesday week, therefore, the Lord Mayor, the Sheriffs, and the Aldermen attended at Temple Bar, where a silken cord had been stretched across the road to represent the City boundary, to receive the King's Officers with the Proclamation. The Officers consisted of the Kings-of-Arms, Heralds, and Pursuivants, with an escort of Royal Horse Guards with drawn sabres. The first thing to be heard was a fanfare of trumpets, then the voice of the City Marshal, "Who comes there?" He was answered by Bluemantle Pursuivant, who demanded entrance in order to proclaim the King. On being admitted, Bluemantle Pursuivant presented to the Lord Mayor the Order in Council requiring the Proclamation to be read. The rest of the King's Officers of Arms were then permitted to enter the City and the Proclamation was read at the corner of Chancery Lane by Norroy King-of-Arms. Cheers were then given for the King and the band played the National Anthem, and, after another fanfare of trumpets, the whole procession moved on to read the Proclamation again at the Royal Exchange. I have described this ceremony to you in detail, not only because it is of interest but also because, taking place as it did between the Temple and the Law Courts, it seems to bear a special significance for the legal profession. The description is only partially based on first-hand observation, because although I was at the time just outside the Law Courts, so great was the crowd that I was able to see and hear only a limited amount.

Our present King is, as I have already said, a Bencher of the Middle Temple, but that is not the only interest that he has taken in the activities of the Bar, for at one time he rode regularly in the Bar Point-to-Point Races. Such frivolities he must now put behind him, but, knowing him for the sportsman that he is, we respectfully welcome him as our King, and wish him long life and all prosperity.

Law Reform.—Two reports dealing with questions of law reform have just been issued. The third and last report of the Business of the Courts Committee was published yesterday, and today we have the report of the Royal Commission appointed in December, 1934, to inquire into the state of business in the King's Bench Division. The Report of the Business of the Courts Committee deals with Crown Office Rules, procedure in patent actions, and affidavits of ships' papers. Our present Crown Office Rules were originally drawn up in 1886 and are now largely out of date, either by reason of the abolition by statute of some forms of procedure to which they relate or by reason of other forms of procedure having become obsolete or of doubtful value. With regard to the prerogative writs of mandamus, prohibition, and certiorari, the Committee recommends that the actual writs should no longer be issued, but that the matter should be finally determined by the order of the Court after a preliminary application for leave to take proceedings (supported by affidavit) has been granted.

As to the trial of indictments and criminal informations in the King's Bench Division, the recommendation is that no indictments should in future be preferred in or removed into the King's Bench Division, except in certain cases, and that criminal informations at the instance of a private prosecutor should be abolished. The Committee also recommends that as all appeals from County Courts now go to the Court of Appeal, leaving few cases for the Civil Paper, the Civil Paper should be abolished, and that all business to be heard by the Divisional Court in the King's Bench Division should be entered in the Crown Paper. I do not think that the reforms suggested with respect to patent actions and affidavits of ships' papers will interest you particularly.

The Report of the Royal Commission recommends, first, that while the basis of the present circuits of the Judges should be retained, circuit work should be more evenly spread over the judicial year so as to avoid the absence from London at the same time of such a large number of Judges as are often absent under the present system. The Commission then recommends that the London lists, apart from the Commercial list and the Short Cause list, should be divided into four ordinary lists: Special Jury, Common Jury, Long Non-Jury, and Short Non-Jury. The last-named list would then take the place of our present New Procedure list. The Commission also recommends a qualified increase in the jurisdiction of the County Courts and in that of Quarter Sessions, the qualification in the latter case being the appointment of legally qualified chairmen. Amongst other recommendations is that of a retiring age for Judges, the suggested age being seventy-two, but Lord Hanworth and Sir Claud Schuster are opposed to this.

How far any of the recommendations in either of these Reports is likely to be carried out, it is impossible to say; but they are of great interest and importance to us all, since they represent practical suggestions for speeding up justice and removing the doubts and fears with which the general public are apt to regard all legal procedure. Only yesterday Mr. Justice Hilbery remarked, as a witness hesitated over a reply, "Mr. So and So is naturally suspicious that in a Court of law words do not bear their natural meaning."

Murder in the Temple.—This somewhat startling heading is the title of a recently published volume from the pen of Mr. Justice Mackinnon. It sounds like a thriller; but it is in fact a collection of essays on many varied subjects, mostly having a legal flavour, which makes delightful reading for anyone, but especially for a lawyer. The book's full title, which is printed only inside, is "The Murder in the Temple and other Holiday Tasks."

The Story of the Rude Judge.—Baron Brampton, otherwise Sir Henry Hawkins, in his books of reminiscences, tells the story of a very stupid and very rude Scotch judge, who rarely listened to what counsel said, or if he did, treated counsels' submissions with contempt. One day a well-known advocate was arguing a case before him. Then the Judge interrupted him, and, pointing with his fingers to his ears, said, "You know, Mr. So and So, what you are saying just goes in here and it comes out there." The advocate, however, smiled and said, "I do not doubt it, my Lord, what is there to prevent it?"

Yours ever,
H. A. P.

New Zealand Conveyancing.

By S. I. Goodall, LL.M.

Deed of Hypothecation of Bearer Debentures effected by the Holder to secure present and further Advances including the Guaranteed Account of the Company issuing the Debentures.

