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"It seems to me most just in favour of the authors of all foreign countries that, if they have complied with the law of their own country, they shall be protected in this country, on condition that Englishmen who have complied with the laws of their own country shall be protected abroad."

—LORD ESHER, M.R., in *Hanfstaengl v. American Tobacco Co.*, [1895] 1 Q.B. 347, 353.

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Newspaper Articles and Copyright.

II.

NO copyright is conferred by the Copyright Act, 1913, upon works first published in foreign countries, and protection in foreign countries of works first published in New Zealand cannot be secured by our municipal legislation. This protection can only be secured by international co-operation, and this has so developed during the last century that, to use the words of the late Lord Justice Scrutton, "a British author is assured that readers who formerly would have paid him the compliment of reading his works can now be compelled to pay him for the privilege not in compliments but in cash."

As Carroll, J., said in delivering the judgment of himself and three of his colleagues in *Joubert v. Geracino*, (1916) 35 D.L.R. 683, the juridical situation in relation to international copyright has to be looked at as it emerges from a mass of statutes and from conventions in connection with copyright covering a period of more than half a century.

The result has been achieved only after considerable historical progression. The Common Law affecting copyright in England became by degrees crystallized by statute law; and this was extended beyond the British Isles by sundry treaties with foreign powers. But the need for international conformity soon became pressing, not only to protect the rights of foreigners in British countries, but also for securing the rights of British subjects in foreign countries. From 1838 to 1883 the position regarding international protection was unsatisfactory, as reciprocal treaties existed only between some countries and then with considerable variation in their terms; but in the latter year a meeting at Berne promoted by the International Literary Association produced a scheme for the formation of an International Copyright Union. This was taken up by the Swiss Government with the result that Diplomatic Conferences were held at Berne, in 1884 and in 1885. Following the latter Conference the framing of a Draft Convention led to the International Copyright Convention of Berne, 1886, which recommended periodical Conferences for revision. By the Berne Convention, the contracting Powers were "constituted into a Union for the protection of the rights of authors over their literary and artistic works," from which it follows that, should any of its provisions be doubtful, that construction should be preferred which is most favourable to the author's protection.

The effect of the Convention as a whole was to confer upon foreign authors the rights of nationals, and to protect them in every one of the Union countries independently of the legislation of each; with the restriction that the copyright term should not exceed that accorded in the country wherein the work was produced, and with the qualification that foreign authors should enjoy no greater protection than that accorded in the country where the work was produced. It left, however, the Union countries to provide for the means of redress and remedies in case of infringement; and made this an obligation by Art. 2.

Modification of the Berne Convention, in accordance with its provisions for periodical revision, took place at a Conference at Paris in 1896, and the outcome of its deliberations was the "Additional Act of Paris," which Great Britain adopted with a reservation, in March, 1898. A further revision took place at Berlin in 1908, with the resulting "Revised Berne Convention, 1908," which replaced the earlier Convention and Act of Paris, and forms a copyright code binding on the countries which have ratified it as Great Britain did by Order in Council in June, 1912.

New Zealand was admitted as a member of the International Copyright Union on April 1, 1914: London *Gazette*, April 24, 1914; *1914 New Zealand Gazette*, 2547.

The basis of international copyright protection of authors in countries other than the country of origin of their work, of authors who first publish in another country of the Union, and of authors who are not nationals of a Unionist country, is found in the following articles of the Revised Convention:

> Art. 4. Authors who are subjects or citizens of any of the countries of the Union shall enjoy in countries other than the country of origin of the work, for their work, whether unpublished or first published in a country of the Union, the rights which the respective laws do now or may hereafter grant to natives as well as the rights specially granted by the present Convention.
>
> Art. 5. Authors being subjects or citizens of one of the countries of the Union, who first publish their works in another country of the Union, shall have in the latter country the same rights as native authors.
>
> Art. 6. Authors not being subjects or citizens of one of the countries of the Union who first publish their works in one of those countries shall enjoy in that country the same rights as native authors, and in the other countries of the Union the rights granted by the present Convention.

These Conventions have no force of law in this country, or in any country for that matter, and the rights of authors are regulated by the law of the country in which they seek protection, which gives force to application of the Conventions to that particular country.

Section 33 of the Copyright Act, 1913, enables New Zealand to come within the scope of International Conventions: it is an adaptation of s. 29 of the Copyright Act, 1911 (Imp.). The countries to which the New Zealand statute has been extended by Orders in Council made pursuant to s. 33, may be found in the *Index to the Laws of New Zealand*, 28th Ed., p. 99, from which it appears that works first published in the following countries receive protection under the statute in like manner as if they were first published in New Zealand, or in the case of literary, dramatic, musical, and artistic works, the authors whereof were at the

time of the making of the work subjects of any of those countries, in like manner as if the authors were British subjects, or, in respect of residence in those countries as if such residence were residence in New Zealand :

By Order in Council of March 27, 1914, the provisions of the Copyright Act, 1913, were extended to the following countries of the Copyright Union : Austria-Hungary, Belgium, Denmark, and the Faroe Islands, France, Germany, Haiti, Italy, Japan, Liberia, Luxemburg, Monaco, the Netherlands, the Netherlands East Indies and the colonies of Curaçao and Surinam, Norway, Portugal, Spain, Sweden, Switzerland, and Tunis, with reservations as to the rights conferred by the Act as subject, in the case of newspaper or magazine articles (not being serial stories or tales), to the accomplishment of conditions and formalities, (*a*) where the country of origin is Denmark, Italy, the Netherlands with its East Indies and Colonies, Norway or Sweden (the right to prevent reproduction either in the original language or in a translation, with indication of the source, to be conditional upon reproduction being forbidden by express declaration in some conspicuous part of the newspaper or magazine in which the article is published) ; and (*b*) where the country of origin is Belgium, France, Germany, Haiti, Japan, Liberia, Luxemburg, Monaco, Portugal, Spain, Switzerland, or Tunis (the right to prevent similar reproductions of such article in another newspaper, with an indication of the source, to be similarly conditional) : *1914 New Zealand Gazette*, 1323–1324. The latter reservation, (*b*), was extended to Italy : *1915 New Zealand Gazette*, 2478 ; to French Morocco and to Poland : *1920 New Zealand Gazette*, 2264, 2276 ; to Austria and Czechoslovakia : *1921 New Zealand Gazette*, 1123, 2747 ; Bulgaria, Hungary, and Brazil : *1922 New Zealand Gazette*, 1696, 2272 ; to the Free City of Danzig : *1924 New Zealand Gazette*, 2971 ; to Syria and Lebanon : *1925 New Zealand Gazette*, 518 ; to Roumania, *1928 New Zealand Gazette*, 2425 ; and to the colonies of Portugal and of Spain : *1930 New Zealand Gazette*, 89. The former reservation, (*a*), was extended to Greece : *1921 New Zealand Gazette*, 1123.

By Order in Council of March 27, 1914, the provisions of the Act were extended to works first published in any part of His Majesty's dominions to which the Copyright Act, 1911 (Imp.), then extended ; and it was declared that the 1913 Act extended to residence in any part of such dominions as if such residence were residence in New Zealand : *1914 New Zealand Gazette*, 1323. There have been subsequent extensions to British protectorates and mandated territories.

For a list of the corresponding Orders in Council in Great Britain see *9 Halsbury's Laws of England*, 2nd Ed., 532-533.

Countries outside the Copyright Union, the most notable of which is the United States of America, are not bound by the international code, and in many cases an author can obtain protection only by simultaneous publication in the foreign country.

Coming now to the question of the protection given by the international copyright code to articles in newspapers, the classification of countries falls into the two distinct classes of countries within the Copyright Union and countries outside the Union. It is with the former class we propose to deal here. Reference to any particular foreign country must be made to the individual Order in Council respecting that country, where the provisoes, conditions, and formalities applicable to each such country are indicated, in order to ascertain what modifications, if any, of the law applicable to New Zealand and British works generally apply to the particular country of origin of the work under notice. Thus, if a newspaper or magazine article (not being a serial story or tale) were published in a Dutch newspaper, and, without permission, it were translated and copied into a New Zealand newspaper, the author of the article would have to seek protection under the New Zealand law, but it would be found that the conditions relating to the application of that law to works of which Holland is the country of origin appear in an Order in Council reproduced in *1914 New Zealand Gazette*, p. 1324.

Article 9 of the Revised Convention of 1908, relating to the protection of works published in newspapers or periodicals, is as follows :

Art. 9. (Para. 1). Serial stories, tales, and all other works, whether literary, scientific, or artistic, whatever their object, published in any of the newspapers or periodicals of one of the countries of the Union may not be reproduced in the other countries without the consent of the authors.

(Para. 2). With the exception of serial stories and tales, any newspaper article may be reproduced by another newspaper unless the reproduction thereof is expressly forbidden. Nevertheless the source must be indicated ; the legal consequences of the breach of this obligation shall be determined by the laws of the country where protection is claimed.

(Para. 3). The protection of the present Convention shall not apply to news of the day or to miscellaneous information which is simply in the nature of items of news.

As it does not seem that this Article was intended to confer rights on newspapers to the exclusion of legislation by the countries to which such newspapers belong, the rights of authors or of newspapers are not finally determined by the Convention but by the laws of the country in which protection of the rights of the author of a newspaper article is sought.

In referring to Article 9, Lord Gorrell's Committee appointed to examine the various points in the Revised Berne Convention of 1908, said :

"The article may be adopted, and it would seem expedient, for the sake of uniformity to mould British law, at all events *qua* international rights, if not *qua* internal rights, so as to agree with the Revised Convention, the difference between the two not appearing to be points of vital importance."

The Committee's recommendation was not carried into the Act of 1911 (our Act of 1913), as the British Press considered that suitable and helpful as Art. 9 might be as between foreign newspapers and their own, it was not desirable that newspapers published in the United Kingdom should be deprived of the blanket protection of their existing law, or that they should accept the task of safeguarding their articles from reproduction by labelling them with prohibitory notices.

In view of the International Conference to be held in Brussels, during the present year, for the periodical revision of the International Copyright Convention, the Belgian Government and the Bureau of the International Union for the Protection of Literary and Artistic Works prepared a communication for consideration by the British Government with a view to common action at the forthcoming Conferences. The British Board of Trade Committee which was set up to consider what should be the policy of His Majesty's Government in Great Britain on the several matters dealt with in the Belgian Government's proposals, reported as follows, in relation to suggested amendments of Article 9, as above :

The Belgian Government propose to cancel paragraph (2) and to bring articles on current economic, political or religious topics into the scope of paragraph (1), in order that such articles may receive full protection and not merely the qualified protection at present provided for in paragraph (2). They point out that the provisions of paragraph (2) as to reservation of copyright are not of much practical value to authors, and that in any case the requirements regarding notice of reservation and indication of source are contrary to the essential principle laid down in Article 4 (2) that the enjoyment and the exercise of copyright shall not be subject to the performance of any formality.

