New Zealand
Law Journal
Incorporating "Butterworth's Fortnightly Notes."

"The law does not consist of particular cases but of general principles, which are illustrated and explained by these cases."

—LORD MANSFIELD in *The King v. Bembridge*, (1783) 2 Dougl. 327, 332.

Vol. XII. Tuesday, March 31, 1936. No. 5

Newspaper Articles and Copyright.

IN the recently published report of the Committee set up by the Board of Trade to report as to what should be the policy of His Majesty's Government in Great Britain on propositions put forward by the Belgian Government for amendment of the International Convention for the Protection of Literary and Artistic Works, the following comment has created considerable interest:

"Under our law a journalist has full copyright in his articles, except in some cases where he is under a contract of service."

We propose to consider the present position of the law in regard to copyright in articles in newspapers and periodicals in relation to our domestic legislation, the Copyright Act, 1913; and we hope, in a later issue, to discuss the legal position under the less stringent International Code of the writers of similar articles.

I.

The Copyright Act, 1913 (New Zealand), is a code in itself, and rights do not now exist apart from it in respect of any literary, dramatic, musical, or artistic work, whether published or unpublished, otherwise than under and in accordance with the statute. Copyright at Common Law is abolished, and there are now no formalities of registration, since copyright protection attaches automatically throughout His Majesty's dominions. As McCardie, J., said in *Falcon v. Famous Players Film Co., Ltd.*, (1925) 42 T.L.R. 91, 95, the present Copyright Act is designed to enlarge the protection of authors and their assigns and to maintain these rights by a system of liberal substitution and enlargement. The provisions of the New Zealand statute are identical with those of the Imperial statute of 1911, so assistance in its construction and application may be derived from cases decided in England and in the self-governing Dominions which have also adopted it.

The ownership of copyright is dealt with in s. 8 of our Act, which is in the same terms as s. 5 of the Copyright Act, 1911 (Imp.), and, in so far as it affects literary works, is as follows:

1. Subject to the provisions of this Act, the author of a work shall be the first owner of the copyright therein: Provided that . . .

(*b*) Where the author was in the employment of some other person under a contract of service or apprenticeship, and the work was made in the course of his employment by that person, the person by whom the author was employed shall, in the absence of any agreement to the contrary, be the first owner of the copyright; but where the work is an article or other contribution to a newspaper, magazine, or similar periodical, there shall, in the absence of any agreement to the contrary, be deemed to be reserved to the author a right to restrain the publication of the work, otherwise than as part of a newspaper, magazine, or similar periodical.

In considering the question of copyright in articles written for or contributed to newspapers, magazines, and other periodicals, it must be borne in mind that there are three classes of writers or contributors of such articles. First, there is the independent author who is not employed by the newspaper proprietor, or under a contract of service or apprenticeship to him. Secondly, there is the otherwise independent author, such as a free-lance journalist, who, in law, is in the employment of the newspaper proprietor and makes his work in the course of his employment by such proprietor. Thirdly, there is the regular-staff man, who is under a contract of service with the proprietor and makes his work in the course of his employment on the staff of the newspaper owned by such proprietor.

There is no difficulty in ascertaining the position of the members of the third class. As the condition precedent to the passing of the copyright from author to newspaper proprietor under para. (1) (*b*) of s. 8 of the Act is the relationship of master and servant, difficulty may arise in distinguishing those in the first class from those in the second class in relation to copyright. And this distinction must be clearly drawn in the case of contributors to a newspaper, magazine, or similar periodical, because of the special considerations which are applied in the final proviso of subs. 1 (*b*) of s. 8 of the Act, above quoted.

To take a typical New Zealand instance: An author writes an article and sends it to the editor of a newspaper or periodical, hoping that it may be accepted, and that, if it is published, he will receive payment according to the newspaper's usual rates in due course. (It is understood that in this instance the author is not a member of the newspaper's staff.) Does the author retain his copyright in the article, after its publication in the newspaper's columns?

Before this practical question may be answered with any certainty, we must apply the provisions of the statute, and ascertain: (*a*) What is an "author"? (*b*) What is "employment under a contract of service" and to what does "the course of his (the writer's) employment" extend? (*c*) What is "an agreement to the contrary"? These are mostly question of fact, but as MacKinnon, J., said in *Sasha, Ltd. v. Stoenesco*, (1929) 45 T.L.R. 350, a copyright action respecting photographs, their complexity is

"an illustration of the fact that the terms of the simplest contracts which everyone enters into every day are the most difficult to ascertain, because they are made with the minimum of expression and the maximum of implication."

The first question is, "What is an author?" The statute supplies no definition, but in *Walter v. Lane*, [1900] A.C. 539, Lord Davey said:

"Whilst it may be difficult for any judicial authority to give a positive definition of that word, certain considerations controlling the meaning of it seem to be established."

The now-repealed statute seemed to the Earl of Halsbury, L.C., to require in an "author" neither literary merit nor intellectual labour nor originality in thought or expression. A reporter of a speech is the author of his own report, as he alone composed his report, the materials for the composition were his notes, which were his own property, aided to some extent by his

memory and trained judgment, said Lord Davey. The term "author" may include, in the opinion of Lord James of Hereford, a translator from a foreign language, the compiler of law reports, or of a street directory, or of a railway time-table, yet in one sense no original matter can be found in such publications; but, he added,

> "still there is something apart from originality on the one hand and mere mechanical transcribing on the other which entitled those who gave these works to the world to be regarded as their authors."

The meaning of "author" has not been altered by the Copyright Act, 1913. The expressions "author" and "original" have always been correlative in copyright law; one connotes the other, and there is no indication in the Act that the Legislature intended to depart from the accepted signification of the words as applied to the subject-matter. "Original" means "not copied," "not imitated." The circumstance of reciprocal connotation is the key to the meaning of the enactment: per Isaacs, J., in *Sands and McDougall Proprietary, Ltd. v. Robinson*, (1917) 23 C.L.R. 49, 55; and see also *H. Blacklock and Co., Ltd. v. C. Arthur Pearson, Ltd.*, [1915] 2 Ch. 376, 381; and *University of London Press, Ltd. v. University Tutorial Press, Ltd.*, [1916] 2 Ch. 601, 608.

It is, therefore, settled law that under the Copyright Act, 1913, copyright subsists in every "original literary, dramatic, musical, and artistic work," and, in relation to "literary work," which includes compilations, copyright subsists in work expressed in print or writing irrespective of the question whether the style or quality is high or shows literary finish or there is any expression of originality of ideas, provided the expression of the thought originates from the author or compiler. The owner of such copyright is the "author," in the absence of any assignment by him, subject to the provisions of the Act.

As to what is a "contract for service," Cozens Hardy, M.R., said in *Simmons v. Heath Laundry Co.*, [1910] 1 K.B. 543, 547,

> "I confess my inability to lay down any complete or satisfactory definition of the term 'contract of service' in the Workmen's Compensation Act. Various tests were suggested by counsel, no one of which was beyond criticism . . . There may be a contract for services, but not a contract for service . . . This is not a question of law, but a question of fact."

And Fletcher Moulton, L.J., as he then was, said that in his opinion it is impossible to lay down any rule of law distinguishing a contract for services and a contract of service: it is a question of fact to be decided by all the circumstances of the case. He continued:

> "The greater the amount of direct control exercised over the person rendering the services by the person contracting for them the stronger the grounds for holding it to be a contract of service, and similarly the greater the degree of independence of such control the greater the probability that the services rendered are of the nature of professional services and the contract is not one of service. The place where the services are rendered, *i.e.*, whether at the residence of the person rendering the services or not, will also be an element in deciding the case."

As Buckley, L. J., as he then was, indicated in his judgment, a contract of service involves the existence of a servant, and imports that there exists in the person serving an obligation to obey the orders of the person served.

The question is fully discussed in *Macdonald's Workers' Compensation in New Zealand*, 2nd. Ed., 110, 112, where the authorities are collected, and it is said that a "contract of service" may be sufficiently described as

> "one whereby one person agrees for wages or other remuneration to work for another on the terms that the party rendering the service is to be subject to the control and directions of his employer in respect of the manner in which the work is to be executed."

The application of the term "contract of service" in s. 5 (1) (*b*) of the Copyright Act, 1913, is similarly a question of fact.

On the other hand, the mere payment of a fixed salary for the supply of contributions does not necessarily bring the recipient under a contract of service. This statement may be illustrated from the facts in *In re Beeton and Co., Ltd.*, [1913] 2 Ch. 279. The editress had duties which took up the whole of her time, she had a seat in the office, and was subject to supervision, and she was paid a fixed annual salary for the multifarious duties of a general nature which she performed for her proprietor. She was held to be a "clerk or servant" within the meaning of that term in s. 209 (1) (*b*) of the Companies (Consolidation) Act, 1908 (Gt. Brit.). On the other hand, it was held that two persons employed by the same proprietor were not clerks or servants. One of these persons was engaged, under a written agreement, to provide at least seventy pages per annum, at an annual salary, the work to be done at her home or at her studio with a right to work for others when the work in hand for the periodical was complete; and the other contributor was paid £100 a year to provide a weekly article and a column of "answers to correspondents," but was not required to give her exclusive services to the proprietor or to perform her duties at its office.

It was held in *Byrne v. Statist Co.*, [1914] 1 K.B. 622, that, upon the facts, which showed that a permanent employee on the editorial staff of a newspaper was specially employed and paid by his employers to do work in his own time and independently of his ordinary duties, such employee retained the copyright of the work so done as it was not "made in the course of his employment." This construction was approved in *Tate v. Thomas*, [1921] 1 Ch. 503, 513.

So, too, it follows that an author of a letter published in the correspondence columns of a newspaper retains his copyright in such letter. It will be remembered that Robert Louis Stevenson published his famous *Open Letter to Dr. Hyde* in the *Sydney Morning Herald* and later in the *Scots Observer*, and he subsequently made a gift of his rights therein to his publishers, Messrs. Chatto and Windus, when the gentle author wrote: "The letter to Dr. Hyde is yours or any man's. . . . I could not eat a penny roll that piece of bludgeoning had gained for me."

As regards contributed news-items, while there is no copyright in news, there is or may be copyright in the particular form of language in which the news is conveyed: *Walter v. Steinkopff*, [1892] 3 Ch. 489, 495. If, however, from the information contained in a contributed news-item, sub-editors compile a new paragraph by dressing the facts or some of them in their own language, the paragraph becomes in substance a different statement of the news, and its true authors for the purposes of the Copyright Act are the sub-editors: *Springfield v. Thane*, (1903) 89 L.T. 242.