This deed made the day of 19 between A.B. of etc. (hereinafter together with his executors administrators and assigns called "the mortgagor") of the first part C. D. Limited a company duly incorporated under the Companies Act 1933 and having its registered office at (hereinafter together with its successors and assigns called "the company") of the second part and E.F. of etc. (hereinafter together with his executors administrators and assigns called "the mortgagee") of the third part

Whereas under and by virtue of the bearer debentures issued by the company and more particularly described in the Schedule hereto and now in the hands of the mortgagor there is now due and owing and secured to the mortgagor by the company the sum of £ for principal moneys together with interest thereon from the day of 19

And whereas the mortgagor has requested the mortgagee to advance and lend to him the sum of £ which the mortgagee has agreed to do upon having security therefor and for further advances with interest and the guarantee by the mortgagor of advances by the mortgagee to the company hereinafter appearing

Now this deed witnesseth as follows:

1. In Consideration of the sum of £ paid lent and advanced by the mortgagee to the mortgagor (the receipt whereof is hereby acknowledged) the mortgagor Doth Hereby Covenant with the mortgagee:—

(1) The mortgagor will "upon demand" pay to the mortgagee the said sum of £ and "further advances" within the meaning ascribed to those words respectively in the Fifth Schedule to the Chattels Transfer Act 1924 the mortgagor being the grantor and the mortgagee being the grantee for such purpose (hereinafter called "the principal sum").

(2) The mortgagor will pay to the mortgagee interest upon the principal sum or so much thereof as shall for the time being be outstanding and secured hereunder at the rate for the time being charged by the mortgagee's bankers to its customers upon their unsecured overdraft accounts such interest to be computed from the day of 19 and to be paid by quarterly payments on the days of and in every year the first thereof to be paid on the day of next and to be a proportionate payment.

2. For the Consideration aforesaid the mortgagor Doth Hereby Guarantee to the mortgagee the due faithful and punctual payment by the company of all moneys due and to become due to the mortgagee by the company for or on account of goods supplied or bills and notes discounted and paid and for further loans credits and advances that may during the continuance of this guarantee be made by the mortgagee and for the accommodation or at the request of the company.

3. For the Consideration aforesaid the mortgagor Doth Hereby Assign Transfer Set Over Hypothe-

CATE CHARGE AND PLEDGE the said debentures and all moneys due and to become due by the company thereunder and all rights remedies and powers incidental thereto unto and with the mortgagee TO HOLD the same unto the mortgagee by way of mortgage and security for payment of the principal sum and interest thereon and all further moneys hereby covenanted or guaranteed to be paid by the mortgagor to the mortgagee and subject to the rights of redemption thereof by the mortgagor accordingly and subject further to the right of redemption by the company subsisting in the said debentures.

4. FOR THE CONSIDERATION aforesaid the mortgagor DOTH HEREBY COVENANT with the mortgagee as follows :—

(1) There is now due and owing and secured to the mortgagor by the company under the said debentures the said sum of £ for principal moneys and interest thereon from the day of 19 .

(2) The mortgagor will cause to be insured and kept insured against loss or damage by fire to the full insurable value thereof all property of an insurable nature comprised in the said debentures and will cause to be punctually paid all premiums and other sums of money due and to become due in respect thereof and will on demand from time to time furnish and deliver to the mortgagee the policy or policies of such insurance and evidence of compliance herewith.

(3) The mortgagor will at all times and from time to time as the mortgagee shall direct demand enforce and procure performance observance and compliance by the company of and with the conditions of and endorsed on the said debentures.

5. IN CONSIDERATION of the premises the company DOTH HEREBY COVENANT AND ADMIT ACKNOWLEDGE AND DECLARE with and to the mortgagor and the mortgagee jointly and with each of them severally that there is now due owing and secured to the mortgagor by the company the said sum of £ and interest thereon from the day of 19 and that the said debentures are good valid and subsisting securities for the last mentioned sum and "further advances" with interest at bank rate "upon demand" within the meaning ascribed to those words respectively by the Fifth Schedule to the Chattels Transfer Act 1924 the company being the grantor and the mortgagee the grantee for the present purpose and the words "further advances" also including all and every sum and sums of money which the mortgagor shall pay or become liable to pay pursuant to the above or any other guarantee or indemnity given or to be given by the mortgagor in respect of liabilities past present or future to the company.

6. AND IT IS HEREBY AGREED AND DECLARED by and between the mortgagor and the mortgagee as follows that is to say :—

(1) The mortgagor may at any time pay to the mortgagee the principal sum or any part thereof without notice or bonus of any kind and interest on any sum or sums so paid shall cease to accrue as from the day or respective days of payment.

(2) If and whenever default shall be made by the mortgagor in payment of any of the principal interest or other moneys hereby covenanted or agreed to be paid and such default shall continue for the space of thirty days or if and whenever the mortgagor shall make default in performance and observance of any other covenant or provision hereof then and as often as the same shall happen :—

(i) The mortgagee may at his option treat all and every sum or sums of money due by the company and hereby guaranteed to be paid by the mortgagor as a further advance by the mortgagee and as capable of being included in the principal sum and (inclusive of any capitalised interest moneys) to bear interest (and further interest) accordingly.

(ii) The power of sale and incidental and subsidiary powers conferred upon mortgagees by the Property Law Act 1908 shall without notice or further lapse of time be exercisable by the mortgagee in respect of the said debentures and the debt and all moneys due and to become due by the company thereunder.

(iii) The mortgagee may (subject as aforesaid) hold sell transfer dispose of appoint a receiver exercise the powers under and generally act and rely upon the said debentures as and in the capacity of the bearer thereof.

(iv) The mortgagee and any receiver appointed by him in terms of the said debentures shall not be liable for any involuntary loss occasioned by the sale of the said debentures or any of the assets comprised therein or the realisation of the security thereby and hereby created.

(v) The proceeds of any sale transfer or disposal of the said debentures or the exercise of any of the powers thereby or hereby conferred or the realisation of the security thereby or hereby created shall (subject as aforesaid) be applied in the following order of priority :—

(*a*) first in or towards payment of all costs commissions and expenses incurred or payable in or about perfecting the security the appointment of a receiver or receivers thereunder the enforcement and exercise of powers and remedies thereunder and the realisation sale transfer or disposal as aforesaid

(*b*) secondly in or towards payment and recoupment to the mortgagee of the principal sum and interest as aforesaid and all further moneys hereby covenanted or guaranteed to be paid by the mortgagor

(*c*) thirdly in or towards satisfaction of any contingent liability assumed by the mortgagee at the request or for the accommodation of the mortgagor and not already included in the principal sum

(*d*) fourthly in payment or transfer to those according to the knowledge of the mortgagee next entitled thereto as creditors secured or otherwise of the mortgagor in their proper order of priority so far as they shall have been ascertained by the mortgagee

(*e*) fifthly in payment or transfer of the surplus to the mortgagor or as he shall direct.