This proposal was supported in oral evidence given us on behalf of the Society of Authors and the Institute of Journalists and in a written communication the Newspaper Proprietors' Association informed us that the majority of their members approved the proposal, subject to the addition at the end of paragraph (1) of the words : "or of the owners of the copyright," but that one or two influential papers would much prefer Article 9 to remain unamended. The retention

of the existing text was favoured by the British Broadcasting Corporation and Reuters Ltd. It was contended on behalf of the British Broadcasting Corporation that it is important that the Corporation should be able to draw on as many and authoritative sources as possible for the purposes of news bulletins. On behalf of Reuters Ltd., it was submitted that the qualified protection provided for in paragraph (2) has in practice proved fairly effective and that if the proposed amendments were adopted there would be a risk that articles on current economic, political and religious topics, if sent out by news agencies, might for that reason become assimilated in some countries to mere press information, with the consequence that such articles might lose the protection of the Convention.

In this country articles on current economic, political and religious topics published in newspapers receive the full protection of the Act, and the adoption of the proposed amendments would merely give effect to our law. These amendments seem to us to be approved by the bulk of the persons most directly concerned in this country, and we are disposed to think that the apprehensions felt by Messrs. Reuters as to their effect would be realized only if the plain meaning of the amended Article were disregarded. In these circumstances, we recommend that the proposed amendments be adopted.

The suggestion of the Newspaper Proprietors' Association that the words: "Or of the owners of the copyright" should be added at the end of paragraph (1) will be taken care of if the recommendation we make later* that the term "author" should be defined in the Convention is adopted.

Then, as to the right of the author of a work published in a newspaper or periodical to exploit his work, the Board of Trade Committee reported as follows:

The Belgian Government propose the addition of a new Article to the effect that, subject to any stipulation to the contrary, the author of a work published in a newspaper or periodical shall retain the right of reproduction and of exploitation in any form whatsoever, provided that such exploitation is not of such a nature as to compete with the newspaper or periodical. They point out that authors nowadays frequently derive more revenue from modern methods of communication of their works, such as transmission by wireless, than from the older form of reproduction by means of printing.

This proposed provision was objected to by the Newspaper Proprietors' Association on the ground that, if the author of an article in a newspaper is not an employee of that newspaper, the question of his surrendering his property rights therein is a matter between himself and the newspaper, and that in the absence of any agreement to the contrary his rights with regard to other forms of reproduction are safeguarded by the copyright law, while if he is an employee, he would not be allowed to do anything which would affect detrimentally the newspaper employing him.

The proposed provision was also objected to by the Society of Authors and the Institute of Journalists, on the ground, among others, that it implies that the author of a work published in a newspaper or periodical cannot again publish that work, of which *ex hypothesi* he owns the copyright, in a form which may compete with the newspaper or periodical, and to that extent tends to restrict the rights of the author rather than to extend them.

The last-named two bodies thought, however, that some provision regulating the rights of authors in respect of articles published in newspapers and periodicals should be inserted in the Convention and they accordingly put forward a proposal to the effect that an author who permits the publication of his work in a newspaper or other periodical shall, in the absence of express agreement to the contrary, be deemed to have granted a licence for the publication of the work once only in the newspaper or periodical.

Under our law a journalist has a full copyright in his articles, except in some cases where he is under a contract of service, and we think that the difficulty which has led the Society of Authors and the Institute of Journalists to put forward their proposals arises mainly in cases where a newspaper or periodical refuses to accept and to publish articles unless the author makes an assignment of all his copyright therein. It would not appear however that this particular difficulty could be met by an amendment of the Convention and we see objection to a provision which might be taken to imply that a journalist should be free to license the production of his article simultaneously in competing newspapers. We are therefore unable to recommend the adoption of the proposal of these bodies. Nor do we think that the Belgian Government's proposal is a suitable one for insertion in an international convention. We consider that the matter would be best left to contract and that accordingly the proposed new Article should be resisted.

Article 9 of the International Convention, as amended by the Committee, would, therefore, read as follows:

(1) Serial stories, tales, *articles on current economic, political, or religious topics*, and all other works, whether literary, scientific or artistic, whatever their object, published in the newspapers or periodicals of one of the countries of the Union may not be reproduced in the other countries without the consent of the authors.

(2) The protection of the present Convention shall not apply to news of the day or to miscellaneous information which is simply of the nature of items of news.

From the above, it will be seen that the italicised words have been added to para. 1; that para. 2 has been wholly deleted, and that para. 3 becomes the new para. 2. Consequently, it is suggested that there be taken away the limited right of reproduction of "articles on current economic, political or religious topics" and that these classes of articles be included in the absolute prohibition.

The practical effect of the existing International Convention is that the author of a newspaper article who is a British subject enjoys in any country of the Copyright Union the rights which the law of the country gives to its own nationals: "*Morocco Bound*" *Syndicate Ltd. v. Harris*, [1895] 1 Ch. 534. It follows, therefore, that, as a British Court has no jurisdiction at the instance of a British subject who is the proprietor of copyright in his work to restrain any threatened infringement by a British or foreign subject in a country which is member of the Copyright Union, proceedings in cases of infringement arising in that country must be taken in the Courts and according to the law of that country. The rights are British rights, except so far as they are extended by International Convention so as to constitute foreign rights to be exercised in the foreign country where the infringement occurs.

The distinction between the protection given to writers of newspaper articles by the Copyright Act, 1913, to those who have the status to maintain an action under it, and the lesser protection given by the Revised Convention of 1908 can be illustrated by a simple illustration. The proprietors of a New Zealand newspaper republish therein an article originally published in a London newspaper, and copied therefrom under the heading: "*The Life of John Jones, by William Smith, in Blackfriars Weekly, London*," and the author of the article is a British subject who has not assigned his rights as such, the newspaper proprietors did not have his consent or that of the prior publishers, and there was no notice in the London newspaper referred to forbidding republication.

If the author, who has a claim to copyright both by the Copyright Act, 1913, and under the Revised Berne Convention, proceeds to enforce his rights under the Convention, he will have to prove under Art. 4 (*supra*), besides his authorship and the fact of republication of his article here, that he is the subject of a Union country, that the country in which he claims protection is a country other than the country

* In view of the evidence given before the Committee, it recommended that the term "author" as used in the Convention be supplemented by a proviso to include assignees, as follows: "Except where the context otherwise requires, the term 'author' as used in this Convention shall be taken to include an assignee or other proprietor for the time being of the relevant right in the work."

of origin of the work, and that the two latter countries are Union countries. But Art. 9, which deals specially with newspapers, prevails over the generality of Art. 4, and he obtains no protection in this country under the Convention because he never gave any notice forbidding reproduction and the newspaper proprietors complied with the requirement that they should indicate the source of the article.

On the other hand, if the author proceeded under the Copyright Act, 1913, he would, on the same facts, be able to enforce his rights. He is a British subject, he first published the article in England, which is "a part of the British Dominions," and would by s. 28 and the Order in Council made thereunder relative to the extension of reciprocal protection of copyright to Great Britain, be entitled to complete protection against republication of his article in a New Zealand newspaper.

The author in question need not invoke the Convention at all or claim protection on the ground that is given by New Zealand to New Zealand natives. He gets it directly as a British subject by the Act itself and without any reference to the rights which New Zealanders may have as such. In fact, if Great Britain had never adhered to the Convention, he could rest his claim in terms of the section of the Act on the fact that he is a British subject. The condition in Art. 9 of the Convention is completley overcome by the Act which makes his protection absolute.

The provision in the Revised Convention and the Orders in Council adopting the same, that the enjoyment of the rights given to a foreign author is to be subject to the conditions and formalities presented by law in the country of origin of the works, means that it is to be subject only to those conditions and formalities, and not to those required by the law in which the right is being enforced: see *Sarpy v. Holland*, [1908] 2 Ch. 198. But, once a foreign author has established his right, his remedy depends entirely on (here) the New Zealand statute.

To conclude: The joint effect of the Copyright Act, 1913, and the Revised Berne Convention, is that an author suing in New Zealand in respect of an infringement here of a foreign copyright must prove that he is entitled to protection in the country of origin of his work. As Kekewich, J., said in *Baschet v. London Illustrated Standard Co.*, [1900] 1 Ch. 73, 78:

> A man cannot sue here in respect of a work published in the country of origin—in this case, France—unless he proves that he is entitled to protection in the country of origin; and, *vice versa*, a man cannot sue in France in respect of a work published in England unless he proves to the satisfaction of the French Court that he is entitled to sue in England as the country of origin.

Once he has established his right, his remedy depends entirely on the New Zealand statute: see also *Sarpy v. Holland* (*supra*).

Legislative action by any Unionist country to give more extensive protection to authors is not restricted by the International Convention, the spirit as well as the wording of which is to give authors minimum protection, leaving it to any Unionist States which may feel more liberally disposed, to enlarge that protection as they see fit, by wider provisions in their municipal law.

The protection thus given by the Convention, and so enforceable has appropriately been termed "reciprocal automatic copyright" in all countries of the Copyright Union.

Summary of Recent Judgments.

SUPREME COURT
Wellington.
1936.
April 20, 21.
Smith, J.

RE C. M. BANKS, LIMITED, BANKS v. HAMMOND AND OTHERS.

Company Law—Directors—Power of Directors and Company under Agreement with Managing Director to Determine his Appointment—Memorandum of Association empowering Holders of named Shares to appoint two Directors—Meeting of Directors held and Certificate determining Appointment of Managing Director produced—Nomination of new Director by Managing Director as Holder of the named Shares—Whether Certificate and Nomination valid—Whether new Director could vote at Meeting at which he was appointed—Whether Resolution at such Meeting passed by Directors other than new Director effective.

Plaintiff was managing director of the company under agreement which provided plaintiff should continue as managing director until

> "(*e*) If at any time the directors of the company shall certify in writing and the members of the company shall duly pass a resolution to the effect that it is not in the interests of the company that the said Claude Malcolm Banks shall continue managing director and shall after passing such resolution have given to the said Claude Malcolm Banks six calendar months' notice terminating this agreement but the company shall not pass any resolution as aforesaid without some good reason affecting the conduct of the said Claude Malcolm Banks."

This agreement was authorized by an article providing that the plaintiff should be managing director "in accordance with an agreement to be entered into between him and the company."

Spratt, for the plaintiff; **G. G. G. Watson,** and **James,** for the personal defendants.

Held, That the directors to give such a certificate were the directors other than the managing director; that the certificate was constituted by the individual act of each such director and did not require a meeting of directors; and that such certificate need not state the grounds of the opinion expressed therein.

When the agreement was made plaintiff held shares numbers 2,001-3,000 of the original capital of the company. As to such shares the memorandum of association provided:

> "The holders of the ordinary shares numbered 2,001 to 3,000 inclusive of the original capital of the company shall have the right from time to time by writing under the hands of a majority of such holders to appoint and have two directors upon the Board of Directors of the company and the company shall give effect to every such appointment."

The directors other than the managing director produced the above certificate at a meeting of directors, and proposed a resolution to call a general meeting of the company to consider and determine a resolution based on such certificate for the removal of the plaintiff. The plaintiff thereupon introduced to the meeting and signed a valid appointment of a new director under the powers vested in him as owner of the said shares: the resolution was then put and, the plaintiff and the new director voting against it and the plaintiff exercising his casting vote as chairman, it was declared lost. The right of the chairman to introduce the new director pending the resolution was questioned.

Held, 1. That the newly appointed director was immediately qualified to participate in the business of the meeting and that the other directors were not entitled to deny his right to participate therein from the time of his appointment and were put upon inquiry immediately to ascertain whether he had been validly appointed.