We now come to consider what is an "agreement to the contrary" within the meaning of that phrase in s. 8 (1) (*b*) in the Copyright Act, 1911. In *Sweet v. Benning*, (1855) 16 C.B. 459, 139 E.R. 838, the special case upon which the opinion of the Common Pleas was delivered contained a statement that nothing was said between

the parties affecting copyright, and it was held unanimously that its ownership could be inferred. In *Lamb v. Evans*, [1893] 1 Ch. 218, where it was held that there was no express evidence that there was an agreement as to the author's rights in copyright matter, it was pointed out that the terms of such an agreement may be made out by anything that satisfies the usual rules of evidence, and it was then a matter of inferences of fact to be drawn. In approving this judgment of the Court of Appeal, the Earl of Halsbury, L.C., in *Lawrence and Bullen, Ltd. v. Aflalo*, [1904] A.C. 17, at p. 20, said that the ownership of copyright is not a question of law; it is a question of fact to be derived from all the circumstances of the case what is the nature of the contract entered into between the parties. There may, he observed, be a distinction between the inferences of fact that may be drawn in different cases.

Where the independent contributor, not under any contract of service, is the first owner of the copyright, he may change his status by assigning the copyright either wholly or partially or he may grant any interest in the right by license, but s. 8 (2) of the Act provides:

> "No such assignment or grant shall be valid unless it is in writing signed by the owner of the right in respect of which the assignment or grant is made or by his duly authorized agent."

The grant of such a right to print and publish an author's work in a particular form does not necessarily amount to an assignment: *Lucas v. Cooke*, (1880) 13 Ch.D. 872; and the question whether in any case there is an assignment, for which no special form of words is essential, depends on the terms of the particular document involved: *Jefferys v. Boosey*, (1854) 4 H.L. Cas. 815, 992, 10 E.R. 681, 750.

Where a newspaper receives an article from a free-lance author, and, nothing having been said between them about copyright, prints the article, that contract (except for payment) is complete. If on the writer's asking for payment for his article, he is confronted with a receipt for his signature which in addition to acknowledgment of payment contains a declaration or agreement that, in consideration of the sum to be paid, all rights in the article are to vest in the proprietor of the newspaper, the writer is under no obligation to enter into this new contract of assignment, unless he so desires, as his payment is due under the contract already made. Moreover, it is difficult to see how, if he signed the form as given to him, the subsequent acquisition could be held to relate back so as to cause the first publication, which on its date was not an assignment under the Act, to become such an assignment: see *Performing Right Society, Ltd. v. London Theatre of Varieties*, [1924] A.C. 1, 13. For an agreement granting to another rights in a copyright work which is more than a mere license, see *Messager v. British Broadcasting Co.*, [1928] 1 K.B. 660.

It appears, therefore, that when an author's work is accepted and published by a newspaper, magazine, or other periodical, and such author is not under a contract of service or in the employment of the proprietor, then, in the absence of an assignment of his copyright in writing to such proprietor, he remains the owner of the copyright in his work; and the newspaper in question merely pays for the license to use it in its columns.

We now have to consider the position of a working journalist employed by a newspaper or other periodical in which his work appears, and the proprietor of which, under a contract of service or apprenticeship, is his employer, the work being made in the course of his employment by such proprietor.

Members of the staff of a newspaper or periodical, engaged solely in its service, are ordinarily under a "contract of service" with its proprietor: an example of such a contract is set out in the *Sun Newspapers* case, referred to *post*. When an author is employed under a contract of service, the proprietor of the newspaper or periodical is the owner of the copyright, in the absence of any agreement to the contrary. But, in the absence of agreement, the author has the right reserved to him to restrain publication in any separate form, and he may prevent the proprietor of such newspaper or periodical from republishing it as part of a collective work, though the author himself may not republish it in any separate form since he is not the owner of the copyright. The proviso admits of doubt; but it seems that although the contributor, who is under a contract of service, can restrain *any* publication in separate form, he cannot prevent the republication in *any collective work* besides the original collective work in which the contribution was first published.

An article is published "in separate form," when it is published separately from the newspaper or periodical, either in a book by itself or in conjunction with other matter or in a separate supplement: *Mayhew v. Maxwell*, (1860) 1 J. & H. 312, 318, 70 E.R. 766, 769; *Smith v. Johnston*, (1863) 4 Giff. 632, 66 E.R. 859. Where an article originally published in a periodical was reproduced in a subsequent number of that periodical, without the other matter contained in the issues of the periodical in which the series of articles of which it was a part originally appeared, it was held that it was "separately published": *Whitefield v. Progressive Newspapers, Ltd.*, (1912) *Times* Newsp., May 24; but, under the present statute, the proprietor of the copyright, although not having the right to republish an article in separate form, may republish it in any collective work, and is not bound to publish only in the collective work for which the contribution was originally made. Consequently, neither the author nor his employer may reproduce the article in a separate form without coming to some mutual understanding.

Consequently, where an author is under a proved contract of service to a newspaper, there is only a narrow limited right left to him by s. 8 (1) (*b*) of our Act: it is only a right to prevent publication, not to publish. It is a mere right of veto. In the "Ginger Meggs" case, *Sun Newspapers, Ltd. v. Whippie*, (1928) 28 N.S.W.S.R. 473, 478, Harvey, C.J. in Eq., said:

> "The original proviso [to our s. 8 (1) (*b*), *supra*] gives the newspaper proprietor the copyright: the reservation is a proviso on that proviso and gives the author not 'the' right to restrain publication but 'a' right to restrain publication. It recognises the employer's right to publish not only in his newspaper but in any newspaper or periodical. In other words, it assumes that the employer is the only person with a right to publish by reason of the first proviso and it then limits that right to this extent: that if he wishes to publish anywhere but in a newspaper, magazine, or similar periodical, he has to come to terms with the author, who has a right of veto. The author cannot publish at all."

The learned Chief Justice left open the point, for consideration when it arises, whether the right of veto of an author under a contract for service is against the world or only against his employer. This judgment is interesting for another matter: the learned Chief Justice held that para. (*b*) of s. 5 (1) extends to all contributions, including illustrations, and is not limited to "articles," as suggested by the learned editor of the sixth edition of *Copinger on Copyright* at p. 197.

It may, therefore, be concluded that if the author is not an employee of the newspaper publishing his article,

then, in the absence of an express agreement whereby he assigns or surrenders his copyright, his right to reproduce his work in any other form is safeguarded by the Copyright Act. The Board of Trade Committee, of which one member is the Hon. S. O. Henn Collins, K.C., the principal author of the title "Copyright" in the Hailsham Edition of *Halsbury's Laws of England*, after hearing evidence on the part of the Newspaper Proprietors' Association, the Society of Authors, and the Institute of Journalists, considers that any difficulty mainly comes from the refusal of some newspapers to accept articles unless the author assigns to them all his copyright, and they think the matter is "best left to contract," and should not be remedied by any amendment of the International Convention.

Summary of Recent Judgments.

SUPREME COURT
Wanganui.
1936.
March 7.
Ostler, J.

RE THE WANGANUI CHRONICLE CO., LTD.

Company—Reduction of Share Capital—Petition to Court to *confirm Special Resolution reducing Share Capital*—Purpose of Reduction to Redeem at par Preference Shares at a Premium—Discretion of Court to Protect minority and prevent injustice to Class of Shareholders—Dismissal of Petition—Companies Act, 1933, s. 68.

Petition under s. 68 of the Companies Act, 1933, seeking the confirmation of the Court of a resolution to reduce the capital of the above-named company.

A company in a sound financial position had 900 shares of £5 each, and 400 preference shares of £20 each carrying a non-cumulative dividend of 8% per annum. Each shareholder had one vote for every share held by him. In February, 1935, preference shares fully paid to £20 were worth approximately £29, and the Y. Estate had purchased 250 £5 ordinary shares for £28 each for the purpose of securing the control of the company.

The directors determined to reduce the capital of the company by redeeming the preference shares at par. New articles of association were prepared, containing a power to reduce capital. An extraordinary general meeting was called, but the notice thereof made no mention of the fact that the reason why the new articles were being adopted was to enable those who controlled the voting power to pay off the preference shareholders, nor did it point out the material addition to the articles necessary to carry out that reduction. A preference shareholder who spoke to the Chairman of Directors was told that the adoption of the new articles was merely a matter of routine. At the meeting the new articles of association were adopted.

An extraordinary general meeting was held to consider a special resolution reducing the capital to £4,500 divided into 900 ordinary shares of £5 each, paying off at par the capital on the preference shares and cancelling such shares.

Despite the opposition of the preference shareholders, the motion was carried by the voting strength of the trustees of the Y. estate.

Haggitt, for the company; **Izard,** for the holders of 165 preference shares; **Turnbull,** for the holders of 32 preference shares.

Held, dismissing the petition, That the scheme sought to be sanctioned was designed unfairly to deprive the preference shareholders of the premiums on their shares and that the Court was given discretion for the protection of a minority being oppressed by a majority.

Re Direct Spanish Telegraph Company, (1886) 34 Ch.D. 307, applied.

Solicitors: **Treadwell, Gordon, Treadwell, and Haggitt,** Wanganui, for the company; **Marshall, Izard, and Wilson,** and **F. K. Turnbull,** Wanganui, for the preference shareholders.

Case Annotation: *Re Direct Spanish Telegraph Co.*, E. & E. Digest, Vol. 9, pp. 148-149, para. 836.

SUPREME COURT
In Chambers.
Wellington.
1936.
March 16, 17.
Blair, J.

LYSNAR v. NATIONAL BANK OF NEW ZEALAND, LTD.

Practice—Appeals to the Court of Appeal—Security for Appeal—Amount assessed by Registrar and Security therefor given by Appellant—Taxed Supreme Court Costs and Court of Appeal Costs actually of Greater Amount—Registrar's Certificate filed in Court of Appeal and case Set Down—Objection by Respondent that Amount fixed for Security too small—Court of Appeal Rules, R. 22—Code of Civil Procedure, R. 595.

While the party liable to find, under R. 595 of the Code of Civil Procedure, security for appeal to the Court of Appeal has a right of appeal to the Supreme Court to obtain reduction of the amount of the security fixed by the Registrar, the other party objecting to the amount fixed as being too small has no such right of appeal.

Taitumu Marangataua v. Patena Kerehi, (1911) 30 N.Z.L.R. 1049, referred to.

Semble, The only remedy available to the respondent is an order that the appeal was wrongly constituted in that the Registrar, in exercising his discretion under Rule 595 of the Code of Civil Procedure, had acted upon an entirely erroneous principle; but, when a certificate by the Registrar of due compliance by the appellant with the rules as to security has been filed in the Court of Appeal, the case has been set down, and the appeal is properly constituted, the only Court that can declare that the proper security for appeal has not been found by the appellant is the Court of Appeal.

Counsel: **Powles,** in support; **Lysnar** in person, to oppose.

Solicitors: **Bell, Gully, Mackenzie, and Evans,** Wellington, for the appellant; **Brandon, Ward, Hislop, and Powles,** Wellington, for the respondent.

SUPREME COURT
Wellington.
1936.
Feb. 25, 26;
March 5.
Reed, J.

WELLINGTON CITY CORPORATION v. McREA AND OTHERS.