7. PROVIDED ALWAYS AND IT IS HEREBY AGREED AND DECLARED by and between the parties hereto as follows :

(1) No giving of time waiver or indulgence of any kind to the company by the mortgagee shall in any way impair the above written guarantee.

(2) Nothing herein contained shall in any way impair the security of the mortgagor under and by virtue of the said debentures for or in respect of moneys hereinbefore recited to be owing thereunder and any further advances as above defined made or to be made by the mortgagor and interest thereon respectively.

IN WITNESS etc.

SCHEDULE.

ALL THOSE etc.

SIGNED etc.

THE COMMON SEAL etc.

Wellington District Law Society.

Annual Meeting.

The annual meeting of the Wellington District Law Society was held on February 24. Some seventy-six practitioners were present and apologies for absence were received from Mr. H. F. O'Leary, K.C., Hon. W. Perry, M.L.C., and Messrs. G. G. G. Watson and E. L. Howe.

The retiring President, Mr. W. H. Cunningham, who occupied the Chair until the election of his successor for the current year, extended a greeting to the country members who were present, and expressed his pleasure at their attendance. In moving the adoption of the Annual Report and Balance Sheet, he said that the year had been an interesting one, and he drew attention to the passing of the Law Practitioners Amendment Act, 1935, and the revival of the Legal Conference, which was being held at Easter, in Dunedin. He trusted that as many as possible would attend this Conference. A Law Dinner had been held again after a lapse of some years, and had been an unqualified success. A perusal of the accounts would show that the finances of the Society were in a satisfactory condition.

Election of Officers.—Mr. Cunningham, in declaring duly elected as President Mr. D. Perry, the only nominee for the position, stated that his year in office had been one of the happiest of his professional life, owing very largely to the unselfish help of every member of the Council, to whom he was exceedingly grateful.

Mr. Perry, on taking the Chair, expressed his appreciation of the honour conferred, and said he looked back with trepidation on the long line of Presidents who had held office before him, but found comfort in the thought that he would be assisted by an able Council.

The following members were declared duly elected to their respective offices: Mr. D. R. Richmond, Vice-president, and Mr. A. M. Cousins, Treasurer. The following were declared elected to the Council: Messrs. S. J. Castle, P. B. Cooke, K.C., W. H. Cunningham, P. Levi, D. G. B. Morison, G. G. G. Watson, S. A. Wiren, and A. T. Young.

Mr. C. H. Treadwell and the Hon. W. Perry, M.L.C., were unanimously elected delegates to the Council of Law Reporting.

Messrs. Clarke, Menzies, Griffin and Ross were re-elected Auditors.

Mr. C. H. Treadwell, one of the delegates to the New Zealand Law Society, gave a brief account of the work done by the parent body during the year. He then moved that Messrs. H. F. O'Leary, K.C., D. Perry, and G. G. G. Watson should be the delegates to the New Zealand Law Society for the current year, the motion being seconded by Mr. Cunningham and carried unanimously.

Tributes to Mr. C. H. Treadwell.—The President stated that he could not let the occasion pass without paying a tribute to Mr. Treadwell. He had been a representative of the Wellington Society on the New Zealand Council since 1914, a year in which he had been President of the Wellington District Law Society. In 1926 he had been elected Vice-President of the New Zealand Society, and had continued as such until 1933, when, on the death of Sir Alexander Gray, K.C., he had become President. This position he held until March, 1935, when he retired from the office of President but continued as a member of the Council.

On the motion of Mr. Perry, seconded by Mr. A. J. Luke, the following motion was carried with acclamation:—

> "That this meeting desires to place on record its deep appreciation of the distinguished services rendered by Mr. C. H. Treadwell over the past twenty-two years as a representative of this Society on the Council of the New Zealand Law Society, during which period he attained the high office of President of that body; and greatly regrets his decision not to accept nomination for a further period as one of the Society's delegates."

After Mr. A. J. Luke and Mr. M. M. F. Luckie had expressed their indebtedness to Mr. Treadwell for many kindnesses and much assistance, Mr. Treadwell replied, stating that he found it very difficult to express his appreciation of the vote of thanks, but that he was more than pleased to have been of service to the Society. He said he had not grudged one moment of the time spent on its work.

Easter and Christmas Holidays.—Mr. W. G. L. Mellish, seconded by Mr. R. E. Tripe, moved that the holidays should be as follows:—

Easter.—Close at the usual hour on Thursday, April 9, and re-open at the usual hour on Monday, April 20.

Christmas.—Close at noon on Thursday, December 24, and open at the usual hour on Tuesday, January 12, 1937.

A considerable amount of discussion then took place and an amendment that the Easter holidays should be one week from Thursday, April 9, and the Christmas holidays three weeks from noon December 24, was lost, as was a further amendment that offices should re-open after Christmas on Monday, January 11.

Mr. Mellish's motion was then put to the meeting and carried.

Bar Dinner.—Mr. Luckie moved that it should be a recommendation to the new Council that the practice of holding a Bar Dinner should be continued. Mr. J. Macfarlane Laing (Masterton), in seconding, stated that the idea of the Dinner was an excellent one, as country members were brought into closer touch with town members. The last Dinner had been a great success and he hoped the function would be continued. The motion was carried unanimously.

Office of Attorney-General.—It was decided that a letter should be sent to the Hon. Mr. Mason, expressing the congratulations of the meeting to a former Wellingtonian and member of the profession on his attaining the high office of Attorney-General.