2. That, in the circumstances, there was no will or intention on the part of two of those present to attend a meeting of four directors, and there was no will or intention on the part of the remaining two present to attend a meeting of three directors, and in the result there was from the point of view of the company no meeting of directors at all when the resolution to call the general meeting of the company was dealt with.

Barron v. Potter, Potter v. Berry, [1914] 1 Ch. 895, referred to.

3. That a provision in the articles of the company giving the directors power to regulate the order of their business as they think fit must apply to the business before the meeting of directors and not to a question as to what directors shall participate in the meeting to consider that businsss.

Injunction restraining the defendants from holding the extraordinary general meeting of the company granted.

British Murac Syndicate, Ltd. v. Alperton Rubber Co., Ltd., [1915] 2 Ch. 186, and **In re Wincham Shipbuilding, Boiler, and Salt Co., Hallmark's case,** (1878) 9 Ch.D. 329, referred to.

Solicitors: Morison, Spratt, Morison, and Taylor, Wellington, for the plaintiff; **Chapman, Tripp, Watson, James, and Co.,** Wellington, for the personal defendants.

Case Annotation: *Barron v. Potter, Potter v. Berry,* E. & E. Digest, Vol. 9, pp. 437-438, para. 2840; *British Murac Syndicate, Ltd. v. Alperton Rubber Co., Ltd., ibid.,* Vol. 42, p. 570, para. 1354; *In re Wincham Shipbuilding, Boiler, and Salt Co., Hallmark's case, ibid.,* Vol. 9, pp. 469-470, para. 3071.

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

COURT OF APPEAL
Wellington.
1936.
Mar. 30; April 27.
Reed, J.
Ostler, J.
Blair, J.
Kennedy, J.

IN RE HOLMES (DECEASED)
McMASTER
v.
CUNNINGHAM AND OTHERS.

Family Protection—Advances made to Daughter during Lifetime of a Wealthy Testator—Daughter in actual Want at his Death—Ample Assets to provide for her Maintenance without undue Hardship to any Necessitous Member of Family—Whether Order should be made in such Daughter's Favour—Family Protection Act, 1908, s. 33.

Where a wealthy man died, making no provision for a daughter, to whom advances had been made during his lifetime but who at his death was in actual want, and the assets of the estate were ample to provide for her maintenance and an order could be made in her favour without undue hardship to any necessitous recipient of the testator's bounty, an order should be made for the maintenance of such daughter.

In re Allardice, Allardice v. Allardice, (1909) 29 N.Z.L.R. 959, aff. on app. [1911] A.C. 730, applied.

So Held by the Court of Appeal,

Per *Reed,* A.C.J., That the question is reserved for future consideration, should it ever arise, as to whether, when a parent makes a will, in which he leaves his estate to his family in such shares as, judged by the circumstances then subsisting, show no breach of moral duty, the provisions of such will should not be disturbed upon the death of such parent if any member of the family, having received during the lifetime of the testator advances against his share, is in reduced circumstances as compared with other members of the family. Each case must be decided upon its own particular facts.

Per *Kennedy,* J., That (without expressing any opinion on the case mentioned by *Reed,* A.C.J., or on a case in which the testator had merely sufficient to provide adequately for the maintenance and support of such other children and had in his lifetime given a share to one child, who, having lost it, claimed on testator's death in competition with other children who had been content to wait to receive their shares) in the circumstances of the present case, the testator was clearly under a moral duty to provide out of his estate for the maintenance and support of his daughter, and that she should not have been left to rely merely upon what might be paid by the trustee to her for the maintenance, education, advancement, or benefit of her children.

Counsel: C. S. Thomas, with **H. O. Jacobson,** for the appellant; **Brown,** for J. R. Cunningham; **Lascelles,** and **Abernethy,** for all respondents other than trustees.

Solicitors: Cassidy, Amodeo, and Jacobson, Christchurch, for the appellant; **Cuningham and Taylor,** Christchurch, for the respondent John Roberts Cuningham; **Weston, Ward, and Lascelles,** Christchurch, for the respondent Elizabeth Holmes; **Duncan, Cotterill, and Co.,** Christchurch, for the respondent Mary Elizabeth Paterson.

Case Annotation: *In re Allardice, Allardice v. Allardice,* E. & E. Digest, Vol. 44, pp. 1289-1290, para. g.

NOTE:—For the Family Protection Act, 1908, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, 1908-1931, Vol. 3, title *Family Protection,* p. 292.

SUPREME COURT
Wellington.
1936.
April 1, 2, 3, 4, 7.
Myers, C.J.

RE T.E.V. "RANGATIRA."

Shipping and Seamen—Shipping Casualty—Rehearing by Supreme Court of Inquiry of Investigation—Ship Registered in New Zealand—Jurisdiction—Effect of His Majesty's assent to but not Confirmation of Reserved Statute—Whether any Repugnancy between New Zealand and Imperial Statutes—Shipping and Seamen Act, 1908, s. 243—Merchant Shipping Act, 1894 (57 & 58 Vic., ch. 60), ss. 475, 478, 735—New Zealand Constitution Act, 1852 (15 & 16 Vic., ch. 72), ss. 53, 59.

Section 243 of the Shipping and Seamen Act, 1908, must be interpreted *ut res magis valeat quam pereat,* and should be interpreted on this doctrine as applying to ships registered in New Zealand.

Macleod v. Attorney-General for New South Wales, [1891] A.C. 455, followed.

The New Zealand Legislature may by implication repeal s. 478 of the Merchant Shipping Act, 1894 (Imp.), as that section is included in the provisions of the statute which the Legislature of a British possession is empowered by s. 735 to repeal wholly or in part.

Harris v. Davies, (1885) 10 App. Cas. 279, **Hume v. Palmer,** (1926) 38 C.L.R. 441, and **Butler v. The Ship Millimumul,** (1930) 30 N.S.W.S.R. 182, referred to.

The assent of His Majesty to the Shipping and Seamen Acts, 1903 and 1908, was intended, and must be regarded, as a confirmation of these statutes for the purposes of s. 735 of the Merchant Shipping Act, 1894 (Imp.), and, as subsequent amendments have been assented to and confirmed, the principal Act which was assented to cannot be held invalid for want of confirmation.

Even if there be a repugnancy between s. 243 of the Shipping and Seamen Act, 1908, and s. 478 (6) of the Merchant Shipping Act, 1894 (Imp.), that repugnancy is authorized by s. 735 of the latter statute; and, having regard to s. 735, it is immaterial whether the jurisdiction of the Board of Trade under s. 478 (6) is ousted or whether the Board of Trade and the Minister of Marine in New Zealand have concurrent jurisdiction.

Union Steam Ship Co. of New Zealand, Ltd. v. The Commonwealth, (1925) 36 C.L.R. 130, **Hume v. Palmer,** (1926) 38 C.L.R. 441, and **Butler v. The Ship Millimumul,** (1930) 30 N.S.W. S.R. 182, referred to.

Consequently, s. 243 of the Shipping and Seamen Act, 1908, must be regarded as a valid exercise of the power conferred upon the New Zealand Legislature by s. 735 of the Merchant Shipping Act, 1894 (Imp.), *quoad* ships registered in New Zealand.

Counsel: Cornish, K.C., Solicitor-General, and **Foden,** for the Minister of Marine; **Cooke,** K.C., and **Kirkcaldie,** for the Master and Chief Officer; **C. G. White,** for the owners, the Union Steam Ship Co., Ltd.; **L. H. Herd,** for the Wireless Operator; **J. F. B. Stevenson,** to watch proceedings on behalf of the Wellington Harbour Board.

Solicitors: **Crown Law Office,** Wellington, for the Minister of Marine; **Buddle, Anderson, Kirkcaldie, and Parry,** Wellington, for the Master of the T.E.V. "Rangatira."

Case Annotation: *Macleod v. Attorney-General for New South Wales*, E. & E. Digest, Vol. 42, p. 687, para. 1016; *Harris v. Davies, ibid.*, Vol. 17, p. 449, para. 189.

NOTE:—For the Shipping and Seamen Act, 1908, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, 1908-1931, Vol. 8, title *Shipping and Navigation*, p. 249; New Zealand Constitution Act, 1852, *ibid.*, Vol. 1, title *Constitutional Law*, p. 997; Merchant Shipping Act, 1894 (Imp.), 18 *Halsbury's Statutes of England*, Vol. 28, title *Shipping and Navigation*, p. 162.

SUPREME COURT
Nelson.
1936.
Mar. 18; April 7.
Smith, J.

IN RE CIDER (N.Z.), LIMITED, (IN LIQUIDATION), OFFICIAL ASSIGNEE v. GRAINGER AND ANOTHER.

Company Law—Winding-up—Receiver in Possession and carrying on Business—Winding-up Order made—Balance of Cash in Hand after payment of Debenture-holders subsequently paid to Official Liquidator—Proof by Manager for Wages accrued due during Receivership—Proof by Landlord for Rent during same Period—Whether Preferential Claims—Companies Act, 1933, ss. 88, 258 (1) (*a*).

The company employed G., the first defendant, as manager. It acquired leasehold premises for the manufacture of its products from R., the second defendant, under an unregistered lease for a term of five years from February 26, 1931. On November 23, 1933, a receiver was duly appointed by debenture-holders, and he entered into possession and carried on the business. On September 8, 1934, G. petitioned for the winding-up of the company upon a claim for unpaid wages, and a winding-up order was made on October 15, 1934.

The receiver paid the debenture-holders, and, on June 10, 1935, reported to the official liquidator to whom he sent the balance of cash in his hands, which sum and other assets of the company were held by the official liquidator. G. and R. claimed they were entitled to preferential payment, the former for the unpaid balance of his wages (£184 5s. 8d.) from the time of the receiver's going into possession until the winding-up order was made, and the latter for the balance of rent unpaid under the lease from November 18, 1933, until the date of the winding-up order.

On motion for directions by the official liquidator,

Fletcher, for the plaintiff; **Brodie,** for the first-named defendant; second-named defendant in person; **Glasgow,** for the receiver for the debenture-holders.

Held, 1. That the principle that the Court in bankruptcy ought not to allow its officer to insist upon a rule of law or equity in the administration of an estate where insistence would manifestly produce an unjust or dishonest result, applied to the official liquidator.

Ex parte James, In re Condon, (1874) L.R. 9 Ch. 609, **Ex parte Simmonds, In re Carnac,** (1885) 16 Q.B.D. 308, **In re Tyler, Ex parte the Official Receiver,** [1907] 1 K.B. 865, and **In re Thellusson, Ex parte Abdy,** [1919] 2 K.B. 735, referred to.

2. That G. had proved in the liquidation for a dividend from the assets of the liquidation. A claim based upon such proof was inconsistent with an application to withdraw assets from the liquidator; and he should be taken to have elected to rest upon his rights as a proving creditor, which, in itself, was sufficient to prevent him from succeeding, at least in the present proceedings; and the same consideration applied to R.'s claim for unpaid rent.

3. That, on the merits, there was no ground for the contention that the official liquidator had received assets from the receiver which were impressed with any trust or equity in favour of G., and there was nothing manifestly unjust or dishonest in the receipt by the official liquidator of the receiver's surplus assets, some of which might possibly have been applied in payment of G.'s wages before the compulsory winding-up took place.