Road—Laying-off and Construction—Statute authorizing Construction of new Road, Declaration by Gazette **Notice that such Road as constructed under Control of Local Authority, and Closing old Road and vesting Parts thereof not included in new Road in Crown—Subsequent Statute vesting such new Road in Local Authority**—Gazette **Notice declaring not only *constructed Road but Parts of old Road abutting thereon* as under control of Local Authority**—Ultra Vires **as regards such Parts—Hutt Railway and Road Improvement Act, 1903, ss. 3, 4, 5, 6, 10—Hutt Road Act, 1915, ss. 2, 5 (1)**—1914 New Zealand Gazette, **1016.**

The Hutt Railway and Road Improvement Act, 1903, provided for the construction of a railway and a new road of a width of not less than 80 ft. from Wellington to Hutt in lieu of the old Hutt Road, and, by s. 10, provided that on completion of the said road the Governor shall by notice in the *Gazette* declare that such road should be under the control of such local authority as he thought fit, and that, on the gazetting of such notice, the existing Hutt Road should be deemed to be closed and the land vested in the Crown.

The road and railway were duly completed, and the Hutt Road Act, 1915, came into force, providing by s. 5 (1) that the Hutt Road, constructed under the 1903 Act, was declared to be vested in fee-simple in the Wellington City Corporation as if it were a street within the city. Before the passing of this statute, the Corporation had been gazetted as the controlling authority, the notice establishing that the construction of the new road had been completed, the old road closed, and the parts of the old road not included in the new road had been vested in the Crown. This *Gazette* notice purported to describe "the new Hutt Road" by reference to a plan which included in the road not only a clearly defined road so constructed coloured sienna (recognized by all surveyors as the proper plan-colour

for a road), but also various small pieces coloured green abutting on such part coloured sienna which were alleged to be parts of the old closed road.

In an action for a declaration that the parts coloured green on the said plan were part of the Hutt Road, and that one such part had been wrongfully included in a certain certificate of title,

O'Shea and **Marshall,** for the plaintiff; **O. C. Mazengarb,** for the first defendants; **A. E. Currie,** for the third defendant; the second defendant, the Mortgage Corporation of New Zealand, was not represented.

Held, 1. That, as the road authorized by the Hutt Railway and Road Improvement Act, 1903, was not only to be laid off but constructed, and the gazetting of the notice was only to be as regards the completed road, so far as the gazetted declaration purported to include the pieces adjoining the road as part of that road it was *ultra vires*.

2. That if the pieces marked green on the plan were part of the old Hutt Road, they became vested in the Crown on that road being closed, and, therefore, a certificate of title that vested a piece of such land in the registered proprietor could not be attacked.

Solicitors: The City Solicitor, Wellington, for the plaintiff; **Mazengarb, Hay, and Macalister,** Wellington, for the first defendants; **The Crown Law Office,** Wellington, for the third defendant.

COURT OF ARBITRATION
Wellington.
1935.
Dec. 21, 23.
Page, J.

McNABB v. ECKFORD & CO., LTD.

Workers' Compensation—"Accident arising out of and in the course of the Employment"—Fireman on ship—Paid off at Blenheim in terms of Articles and Provided with Steamship Ticket to Wellington where he had been Engaged—Accident happening during Passage to Wellington—Workers' Compensation Act, 1922, s. 3.

Plaintiff was engaged at Wellington to work as a fireman on the S.S. *Wairau*, owned by defendant, and then lying at the port of Blenheim. He undertook to proceed to Blenheim, join the ship, and there sign the usual articles. Wages were to be paid from the time of signing on at Wellington, and the terms of the articles incorporated Cl. 34 (*b*) of the agreement made between the employers and the Federated Seamen's Union, which provided:

> "If the ship be laid up or the Articles of Agreement expire at any port other than the port where the seaman first joined the ship, or if he be discharged by the ship at any port other than the port where the seaman first joined the ship, the seaman shall be provided by the employer with a free passage to the port in Australasia where he first joined the ship, with wages up to the time at which in due course he should arrive thereat."

Plaintiff was signed off at Blenheim, was given his wages up to and including the day of payment, and a railway ticket from Blenheim to Picton and a steamer ticket from Picton to Wellington, available by the S.S. *Tamahine*, which sailed from Picton on the same afternoon and was due to arrive at Wellington on the same day. Plaintiff travelled by the S.S. *Tamahine* accordingly, and on the trip to Wellington, which was a very rough one, he was injured. He claimed compensation in respect of such injury.

E. P. Hay, for the plaintiff; **H. E. Evans,** for the defendant.

Held, That the accident did not arise in the course of the employment.

St. Helen's Colliery Co., Ltd. v. Hewitson, [1924] A.C. 59, 16 B.W.C.C. 230, followed.

Solicitors: Mazengarb, Hay, and Macalister, Wellington, for the plaintiff; **Bell, Gully, Mackenzie, and Evans,** Wellington, for the defendant.

Case Annotation: *St. Helen's Colliery Co., Ltd. v. Hewitson*, E. & E. Digest, Vol. 34, p. 280, para. 2364.

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

COURT OF REVIEW
Te Kuiti.
1936.
March 4.
Johnston, J.

IN RE A MORTGAGE, B. TO THE MORTGAGE CORPORATION OF NEW ZEALAND.

Mortgagors and Tenants Relief—Mortgages—Agreement for Sale and Purchase of Crown Lessee's Interest in Land made before passing of 1931 Act—Consent of Land Board given after that Act passed and Mortgage for Balance of Purchase-money in Terms of Agreement also given subsequently thereto—Whether Mortgage subject to Provisions of Statute—Mortgagors and Tenants Relief Act, 1933, s. 4 (1) (a), (d).

An agreement for sale and purchase of a Crown leasehold, whereby the purchaser agreed to secure the balance of purchase-money to the vendor by a mortgage of the lessee's interest, was complete on March 31, 1931, but, notwithstanding the fact that the consent of the Land Board was not obtained until after April 17, 1931, the date of the passing of the Mortgagors Relief Act, 1931, it was nevertheless a "mortgage" to which that Act applied. Consequently, the mortgage for the balance of purchase-money executed in pursuance of such agreement on July 31, 1931, was a "replacement mortgage" to which the Mortgagors and Tenants Relief Act, 1933, applied.

Solicitors: Broadfoot and Mackersey, Te Kuiti, for the mortgagor; **Hine and Hine,** Te Kuiti, for the mortgagee.

COURT OF APPEAL
Wellington.
1936.
March 12.
Myers, C.J.
Blair, J.
Kennedy, J.

WRIGHT & OTHERS v. NEW ZEALAND FARMERS' CO-OPERATIVE ASSOCIATION OF CANTERBURY, LTD.

Practice—Appeals to the Privy Council—Date from which Time for applying for Leave to Appeal runs—Whether Date of sealing Formal Judgment of Court of Appeal or Date of Pronouncement of Judgment delivered orally—Privy Council Rules, R. 4.

On motion for conditional leave to appeal to the Privy Council from the judgment delivered on December 4, 1935, and reported [1936] N.Z.L.R. 157, appellants contended that they were entitled to appeal also from the judgment delivered on July 12, 1935, and reported [1935] N.Z.L.R. 614, on the ground that the formal judgment was not sealed until December 11, 1935, and application for leave to appeal had been filed on December 21 and served within twenty-one days after December 4.

Held, by the Court of Appeal (*Myers*, C.J., *Blair* and *Kennedy*, JJ.), 1. That there was no reason why appellant should not have an order granting leave to appeal from the judgment "given" on December 4, 1935 (thus following the wording of R. 4 of the Privy Council Rules).

2. That the effect of such an order was a matter for the Judicial Committee.

Counsel: Saunders, for appellants, in support; **Haslam,** for respondent.

Solicitors: R. L. Saunders, Christchurch, for the appellants; **C. S. Thomas,** Christchurch, for the respondent.

Dominion Legal Conference.

Special Issue of the "Journal."

The next issue of the JOURNAL will contain a full account of the proceedings at the Dominion Legal Conference to be held in Dunedin during Easter Week, details of which appear on p. 70 (*post*).

The JOURNAL, which will be an enlarged issue, will contain the full text of papers read at the Conference, and reports of the discussions following them, as well as a detailed description of the various gatherings which form part of the Conference programme.

Sir Francis Bell, P.C., G.C.M.G., K.C., M.L.C.

"Statesman and Leader of the Legal Profession."

By C. A. L. Treadwell.

As Sir Francis Bell crossed, on March 13, to his life elysian, the legal profession lost the greatest personality who ever followed its calling in New Zealand.

Twice, on March 16, 1926, and on June 5, 1934, there was occasion to recount in these columns in some detail his illustrious career*: It is, accordingly, not now necessary to do so again.

For nearly a century there have been lawyers in New Zealand, and of them all Sir Francis was supreme. His career has been one of service of the highest quality, not merely within the narrow confines of the legal profession, but in the broader sphere of public service.

S. P. Andrew, Photo.

The Late Rt. Hon. Sir Francis Bell.

What makes a great lawyer? Is it to possess and display a profound knowledge of the principles of the law? If so, Sir Francis had no superior. Is it the ability to advocate a cause either in the august presence of the Judicial Committee of His Majesty's Privy Council, or our own Court of Appeal or Supreme Court? If so, Sir Francis had no superior. Is it the ability to give a lucid and correct opinion on matters either of fact or law? If so, then again Sir Francis had no superior. From all aspects he was almost, from the beginning of his career, a leader; and later, but not much later, and then for many years, he was the leader of us all.

No more will be heard his slow, deliberate words uttered in sonorous tones, advocating a cause; no more will his brethren be privileged to listen in his chambers to his beautifully-polished and cultured opinions. The great lawyer has doffed his wig for the last time.

As a lawyer there is one reference that must not be omitted on this occasion. Without the smallest ostentation—for great men eschew display—Sir Francis readily and gratuitously gave the members of the Junior Bar help from his own great experience. He never forgot that the youthful stuff-gownsman of to-day is the leader of the morrow.

In every way that he could help his profession Sir Francis regarded such help as an urgent duty for him to perform.

The lives of all great men leave behind some useful lesson. The life of Sir Francis Bell has negatived the old adage that the law is such a jealous mistress that the whole of the barrister's time must be devoted exclusively to that mistress. So many of us are wont to hang to quips and adages, especially those, who, for some good cause, or for greed, or through incompetence, are not moved to serve their Country. Busy as Sir Francis always was in his professional life, he made time wherein to serve his Country. As Mayor of the City of Wellington his service was outstanding; as a Member of the House of Representatives, and later, and more importantly, in the Legislative Council, he personally maintained a quality of debate and reasoning that not only reflected credit on the New Zealand Legislature but also served as a guide to other members in setting a dignified and worthy standard of conduct in Parliament.

In the long years of his service, this Country has undergone many changes; and, in the modelling of many of the constitutional changes, the advantage to Parliament in having possessed the sagacious guidance of Sir Francis is patently clear.

Our profession has produced some members who have realized that their talents called from them some public service. They have assumed that in the community the members of the most learned profession ought to provide the leaders in the councils of the Country. On the other hand, it is a just, if regrettable, commentary that many have advanced to the front rank without having spent an hour of their time gratuitously for their Country's sake. The lesson of public service in this Country has never been so well illustrated as by the example presented by the life of Sir Francis Bell.