Five-day Week.—Mr. O. C. Mazengarb, seconded by Mr. J. Meltzer, moved that there should be a recommendation to the incoming Council to consider the advisability and practicability of closing all legal offices on Saturday mornings.

A lengthy discussion took place, and the motion was carried by a majority on the voices.

[*The Secretaries of other District Law Societies are requested to send to the Editor reports of their respective annual meetings as being matters of general interest to the profession at large.*]

Solicitors in State Departments.

Admission as Barristers.

Section 45 of the Law Practitioners Amendment Act, 1935, which was inserted during the passage of the Bill through the Legislative Council, and in direct opposition to the wishes of the New Zealand Law Society,* substitutes the following paragraph for para. (*e*) of s. 4 of the Law Practitioners Act, 1931 :

> " (*e*) Any person who is a solicitor of the Court of not less than five years' standing, and who, for at least five years continuously next preceding the date of his application, has been in active practice as a solicitor or has been managing clerk to a solicitor of the Court in active practice, or who, being an officer employed in any Department of State, has been engaged therein for at least five years continuously next preceding the date of his application in the performance of legal work of such a character as in the opinion of the Court qualifies him to be admitted as a barrister.

On February 3, two applications for admission as barristers were made to the Supreme Court at Wellington under the newly-substituted paragraph ; and, as these were the first to be made under it, the remarks of counsel and the subsequent observations from the Bench are of general interest.

The applicants were Mr. F. W. Aickin, Railway Law Officer, for whom Mr. A. E. Currie appeared, and Mr. J. H. Carrad, first Assistant Solicitor to the Public Trust Office, for whom Mr. E. P. Hay appeared.

The President of the New Zealand Law Society, Mr. H. F. O'Leary, K.C., with him Mr. H. J. Thompson, the Society's executive officer, represented the New Zealand Law Society.

Mr. O'Leary said the remarks he was about to make would apply to both applications. The applications were not opposed by the Law Society because from inquiry and actual knowledge of many members the work done by Mr. Aickin and Mr. Carrad had been such as in their opinion to entitle them to be admitted as barristers under s. 45 of the Law Practitioners Amendment Act, 1935. He would like to add that the attitude taken by the Law Society on this occasion would not necessarily be the attitude which might be taken on similar subsequent occasions. It was submitted that it was not to be assumed that anyone who had been a solicitor for five years and who had been employed by a Department of State should, as a matter of course, be admitted as a barrister. The section provided that in addition to the two qualifications stated the applicant must have been engaged in the performance of legal work of such a character as in the opinion of the Court qualified him to be admitted as a barrister. If in any particular case the Society from its knowledge of the circumstances felt that the application should be opposed it would take steps to be represented for that purpose. He would not attempt to lay down what principles should be applied by the Court in determining what constituted the standard required by the statute. That might be necessary in a future case ; but in these two cases now before the Court the qualifications were unquestioned.

His Honour, the Chief Justice (the Rt. Hon. Sir Michael Myers), in making the orders applied for, said : " These are the first cases under the new statute. Whatever view the Law Society may take in respect of any application of this character, the statute casts the responsibility on the Court, which is, of course, always glad to be assisted by any representations on the part of the Law Society. I agree that every case should be considered not only by the Law Society, but also by the Court, and decided upon its merits. I also agree with what has been said by Mr. O'Leary concerning the work performed by both applicants. But I consider that the Law Society should be represented on the hearing of all applications of this kind, and that, if necessary, rules should be made to ensure that the Law Society may have ample notice of every application so as to enable it to make proper inquiries."

* See p. 37, *ante*.

Bench and Bar.

Mr. O. C. K. Corrie, Senior Puisne Judge in Palestine, has been appointed Chief Justice of Fiji.

Mr. P. B. Cooke, K.C., has taken the chambers recently occupied by Mr. H. J. V. James, in Ballance Street, Wellington.

Mr. A. E. L. Scantlebury, of Blenheim, has taken into partnership Mr. F. Noble-Adams, and the firm will be known as Messrs. Scantlebury and Noble-Adams.

Mr. J. Tattersall, of Napier, has returned from a nine months' trip to England and the East. He has resumed practice at his former offices, Tennyson Street,Napier.

Mr. A. C. Brassington, until lately on the staff of Messrs. Wilding and Acland, has commenced practice on his own account at 188 Hereford Street, Christchurch.

Mr. T. S. Dacre, of Christchurch, has taken Mr. S. R. Dacre, LL.M., into partnership. The practice will in future be conducted under the firm-name of " T. S. Dacre and Son."

Mr. Colin Nicholson, LL.B., who has been with Mr. G. J. Bayley, Hawera, for some years, has entered into partnership with Mr. F. W. Hamel, of Patea. Mr. Milliken who has been with Mr. Hamel, is returning to Auckland.

The partnership between Messrs. A. M. Ongley and G. Tremaine, which was carried on at Palmerston North under the firm name of " Gifford Moore, Ongley, and Tremaine," has been dissolved. Mr. A. M. Ongley will continue to practise under the present firm-name.

Messrs. Wilding and Acland, Christchurch, have admitted into partnership Mr. A. C. Perry, LL.M., Mr. C. G. de C. Drury remaining the resident partner at Ashburton. The firm will continue to practise as Messrs. Wilding and Acland, both at Christchurch and at Ashburton.

Mr. H. J. V. James, formerly editor of this JOURNAL, who for some years past has been practising in Wellington on his own account as a barrister only, has joined Messrs. Tripp, Watson, Jorgensen, and Hogg in partnership. Owing to Mr. P. B. Cooke's having received his patent as King's Counsel, he retired from membership of the former firm of Messrs. Chapman, Tripp, Cooke, and Watson as from January 29 last. Mr. W. P. Shorland, who has been a member of the staff for many years, has also been admitted to the new partnership, which will be known as " Chapman, Tripp, Watson, James, and Co."

Tactics in Court.

By Wilfred Blacket, K.C.