4. That, as no wages were owing for any period prior to the appointment of the receiver, the receiver did not become liable to make any preferential payment under s. 88 of the Companies Act, 1933, and as G.'s claim was solely against the company, he was entitled to preferential payment to the extent of £100 under s. 258 (1) (*a*) of the Companies Act, 1933.

5. That, although the receiver, who had a sole discretion under the debenture as to payment of rent, had been advised by the official liquidator not to pay rent which had fallen due prior to the compulsory winding-up, he could have accepted or rejected this advice as he thought fit; but, as the compulsory winding-up had intervened before that advice was given, the rights of other creditors had intervened, and the landlord had no preferential claim for rent in the winding-up, it was proper that the receiver should not at any time after receiving the official liquidator's advice pay the rent which had accrued before the winding-up.

Solicitors: **Pitt and Moore,** Nelson, for the plaintiff; **Fell and Harley,** Nelson, for the first-named defendant; **Rout and Milner,** Nelson, for the second-named defendant; **Glasgow, Rout, and Cheek,** Nelson, for the receiver for the debenture-holders.

Case Annotation: *Ex parte James, In re Condon*, E. & E. Digest, Vol. 5, p. 819, para. 6961; *Ex parte Simmonds, In re Carnac, ibid.*, Vol. 4, p. 205, para. 1890; *In re Tyler, Ex parte The Official Receiver, ibid.*, Vol. 4, p. 482, para. 4342; *Re Thellusson, Ex parte Abdy, ibid.*, Vol. 35, p. 148, para. 463.

COURT OF APPEAL
Wellington.
1936.
Mar. 27; April 27.
Reed, J.
Ostler, J.
Blair, J.
Kennedy, J.

BERRYMAN v. MARTHA GOLD-MINING COMPANY (WAIHI), LIMITED.

Workers' Compensation—Average Weekly Earnings—Mining "Scouts"—Method of computing Average Weekly Earnings for Purposes of Compensation—Workers' Compensation Act, 1922, s. 6 (2).

Two grades of employees were employed underground in the defendant company's mine: the ordinary miners, and the "scouts," who, so far as the company was concerned, had not reached the grade of ordinary miners and were not engaged by the company as part of its ordinary underground permanent staff: they were recognized as men who might be temporarily employed to fill accidental gaps in the ranks of the company's permanent working teams. The definition of a "scout" and the special conditions of a "scout's" employment were precisely detailed in *McConnell v. Waihi Gold-mining Co., Ltd.*, [1935] N.Z.L.R. s. 36.

Plaintiff had been a "scout" for about two and a half years. During the period of twelve months prior to July 16, 1935, he had worked underground for sixty-seven and a half days with various contracting parties, and for twelve and a half days as a timber and pipe man, his total earnings for the year being £85 2s. On July 16, 1935, he was selected to work with a party to replace a man who was absent from work through illness, and who resumed work with his party after four and a half days' absence, when, if plaintiff had not been injured on July 17, 1935, his second day, he would have ceased work with that party. Plaintiff claimed compensation for his injury, which totally disabled him for four days, in accordance with the provisions of s. 6 (1) of the Workers' Compensation Act, 1922.

The President of the Court of Arbitration submitted for the opinion of the Court of Appeal the question of law: On what basis should the average weekly earnings of the plaintiff be calculated?

P. J. O'Regan, for the plaintiff; **Richmond,** for the defendant.

Held, That as the plaintiff was engaged by the company not as a miner but as a "scout" only, and upon the terms and conditions applicable to "scouts," and was injured while doing "scout's" work, the compensation he became entitled to must be on the basis of the terms and conditions of his employment as a "scout" and not upon the terms and conditions of another grade of employee to which he had not attained.

The basis upon which the average weekly earnings of the plaintiff should be calculated was that laid down in **McConnell v. Waihi Gold-mining Co., Ltd.,** [1935] N.Z.L.R. s. 36.

Solicitors: **P. J. O'Regan and Son,** Wellington, for the plaintiff; **Buddle, Richmond, and Buddle,** Auckland, for the defendant.

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

COURT OF ARBITRATION
Hamilton.
1936.
April 24; May 2.
Page, J.

IN RE DRUMMOND (DECEASED)

Workers' Compensation—Apportionment of Compensation for Death of Worker—Magistrate's Order for payment by Public Trustee of fixed and ascertained Sum exceeding Fifty Pounds—Jurisdiction—Method of Apportionment of Compensation between Dependent Widow and Son of former Wife—Workers' Compensation Act, 1922, ss. 20, 36, 38.

Deceased was killed by accident arising out of and in the course of his employment, and left him surviving his widow, a former wife, and her son aged fifteen years and two months, the other children of his former marriage not being dependants.

The former wife assumed the custody and maintenance of the said son, for whose maintenance deceased paid her 10s. per week. At the death of deceased, he owed his former wife on such account the sum of £5. After the payment of compensation-moneys to the Public Trustee, the said son agreed to accept from the deceased's employers £25 10s. in full satisfaction of all their liability to him in respect of his father's death. The former wife obtained an order in the Magistrates' Court for payment to her of the compensation-moneys amounting to £25 10s. then in the hands of the Public Trustee. Such order purported to be made under the Workers' Compensation Act, 1922, but the moneys thereunder were not paid.

On motion by the widow for payment of £25 10s. to the former wife on behalf of the said son, and of the balance of compensation-moneys to her (the widow),

Gillies, in support; **D. R. Wood,** for the Public Trustee.

Held, 1. That the transaction which included the agreement and the subsequent application to the Magistrate was, and was intended to be, a step taken on behalf of the former wife to secure payment to her of the weekly sums of 10s. a week due or to become due to her for maintenance of the son until he should attain the age of sixteen years.

2. That, as the order made in the Magistrates' Court was a claim in respect of an injury resulting in death, that Court had no jurisdiction to make it.

3. That, as between the son and widow of the deceased there had been no apportionment of the compensation paid in respect of the death of the deceased, the matter was *res integra*, and an order should be made apportioning the compensation-moneys between the dependents.

The Court's order for payment of portion of the compensation-moneys to the former wife for the son's past maintenance and apportionment of the balance between the widow and dependent son is set out in the judgment.

Solicitors: Gillies and Tanner, Hamilton, for the applicant; **District Solicitor,** Public Trust Office, Hamilton, for the Public Trustee.

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

SUPREME COURT
Dunedin.
1936.
Mar. 4, 21.
Kennedy, J.

WILSON AND OTHERS v. THE ATTORNEY-GENERAL.

Friendly Societies—Investment of Moneys forming Part of Benefit Fund in Purchase of Land or Erection of Offices or Buildings—Minimum Return to be Assured—Effect of Receipt of Surplus Payment in Earlier Year—Friendly Societies Act, 1909, s. 50 (4).

Section 50 (4) of the Friendly Societies Act, 1909—which provides:

"If any money forming part of any benefit fund of a registered society or branch is invested after the commencement of this Act in the purchase of land, or the erection or alteration of offices or buildings, and such land, offices, or buildings are used or occupied wholly or in part for the purposes of the society or branch, interest on that money at the rate of not less than four per centum per annum shall be paid by the society or branch into the said benefit fund, and that interest shall be payable out of the management fund of the society or branch so far as it is not otherwise lawfully provided"—

means that while there is use and occupation by a society or branch, the society or branch must assure a minimum return for the benefit fund at the rate of four per centum per annum and, accordingly, if that interest is "not otherwise lawfully provided," for example, out of rents received from a part not for the time being used or occupied by the society or branch the deficiency must be paid out of the management fund of the society or branch.

An earlier surplus payment is not "otherwise lawfully provided" against interest; as to come within that expression, the credit must be provided in the form of a return from the investment during the year in question.

Counsel: Calvert, for the plaintiffs; **F. B. Adams,** for the defendant.

Solicitors: Brugh, Calvert, and Barrowclough, Dunedin, for the plaintiffs; **Crown Solicitor,** Dunedin, for the defendant.

NOTE:—For the Friendly Societies Act, 1909, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, 1908-1931, Vol. 3, title *Friendly Societies*, p. 461.

SUPREME COURT
Auckland.
1936.
April 6.
Fair, J.

DONALDSON-EDWARD v. DONALDSON-EDWARD.

Divorce and Matrimonial Causes—Separation (as a Ground for Divorce)—Desertion—Decree *nisi* obtained on Petitioner's Evidence of Separation by Mutual Consent—Intervention by Solicitor-General on Grounds that Material Evidence of Petitioner's Conduct not disclosed—Admission of her Adultery made before separation—Meaning of "Agreement to separate"—Decree *nisi* rescinded—Divorce and Matrimonial Causes Act, 1928, s. 10 (*i*), (*j*).

The petitioner having alleged a verbal agreement for separation made in June, 1930, which had subsisted for three years and upwards, and, alternatively, three years' desertion, and having given evidence of such agreement, separation, and desertion, the suit being undefended, a decree *nisi* was pronounced. She did not disclose to the Court that she had left respondent and their mutual home on September 10, 1930, after having been charged with infidelity by her husband and having, with the alleged co-respondent, admitted to him the truth of the charge, or that the respondent had filed a petition on the ground of adultery for dissolution of their marriage in October, 1930, to which no answer was filed, but the petition was not brought on for hearing.

On the intervention of the Solicitor-General, who disclosed the actual facts under which the separation agreement was entered into,

V. R. S. Meredith, for the Solicitor-General; **Matthews,** for the petitioner.

Held, rescinding the decree *nisi*, 1. That the facts did not disclose an agreement for separation within the meaning of s. 10 (*i*) of the Divorce and Matrimonial Causes Act, 1928, as the section contemplates an agreement entered into voluntarily and not as a result of a husband, for just cause, refusing to continue marital relations.

2. That, where the full circumstances are disclosed, and it is shown that the petitioner relies on the consequences of her own wrongful act as the basis of her petition for dissolution of marriage on the ground that she and respondent were parties to an agreement for separation which had been in full force and effect for a period of three years and upwards, the Court should refuse a decree *nisi*, as to allow her to proceed would in substance amount to allowing her to obtain a divorce as a result of her own misconduct; so, when a decree *nisi* had been made owing to such full circumstances not having been disclosed, it should be rescinded.

Solicitors: Crown Solicitor, Auckland, for the Solicitor-General; **Matthews and Clark,** Auckland, for the petitioner.

NOTE:—For the Divorce and Matrimonial Causes Act, 1928, see THE REPRINT OF THE PUBLIC ACTS OF NEW ZEALAND, 1908-1931, Vol. 3, title *Husband and Wife*, p. 865.

London Letter.

By Air Mail. Temple, London,
April 2, 1936.

My dear N.Z.,

A remarkable thing has happened! After all this talk about the delays of the law and not enough Judges, such is the progress that has been made with the non-jury list this term that it is now said that it is doubtful if there are enough cases set down to provide the Judges with work to the end of the term. This state of affairs became known early in the month, and since then it has been quite difficult to fill the daily lists, with the result that the King's Bench Judges taking non-jury cases have on many occasions finished their day's work before lunch. Moreover, applications for postponement of cases because the parties have not been ready have been frequent. In one case such an application was made because the defendant's principal witness had gone abroad for a few days. The case had been set down only nineteen days previously and when the witness went abroad there were fifty-nine other cases before it in the list. In another case the action had come into the list for hearing before the time for delivering the defence had expired. The cause for this rather sudden acceleration of work is somewhat obscure. It has been said that the principal reason is the reduction in the number of jury cases, for not only does a jury case take considerably longer to try than a non-jury case, but also litigants are more inclined to try their luck before a jury, whereas before a Judge alone they may be persuaded to settle. This may well be one reason, but I doubt if it is the main reason, which in my humble view is simply that we now have plenty of Judges.