It might be thought that it would suffice to say, "Statesman and Leader of the Legal profession," to cover the outstanding qualities of our revered leader. Yet the great quality of sportsmanship in all its phases happily attaches to his memory. The healthy, manly games of cricket, rowing, and football, as well as, in his early days, soldiering, all claimed his devotion. He never lost interest in them, and the sporting instincts were reflected in his sportsmanlike attitude in the conduct of litigation and in debate in the Houses of Parliament. Professor L. P. Jacks once said that a great man was "one who possessed ideal aims, business-like methods, and sportsmanlike principles." Sir Francis possessed these three qualities in the highest degree.

It is not extravagant praise but bare justice to say that Sir Francis Bell in his private and in his public life provided a striking example for all to follow.

*(2) N.Z. Law Journal p. 308; (10) N.Z. Law Journal p. 136.

Tributes to the Late Sir Francis Bell.

"You will never look upon his like again."

When it was known that Sir Francis Bell had died, the terms of veneration and affection with which his fellow-practitioners spoke of him showed that not only a great but a loved leader had passed from their midst. At the service at St. Paul's Pro-Cathedral, Wellington, on the morning of the funeral practically every practitioner in the city, and many from the country, were present. All the members of the Judiciary then in Wellington formed part of a congregation that was the most representative seen in the capital city for many years.

On the afternoon of March 16 a very large attendance of members of the legal profession met at the Supreme Court, Wellington, to do honour to the memory of the late Sir Francis Bell, K.C. In addition to the members of his family, who occupied the jury-box, Lady Myers and Mrs. J. R. Reed were present.

The Magistracy was represented by Messrs. E. D. Mosley, S.M., H. P. Lawry, S.M., W. F. Stilwell, S.M., and J. H. Luxford, S.M. The Justice Department was represented by Mr. B. L. Dallard, Under-ecretary, and Mr. J. Bishop, Chief Clerk, the Internal Affairs Department by Mr. J. W. A. Heenan, Under-Secretary, and the Police Department by Superintendent Cummings.

The Attorney-General, the Hon. H. G. R. Mason, was with the Solicitor-General, Mr. H. H. Cornish, K.C., the President of the New Zealand Law Society, Mr. H. F. O'Leary, K.C., Mr. C. H. Weston, K.C., Mr. P. B. Cooke, K.C., and Mr. D. Perry, President of the Wellington District Law Society. All the barristers in Wellington as well as country representatives were present robed, and, with a large number of solicitors, filled all the available space in the Court-room.

The Bench was occupied by the Chief Justice, the Rt. Hon. Sir Michael Myers, and Mr. Justice Reed, Mr. Justice Ostler, Mr. Justice Blair, Mr. Justice Kennedy, Mr. Justice Johnston, and Mr. Justice Page.

The Attorney-General.

The Attorney-General (the Hon. H. G. R. Mason, M.A., LL.B., M.P.) addressed their Honours. He craved leave to refer to the recent death of the Rt. Hon. Sir Francis Bell, which removed from their midst a truly illustrious son of this country. He proceeded: "Born in Nelson in 1851, the eldest son of a father who was himself a distinguished statesman in the early days of the Colony, the late Sir Francis Bell attended the Auckland Grammar School and later the Otago Boys' High School. He completed his classical and legal education at St. John's College, Cambridge, and was called to the Bar by the Middle Temple. He returned to New Zealand in 1875 and began that career which in a number of fields of activity has been so outstanding.

"He was the first man to organize law reporting in New Zealand. On his return to the Colony in 1875 he, with four other barristers, began the law reporting which is recorded in a volume known as the *Colonial Law Journal*. Mr. F. H. D. Bell was its editor for the Wellington district, his colleagues representing the other judicial districts. A few years later with Messrs. F. M. Ollivier and W. FitzGerald, he collected a number of legal arguments and decisions of our Court of Appeal and Supreme Court into a volume which is our chief source of reference for the reports of that time. To the late Sir Francis Bell more than to any other person is due also the creation of the Council of Law Reporting."

The learned Attorney-General then recalled that Sir Francis's devotion to the service of his fellows extended far beyond an interest in professional activities. He gave full measure of service to his city, to his country, and to the Empire. As Mayor of Wellington, he was especially active in securing a clean and healthy city. His vision comprehended not only the requirements of his own time, but the needs of the future. Because the citizens did not always appreciate the wisdom of his advice, the city is to-day the poorer by being without some of the playgrounds and open spaces he would have secured for it; but the Wellington of to-day still has especial cause to be thankful to the memory of Sir Francis Bell for the works he accomplished as its Mayor.

"Sir Francis Bell entered Parliament as a Wellington representative in 1893 but did not seek re-election at the end of his first term in the House of Representatives. Later he was elevated to the Legislative Council, where his talents, especially during the trying days of the War and afterwards, were of incalculable advantage to the Government of which he was a member," said the speaker.

"Sir Francis Bell has rendered signal service to his country in the offices of Prime Minister, Attorney-General, Minister of Internal Affairs, Minister of External Affairs, and representative of New Zealand at the Council of the League of Nations. He has received the special thanks of the British Foreign Office for advice which extricated the Imperial Government from a position of great embarrassment."

The legal profession had always felt that its standard of honour was in safe keeping when in the hands of Sir Francis Bell, and the confidence felt in him as well as regard for his great talent was manifested by his being repeatedly chosen as President of the Wellington Law Society and President of the New Zealand Law Society, the Attorney-General continued.

"It is unnecessary for me to refer to the great eminence of Sir Francis Bell as a lawyer and advocate," the Hon. Mr. Mason proceeded, "but I may be permitted to call to remembrance his long association with the law. He was a very eminent barrister for a longer period than most of us can remember, and, indeed, before many of us were born.

"His association with the law goes back to the days when forms of pleading were used which to us seem utterly strange, and of what might almost be termed antiquarian interest. Yet to within a few weeks of his death his opinion on matters of difficulty was sought as being of the highest value. A career at once so long and so eminent would be hard to parallel.

"For a period of thirty years the late Sir Francis appeared on behalf of the Crown in numerous cases both criminal and civil. Even in the cold print of the report is disclosed the scrupulous fairness with which he conducted the Crown work. Thus he would refuse to adduce argument in support of a conviction which he felt to be bad; and, if a prisoner were unrepresented, he would himself state the case for him as well as for

the Crown. By means such as these, he established for those that came after him the highest standard for the conduct of the business of the Crown.

"May I be forgiven if I here introduce a personal note. Only a week or two before he fell ill he said to me: 'I wish you all success in your office'; and then he added, perhaps fearing that this might be regarded as mere conventional courtesy, 'I mean that.'

"It is instances of generous thought and action such as this which caused those who knew Sir Francis, whether as an opponent or not, to feel the warmest personal friendship towards him. To those of us present to-day and to many in other parts of New Zealand his passing is a cause of personal sorrow.

"Twelve years ago, speaking in this Court-room on the death of his friend Sir John Salmond, the late Sir Francis Bell quoted words which Macauley had used of Milton. Could more fitting tribute to the life and character of Sir Francis Bell himself be found than in those same words to record

"'The zeal with which he laboured for the public good; the fortitude with which he endured every private calamity, and the faith which he so sternly kept with his country.'"

The New Zealand Law Society.

The President of the New Zealand Law Society, Mr. H. F. O'Leary, K.C., said that he desired to associate the legal profession of the Dominion with the Attorney-General in expressing the very deep regret which all felt at the passing of Sir Francis Bell.

In the first place, Mr. O'Leary expressed the profession's very sincere sympathy with the members of Sir Francis's family in the great loss they had suffered; and he assured them that that loss was shared by each and every one of the legal practitioners who were honoured with his friendship and who to-day mourned the loss of the most distinguished member of their profession.

The speaker proceeded:

"Whilst his death has caused widespread sorrow amongst men of all classes and shades of opinion, it has caused a sense of peculiar and particular loss to lawyers in whose world Sir Francis has been for so many years the most striking figure, and it is with reference to him as a member and leader of the profession and of the Bar that I in particular desire to address you.

"The learned Attorney-General in his address has drawn your attention to the many and varied activities of his life, but our particular remembrance of him is as a member of the Bar—called so far back as 1874, and from that time down to the month of his death an active and honoured member of our profession. His legal life was distinguished not merely by the eminence to which he rose on the purely professional side, but also for his activities and his work in the various bodies which are concerned with the organization and welfare of the legal profession.

"Lawyers will ever be grateful to him for these services which he performed for the profession from his first entry to the Bar down to the time of his death. His work in the New Zealand Law Society, of which he so long held the office of President and in which office he was looked to as the authoritative spokesman in everything that affected the profession; his founding of and work on the Council of Law Reporting; his work as Attorney-Genaral—for all of which the profession is profoundly grateful and tenders through me this public expression of its thanks. But even greater than any of these services was the service he performed for the profession in setting a standard of professional honour and conduct which has been an example to, and an ideal to be attained by, every member of the profession. The benefits of his influence and example are to-day reflected in the profession throughout New Zealand.

"At the Bar he attained a supremacy amongst his fellows, and when in 1912 he left the law to devote his time and his talents to the larger questions of statesmanship his position at the Bar was unrivalled.

"To us his name will always recall a profound and subtle lawyer: a lawyer who had the widest knowledge and grasp of legal principles; a master of the technique of pleading and argument; a practitioner of immense experience; a most formidable opponent; a most powerful ally—in short, one of the greatest, if not the greatest, lawyer within the memories of those who still practise."

Mr. O'Leary then referred briefly to other qualities possessed by Sir Francis Bell. Fear and indecision were unknown to him. Once he made up his mind as to what he considered was right no amount of argument or persuasion could deflect him from his purpose. Withal courteous and always punctilious in the exercise of his duties, he had the greatest respect for the law and its institutions. The speaker was reminded that Sir Francis's last appearance in the Court in which the present gathering was taking place was to attend the calling within the Bar of one, who, it was interesting to note, was not even of the Bar when he himself was called within. He was present because it was courteous and respectful and proper that he should be there.

The President of the parent Law Society concluded an eloquent address, as follows: "As one who had even closer relations with him than most members of the Bar, I pay a tribute to his loyalty to and consideration for those associated with him, to his readiness at all times to help with counsel and with advice, and to his unostentatious but large-hearted generosity.

"We mourn his loss; but he has left a name—he set a standard of honour and conduct which should be, and I am sure will always be, an inspiration and a guide to those whom he always delighted to call his 'brothers of the Bar.'"

The Wellington District Law Society.

The President of the Wellington Law Society, Mr. D. Perry, in addressing their Honours, said that it remained for him to add to the tributes that had been paid to the late Sir Francis Bell, on behalf of his colleagues in the profession in Wellington, a brief expression of the sorrow which his passing had brought to his brethren in the law in Wellington, an expression which must necessarily be inadequate to express their feelings, feelings which the size of the gathering testified to far more eloquently than any mere words could do.