Women in Court.—Pity it is that they ever have to be there on business, for to me a woman in litigation is just as inappropriately placed as a woman in hurdle-racing, and you may have noticed that it is always the heavy-weight women who want to fly over hurdles, and that the photographer always gets them just at the instant when they are looking more unladylike than they have ever done before or since. Of course, a woman does look ladylike in Court, and that is the very reason why she does not harmonise with her surroundings. A woman in the dock is a tragedy; a woman in the witness-box is a regrettable occurrence; and may Heaven protect Australia from women in the jury-box! Yes, I know that woman is man's equal, but still no nice girl that I know would like to sit on a jury—not even if she had got a new hat for the occasion.

Possibly I shall not be believed by persons who have never been in Court, although I think that members of the legal profession will agree with me when I assert that women are not talkative in the witness-box. Of course occasionally you do see a female witness who wants to tell the Court within ten minutes all the things that she knows about herself and others, but she is the rare exception; the general thing is for the witness to restrain her utterances in Court, being consoled in this restriction by the thought of the perfect freedom of speech that she will be able to enjoy what time she is telling her friends all about it. And it is certain that she will talk about it, for a law-suit is the event of a life-time to the litigants and their witnesses, although it is merely "a case" to the barristers. I know I have said something like this before, but it is a truth that should be "hammered," for the successful advocate is he who is able to emulate his client's enthusiasm in the fight.

Women and younger females are quick to realise the restraints, and perceive and perform the duties of a new environment. You can make an efficient branch ledgerkeeper out of a flapper in a fortnight, and if a female witness is firmly told that her opinion concerning matters generally is not desired, and will not be favourably received, she will generally refrain from telling the world all that it ought to be told for its own good. Rarely either do you hear in Court the crude sarcasms and contemptuous observations which some women are prone to indulge in when speaking on ordinary occasions. Only one bitter retort from a lady in the witness-box do I remember, and it had the complete sympathy of her audience. The lady was not without spot nor blemish, but her record did not invite, nor did the silk robe of cross-examining counsel excuse, the insolence of a comment which he made upon an answer she had given. Obviously it hurt, but she with splendid restraint quietly said, "Mr. So-and-So, I hope that I misunderstood the words you have just used, for I still want to believe that King's Counsel are gentlemen." He had not the grace to apologise, but he had "nothing more to ask this witness."

The most wonderful witness I ever saw in the box was Mrs. Porter, whose story is told in an instalment of "Tactics" not yet published, and the strangest, in a gruesome way, was a girl of sixteen, prosecuted in a trial in a country court. She in the calmest and most methodical way detailed with faultless accuracy her wrongdoings during two lurid years so far as they related to the charge then in prosecution. Her phrasing was wholly original, and in spite of their novelty the terms used were unmistakable in their meaning. In support of her statements she produced a diary, and there in the pot-hooks and hangers of childhood were written frank and full accounts of the happenings "down at the river," exceeding in vividness and wealth of detail the narratives of similar doings contained in the works of the most widely read writers of modern fiction. Her calmness in the box contrasted strangely with her recklessness "down at the river," but still the jury acquitted. "On what ground?" Well, you see, the prosecutrix was a young girl, and that is generally a sufficient ground for acquittal anywhere.

In my "Notes" already published I have dealt with the "gloaters" in the gallery in dirty cases, so will not now refer to them, but should like to quote some words of wisdom uttered by an observant tipstaff and recorded in my book *May it Please your Honour*, for the book has been out of print for years past, and there are, I think, only two copies of it in the Dominion, and the wise words of this tipstaff are as follows:

> "It's funny to see the women looking on in the Divorce Courts at the beginning of a sitting. You see, lots of them will appear in cases lower down the list, and they come along just to see what the Judge looks like with his wig on, and what sort of questions they'll be asked, and how they ought to talk to the Judge, and whether they ought to wear veils, and of course they take notice of the dresses, too.
>
> "They ought to do that, because there's a lot in dressing. Many a time a woman has been docked a hundred or two in a breach of promise case because she came into court with too much hat and too little frock on. And these chintz kind of things, they don't look too well.
>
> "I do not know whether the women's journals tell them what women ought to wear in court, but you take it from me that there's nothing more likely to get a good verdict than a little peewee-nest hat and a plain brown or dark-blue dress that fits close like a tailor-made and without any sequins or flounces on it.
>
> "Of course, in divorce, a woman wears black, if her complexion goes well with it. If a barrister knows his work, he will go through a girl's menu of clothes and see which of her dresses will get her the best verdict. He ought to make her wear whatever she looks most modest in, even if she says she won't go on with the case unless she can wear her purple cretonne with the big yellow and peacock-blue butterflies on it. Barristers ought to know their business, and not let her wear a thing like that."

I may add that the reason why the book is out of print is that when the first edition had been speedily sold out and a second edition was required it was found that the publisher had distributed the type and no more copies could be printed, but notwithstanding this error I do not concur in the opinion very strongly held by some writers that Simple Simon was a publisher.

"**Acting the Goat.**"—It is well upon commencing a case to create a favourable atmosphere, and that is why Sir Julian Salomons once began his argument in an appeal in Banco by saying, "In this case, your Honours see I appear for I. W. Brown, the defendant in the Court below, and as I have difficulty in pronouncing the name of the plaintiff company, your Honours see, I propose to refer to it as the Acting Billygoat Company, and this not only because it is easier to pronounce, your Honours see, but also because it seems to be particularly appropriate to much of the conduct and many of the proceedings of the plaintiff company and its advisers in the action, your Honours see." He got that one over all right, but he was much too prudent to give his impudence an encore. And the name of the plaintiff company was "Acktiebolaget Muliebaka Tryoil."

Practice Precedents.

Written Issues to the Jury in Running-down Actions.

There can be no such thing as a set of model issues that may be appropriate to the circumstances in every case; and no attempt is made here to do more than furnish copies of issues which have been the subject of judicial consideration. It is hoped, in this way, to provide a guide for the framing of issues applicable to the special circumstances of individual actions.