But in spite of all this hustle, let it not be supposed that there is any danger of the Courts havng to close down for lack of work. There is plenty of other work, even on the King's Bench side. Last week two Divisional Courts were sitting to hear Crown Paper and Civil Paper cases, while another Judge was engaged in Revenue cases. Then there is always the Commercial List, and, if the worst comes to the worst, the Railway and Canal Commission.

The Minister of Defence.—The appointment of Sir Thomas Inskip to be the new Minister of Defence came as a surprise to most people. I believe an enterprising Member of Parliament made a book on the appointment and that Sir Thomas's name was not even included as a starter. It is perhaps surprising that the ex-Attorney-General should have decided to give up all the opportunities that were open to him in the law to accept a purely political position, but there is no doubt that he is well qualified to undertake the difficult duties of his new office. Not only will his legal training stand him in good stead for these, but he is not without experience of the Services, since he served in the Naval Intelligence Department of the Admiralty from 1915 to 1918 and was head of the Naval Law Branch of the Admiralty in 1918.

The New Law Officers.—The vacancy in the Attorney-Generalship created by the appointment of Sir Thomas Inskip as Minister of Defence has been filled, as was expected, by the appointment of the Solicitor-General, Sir Donald Somervell, K.C. Sir Donald Somervell was made Solicitor-General in 1933, when he was only forty-four years of age. He had made a rapid rise in his profession, for, although he was called to the Bar in 1916, he served in His Majesty's Forces throughout the Great War and may be said not to have started his legal career until after the close of hostilities.

The new Solicitor-General, Terence O'Connor, K.C., like Sir Donald Somervell, belongs to that generation of members of the Bar which was young enough to see active service in the Great War. He is in fact two years younger than the new Attorney-General. His name naturally leads one to suppose that he is an Irishman, but, although he is doubtless of Irish extraction, he was born in Shropshire. In the War he served with the Highland Light Infantry, and he now represents Central Nottingham in Parliament. Besides having this similarity of age and experience, the two present Law Officers of the Crown are, it always seems to me, curiously similar both in appearance and methods. Both are tall and dark, and both have a rather free and easy manner in Court.

Cases of the Month.—There has, I think, been no case of outstanding legal importance this month, but there have been several which have excited a good deal of public interest. There have been two sensational murder trials, that of Nurse Waddingham, who was convicted of poisoning a patient in her nursing-home, and that of Dr. Buck Ruxton, who was convicted of murdering his wife and her maid. The latter case contained points of interest owing to the difficulty of establishing the identity of the bodies, which had been partially dismembered and badly mutilated and were found in a ravine many miles from the home of the accused.

There has also been the appeal in the famous Pepper case, in which three City financiers were convicted of issuing a fraudulent company prospectus. It seems that these three gentlemen formed a company and issued a prospectus inviting the public to subscribe, nominally (as appeared in the prospectus) to provide funds to carry on an old-established business of dealers in commodities, but really (as did not appear in the prospectus) to finance a colossal gamble in pepper. The original idea had been to corner the market in white pepper by buying up the world's supply, but unfortunately, as they bought, the price went up, and owners of black pepper found it paid them to turn their black pepper into white. The market thus became flooded with pepper, the whole scheme collapsed, and the company failed, with serious consequences to many people. It was said on behalf of the defendants on the appeal that they themselves thought they were on a good thing, and invested large sums of money in the scheme, but the Lord Chief, in giving the judgment of the Court of Criminal Appeal, said that that was no better than an office boy taking half a crown out of the till because he had a good thing for the Grand National. The Court held that the prospectus was clearly false, and dismissed the appeal.

The Progress of Law Reform.—In pursuance of the recommendations of the Royal Commission on the Despatch of Business at Common Law, three Committees have been appointed to enquire into and report with respect to various matters with which the Commission has been dealing. One, under the chairmanship of Mr. Justice Finlay, is to review the distribution of Assize facilities; another, including in its personnel such well-known names as those of Mr. Justice Humphreys, Sir Archibald Bodkin, and Sir Henry Curtis-Bennett, K.C., is to consider and report on the question of enlarging the jurisdiction of Quarter Sessions; and the third, under the chairmanship of Mr. Justice Atkinson, is to consider the problems involved in the establishment of a system for taking

an official shorthand note of cases in the Supreme Court.

Another Committee—the Departmental Committee on Social Services in Courts of Summary Jurisdiction—has just published a report. This Committee was appointed as long ago as October, 1934, by the then Home Secretary, but since it seems to have examined one hundred and twenty-six witnesses, it cannot be said to have been idling. The report deals mainly with the matrimonial jurisdiction of Justices and with the law and practice of probation, and makes numerous recommendations for improvements in both these matters. It advocates a more careful use of methods of conciliation in matrimonial cases, and the conversion of the voluntary organization of the probation system into a public service. But perhaps the most interesting thing about this report is that it reminds us that the jurisdiction of our Justices is not by any means limited to criminal cases. Thousands of matrimonial applications come before them and although their jurisdiction does not include the power to dissolve marriages, they can make judicial separations and maintenance orders. Of course, in general, the jurisdiction of our Justices (or Magistrates) corresponds to the jurisdiction of your Justices of the Peace, while the jurisdiction of our County Court Judges corresponds to the jurisdiction of your Magistrates, but summary jurisdiction in matrimonial matters with you is, I think, exercised by a Magistrate.

Yours ever,
H. A. P.

New Zealand Law Society.

Annual Meeting.

The Annual Meeting of the New Zealand Law Society was held on March 20. The President, Mr. H. F. O'Leary, K.C., occupied the chair.

The following Societies were represented: Auckland, Messrs. G. P. Finlay, A. H. Johnstone, K.C., L. K. Munro, H. M. Rogerson (proxy); Canterbury, Messrs. A. S. Taylor and A. F. Wright; Gisborne, Mr. L. T. Burnard (proxy); Hamilton, Mr. J. F. Strang; Hawke's Bay, Mr. H. B. Lusk; Marlborough, Mr. W. T. Churchward; Nelson, Mr. W. V. Rout; Otago, Messrs. A. N. Haggitt and E. J. Smith; Southland, Mr. J. G. Imlay; Taranaki, Mr. J. C. Nicholson; Wanganui, Mr. R. A. Howie; Westland, Mr. A. A. Wilson (proxy); and Wellington, Messrs. H. F. O'Leary, K.C., D. Perry, G. G. G. Watson. Mr. P. Levi, Treasurer, was also present.

The President extended a welcome to the new members of the Council, and expressed his great pleasure at the fact that a delegate was present from every Society in New Zealand. The meeting was the first to be held under the auspices of the Law Practitioners Amendment Act, 1935.

The year had been a very important one in the history of the Society, and matters of great interest had occupied the attention of the Council. The Society had welcomed with much pleasure the appointment of an Attorney-General who was a member of the profession, and whose attitude showed that he could and would help our legitimate aims.

The President then referred to the following matters:

The appointment of the Disciplinary Committee, its work, and its advantages; the financial needs of the smaller District Law Societies and the effort being made to alleviate their position; the Council of Law Reporting—its relation to the Society and to practitioners generally; the Mortgage Corporation; the Guarantee Fund; and the forthcoming Legal Conference, and the desirableness for the attendance of as many members as possible.

Death of His Majesty the King.—The following report was received:—

"The President desires to report that, taking advantage of the presence in Wellington of members of the Disciplinary Committee, he summoned a special meeting of the Council of the Society on January 23, 1936, to pass a motion of sympathy from the Society.

"The following members were present at the meeting:—Messrs. H. F. O'Leary, K.C., A. T. Donnelly, G. G. G. Watson, C. H. Weston, K.C., A. H. Johnstone, K.C., H. B. Lusk, and F. B. Adams.

"On the motion of the President, the following resolution was carried while members stood in token of respect:—

'That the New Zealand Law Society records its deep regret at the death of our beloved Sovereign King George V and respectfully desires to express its deepest sympathy with her Majesty the Queen and the members of the Royal Family in their bereavement.'

"It was decided to forward the resolution to London, and arrangements were made through the Prime Minister's Department for this to be done immediately."

Death of Sir Francis Bell.—The President spoke of the great loss suffered by the profession in the death of Sir Francis Bell, which had been fittingly referred to at impressive gatherings held at the Supreme Court in Wellington and Auckland. The following motion was carried, members standing in silence:—

"This meeting of the New Zealand Law Society records its sorrow at the passing of Sir Francis Bell and expresses its deepest sympathy to the members of his family. It also desires to record its appreciation of the eminent services rendered by Sir Francis to the Society during the long period that he was its President, and it also expresses its thanks for the invaluable counsel and help given by him to the profession throughout his long and honourable career."

The Minutes of the Council Meeting of December 13, 1935, as printed and circulated, were taken as read and were confirmed.

Report and Balance Sheet.—The Annual Report and Balance Sheet were adopted.

Election of Officers.—The following officers were re-elected unopposed: President: Mr. H. F. O'Leary, K.C.; Vice-President: Mr. A. H. Johnstone, K.C.; Treasurer: Mr. P. Levi; Auditors: Messrs. Clarke, Menzies, Griffin and Ross; and the Management Committee of Solicitors' Fidelity Guarantee Fund: Messrs. C. H. Treadwell, A. H. Johnstone, K.C., E. P. Hay, and P. Levi.

With reference to the members of the Disciplinary Committee, the President pointed out that there was some doubt about the duration of their appointment, and drew the attention of the meeting to s. 2 of the Law Practitioners Amendment Act, 1935. He asked for the views of the Council as to whether the Committee should be appointed for a definite term or not. The view was then expressed that the Disciplinary Committee, once appointed, remained in office indefinitely, subject only to the Council's right to recall of any member, and it was suggested that the Act should be altered to provide for the whole Committee to retire at the end of three years. As it appeared that the matter of re-election of the Committee was not one for the Council under the present Act, the matter was dropped until later in the meeting.

Mortgagors Final Adjustment Act, 1934-35; Death Duties Act, 1921.—The Canterbury Society forwarded

the following letter criticising the reply received from the Attorney-General :—

"I have read the memorandum from the Attorney-General addressed to the Secretary of the New Zealand Law Society. I would particularly refer to the stress laid by the Attorney-General on the fact that duty is assessed upon values ascertained as at the date of the death. The whole trouble arises out of the extreme difficulty in determining the value of a mortgage which is subject to the Mortgagors Relief Acts.

"Other assets, such as shares, are constantly changing hands at easily ascertained prices and there cannot be much doubt as to their approximate value.

"Mortgages which are subject to the provisions of the Mortgagors Relief Acts are not changing hands and I submit that there are few persons who would care to assign any particular figure as being the realisable value of such a mortgage as at a particular date. As the Attorney-General says, it is customary in such cases for the Commissioner of Stamps to take into account the Government valuation of the land and to treat this as a guide to the value of the mortgage. I submit that in fact this is an entirely erroneous basis to take.