"Less than two years ago most of us present here to-day met on a happy occasion to do him honour. He was then celebrating the sixtieth anniversary of his call to the Bar, and we honoured him then, not so much for that great achievement, but because for so many years he had occupied with us a position of eminence that no other man is ever likely to achieve

again ; and because, as the President of the Wellington District Law Society said at that time, he had during his career at the Bar set to the legal profession a great example of what befitted a great lawyer and a great man," Mr. Perry continued

The speaker recalled that on that occasion an address was presented to Sir Francis which told him in words that did less than justice to the occasion of the pride which his fellow-practitioners took in his great achievements and of the esteem and affection in which he was held : This address ran as follows :—

" To-day you complete a period of sixty years' active practice at the Bar and we have assembled to tender you our sincere congratulations on your great achievements during that period. You have for many years been regarded as one of the most eminent members of our profession and an acknowledged leader of the Bar. In the exercise of your outstanding ability you have ever been mindful of the cause of justice and have ever jealously guarded the high traditions of the Bar. You have always been regarded by your fellow practitioners not only with great esteem, but also with deep affection. To you many of us have turned for the advice and the help you have never failed to give.

" Your high ideals, mature judgment and firm character, united with a sympathetic and generous nature, have gained for you a unique and abiding place in the regard and affection of your fellow practitioners and your fellow citizens. Today, upon this happy occasion we, your brothers in the profession of the Law, pay to you our tribute of respectful admiration and affectionate regard."

" To-day we are again assembled, this time to do honour to his memory," the speaker added.

The legal profession in New Zealand had much for which to thank Sir Francis Bell. The members of the profession in Wellington owed to him a very especial debt of gratitude, and to them his passing came as a great personal loss, Mr. Perry proceeded. He remembered that the first Council of the Wellington District Law Society was elected in 1879, and Sir Francis was one of its members. He served on the Council for very many years, was one of its delegates to the Council of Law Reporting from 1898 to 1920, and to the Council of the New Zealand Law Society from 1898 to 1917. He was president of the Wellington Law Society in the years 1888 and 1889. Sir Francis was thus guiding the destinies of their Society in those early years before many of those present on this occasion were born, and when foundations were being laid—the foundations of that great tradition to which it had been their privilege to succeed. And to him in great measure was due the credit for the establishment and expansion of the Wellington law library, which would ever stand as a monument to his memory.

Mr. Perry concluded his feeling address as follows :

" With the passing of Sir Francis there has parted one more of the few remaining links between the present and the early days of the Wellington Bar, and this is a parting which has a particular poignancy, because he had so long been a leader amongst us, had so long stood head and shoulders above his fellows that he still in his life-time had come to be regarded by us all, by so many years his juniors, most of us his juniors by a generation and many his juniors by even two generations, with feelings akin to veneration.

" The legal profession in Wellington is the richer for his having lived ; and the richer for that great career which has been a shining example for his successors to emulate.

" To the members of his family and to those who had the privilege of daily contact with him in the business of the Law and the privilege of his friendship, we tender this tribute of our sympathy and of our pride."

The Chief Justice.

The learned Chief Justice then spoke as follows :—

" Mr. Attorney-General and Gentlemen of the Bar :

" It is with a poignant feeling of sadness that we of the Bench meet you to-day to mourn the loss of a most remarkable man—a man even more remarkable than most people appreciate, but whose greatness will be more and more recognized as the years go on and the history of this Country is written in its true perspective.

" It is perhaps singularly appropriate that both Mr. O'Leary and I should be speaking on this occasion, for we had the special opportunity of knowing by close and intimate association over a period of years the great qualities of our departed friend and leader—his fine intellect, his strict integrity, his knowledge and punctilious observance of the traditions and etiquette of the Profession, his unselfishness and generosity in all his dealings.

" I knew him first in 1892 when I first entered the offices of his firm. He was then at the zenith of his powers, and those powers were maintained undiminished till the day of his death. He was trained as a lawyer under the old and intricate system of Common-law procedure and the old system of Real Property and Conveyancing, and grew up with the new system of civil procedure which commenced in 1883 and the new Land Transfer system of titles and conveyancing. If you scan the *Law Reports* you will find that for a great many years he did more towards the development of the Land Transfer system and the new civil procedure and the development of the law relating to Native lands than any other practitioner in New Zealand : and finally it was by his initiation and efforts as a Minister of the Crown that the Land Transfer system became compulsory and titles became uniform throughout the Dominion. It is fitting that in this Court, within whose walls so much of his life's work was done, we, as lawyers, should now offer our tribute to his memory. We all knew him best as a lawyer, and both as a practical lawyer in any and every branch of the law, and as a Banco advocate, and also as a draftsman I have never met his superior. He was a great New-Zealander, one of the greatest and most remarkable men that this country has produced, and his qualities and abilities were such as would have earned for him in any part of the Empire the correspondingly high—or higher—place that he filled in our relatively small community.

" There was no position he ever occupied that he did not adorn. For very many years a Crown Prosecutor—no barrister who has ever held that post was more thorough, yet withal more fair. As Mayor of Wellington on various occasions—a position which he filled with his customary dignity and ability—he did work for which the City should be ever grateful. As a Minister of the Crown holding at different times various portfolios, including that of Attorney-General, thus becoming the titular head of the profession of which he was already the acknowledged *de facto* leader, he performed most valuable service to the country which, as I have said, will be recognized more and more as the years roll on. I think that perhaps the work of which he was himself most proud was that which he did in his capacity of Commissioner of State Forests in the conservation and development of our timber resources, the legislation (for which he was responsible) for the orderly and sound finance of local bodies, and the legislation to which I have already referred making the Land Transfer system of titles compulsory. One humanitarian piece of legislation of

special importance initiated by him—indeed I think it was one of his first Acts after he became a member of the Government in 1912—was the Aged and Infirm Persons Protection Act, the necessity for which had become apparent to him in his professional practice, and the beneficial provisions of which have saved many a home from wreck and many a family from ruin.

"Sir Francis was, as previous speakers have mentioned, one of the founders of the New Zealand Law Society of which he was President from its initiation until he became a Minister of the Crown. He was also one of the founders of the *New Zealand Law Reports* and for many years took a leading part in their management. No member of the profession has ever done more than—or as much as—he did for the profession that he—its Nestor—honoured and loved. But more than all that—his door was ever open to any member of the profession, young or old, who required advice and help in any professional or other difficulty, and none ever sought that advice and help in vain.

"I have referred to his great career as a lawyer in New Zealand. But his merits were known and recognized elsewhere, and in connection with his appearances in the Privy Council he earned the eulogy of their Lordships of the Judicial Committee expressed by that eminent Judge, the late Lord Macnaghten. His ability as a statesman and as a draftsman was recognized also at Geneva in the Councils of the League of Nations, where he is reputed to have drafted a formula which formed the solution of a very difficult and anxious problem.

"And now this great man is gone from us. If I have spoken eulogistically of him, it is because I knew the man and I speak of what I know. It remains only to say for my colleagues and myself that we join with you, gentlemen of the Bar, in your expression of sympathy with his son and daughters and the other members of his family in their great loss. We hope that our tribute to-day, and the knowledge that their father and relative has done his life's work well, has performed most valuable service for his sovereign, his country, and the Empire, and has left an imperishable name in our Country's history, will afford them some solace in their grief. To you, gentlemen of both branches of the profession, I can only say: *Vita enim mortuorum in memoria vivorum est posita.*

"I charge you to cherish the memory of our departed friend and leader as you mourn his loss, for you will never look upon his like again."

In Other Centres.

At Auckland, on March 17, a large gathering of the members of the profession attended the Supreme Court to honour the memory of the late Sir Francis Bell. Mr. Justice Fair and Mr. Justice Callan occupied the Bench, and the Hon. Sir Walter Stringer and Mr. Wyvern Wilson, the Senior Magistrate at Auckland, were also present. Mr. L. K. Munro, President of the Auckland District Law Society, in addressing their Honours expressed the sympathy of Auckland practitioners with the relatives of Sir Francis Bell, and, in outlining the incidents of the remarkable life of the "grand old man" of the New Zealand Bar, recalled his devotion to the proper interests of the profession. Mr. Justice Fair, for himself and Mr. Justice Callan, in a very feeling address, joined in the public record of appreciation of the great services rendered to his country by Sir Francis Bell in the course of his long and distinguished career.

A similar gathering took place in Dunedin.

The Law Relating to Motor-vehicles.

Noteworthy Decisions in 1935.

(*Concluded from p. 46.*).

The correct assessment of damages was in issue in four cases, two of them arising under the Deaths by Accidents Compensation Act, 1908. In the first of these, *Winiata v. Etheridge*, [1935] G.L.R. 599, a Maori boy of fifteen was run down and killed. The loss of services alleged was that the deceased, at the time of his death, had for some time past assisted his father, a dairy-farmer, in his farming operations. The Court considered that the amount of advantage the father would obtain was peculiarly a matter for the jury, who may have thought that this particular son would stay at home at a low wage for a longer time than would ordinarily be the case by reason of his father's defective sight and injury to his leg; and they may have thought that he would have worked harder for his father than a stranger would. A motion to disturb the verdict of £350 in favour of the father was dismissed; but as there was no evidence to show the state of feeling between the deceased and his mother or whether he had assisted in the house or ever shown a disposition to make gifts to her, the Court took away the judgment of £150 in favour of the mother, holding that the evidence, at the most, showed a mere speculative possibility of benefit which was not assessable. In the second case arising under this Act, *Shaw v. Hill*, [1935] N.Z.L.R. 914, the jury awarded a widow £1,750 in a running-down action, and the Court of Appeal ordered a new trial confined to the issue of the quantum of damages, upon the ground that there was no reasonable proportion between the amount awarded and the loss sustained. Those interested in this method of testing the verdict of a jury—"the Irish judicial test," Lord Blanesburgh calls it—will find a particularly interesting exposition of it in his dissenting judgment in *Mechanical and General Inventions Co., Ltd., and Lehwess v. Austin and Austin Motor Co., Ltd.*, [1935] A.C. 346. In England recently, consideration has been given to the test to be applied where the appeal is against the assessment of damages by a Judge: *Flint v. Lovell*, [1935] 1 K.B. 354, 360; *Owen v. Sykes*, (1935) 180 L.T. Jo. 419, 422.

In *Kassler v. Byrne*, [1935] N.Z.L.R. s. 121, the Full Court refused to disturb the jury's assessment of £1,200 for a broken leg. There was evidence of an abnormal delay of the healing processes, and the possibility of a further easy break within six months of the jury's verdict, with its attendant economic loss and physical pain. Nor would the Court disturb a verdict of £900 general damages for a student who sustained head-injuries in a collision and was said to suffer from a condition of cerebral irritation which might have serious results in the future: *Collins v. White*, [1935] G.L.R. 615.