The putting of issues to a jury is to avoid the difficulty of explaining the law of negligence in terms of decided cases, though the whole law of negligence in accident cases is now well settled: *British Columbia Electric Railway Co., Ltd. v. Loach*, [1916] A.C. 719; *Swadling v. Cooper*, [1931] A.C. 1. In England, it is not the practice to submit written issues, reliance being placed on the Judge's direction to the jury. In New Zealand, in cases where the facts are simple, it is not usual to prepare written issues; but, when contributory negligence or the doctrine of last opportunity is in question, both the Court and counsel generally prefer that the issues be put in writing to supplement the direction of the Judge on the subject-matter of such issues, and to ascertain the findings of the jury on certain actual facts.

In practice, the decision as to whether issues shall be put, or not, rests with the trial Judge, who, after hearing the evidence, indicates to counsel whether he proposes to put written issues to the jury. It is also for him to say whether, in his opinion, the facts brought out in evidence allow for the putting of certain special issues, such as a question as to "last opportunity" or "substantial cause." As to the evidence that is necessary and relevant to support the Judge's putting of such a question, see *Admiralty Commissioners v. S.s. "Volute,"* [1922] 1 A.C. 129, referred to in *Salmond on Torts*, 7th Ed., 48, and also see the review of the authorities generally in the article by the late Lord Justice O'Connor in *38 Law Quarterly Review*, p. 17.

If counsel are not in accord with the trial Judge as to the nature or form of the issues proposed to be put to the jury, then, if necessary, the issues are settled in Chambers with counsel. But, it must be remembered, that counsel are bound by the issues to which they have agreed, or to which no objection was raised before they went to the jury.

In *Anson v. Black and White Cabs, Ltd.*, [1928] N.Z.L.R. 321, the question of issues was before the Court of Appeal, and all that was there decided was that the issues mentioned would have been proper in that case: per Myers, C.J., in *Benson v. Kwong Chong* [1931] N.Z.L.R. 81, 87; and see in *Swadling v. Cooper* (*supra*) the issues on which the learned trial Judge directed the jury, were held by the House of Lords to have been sufficient in the circumstances of that case.

The issues put to the jury in *Anson's* case were as follows:

1. Was the defendant guilty of negligence in that its cab was being driven on the wrong side of the road?
   Answer:
2. If so, was the negligence of the defendant the real, direct and immediate cause of the accident?
   Answer:
3. Damages:
   (*a*) Special .. ..
   (*b*) General .. ..

In the Court of Appeal, leaving out the issue as to quantum of damages, the Court in its judgment said it appeared that the proper issues would have been these:—

1. Was the defendant's driver guilty of negligence by driving the car on the wrong side of the road?
2. Was the plaintiff guilty of negligence by (*a*) riding his cycle on the wrong side of the road; (*b*) riding at an excessive speed; (*c*) failing to keep a proper look out?
3. If both were negligent, whose negligence was the real cause of the collision?

Three years later, in his separate concurring judgment in *Benson v. Kwong Chong*, [1931] N.Z.L.R. 81, 87, Myers, C.J., in commenting upon the judgment in *Anson's* case and the issues therein suggested, said:

> "Recent cases have shown that issues in this form are not satisfactory. In any event, the third issue would involve practically as elaborate a direction as if no issues were submitted at all."

In *Benson v. Kwong Chong* itself, the issues submitted to the jury were as follows:

1. Was the defendant's driver negligent:
   (*a*) In driving at an excessive speed?
   Jury's answer: .....
   (*b*) In driving on the wrong side of the road?
   Jury's answer: .....
2. Was the plaintiff negligent:
   (*a*) In cutting the corner of Spiers Street?
   Jury's answer: .....
   (*b*) In attempting to cross Seddon Street in front of defendant's car?
   Jury's answer: .....
3. If you find that both were negligent could each up to the last moment have avoided the accident by the exercise of ordinary care?
   Jury's answer: .....
4. If not, could either of them, and, if so, which?
   Jury's answer: .....
5. Assess the damages to the plaintiff irrespective of your answers to the above questions:
   Jury's answer: .....
   Special damages .. ..
   General damages .. ..

After saying it was unwise to attempt to frame a model set of issues, the learned Chief Justice said, in addition to the remarks above quoted, that, speaking generally, in his view,

> "Issues framed generally on the lines adopted in the present case would seem to be sufficient, with appropriate and comparatively simple direction, to meet a large number of the cases of this kind that come up for trial."

It is remembered, of course, that in the judgment of the Privy Council in the appeal in *Benson's* case nothing turned on the form of the issues, as above set out, which were before their Lordships' Board.

In *Lewis v. Stewart*, [1934] N.Z.L.R. s. 89, the learned trial Judge proposed submitting two issues to the jury, in addition to the question as to damages:

> 1. Was the defendant guilty of negligence in any of the respects alleged by the plaintiff? If this issue is answered "Yes," then state in what respects the defendant was negligent.
> 2. Was the plaintiff Lewis guilty of negligence in any of the respects alleged by the defendant Stewart? If this issue is answered "Yes," then state in what respect or respects the plaintiff Lewis was negligent.

Plaintiff's counsel requested the inclusion of the issue as to "last opportunity," or as to whose negligence was the substantial and effective cause of the accident. Defendant's counsel objected to the inclusion of that issue, relying on the defence of contributory negligence *simpliciter*. The learned Judge indicated that he thought there was no room for the doctrine of last oppor-

tunity on the facts before the Court, except possibly as to the plaintiff. He ruled that as the doctrine, if open, would on the facts at most apply against plaintiff, and defendant did not want the issue, it should be omitted. He offered both parties an issue as to joint and simultaneous negligence, but neither desired it, and the issues remained as above.