"Government values of land are based on realisable values. The only person who can realise is the mortgagor, the mortgagee being prevented from realising the land, owing to the operation of the Relief Acts. All he can realise, therefore, is the mortgage and no investor to-day would in his senses give par value for a mortgage in respect of which a Relief order or a Stay order had been granted by the Court, no matter what the Government valuation of the land, subject to the mortgage, might be.

"I am certain that if the executors set about realising such mortgages, they would have to accept large discounts ever where the lands valuations disclosed an apparent substantial margin of value, over and above the amount owing on the mortgage.

"It was to avoid the very considerable trouble which may be involved in attempting to fix a fair value for mortgages as at any partcular date that I suggested legislative powers enabling the Commissioner to postpone final determination of such value until the lapse of a period sufficient to allow of the expiry of a Stay order. If the Act remains as at present, then I consider that it is clearly the duty of all executors to test in the Courts the basis of valuation of any mortgage which is subject to the Relief Acts and the circumstances of which lead such executors to fear that some loss may eventuate. Under the present practice such a mortgage may easily be assessed at its full value for duty purposes, whereas its real value may be far below the value as so assessed.

"In regard to the first part of the Attorney-General's letter, I quite recognise that the interpretation of Sections 74 and 75 are as stated in the letter. As a matter of convenience, however, it has frequently in the past been agreed between the Commissioner and executors that a particular asset, the value of which may be very difficult to determine until realisation, shall be provisionally assessed at a certain figure with a proviso that such assessment may be reopened if subsequent events should prove that the value as so provisionally fixed was incorrect. I maintain that in my argument I am not seeking to allow events subsequent to death to affect the amount of duty payable. The amount of duty is clearly determinable according to values as at date of death. All I am trying to avoid is extensive litigation due to the difficulty of assessing values arising out of emergency legislation."

It was decided to forward the letter to the Attorney-General with a request for the reconsideration of the matter.

Upkeep of Judges' Library, etc.—The following report was received :—

"A deputation consisting of Messrs. H. F. O'Leary, K.C., G. G. G. Watson, S. A. Wiren and the Secretary interviewed the Minister of Justice (the Hon. Mr. Mason) on January 30, 1936. The following matters were discussed :—

Upkeep of Judges' Library.—Mr. O'Leary outlined to the Minister the history of the Judges' Library, and explained that the average cost to the Society for some years had been £180, and for the last two years about £115, per annum. The Society had received applications from the smaller Societies asking for help in keeping up their Libraries, and if the Government would undertake the upkeep of the Judges' Library, the New Zealand Society would be in a position to help the District Societies.

Mr. Mason promised to go into the matter and give it his sympathetic consideration.

Note: The following reply was received later from the Hon. the Minister of Justice :

"Sir,—

"Referring to the representations made to me by the Council of your Society, I have to inform you that I shall arrange for a sum of £200 to be placed on the Estimates for the coming financial year as a grant in aid of the Judges' Library at Wellington."

Fees in Bankruptcy : Abolition of £6 Filing Fee on Creditor's Petition.—The position was explained in connection with the request that the filing fee should be either abolished or reduced, and pointed out that a fee of £1 would be ample and more in line with other Court fees. Mr. Mason intimated that he would see what effect the proposal would have on the finances of the Justice Department, but that at the moment he was inclined to favour the suggestion.

Scale of Costs under Mortgagors and Tenants Relief Acts.—The representations already made to the Rules Committee in connection with increasing the existing Scale of Costs were outlined to the Minister. The Under-Secretary of Justice, who was present throughout the interview, intimated that his Department had already considered and approved the proposed new scale, the adoption of which had been delayed merely owing to a technical difficulty in the Act. It was hoped that this difficulty would shortly be overcome, and the new scale, which was regarded as reasonable, be adopted.

War Regulations Continuance Act, 1920.—The necessity for the repeal of the present Soldiers' Protection Regulations was pointed out, and it was asked that the War Regulations Repeal Bill should be re-introduced. The Minister agreed that this appeared to be desirable and promised to go into the matter."

In connection with the grant to the Judges' Library, the President stated that it was not clear whether this was to be an annual payment or not, or whether the Society was expected to disburse the money. He therefore proposed to see the Minister of Justice again with a view to clarifying the position.

It was then pointed out that the Auckland, Canterbury, and Otago Societies were also faced with the expense for Judges' Libraries in their towns, and it was decided that the President, when interviewing the Minister, should ask that these Societies should also be relieved of any liability in this direction.

Commission on Collection of Rents.—Undercutting.—The following report from Messrs. C. A. L. Treadwell and A. M. Cousins was received and adopted :—

"In pursuance of the resolution of the Society passed at its last meeting, we have to-day interviewed Mr. Gordon Harcourt, the President of the New Zealand Land Agents' Association.

Mr. Harcourt informed us that his Association prescribed a charge of 5 per cent. for rent collecting, subject to exceptional circumstances. He stated that in actual practice a lower rate was frequently charged. For example, in the case of the collection of rents of large city buildings the charge was a matter of arrangement in each case, and usually was about 2½ per cent. A reduced charge was also made in other cases in which there was little difficulty in collection.

In the case of ordinary house tenancies, however, 5 per cent. was the usual and recognised charge. Mr. Harcourt pointed out that in cases of this kind any lower rate would be unremunerative, and would result in a tendency to allow rentals to fall into arrear.

Mr. Harcourt stated that a specific case had come to the notice of the Association in which a solicitor was collecting rent from a house property at a commission of 1¾ per cent. His Association considered that the collection of rents by solicitors on such a low commission was unfair to his Association.

Mr. Harcourt agreed, for the reasons already stated, it was not practicable for a definite fixed scale to be adhered to in all cases, but he thought that the scale adopted by his Association should be adhered to as closely as possible.

We suggest that practitioners should be requested as far as possible to observe the scale adopted by the New Zealand Land Agents' Association—namely, 5 per cent. except in special circumstances."

(To be concluded.)

New Zealand Conveyancing.

By S. I. GOODALL, LL.M.

1.—Notice by Landlord to Tenant to quit Premises held under a Weekly (or Calendar Monthly) Tenancy.

To A.B. of etc. [*Tenant*].

TAKE NOTICE that you are hereby required to quit and deliver up to me or to whom I may appoint on the day of next (*or* at the end of the next complete week (*or* calendar month) of the tenancy after the service of this notice upon you) the possession of the premises situate and known as No. , Street held by you of me as a weekly (*or* calendar monthly) tenant.

DATED etc.

C. D. [*Landlord.*]

2.—The like under a Statutory Tenancy (pursuant to s. 16 of the Property Law Act, 1908).

To A.B. of etc. [*Tenant*].

I HEREBY GIVE YOU NOTICE to quit and deliver up to me or to whom I may appoint on the day of next (*or* at the expiration of one calendar month after and exclusive of the day of service of this notice upon you) the possession of the premises situate and known as No. , Street held by you as my tenant.

DATED etc.

C. D. [*Landlord.*]

3.—Notice by Tenant to Landlord of Election to Exercise Option of Purchase of Fee-simple of demised Premises.

To C.D. of etc. [*Landlord*].

IN EXERCISE of the option in that behalf contained in the memorandum of lease bearing date the day of 19 and registered in the Land Registry Office at under No. I HEREBY GIVE YOU NOTICE (being the prescribed *three calendar months'* notice in writing) of my desire to purchase the fee-simple of the land thereby demised upon and subject to the terms and conditions therein set forth AND I HEREBY REQUIRE you to transfer to me the said land upon and subject to the said terms and conditions accordingly.

DATED etc.

A. B. [*Tenant.*]

4.—The like of Election by Tenant to take a Renewal of Lease.

To C.D. of etc. [*Landlord*].

IN PURSUANCE of the provisions in that behalf contained in the memorandum of lease bearing date the day of 19 and registered in the Land Registry Office at under No. I HEREBY GIVE YOU NOTICE (being the prescribed *three calendar months'* notice in writing) of my desire to take a renewed lease of the land thereby demised for the further term of [*three years*] from the expiration of the term created by the said lease at the rental and upon and subject to the terms and conditions therein set forth AND I HEREBY AGREE to accept and execute such renewed lease AND I hereby require you to grant and execute such renewed lease accordingly.

DATED etc.

A. B. [*Tenant.*]

5.—Notice by Landlord to Tenant of Election to Exercise Option to Purchase Fixtures removable by Tenant.

To A.B. of etc. [*Tenant*].

I HEREBY GIVE YOU NOTICE that I intend at the determination of the term created by the memorandum of lease bearing date the day of 19 and registered in the Land Registry Office at under No. to purchase such of the fixtures erected by you on the land therein comprised as are described in the schedule hereto in accordance with and on the terms and conditions set forth in the proviso in that behalf contained in the said lease AND I hereby appoint E.F. of etc. as my arbitrator (*or* valuer) for the purposes of assessing in conjunction with your own appointee the prices to be paid for the said fixtures respectively.

DATED etc.

SCHEDULE.

[*List of fixtures.*]

C. D. [*Landlord.*]

6.—Notice by Tenant to Landlord of Intention to Remove Fixtures in pursuance of Proviso in Lease.

To C.D. of etc. [*Landlord*].

I HEREBY GIVE YOU NOTICE that I intend at the determination of the term created by the memorandum of lease bearing date the day of 19 and registered in the Land Registry Office at under No. to remove from the land comprised therein such of the fixtures erected thereon by me as are described in the schedule hereto in accordance with the proviso in that behalf contained in the said lease *unless* within [*seven*] days from the day of the date hereof you duly signify your intention of purchasing the said fixtures in pursuance of the option in that respect given to you by the said lease.

DATED etc.

SCHEDULE.

[*List of fixtures.*]

A. B. [*Tenant.*]

7.—Notice by Tenant to Landlord of Damage to or Partial Destruction of Demised Premises by Fire or Earthquake and requiring Repairs to Premises and Abatement of Rent pending Reinstatement.

To C.D. of etc. [*Landlord*].

I HEREBY GIVE YOU NOTICE that the building and premises situated and known as held by me as your tenant under the memorandum of lease bearing date the day of 19 and registered in the Land Registry Office at under No. were on or about the day of 19 destroyed in part and damaged by fire (*or* earthquake) but not so as to be rendered wholly untenantable or unfit for business and occupation (*or* habitation) AND in pursuance of the provisions in that behalf contained in the said lease I HEREBY REQUIRE you to repair and reinstate the said building and premises with all reasonable despatch and further require that during the course of such reinstatement the rent reserved by the said lease shall abate in fair and reasonable proportion to the extent to which the said building and premises are and shall for the time being be untenantable and unfit for business and occupation (*or* habitation).

DATED etc.

A. B. [*Tenant.*]

Canterbury College Football Jubilee.

The Club's Great Legal Traditions.

Lawyers have had a lot to do with the development and history of the Canterbury College Football Club, which celebrated its Jubilee last week. In the main, its traditions cluster around men of the legal profession. It was founded by H. F. Von Haast, now Pro-Chancellor of the New Zealand University, Editor of the *New Zealand Law Reports*, and a lawyer of eminence, who was the club's first captain. It was he who exhorted the small group at Canterbury College and the Normal School students to get together and organize a proper fifteen; and this was done in the year 1885, fifty years ago this month.