An interesting judgment on the subject of special damage is provided by *Duffy v. The King*, [1935] N.Z.L.R. 745, in which a dairy-farmer, injured in an accident, was awarded special damages for, *inter alia*, loss of goodwill of milk-customers and loss of crops through inability to sow because of the injuries he had received, and who in addition was awarded general damages through his inability to follow his occupation

as a dairy-farmer and for permanent disability as the result of the accident. The judgment makes reference to *Owners of Dredger Liesbosch v. Owners of s.s. Edison*, [1933] A.C. 449, in which Lord Wright held that the appellants' actual loss, in so far as it was due to their impecuniosity, arose from that impecuniosity as a separate and concurrent cause, extraneous to and distinct in character from the tort, being not traceable to the respondents' acts and outside the legal purview of the consequences of those acts. In many accident cases, the plaintiff seeks, upon varying grounds, to recover damages for loss of use of a vehicle for a period in excess of that actually taken, or estimated as likely to be taken, in repairing it. The dredger case, and, in a lesser degree, *Duffy's* case, should prove useful authority upon this point.

To lightly turn one's thoughts from the question of damages to that of insurance is not found, in actual practice, to present insurmountable difficulty. On this aspect of motor law, the leading case of the year is *Trickett v. Queensland Insurance Co., Ltd.*, [1936] N.Z.L.R. 116. The insured was killed in a motor accident on the Hutt Road, Wellington, and his assignee was held by the Supreme Court and by the Court of Appeal unable to recover under a policy of insurance that, although providing an indemnity in the case of the deceased's death while driving the car, suspended liability while it was being driven in a damaged or unsafe condition. The decision of the Privy Council lends further weight to the proposition that, even in the case of a contract of insurance, the Court will not re-form the contract into which the insured has entered by supplementing its terms. Their Lordships found great difficulty in agreeing with the reasons upon which Goddard, J., had based his conclusions in *Barrett v. London General Insurance Co., Ltd.*, [1935] 1 K.B. 238; and they were not able to assimilate, as he did, the position of a ship at sea with that of a motor-car on land, and in rigidly applying the same code of law to both cases. For reasons which they thought too obvious to be stressed in detail, they considered the analogy imperfect, and indeed misleading, and were of the opinion that the argument based on the identity of the conditions which govern the seaworthiness of a ship at sea and the roadworthiness of a car on land was unsound.

A case stated under the Arbitration Act, 1908, involved a claim by an executrix to recover under a policy in respect of the death of her husband and of the damage to the car. The question to be decided was whether the vehicle, which was stated in the proposal to be used for private purposes, was at the time of the accident used for purposes other than those made the basis of the contract. The deceased, accompanied by the working-manager of one of his Company's mills, and his daughter, was in the course of a journey to inspect a mill and engine purchased by the company, of which he was general manager. In the opinion of Smith, J., the word "private," as used in the proposal and policy, did not cover the use of the assured's motor-car, even when driven by the assured himself, when the substance of that use was the benefit of the business of another person; and this position was not altered by the fact that that other person was a private company in which the assured had a substantial, though separate, financial interest. An appeal to the Court of Appeal was brought against the decision, but before the hearing the case was settled: *In re An Arbitration, Carroll and N.I.M.U. Insurance Company*, [1935] N.Z.L.R. 897.

To the motor-vehicle, also, must be given the credit for a crop of decisions on points of practice. Where there was evidence that the defendant who denied negligence and set up contributory negligence was unaware that there had been any actual collision, and there was no evidence from which he could infer that it had taken place, Herdman, J., after considering all the circumstances that were available at that stage of the litigation, granted an application by the defendant to deliver interrogatories: *Andrew v. McInnes*, [1935] N.Z.L.R. s. 6. These were refused in *Warner v. Fortune*, [1935] N.Z.L.R. 607, the point in opposition being a neat one that, as *The King v. Storey*, [1931] N.Z.L.R. 417, laid down that there was no distinction in New Zealand between negligence as a foundation of criminal liability and negligence as the foundation for civil liability, the defendant's answers, if they proved negligence against him, would constitute admissions which might be used against him in criminal proceedings. The action was one brought by a husband under the Deaths by Accidents Compensation Act, 1908. The proposed interrogatories appear to have had the proverbial savour of Izaac Walton; and it may be added, as a matter of interest, that at the trial the plaintiff was nonsuited.

The allocation of judgment and costs where a guardian *ad litem* and the infant plaintiff both received verdicts is dealt with in *Patience v. Marris and Campbell, Ltd.*, [1935] N.Z.L.R. s. 132.

The following three cases bear directly upon some aspects of a jury's knowledge or conduct. As part of his case in *Smale v. Cameron*, [1935] G.L.R. 392, the plaintiff had tendered evidence as to the remarks made to him by an agent for the insurance company indemnifying the defendant. Counsel for the latter maintained that the reference was introduced into the plaintiff's case for the purposes of creating prejudice, and relied on *Wilson v. George Kent and Sons, Ltd.*, [1928] N.Z.L.R. 166. Callan, J., however, expressed the view that all New Zealanders, including jurymen, now know that every motorist is compulsorily indemnified, and the force of the English and Scottish cases, and of *Wilson v. George Kent and Sons, Ltd.* itself, which was decided before the system of compulsory third-party insurance was introduced, was much weakened by the innovation were it made in our law. In *Holbeck v. Angas*, [1935] N.Z.L.R. s. 187, Blair, J., in an oral judgment, stated that, where liability had been admitted by the defendant, no reference should be made to the circumstances relating to the degree of the defendant's negligence for the purposes of increasing damages. Counsel for the plaintiff was anxious that the jury should not overlook the fact that at the time of the accident the defendant was said to be drunk. Finally, in *Jane v. Stanford*, [1935] N.Z.L.R. 891, Reed, J., laid down the salutary rule that if a Judge was judicially of the opinion that upon the case as a whole—upon the evidence for both the plaintiff and the defendant—there was no case, then it was his duty to enter what he thought was the right judgment—namely, judgment for the defendant—not because he found the facts, for that was the province of the jury, but because he found there were no facts sufficient to support a verdict in favour of the plaintiff. The jury had no right to find a verdict for the plaintiff upon a mere scintilla of evidence or unless there was evidence upon which fair and reasonable men could find that the defendant had done or omitted something which a person of reasonable care and skill would have done or omitted.

Doubtless, if jurymen in the future can be induced to read and digest this case less objection would be taken to their verdicts; but the introduction of any such practice appears in the highest degree unlikely.

Australian Notes.

By WILFRED BLACKET, K.C.

Next Please!—Roy Welsh, of Queensland, was a hairdresser. He was also ambitious, and by assuming the name of a Melbourne doctor of high repute and by other acts of fraud and covin he obtained an appointment as resident doctor at Normanton Hospital. He was about to start from Brisbane to take up his duties when the police heard some things about him, and arrested him on a charge of vagrancy. He will do three months.

An Uncommon Juror.—At Sydney Criminal Court a very heavy case of assault and robbery of £690 was in course of trial. The evidence had taken three long days; addresses were about to begin when it was told to the Crown Prosecutor that one of the jurors had been convicted fifteen times of various crimes. These things having been proved, the Judge discharged the jury and remanded the prisoners. The juror quaintly remarked that he had "wondered why, with his past record, he had been allowed to sit on the jury." It is well to add that he was on the Special Jurors' Panel, for it would be sad to think that a man with fifteen convictions was "a common juror" in Sydney.

Sunday Observance.—E. H. Sawyer, commercial traveller employed by Electrical, etc., Engineers, Ltd., of Sydney, travelled from town to town in a motor car in which he had driven 150,000 miles, and on Sunday, October 14, met with an accident in which he was seriously injured. His employers resisted a claim for compensation upon the ground *inter alia* that Sawyer by following his usual employment on a Sunday was acting illegally and was prevented under the Trinity Observance Act, 1677, from claiming compensation. An award for £4 17s. 0d. a week for seven weeks and £50 medical expenses was made.

Their Second String.—I cannot find any Scriptural precedent of such wrongdoing, but the practice of stealing or embezzling money and then reporting to the police that he, the thief, had been robbed *vi et armis* is one of extreme antiquity. In such cases locally the police were often prevented from proceeding to the punishment of crime by the refusal of the injured party to prosecute. Now, however, they prosecute the thief for making a false report whereby they were taken away from their public duty and employed upon wild goose chases to the loss and damage of the King, etc., etc. The magistrate is thought to measure his months of punishment with due regard to the amount stolen and so the way of the transgressor is made appropriately hard.

Who Told the Tale.—Robert Reynolds, letter-carrier at Rockhampton (9) points a moral to other postal officials. One Effeney—it seems like a made-up name, doesn't it?—had posted a letter to one Hogan containing his resignation from Hogan's employment. Then he regretted that he had done so, and persuaded Reynolds to give him back the letter. Reynolds was prosecuted for giving up the letter without the direction of the Postmaster-General.

Law "Reform" in New South Wales.—No public clamour preceded the decision of the Stevens Ministry to introduce the Judicature system to our Courts. There was not any suggestion of such change made publicly by any members of the legal profession, but the Ministry lately seems to have been trying to win back prosperity by giving increased employment to the Parliamentary Draftsman and the Government Printing Office, and so we are to have this reform of legal procedure. As usual, the reason for it is said to be that litigants are told that they have come to the wrong jurisdiction, and therefore are put to the cost of going to another Court to obtain justice. The obvious reply is that no litigants have ever—at least, not within my forty-eight years of practice—had such an experience. If any solicitor were to take a client to common-law when his only remedy was in equity, that solicitor ought to be struck off the rolls for stupidity. Some of your readers, with the long memories that lawyers ought to have, will remember that I have aforetime lauded our Common-law Procedure system, and asserted the greater cost and delay of proceedings under the Judicature Rules, but I doubt whether there will be enough interest taken in the matter here to arouse any opposition to the proposed Bill. We vote at general elections to prevent the party that has made us very weary, or else the party that has frightened us, from attaining or retaining power, but that is the utmost limit of our patriotism in politics.

Work for Idle Hands.—T. R. Graham, of Melbourne, sustained a fracture of the pelvis, and was in a hospital for seven months, and for some time thereafter was unemployed. Then he broke into a flat and stole a lot of jewellery and some other property. It was his first offence. When he, with a companion named Lewis, appeared at the Court of General Sessions to "pay their respects" to Magennis, J., who presided thereat, he pleaded guilty, and Dr. Ahern gave evidence that "the long months of invalidism and idleness must have had the effect of weakening his moral fibre." The Judge could see no other explanation of the lapse, and so bound Graham over to appear if called upon. Lewis had been joined in the indictment because some of the stolen jewellery was found in his pockets when Graham was arrested. He explained this circumstance by saying that he and Graham were together when the police patrol came along, and Graham handed him some of the stolen goods, which he thoughtlessly accepted. The jury, evidently believing this statement, acquitted him, but Graham's action recalls the resourcefulness of Ikey on an occasion when he and Solly were "bailed up" by bushrangers. The gleaming barrels of the menacing guns did not deprive Ikey of his presence of mind, for, taking a note out of his pocket, he turned to his friend and said, "Oh look, Solly, here's the tenner vot I owe you."

50,000 Drunks.—On p. 206 Vol. XI I was permitted to state that ordinary "drunks" at Mr. Cookson's Court were discharged upon their taking the pledge to abstain from liquor. The total of those who have taken this "local option" now exceeds 50,000 and it is, perhaps hopefully, said that sixty-five per cent. have kept their pledge.