The jury found negligence on the part of both plaintiff and defendant, and assessed the damages. The learned Judge then entered judgment for defendant. Plaintiff moved for judgment, or, in the alternative, for a new trial. The motion was referred to the Full Court, which held that the judgment should be set aside and a new trial ordered. (These judgments should be carefully read, when considering this matter of issues.) In the opinion of the majority, Myers, C.J., and MacGregor and Kennedy, JJ., there was evidence requiring the submission of a third issue; and, on the new trial, that issue should in form be directed not to the question of last opportunity, but to the question of whether, if both parties were negligent, the effective and substantial cause of the accident was the negligence of the plaintiff or of the defendant, or the combined negligence of the two. An issue so submitted would require from the trial Judge any necessary explanation of the doctrine of last opportunity. In the dissenting judgment of Blair, J., there is a review of the authorities on the question as to whether, where there is no room for the doctrine of last opportunity, there must be left to the jury, viewing all the circumstances, the question whether one party was to the exclusion of the other the "substantial cause" of the injury.

The third issue, suggested by the majority of the Court in *Lewis v. Stewart* (*supra*) may be expressed, in suitable cases, as follows:

> 3. Were both parties guilty of negligence? If this issue is answered "Yes," then state whether the effective and substantial cause of the accident was (*a*) the negligence of the plaintiff, or (*b*) the negligence of the defendant, or (*c*) the combined negligence of plaintiff and defendant.

For a recent judgment in a case where no written issues were submitted to the jury, see *Jane v. Stanford*, [1935] N.Z.L.R. 891, which is also valuable as defining the functions of Judge and jury, in a case in which a verdict is returned where there are no facts sufficient to support it.

Some further sets of issues, which have stood the test of practical use in several actions, are submitted as guides in the framing of issues to suit the circumstances of the case before the Court:

A.

1. Did the deceased die as the result of injuries caused by his being struck by the defendant's motor car?
   Answer:

If so

2. Was the defendant guilty of negligence in all or any of the following respects:—
   (*a*) Driving his car without a windscreen-wiper in good working order affixed thereto.
   Answer:
   (*b*) Driving at an improper speed.
   Answer:
   (*c*) Failing to sound his horn prior to, or at the time of entering Street.
   Answer:
   (*d*) Failing to keep a proper lookout.
   Answer:
3. Was the deceased guilty of negligence in both or either of the following respects:
   (*a*) Failing to keep a proper lookout?
   Answer:
   (*b*) Failing to exercise reasonable care to avoid the defendant's motor car?
   Answer:
4. (*a*) Was the accident caused by negligence?
   Answer:
   (*b*) If so, whose negligence was the real cause of the accident?
   Answer:
5. What amount (if any) is the plaintiff entitled to recover for and on behalf of the widow of the deceased?
   Answer: £ .

B.

1. Was the defendant guilty of negligence in all or any, and, if any, which of the following respects:
   (*a*) Driving at an excessive or improper speed.
   (*b*) Failing to keep a proper lookout.
   (*c*) Not observing the "off-side" rule.
   (*d*) Failing to stop in sufficient time to avoid the collision.
   (*e*) Not exercising sufficient or proper control over the motor-bus at the time of the collision.
2. Was the deceased guilty of negligence in all or any, and, if any, which of the following respects:
   (*a*) Driving at an excessive or improper speed.
   (*b*) Not keeping a proper lookout.
   (*c*) Not giving any or a sufficient warning of his approach.
   (*d*) Not having his motor-cycle sufficiently lighted to indicate his approach.
   (*e*) Failing to stop in sufficient time to avoid the collision.
   (*f*) Not exercising sufficient or proper control over the motor-cycle immediately before the time of the collision.
3. If both were negligent, could the defendant , after the negligence of both parties had commenced, have avoided the collision by the exercise of ordinary and reasonable care?
4. If both were negligent, could the deceased, after the negligence of both parties had commenced, have avoided the collision by the exercise of ordinary and reasonable care?
5. Damages (if any)—
   (*a*) To the plaintiff : .
   (*b*) To the plaintiff : .

C.

1. Was the defendant's driver guilty of negligence in all or any of the following respects:—
   (*a*) Failing to keep a proper lookout.
   (*b*) Driving on the wrong side of the road.
   (*c*) Turning suddenly across the road without sufficient warning.
2. Was the plaintiff guilty of negligence in all or any of the following respects:—
   (*a*) Failing to keep a proper lookout.
   (*b*) Driving on the wrong side of the road.
   (*c*) Driving at an excessive speed.
   (*d*) Turning his head and looking in a direction contrary to that in which he was travelling.
   (*e*) Failing to deviate from his course in order to avoid colliding.
   (*f*) Failing to heed the warning (if any) given him.
3. If both were negligent, whose negligence was the real cause of the accident?
4. What damages (if any) is the plaintiff entitled to recover:
   (*a*) By way of special damages.
   (*b*) By way of general damages.

Legal Literature.

Notable New Zealand Trials. By C. A. L. Treadwell. (Thomas Avery & Sons, Ltd., New Plymouth.)

This work is now in the press, and should appear early in April. It records twenty-four of the one hundred and thirty murder trials that have taken place in this country. Each story of the events leading to the conviction or acquittal of the prisoner has been told with dramatic effect, and the collection forms a record of many forgotten incidents in the moving times of early colonization.

Recent English Cases.

Noter-up Service
FOR
Halsbury's "Laws of England."
AND
The English and Empire Digest.

BANKRUPTCY AND INSOLVENCY.

Bankruptcy—Deed of Arrangement—Petition—Conduct of Creditor—*Re* A DEBTOR (No. 11 of 1935) (Ch. D.)

A creditor who does not execute a deed of assignment as assenting thereto, may nevertheless by his conduct preclude himself from relying on the execution of the deed as an act of bankruptcy.

As to assignments for the benefit of creditors as acts of bankruptcy: see HALSBURY, 2nd Edn., 2, para. 26; DIGEST 7, p. 127.