Another present-day Wellington lawyer in the person of W. F. Ward, of Messrs. Brandon, Hislop, Ward, and Powles, was instrumental in bringing about the first game against Otago University in 1886, when the Canterbury College team included other lawyers in E. P. Bunny, now of Wellington, the late Louis Cohen, of Wanganui, and T. Beare, who practiced later on the West Coast.

Of the earlier members of the University Club, Andy Kirk of Messrs. Kirk and Somers has vivid memories of the game as played in the 'nineties.

Of the many members of the Christchurch Bar who have worn the familiar maroon jersey, C. S. Thomas was a dashing wing-forward who, however, did not have a very long record at the game. His chief assistant to-day, W. F. Tracy, was a plodding forward in the piping pre-War days. He played with M. O. Barnett, now of Wellington, who was also a hefty fellow in his day. John Cunningham, of Messrs. Cunningham and Taylor, and now Chairman of the Canterbury Adjustment Commission, confesses to have scored a try once; while his partner, Sid. Taylor, was also a player.

Very few to-day would think of Bob Loughnan or George Weston as footballers, but in their own time they were prominent wearers of the Canterbury College colours. Roy Twyneham, well known at the Christchurch Criminal Bar, was a hard worker in a pack in the old days, just as to-day he is one of the most active men in the profession. Sinclair Murchison is proud of a goal he kicked which won a game, although he laughs about it now. "Peter" Sim, of Messrs. Duncan, Cotterill, and Co., played for Victoria College before the War; and when he returned from the War he exchanged the tartan of the Argyll and Sutherland Highlanders for the maroon jersey of Canterbury College. He was a very good half-back and was at his best one great day against Marists, when he, Bob Livingstone, and Pat Maloney were combining in telling rushes. Bob Livingstone was a very good five-eighths, strong and resourceful. He played well on active service in Ireland, and there was associated with A. W. Bishop, another old wearer of the maroon. Just after the War the team included numbers of lawyers. Wyn Cowlishaw, Archie McLachlan, and Baron Quigley played in the same team. Later on, in 1928, when Canterbury College had one of the finest teams in New Zealand, quite a number of legal men were included in the side. Sid Fookes, now in New Plymouth, gained his cap for the Province, and the maroon rakes were Max Eales and Morry Symes.

One of the best third-grade teams just before the War was the College team of 1913, captained by Bob Beattie. Dick Corbett, of Otorohanga, looking very aldermanic, was one of the bustling set of forwards.

Apart from those who have been active members of the Canterbury College Football Club, many prominent footballers have been students of the College or practising lawyers in Christchurch. Beau Cottrell, of course, has been the most famous University law-student footballer since Eric Harper, of the 1905 All Blacks, but he is a Christchurch Club man. Others who have shown out prominently are Peter Amodeo who played for Victoria College and Marists; and his popular partner, Arthur Jacobson, was a fleet three-quarter in the old days. Les Dougall, of Messrs. Dougall, Son, and Hutchison, was a member of the champion Old Boys' team before the War. Doug. Hutchison played both for Otago University and Victoria College, and was capped for the New Zealand Universities; so, too, was Tom Milliken, one of the most brilliant forwards of his representative days. F. I. Cowlishaw played big football in England, besides playing for his Province.

Lawyers have been for years prominent administrators of Canterbury football. A. E. G. Rhodes was a great head of the game from 1886 to 1908, when he occupied the seat as President of the Union. This length of time as President must be unique in New Zealand. The Canterbury Rugby Union has drawn on the profession for many of its Vice-Presidents, Frederick Wilding, K.C., H. J. Beswick, G. Harris, and F. I. Cowlishaw did great work in the old days, and W. Hoban was a well-known committeeman. Coming to more recent times, Bill Tracy, Bob Beattie, and Pat Moloney have been in the forefront of Rugby administrators.

The rules of Canterbury football, too, were drawn by a lawyer in the person of the Hon. Sir Walter Stringer, who was also a fine footballer in his day.

As this issue of the JOURNAL goes to press, the Jubilee Celebrations, which commenced on May 13 and continue until May 17, are concluding. They attracted to Christchurch a large number of practitioners, formerly members of the Club, from other parts of New Zealand.

Bench and Bar.

Mr. H. F. von Haast, Editor of the *New Zealand Law Reports*, has left on a visit to England *via* Canada. He expects to be abroad for about a year. During his absence, Mr. C. H. Weston, K.C., will act as Editor.

Mr. G. J. Jeune and Mr. K. A. Woodward, of Gisborne, are now practising separately, as their partnership has been dissolved.

Messrs. Aspinall and Sim, Dunedin, have taken Mr. Maurice Joel into partnership, the firm being now known as Messrs. Aspinall, Sim, and Joel.

Messrs. Glasgow, Rout, and Cheek, Nelson, have taken into partnership Mr. W. J. Glasgow, who has been on their staff for the past three years, and the practice in Nelson, Richmond, Takaka, and Collingwood will continue to be carried on under the present firm name.

Practice Precedents.

Prohibition (Extraordinary Remedy).

Rule 463 of the Code of Civil Procedure states: "Where the assistance of the Court is sought to prohibit any inferior Court, Magistrate, or Justice from exercising any jurisdiction he is not by law empowered to exercise, the Court may issue a writ of prohibition prohibiting the exercise of such jurisdiction."

Prohibition is a writ issued to restrain an excess of jurisdiction (or sometimes a wrongful exercise of jurisdiction) on the part of an inferior Court acting on the assumed exercise of judicial functions. It is a remedy to compel Courts entrusted with judicial duties to keep within the limits of their jurisdiction: this may be illustrated by *Paterson's Freehold Gold-dredging Co., Ltd. v. Harvey*, (1909) 28 N.Z.L.R. 1008, in which case it was said: "The decision of the Warden on the preliminary point as to whether he has or has not jurisdiction must be challenged by *mandamus* or prohibition—by *mandamus* if he has wrongly decided that he has no jurisdiction, by prohibition if he has wrongly decided that he has jurisdiction. . . . It is the duty of the Court to apply the proper remedy, and not to allow an appeal where the appellant's remedy is by *mandamus*."

What are grounds for prohibition is not always easy to determine. It was said in *Brown* v. *Cocking*, (1868) L.R. 3 Q.B. 672, that, if the jurisdiction of the inferior Court depends on contested facts which the inferior Court is competent to inquire into and determine, "a prohibition will not be granted although the superior Court should be of opinion that the questions of fact have been wrongly determined by the Court below, and if rightly determined would have ousted the jurisdiction: and if the Court below has decided without hearing evidence, or has assumed jurisdiction by a wrong decision on a point of law, prohibition will lie.

As to what proceedings may be prohibited and when prohibition lies, see *Short and Mellor's Crown Practice*, 2nd Ed., 253 *et seq.*

The rules of the Code as to procedure in respect of injunction are applicable in the case of prohibition. An interim order may likewise be had: See *Allardice* v. *Tansley*, (1899) 18 N.Z.L.R. 85.

Rules 463, 466, 467, 468, 468A, and 468B formerly had application to prohibition but special attention is *now* directed to the recently-gazetted amending rules, *1936 Rules, Regulations, and By-laws*, p. 43.

The new R.466B makes an important change. It states that in a statement of claim under R. 466 (which refers, *inter alia*, to "prohibition") a claim may be made for *more than one of the special forms of relief* referred to in RR. 466 and 466A. Rules 468 and 468A are *revoked* and the following substituted:

"468 (*a.*) Every such motion shall be made in manner hereinbefore provided as to motions generally subject to the succeeding clauses of this rule.

"(*b.*) Every such motion shall be made upon notice except in cases falling within paragraphs (*a*) and (*c*) of R.396. (NOTE.—This rule relates to *ex parte* motions.)

"(*c.*) When *notice of motion is served* upon any person there shall be served *therewith* a copy under the seal of the Court of the *statement of claim* and a *copy of every affidavit* filed *in support* of the motion.

"(*d.*) If by reason of the exigency of the case the provisions of R.395 cannot be complied with such notice must be given as the exigency of the case will allow, but the Court shall only hear the said motion at the time stated in the notice if satisfied that the exigency of the case so requires.

"(*e.*) Any party or person against whom an order has been made *ex parte* or without full notice having been given may at any time move to rescind such order, and the foregoing provisions of this rule shall apply, *mutatis mutandis*, to a motion for rescission.

"(*f.*) The Court on the hearing of any motion including a motion for rescission may adjourn the hearing and direct that any other person shall be served with notice of the motion, and may give leave to such persons to appear on the adjourned hearing of the motion, but no application for leave so to appear need be sought by a person ordered to be served with notice of the motion.

"(*g.*) It shall not be necessary for a person moving a motion for rescission to file a statement of his defence to the statement of claim if the grounds of his motion are sufficiently set out in his notice of motion.

"(*h.*) If any person served or directed to be served with notice of motion is an infant, idiot, or lunatic, a guardian *ad litem* to such person shall be admitted prior to the hearing of the motion unless on account of the exigency of the case the Court shall dispense with such admission or permit such admission to be deferred.

"(*j.*) Where a writ of mandamus or any similar remedy is sought against any person, and such person is by reason of death, resignation, or removal from office superseded in his office, then, unless the cause of action has necessarily come to an end, the proceedings shall not abate but may be continued in the name of such person or (on the application of his successor or any person interested) in the name of his successor with all necessary amendments, and any writ or order directed to or made in the name of such person shall be binding on his successor in office."

In conclusion it is pointed out in New Zealand that the practice is to serve a sealed copy of the order for leave to issue a writ of prohibition, and it is not therefore, in general, found necessary to issue the writ: but, for form of writ, see *1936 Annual Practice, 1742.*

The forms hereunder contemplate a case coming within the orbit of s. 64 of the Magistrates' Courts Act, 1928, which provides that the assignee of a debt shall not be entitled to maintain any action for the recovery of such debt unless he names the assignor in the plaint-note and summons.

Reference to the Practice Precedents relating to Injunctions in Vol. IX, NEW ZEALAND LAW JOURNAL, 75, 87, 102, provide forms for interim injunction and these forms show procedure that may be adapted for an order as to interim prohibition.

It is not deemed expedient to set out herein Exhibit "A" (summons) and Exhibit "C" (plaint) as they are printed forms and are simple to prepare.

The warrant to sue and the warrant to defend in the Supreme Court and the affidavit of service of the order also are not set out.

IN THE SUPREME COURT OF NEW ZEALAND.

.....District.

.....Registry.

BETWEEN A.B. etc. plaintiff

AND

C.D. of Stipendiary Magistrate AND Y. of etc. defendants.

day the day of 19 .

The plaintiff by his solicitor says :—

1. That on the day of 19 he was served with the summons and statement of claim hereunto annexed marked "A" and "B" respectively issued out of the Magistrates' Court at on the day of 19 in the action intituled Y. *versus* A.B., No. .

2. That in the said action the said Y. claimed to recover a sum of £ as assignee of a debt alleged to be due by the said A.B. to one G.H.