Legal Literature.

Garrow's Real Property in New Zealand, Third Edition, by the late Professor James M. E. Garrow, Consulting Editor, and S. I. Goodall, LL.M., Revising Editor. Pp. lxxxiv + 704, including Index. Butterworth and Co. (Aus.), Ltd., Wellington and Auckland.

A Review by E. F. HADFIELD, B.A.(Cantab.).

The new Edition of *Garrow's Property*, published under the new title of *Garrow's Real Property in New Zealand*, will be welcomed by students and practitioners alike. It is a matter for regret to all that its learned author was not permitted to witness its publication.

The book is substantially larger than the former Edition. Having at first been intended, primarily, for students, it is less concise than it might otherwise have been; but the relegation to footnotes of references to authorities is an improvement rendering the text easier of apprehension, and this, combined with an excellent index, makes the book very useful for reference by busy practitioners.

The author's authority stands so high that his views on some recent decisions are of interest and of value. His comments are always temperate, restrained, and instructive. It is evident that he was doubtful of the correctness of the decisions on the Land Transfer Acts contained in *Boyd v. Mayor, &c., of Wellington*, [1924] N.Z.L.R. 1174, and in *Clements v. Ellis*, (1934) 51 C.L.R. 260. The doubt is whether, in these cases, the effect of the decision of the Privy Council in *Assets Co., Ltd. v. Mere Roihi*, [1905] A.C. 176, has been interpreted correctly.

The point is as to whether registration of an invalid document gives to the first registered owner a valid title. To those impressed with the philosophical maxim, *ex nihilo nihil fit*, it would seem that the wording of the Statute must be very strong to achieve that result. It was agreed on all hands that the second purchaser was protected by the Act because he could rely on the register. The minority Judges in *Boyd's* case, including Sir John Salmond, thought that the Privy Council had decided only that the second registered owner was so protected, but not the first. *Boyd's* case is very peculiar because the Judges differed as to whether the facts in one of three cases decided in *Mere Roihi's* case did or did not involve a second purchaser. This involved the point whether some statements of law in the Privy Council's judgment were, or were not, merely obiter. Professor Garrow thought it possible that, in the future, the opinion of the minority Judges may be approved by the Privy Council.

He refers at pages 364-5, to *Shelley's case*, which was recently before the Courts in *In re Rhodes, Barton v. Rhodes*, [1933] N.Z.L.R. 1348. He cites *Van Grutten v. Foxwell*, [1897] A.C. 658, as deciding that the rule applies only "if the words in question are used as *nomen collectivum* to denote the whole line of succession capable of inheriting." In the last-mentioned case the expression "whole heritable blood" is used.

He refers to the argument in the *Rhodes* case that the Property Law Act, 1908, s. 7, following the Conveyancing Ordinance, 1842, s. 36, only abolished the rule in *Shelley's case* when the words "heirs" or "heirs of the body" are used.

He says, on page 365, after referring to *Van Grutten v. Foxwell* (*supra*):—

> "It is possible that the provision in the Property Law Act, 1908, upon its strict reading, is insufficient wholly to dispose of the Rule in *Shelley's case* and that there may be cases in which, with the use of informal words, the rule may still have application in New Zealand."

This is a modification of the view adopted in the earlier edition, and of that stated in *Martin's Conveyancing in New Zealand*. In England, as he points out, "the rule has undoubtedly been abolished in its entirety by a Statutory provision in much wider terms than in New Zealand."

On page 364, he assumes that the use of the word "children" in a will could bring the rule into operation. This statement is certainly made by *Jarman*, but it will be found that the authorities stated in support are few and that in each of them other words in the will compelled the Court to read the word "children" as intended for "issue." It is obvious that the word "children" does not include "the whole heritable blood" as required by *Van Grutten v. Foxwell*.

Several new chapters have been added to the book, one of which deals with boundaries, party walls, roads and streets. These chapters add much to the usefulness of the book.

Mr. Goodall is to be congratulated on the successful discharge of his, somewhat difficult, duties as Revising Editor superintending publication.

Correspondence.

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

Legislative Lapses.

The Editor,
NEW ZEALAND LAW JOURNAL,
Wellington.

Sir,

It would be a poor lawyer indeed who did not realise the difficulties inherent in the task of the Law Draftsman, and your readers will, I am sure, fully appreciate the sentiments of Mr. Christie's recent letter in your pages.

The purpose of my earlier article, however, was to emphasize the need for machinery to deal with defects actually discovered in our legislation, however they arose and however unavoidable they may have been. It is no solution to this difficulty to remind us what skill and care is devoted to the original drafting. It still remains necessary to provide some adequate method to ensure prompt enactment of amendments, without the least tinge of criticism or recrimination.

It would be a valuable contribution to your columns if the Law Draftsman would be good enough to give his own views on the best method, appropriate to New Zealand, to secure speedy consideration of amendments in cases where legislative lapses undoubtedly have occurred.

Yours etc.,
I. D. CAMPBELL.

Wellington,
March 4, 1936.

The Dominion Legal Conference, 1936.

The Complete Programme.

The Dominion Legal Conference, which will be held in Dunedin, commencing on April 15, will take place in the Concert Chamber of the Dunedin Town Hall.

The complete programme, including social functions, is as follows:

Wednesday, April 15—

10 a.m. Inaugural Address. Remarks by the Attorney-General, the Hon. H. G. R. Mason.

10.30 a.m. Remit: Mr. P. J. O'Regan: Proposed amendments to the Workers' Compensation Act, 1922; with discussion to follow.

Mr. P. J. O'Regan (Wellington) to move: That it be a recommendation from this Conference to the Government that any amendments to the Workers' Compensation Act should include the following provisions:—

(1) That insurance against the liability in respect of injury by accident be made compulsory.

(2) That the provisions of section 63 of the statute be extended to include such work as the fencing and draining of land, the cutting of firewood and fencing material, and generally any farming work done by contract.

(3) That in every case where the employer pays travelling time, or though not paying travelling time, provides the means of conveying workers to and from work, compensation should be payable in respect of accidents happening to workers in transit.

(4) That provision be made for the payment in non-fatal cases of a reasonable amount by way of hospital and medical expenses.

(5) That the defence of common employment be altogether abolished.

10.30 a.m. Morning tea for ladies, at the Art Gallery.

11.30 a.m. Remit: Mr. A. N. Haggitt (Dunedin) with discussion:

That it is desirable that the proper attire of barristers at the outer Bar be defined.

12 noon: Civic Reception.

2.30 p.m. Paper: Mr. W. J. Sim (Christchurch): *Law Reform in New Zealand*; and discussion.

3.45 p.m. to 4.30 p.m. Remit: Wellington Law Society, and discussion:

That the present rules preventing King's Counsel from practising as Solicitors should be abolished.

9 p.m. Reception and Ball, Tudor Hall.

Thursday, April 16—

10 a.m. Paper: Mr. C. H. Weston, K.C. (Wellington): *The Development of the Law of Real Property in England*; and discussion.

11 a.m. Remit: Wellington Law Society; and discussion:

That the Society should take a more active part in public matters.

11.45 a.m. to 12.30 p.m. Remit: Mr. Warrington Taylor:

That the provisions governing the Land Transfer Assurance Fund should be extended to satisfy claims for loss due to forgery of Land Transfer documents.

1 p.m. Luncheon for ladies, at Somerset Lounge.

2.30 p.m. Paper: Dr. A. L. Haslam (Christchurch): *The Establishment of a Court (consisting of a Judge and Assessors) for the Hearing of Running-down Cases*; and discussion.

3.45 p.m. Remit: Mr. P. J. O'Regan; and discussion: Proposed amendments to the Deaths by Accidents Compensation Act, 1908.

Mr. P. J. O'Regan to move: That it be a recommendation from this Conference to the Government that the Deaths by Accidents Compensation Act, 1908, be amended as follows—

(1) That damages be made recoverable in every case where the deceased himself would have had a right of action had he survived the injury.

(2) That medical and funeral expenses be recoverable as special damages.

(3) That where the deceased had a policy of insurance, any moneys coming thereunder to the plaintiff should not abate the liability of the defendant.

4.30 p.m. Concluding remarks.

7 p.m. Bar dinner.

8 p.m. Evening entertainment for ladies at the Women's Club.

Friday, April 17—

Informal Stroke Competition in morning at Balmacewan Links.

Ladies: Drive to Larnach's Castle and Afternoon Tea. Buses from Queen's Gardens, 2 p.m.

Any Lady Visitors not wishing to take this drive may, if they wish, join the gentlemen for afternoon tea at 4 p.m. at Balmacewan Golf House.

Four-ball Bogey Handicap Tournament for N.Z. LAW JOURNAL Cup, in afternoon, at Balmacewan Links.

Tennis and Bowls at Balmacewan Courts and Green.

All players to go to Balmacewan Golf House for afternoon tea.

GENERAL.

The Conference Executive has every hope for a successful Conference, and the replies it has received from practitioners in all parts of the Dominion show that there will be a large number visiting Dunedin to take part in the gathering.

Accommodation.—Special tariff rates have been arranged for at certain local hotels and boardinghouses, a list of which has been sent to individual practitioners, and if they so wish, and notify the Conference Secretary, accommodation will be arranged for them according to their instructions.

Fares.—Arrangements have been made for a reduction of approximately 20 per cent. in first-class return rail fare for practitioners and their lady relatives proceeding to the Conference, and 10 per cent. on return saloon passages for practitioners only on the ferry steamers; and if they wish to take advantage of these concessions, an authority will be sent to them on receipt of their advice.

The Otago Law Society extend a cordial welcome to members of the profession to the Conference.

A Judge's Future.—One of the blessings of a Judge's life was that he still remained a member of the legal profession, said Mr. Justice Goddard, in replying to the toast of His Majesty's Judges recently. He recalled that an old friend of his had said to him, "After all, the only difference is that we stand at the Bar, while you sit on the Bench." "I have stood," said Mr. Justice Goddard, "at many bars. Now that I sit on the Bench I know I shall get stout, but I hope that I shan't get bitter."

Practice Precedents.

Leave to Appeal to Privy Council—Conditional and Final:

Pursuant to R.4 of the Rules regulating appeals to His Majesty in Council from the Dominion of New Zealand, applications to the Court for leave to appeal must be made by motion in Court at the time when judgment is given, or by *notice* of motion filed in the Court and served on the opposite party in accordance with the Rules or practice of the Court *within twenty-one days* after the date of the judgment appealed from: see *Stout and Sim's Supreme Court Practice*, 7th Ed., p. 593. Rule 2 of the same rules sets out in what cases an appeal will lie.