Bankruptcy—Judgment against firm—Service on one partner—Receiving Order—*Re* A DEBTOR (No. 24 of 1935) (Ch. D.)

A bankruptcy notice addressed to a firm and served only on one of the partners in the firm at a place other than the principal place of business of the firm, is good service on the partner for the purpose of a receiving order being made against him.

As to service of bankruptcy notice: see HALSBURY, 2nd Edn., 2, para. 47; DIGEST 4, p. 89.

COMPANIES.

Company—Winding-up—Transfer of Proceedings to County Court—Summons in Winding-up—Refusal of County Court to Deal With—VERNON HEATON CO., LTD., *In re* (Ch. D.)

The Court has jurisdiction to transfer any winding-up proceedings from the High Court to the County Court, notwithstanding that the County Court has only a limited jurisdiction to wind up.

As to transfer of winding-up proceedings: see HALSBURY, 2nd Edn., 5, para. 1205 *et seq.*; DIGEST, 10, p. 973.

EVIDENCE.

Divorce—Evidence—Declaration of Deceased Doctor—SIMON *v.* SIMON, HOGARTH & OTHERS (P.D.A.)

The notes or certificates of a medical man made for a purpose unconnected with divorce proceedings cannot, after his death, be given in evidence as declarations made in the course of duty.

As to declarations made in the course of duty: see HALSBURY, 2nd Edn., 13, para. 658 *et seq*; DIGEST 22, p. 112.

EXECUTORS AND ADMINISTRATORS.

Damages—Tort—Cause of Action—Death of Injured Person—Survival of Cause of Action—ROSE *v.* FORD (C.A.)

Where a person dies as the result of the actionable negligence of another, damages may be recovered by his personal representatives for his pain and suffering, and for the loss of a limb; but not for the loss of expectation of life.

As to the Law Reform (Miscellaneous Prov sions) Act, 1934, see HALSBURY, 2nd Edn., 14, paras. 710-730.

Probate—Practice—Presumption of Death—Special Grant—*Re* LEVER (P.D.A.)

In a proper case a motion may combine an application for leave to swear that deceased died on or since a certain date with an application for a grant of administration.

As to grants of administration under the discretionary power of the Court: See HALSBURY, 2nd Edn., 14, para. 424 *et seq.*; DIGEST 23, p. 155.

Probate—Practice—Administration—Grants to Nominee—*Re* SIMPSON, decd.; *Re* GUNNING, decd. (P.D.A.)

Where a person has a claim against the estate of a deceased person under the Law Reform (Miscellaneous Provisions) Act, 1934, and no other person will take a grant of administration a grant may be made to a nominee of the proposed plaintiff.

As to grants of administration under the special powers of the Court: see HALSBURY, 2nd Edn., 14, para. 424; DIGEST SUPP.

GAMING.

Lottery—Cross-Word Puzzle—Solutions Drawn up by Promoter—COLES *v.* ODHAMS PRESS, LTD. (K.B.D.)

A cross-word puzzle competition with money prizes, in which alternative solutions are possible and the winning solution is fixed before the competition, is a lottery.

As to competitions as lotteries: see HALSBURY, 2nd Edn., 15, para. 928; DIGEST 25, p. 463.

Sweepstake Tickets — Block of Tickets Held by Member of Syndicate on Behalf of Syndicate—CORFIELD *v.* DOLBY (K.B.D.)

The holding by one member of a syndicate on behalf of himself and the other members of the syndicate of tickets in a sweepstake does not constitute "possession for the purpose of sale or distribution" within the meaning of sec. 22 (1) of the Betting and Lotteries Act, 1934.

As to offences in connection with lotteries: see HALSBURY, 2nd Edn., 15, para. 931 *et seq.*; Supplement for 1935 *ibid.*, p. 13; DIGEST, 25, p. 457 *et seq.*

HUSBAND AND WIFE.

Breach of Promise—Promise in Event of Divorce—After Decree *Nisi*—FENDER *v.* MILDMAY (C.A.)

The rule that a promise to marry by a person already married is against public policy, and will not support an action, applies to a promise made between decree nisi *and decree absolute of divorce.*

As to promises to marry by a person already married: see HALSBURY, 2nd Edn., 16, para. 816; DIGEST 27, p. 26 *et seq.*

Rules and Regulations

Post and Telegraph Act, 1928. Amendments to the Telephone Regulations.—*Gazette*, No. 15, February 20, 1936.

Agriculture (Emergency Powers) Act, 1934. Herd-testing Regulations.—*Gazette*, No. 16, February 27, 1936.

Land and Income Tax Amendment Act, 1935. Reciprocal Application of Income-tax Exemption to non-resident traders resident in or nationals of Belgium.—*Gazette*, No. 16, February 27, 1936.

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Law of Arbitration. By Quinton M. Hogg, M.A. (Butterworth & Co. (Pub.) Ltd.). Price 28/-.

Michael and Wills' Gas and Water. Gas Volume. (Butterworth & Co. (Pub.) Ltd.). Price 65/-.

Elements of Criminal Law and Procedure. Fourth Edition. By A. M. Wilshire. (Sweet & Maxwell Ltd.). Price 21/-.

The Law Students' Landlord and Tenant. Reprinted from Third Edition of Principles of Common Law, 1935, by A. M. Wilshire, M.A., LL.B. (Sweet & Maxwell Ltd.). Price 5/6.

District Councils. Second Edition. Their Powers and Duties. By H. W. Wightwick. (Stevens & Sons). Price 21/-.

Law of Carriers' Licenses. By E. F. M. Maxwell. (Sweet & Maxwell Ltd.). Price 21/-.

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Summary Criminal Jurisdiction according to the Law of Scotland. By Thomas Trotter, K.C., D.L., 1936. (Wm. Hodge). Price 72/6.

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Rent and Mortgage Restrictions Acts, 1920-1935, by Archibald Safford. Eighth Edition, 1936. (Sweet & Maxwell Ltd.). Price 11/6.