By R.5, leave to appeal under R.2 only is granted by the Court in the first instance :—

(*a*) Upon the condition of the appellant, within a period to be fixed by the Court, but not exceeding three months from the date of the hearing of the application for leave to appeal, entering into good and sufficient security, to the satisfaction of the Court, in a sum not exceeding five hundred pounds, for the due prosecution of the appeal and the payment of all such costs as may become payable to the respondent in the event of the appellant not obtaining an order granting him final leave to appeal, or of the appeal being dismissed for non-prosecution, or of His Majesty in Council ordering the appellant to pay the respondent's costs of the appeal (as the case may be);

(*b*) Upon such other conditions (if any) as to the time or times within which the appeallant shall take the necessary steps for the purpose of procuring the preparation of the record and the despatch thereof to England as the Court, having regard to all the circumstances of the case, may think it reasonable to impose.

Security is frequently given by bond with sureties approved by the Registrar, in which case two sureties are usually required or, in the alternative, an approved company. A solicitor is not acceptable as surety for his client, neither is the solicitor's partner: this follows R. 578 of the Supreme Court Code (*loc. cit.* 375).

MOTION FOR PROVISIONAL LEAVE TO APPEAL TO PRIVY COUNCIL.

IN THE COURT OF APPEAL OF NEW ZEALAND.

BETWEEN A.B. &c. appellant

AND

C.D. &c. respondent.

TAKE NOTICE that this Honourable Court will be moved by Mr. of counsel for the respondent on day the day of 19 at o'clock in the forenoon or so soon thereafter as counsel can be heard FOR AN ORDER granting the respondent leave to appeal to His Majesty in Council upon such conditions as this Honourable Court might think fit to impose from the judgment of this Honourable Court delivered on day of 19 herein UPON THE GROUNDS that the amount in dispute amounts to or is of the value of £500 sterling and upwards.

Dated at this day of 19 .

Solicitors for respondent.

To the Registrar of this Honourable Court and to Messrs. solicitors for appellant.

ORDER FOR PROVISIONAL LEAVE TO APPEAL TO PRIVY COUNCIL.

(*Same heading.*)

Before The Right Honourable Sir K.C.M.G. Chief Justice.
The Honourable Mr. Justice .
The Honourable Mr. Justice .

day the day of 19 .

UPON READING the notice of motion filed herein AND UPON HEARING Mr. of counsel for the appellant AND Mr. of counsel for the respondent THIS COURT DOTH ORDER that the appellant do have provisional leave to appeal to His Majesty in Council from the judgment of this Honourable Court herein UPON CONDITION of the appellant within a period of three months from the date of this order entering into good and sufficient security to the satisfaction of the Court in a sum not exceeding five hundred pounds for the due prosecution of the appeal and the payment of all such costs as may become payable to the respondent in the event of the appellant not obtaining an order granting him final leave to appeal or of the appeal being dismissed for non-prosecution or of His Majesty in Council ordering the appellant to pay the respondent's costs of the appeal (as the case may be) AND UPON such other conditions (if any) as to the time or times within which the appellant shall take the necessary steps for the purpose of procuring the preparation of the record and the despatch thereof to England as the Court having regard to all the circumstances of the case may think it reasonable to impose.

By the Court.

Registrar.

NOTE :—An affidavit of service is not prefixed, as counsel appeared on both sides.

MOTION FOR FINAL LEAVE TO APPEAL TO PRIVY COUNCIL.

(*Same heading.*)

TAKE NOTICE that this Honourable Court will be moved on day the day of 19 at o'clock in the forenoon or so soon thereafter as counsel can be heard on behalf of the respondent FOR AN ORDER granting the respondent final leave to appeal to His Majesty in Council from the judgment of this Honourable Court pronounced herein on the day of 19 UPON THE GROUNDS that the respondent has entered into good and sufficient security to the satisfaction of the Registrar of this Honourable Court in the sum of £ for the due prosecution of the appeal and the payment of costs in accordance with the conditional order of this Honourable Court of the day of 19 .

Dated at this day of 19 .

Solicitors for respondent.

To the Registrar of this Honourable Court and to Messrs. solicitors for appellant.

AFFIDAVIT IN SUPPORT OF MOTION FOR FINAL LEAVE TO APPEAL TO THE PRIVY COUNCIL.

(*Same headings.*)

I of the city of make oath and say as follows :—

1. That I am a solicitor in the employ of Messieurs of solicitors.

2. That the said firm has acted in connection with the proceedings herein as the agents of Messieurs solicitors for the abovenamed respondent.

3. That on the day of 19 an order was made by this Honourable Court granting the said respondent conditional leave to appeal from the judgment of this Honourable Court pronounced herein on the day of 19 .

4. That the condition of the said order was that the respondent should within three months from the date of the said order enter into good and sufficient security to the satisfaction of the Registrar of this Honourable Court in the sum of £500 for the due prosecution of the appeal and the payment of all such costs as might become payable to the abovenamed appellant in the event of the abovenamed respondent not obtaining an order granting her final leave to appeal or of the appeal being dismissed for non-prosecution or of His Majesty in Council ordering the respondent to pay the appellant's costs of appeal (as the case might be).

5. That with the approval of the Registrar of this Honourable Court a bond was accordingly entered into by the said respondent and by one of in the sum of £500 for the due prosecution of the appeal herein and for the payment of costs as hereinbefore mentioned and on the day of 19 an affidavit of justification was duly sworn herein by the said and filed herein on the day of 19 .

6. That the said bond was duly approved by the Registrar of this Honourable Court and was lodged in the office of this Honourable Court on the day of 19 .

Sworn etc.

A Solicitor of the Supreme Court of New Zealand.

ORDER FOR FINAL LEAVE TO APPEAL TO PRIVY COUNCIL.

(*Same heading.*)

Before the Right Honourable Sir K.C.M.G. Chief Justice.
the Honourable Mr. Justice .
the Honourable Mr. Justice .
day the day of 19 .

UPON READING the notice of motion and affidavit of filed herein AND UPON HEARING Mr. of counsel for the respondent and Mr. of counsel for the appellant THIS COURT DOTH ORDER that the respondent do have final leave to appeal to His Majesty in Council from the judgment of this Honourable Court delivered herein on day the day of 19 .

By the Court.

Registrar.

BOND AS SECURITY FOR APPEAL.

(*Same heading.*)

KNOW ALL MEN by these presents that we of and of are held and firmly bound unto Registrar of the Court of Appeal of New Zealand in the sum of five hundred pounds (£500) for the payment of which sum to the said or such Registrar for the time being we do by these presents bind ourselves jointly and severally and our executors and administrators.

WHEREAS the Court of Appeal of New Zealand did by its order sealed herein and dated the day of 19 grant leave to to appeal to His Majesty in Council from the judgment of the said Court delivered in Appeal Number in which the said was respondent and the said was appellant upon the terms that the respondent should within three months from the day of 19 enter into good and sufficient security to the satisfaction of the Registrar of this Honourable Court for the due prosecution of his appeal to His Majesty in Council and the payment of all such costs as might become payable to the said appellant in the event of the abovenamed respondent not obtaining an order granting him final leave to appeal or of the appeal being dismissed for non-prosecution or of His Majesty in Council ordering the respondent to pay the appellant's costs of appeal (as the case might be) AND WHEREAS the abovenamed and have executed the abovewritten bond as and for such security NOW the condition of the abovewritten obligation is such that if the respondent shall duly prosecute his said appeal to His Majesty in Council and shall pay to the said appellant all such costs as may become payable to the said appellant in the event of the said respondent not obtaining an order granting him final leave to appeal to His Majesty in Council and shall also pay to the said appellant all such costs as may become payable to the said appellant in the event of the appeal to His Majesty in Council being dismissed for non-prosecution or of His Majesty in Council ordering the respondent to pay the said appellant's costs of the appeal THEN the abovewritten obligation is to be void and of no effect but otherwise to be and remain in full force and effect.

IN WITNESS WHEREOF we have hereunto set our hands and affixed our seals this day of 19 .

SIGNED SEALED AND DELIVERED by the said and in the presence of } .....

[*Signature of witness, occupation, and address*].

AFFIDAVIT OF JUSTIFICATION OF SURETY.

(*Same heading.*)

BETWEEN appellant
AND
respondent.

I E.F. of the city of make oath and say as follows:—

1. That I am the proposed surety on behalf of the abovenamed respondent in the sum of five hundred pounds (£500) for the due prosecution by the respondent of the appeal herein from the judgment of this Honourable Court to His Majesty in Council and for the payment by the respondent to the appellant of all such costs as may be awarded to the appellant by His Majesty in Council.

2. That after payment of my just debts I am well and truly worth more in real and personal estate than the sum of £500.

Sworn etc.

A solicitor of the Supreme Court of New Zealand.

Rules and Regulations

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Public Revenues Act, 1926.—Justices of the Peace Act, 1927. Crown Legal Business Regulations, 1932, Amendment No. 2.—*Gazette* No. 19, March 5, 1936.

Payment of Jurors Act, 1919. Prescribing Rates of Fees and Allowances.—*Gazette* No. 19, March 5, 1936.

Agriculture (Emergency Powers) Act, 1934. The Dairy Suppliers Regulations, 1936.—*Gazette* No. 19, March 5, 1936.

Agriculture (Emergency Powers) Act, 1934. The Dairy Factories (Licensing) Regulations, 1936.—*Gazette* No. 19, March 5, 1936.

Counties Amendment Act, 1931. Special Order, Ohura County.—*Gazette* No. 19, March 5, 1936.

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Maori Councils Act, 1900. Tangi by-laws amended in certain districts.—*Gazette* No. 19, March 5, 1936.

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Rural Mortgagors Final Adjustment Act, 1934-35. Application to certain classes of leases.—*Gazette* No. 23, March 19, 1936.

Fire Brigades Amendment Act, 1932. Mode of election of local authority members, Dunedin.—*Gazette* No. 23, March 19, 1936.

Law Practitioners Act, 1931. Additional rules as to admission as barrister.—*Gazette* No. 23, March 19, 1936.

Animals Protection and Game Act, 1921-22.—Stock Amendment Act, 1927. Notice respecting Native and Imported Game.—*Gazette* No. 22, March 16, 1936.

Animals Protection and Game Act, 1921-22. List of Native Game. List of Absolutely Protected Birds. Sanctuaries.—*Gazette* No. 22, March 16, 1936.

Animals Protection and Game Act, 1921-22. Open Seasons for Imported Game and/or Native Game in Certain Acclimatization Districts.—*Gazette* No. 22, March 16, 1936.

New Books and Publications.

Paterson's Licensing Acts, Forty-sixth Edition. Edited by Sir John Peddar, K.B.E., C.B., and E. J. Hayward, O.B.E. (Butterworth & Co. (Pub.) Ltd.). Price 30/- Thick; 35/- Thin.

Yearly County Court Practice, 1936. Edited by Edgar Dale, Anthony Linell, and Adam Partington. (Butterworth & Co. (Pub.) Ltd.). Price 53/- Thick; 60/- Thin.

Stone's Justices Manual, 1936. Edited by F. B. Dingle. (Butterworth & Co. (Pub.) Ltd.). Price 50/- Thick; 56/- Thin.

The Law of Housing. (A Complete Commentary on the Housing Acts), Second Edition, 1936. By S. Pascoe Hayward, B.A., and C. Kent Wright, Solicitor, B.A. (Estates Gazette). Price 44/-.