3. That annexed hereto marked "C" is a true copy of the said plaint-note No. .

4. That the said plaint-note does not contain the name of the assignor of the said debt.

5. That on the day of 19 the evidence of the said A.B. on his own application was taken at the Magistrates' Court at .

6. That the hearing of the action (plaint No.) took place before C.D. Esquire Stipendiary Magistrate at .

7. That Mr. of counsel for the said A.B. and Mr. of counsel for G.H. appeared at the hearing on the day of 19 .

8. That at the said hearing before the said Stipendiary Magistrate and before counsel for the said Y. had concluded his case counsel for the said A.B. called the attention of the learned Magistrate the said C.D. Esquire to the fact that the plaint-note in the said action (plaint No.) did not contain the name of the assignor G.H. and that pursuant to s. 64 of the Magistrates' Courts Act 1928 the action could not be maintained and that the Court had no jurisdiction. Counsel for the said A.B. applied to the said Magistrate to nonsuit the said plaintiff in action No. .

9. That the said Magistrate overruled the contentions of counsel for the said A.B. upon the ground that by having his evidence taken at the said A.B. had waived or acquiesced in the irregularity and the defendant C.D. [*the Magistrate*] proceeded with the case and on the same day gave judgment for the said Y. for £ together with costs.

10. That hereto attached and marked "D" is a copy of the evidence taken at the Magistrates' Court at on the day of 19 .

WHEREFORE the plaintiff prays that the defendant C.D. and the Magistrates' Court at be prohibited from exercising any further jurisdiction in the action (plaint No.) referred to in para. 1 hereof.

This statement of claim is sued out by solicitor for the plaintiff A.B. whose address for service is at the office of Messieurs solicitors .

AFFIDAVIT VERIFYING STATEMENT OF CLAIM.

(*Same heading.*)

I of solicitor make oath and say as follows :—

1. That I am a solicitor in the employ of solicitor for the plaintiff A.B. and am familiar with the above-mentioned proceedings.

2. That the statements set out in the statement of claim in paras. 1 to 10 inclusive and now produced and shown to me and marked "A" are true.

SWORN etc.

EXHIBIT "B."

(*Same heading.*)

(Copy of *Statement of Claim* in the Magistrates' Court wherein Y. above named is plaintiff and A.B. above named is defendant.)

The plaintiff sues the defendant and says :—

1. That on or about the day of 19 there became due and payable to one G.H. of , by the defendant the sum of £ for commission on the sale of all that property known as arranged between him and one "O."

2. That on the day of 19 the said G.H. duly assigned the said sum to one "S." and due notice of such assignment was given to the defendant or his agent.

3. That the said "S." on the day of 19 duly assigned the said sum of £ to the plaintiff and the defendant or his agent has had due notice of such assignment.

4. That the plaintiff has demanded payment from the defendant of the said sum of £ and he refuses to pay it.

Wherefore the plaintiff prays judgment for the sum of £ .

[*Solicitors' name.*]

STATEMENT OF DEFENCE.

(*Same heading.*)

day the day of 19 .

The defendant Y. by his solicitor says :—

1. That he admits the allegations contained in paras. 1 to 6 inclusive of the statement of claim filed herein.

2. That prior to the taking of the plaintiff's evidence he had filed in the Magistrates' Court notice of his intention to defend the said action.

3. That he admits the allegations in para. 7 of the statement of claim except that the waiver or acquiescence of the plaintiff was attributable merely to his having had his evidence taken. Y.'s counsel had stated the facts set out in para. 2 hereof and para. 5 of the statement of claim and the said C.D. held that upon all the facts and the plaintiff's evidence there was sufficient evidence of waiver.

4. That there was no objection by the plaintiff or his solicitor at the taking of his evidence to the jurisdiction of the Court.

5. That in order to permit the plaintiff's evidence to be taken in such action the hearing of such action set down for hearing on the day of 19 was adjourned to the day of 19 when the case was duly called on as aforesaid.

This statement of defence is filed by solicitor for the defendant Y. whose address for service is at the office of the said at [*Number*] [*Street*] in the city of .

[*Verifying Affidavit*].

MOTION FOR WRIT OF PROHIBITION.

(*Same heading.*)

Take notice that Mr. of counsel for A.B. the above-named plaintiff will move this Honourable Court at on day the day of 19 at o'clock in the forenoon or so soon thereafter as counsel can be heard for an order that a writ of prohibition do issue out of this Honourable Court directed to the above-named C.D. and Y. restraining them and each of them from further proceeding or exercising any jurisdiction in an action issued out of the Magistrates' Court at on the day of 19 and intituled Y. *versus* A.B. and numbered and for an order that the above-named Y. do pay the costs of these proceedings UPON THE GROUNDS that the said C.D. acted in excess of jurisdiction and UPON THE FURTHER GROUNDS set forth in the statement of claim filed herein.

Solicitor for the plaintiff.

This notice of motion was issued by whose address for service is, etc.

ORDER FOR WRIT OF PROHIBITION.

(*Same heading.*)

Before the Honourable Mr. Justice .

day the day of 19 .

UPON READING the motion filed herein and the statements of claim and defence filed herein and the affidavits of and of filed in support of the said statement of claim and defence respectively and UPON HEARING Mr. of counsel for the plaintiff and Mr. of counsel for the defendant Y.:

IT IS ORDERED that a writ of prohibition do issue out of this Court directed to the above-named C.D. and Y. restraining them and each of them from further proceeding on or exercising any jurisdiction in an action issued out of the Magistrates' Court at on the day of 19 and intituled Y. *versus* A.B. and numbered AND THAT the above-mentioned defendant Y. do pay the plaintiff A.B. for his costs the sum of £ together with disbursements.

By the Court.

Registrar.

Obituary.

Mr. G. Harold Smith, Pahiatua.

After a long and notable career in public and professional life Mr. George Harold Smith, senior partner of the firm of Messrs. Smith, McSherry, and Rawson, Pahiatua, died in Wellington on April 21, at the age of sixty-nine years. Mr. Smith was born at Masterton, being the second son of Major John Valentine Smith. He was educated at Wellington College, and had his early legal training at Patea and Masterton. He qualified as a solicitor at the age of twenty-one, and was admitted a barrister in 1900. He commenced practice in his profession in Patea in 1888, being joined by the late Mr. H. McSherry, and the firm became known as Messrs. Smith and McSherry. Subsequently, Messrs. M. Maurice Smith (son of the deceased and now of Messrs. Wray, Smith, and Halford, London), N. H. Rawson, and R. J. Carruthers became associated with the firm.

Mr. Smith's career in public life began with his election as the second Mayor of Pahiatua in 1893. He also represented Pahiatua in Parliament from 1916 to 1919. He assisted to establish the local War Relief Association, and acted as secretary of that body from its inception till his death. Mr. Smith was connected with a number of district sporting bodies, was president of the Pahiatua Golf Club, and was one of the oldest members of the Tararua Lodge of Freemasons.

In his early days Mr. Smith was a well-known footballer, and represented Wellington Province at the age of seventeen. He subsequently captained the first West Coast touring team. He was also a cricketer and a tennis and golf enthusiast.

The late Mr. Smith had hosts of friends in the profession, and his death removes one who was universally liked and respected.

Mr. John Wilkinson.

The death occurred at Pounawea recently of Mr. John Wilkinson, who was well known in legal circles in Dunedin. Mr. Wilkinson, who was in his seventy-fourth year, was born in Glasgow and came to New Zealand with his parents when an infant. His father settled in Dunedin, and the son received his education at the Middle District School and at Otago University.

In 1883, at the age of twenty-one years, the late Mr. Wilkinson commenced in practice in Dunedin as a solicitor, being at that time the youngest qualified lawyer in the city. He remained in practice till the time of his death, when he was associated in partnership with Mr. F. J. D. Rolfe. In his younger days Mr. Wilkinson was a keen sportsman. He was an oarsman, a well-known rifle shot, and an ardent angler. He was also connected with the volunteer movement. The great interest of Mr. Wilkinson's life, however, was in missionary work. For forty-one years he was the local treasurer for the China Inland Mission, with the activities of which he maintained a close association up till the time of his death. He was also a member of the New Zealand Board of the Ramabai Mukti Mission in India for child widows. The Sailors' Rest Mission owed a great deal to Mr. Wilkinson, who was one of the trustees and had been a worker in the mission for thirty years. In addition he was an organiser for several other missionary societies in the city.

Mr. Henry Hall, Wellington.

The death occurred recently at his residence, Hill Street, Wellington, of Mr. Henry Hall, who was a well-known member of the profession before his retirement some years ago. Born in London in 1857, he came to New Zealand from England. He joined the Public Service, entering the Annuities Office, and in 1874 he read law with his uncle, Sir James Prendergast. When the latter became Chief Justice, in April, 1875, Mr. Hall went with him as his Associate, and qualified as a barrister. Four years later, he was appointed Deputy-Registrar of the Supreme Court at Wellington. He resigned that office in 1882, and joined the staff of Messrs. Buckley, Stafford, and Treadwell, which he left to commence practice on his own account. Mr. Hall took Dr. Prendergast Knight into partnership in 1899, and they continued in practice together until the former's retirement in 1921. Mr. Hall, who was an authority on patent law, was very popular with his brother-practitioners, who remember him for his great courtesy and his innate kindliness. He leaves a widow, and three sons, Mr. Peter Hall (Marlborough), Dr. James Hall (Maldon, England), and Mr. David Hall (Wellington).

Acts Assented To.

Public :

1. Reserve Bank of New Zealand. April 8.
2. Government Railways Amendment. April 27.

Private :

1. Michael Connelly Appointment. April 2.

Bills Before Parliament.

Distress and Replevin Amendment.—By repealing the proviso to s. 5 of the principal Act, gives an absolute exemption to tenants from seizure under distress for rent of personal clothing, tools of trade, etc., to a value of £50.

Factories Amendment.—By amending the Factories Act, 1921–22, this Bill provides for shorter working hours and other benefits for workers along the lines already indicated as the policy of the Government in the Industrial Conciliation and Arbitration Amendment Bill. Clause 2 repeals ss. 17, 18, and 26 (6) of the principal Act and provides for a forty-hour week (unless impracticable) and other limitation of working hours. Cl. 3 provides that a worker shall not be employed in a dairy factory or creamery for more than six days in any one week. Cl. 4 provides that no woman or boy shall be employed in a factory on a Sunday. Cl. 5 increases the rates of pay for overtime worked. Cl. 6 relates specially to the hours of work and overtime pay in laundries. Cl. 7 provides that no person shall be dismissed or have his wages reduced by reason of the shorter working hours prescribed in the Bill. Cl. 10 amends and extends the provisions of the principal Act relating to the licensing of persons employed by factory-owners to do work elsewhere than in the factory. Cl. 11 amends the provisions of the principal Act relating to the minimum wage in factories. Cl. 12 amends and extends the provisions of the principal Act as to holidays for workers, and cl. 13 repeals and re-enacts the section of that Act relating to payment of wages for holidays. Cl. 15 extends the time within which proceedings may be taken for breaches of the principal Act.

Government Railways Amendment.—This Bill has for its main purpose the abolition of the Government Railways Board (established by s. 2 of the Government Railways Amendment Act, 1931) and the restoration to the Minister of Railways and the General Manager of Railways of the administration of the Government Railways and allied services. The abolition of the Board renders necessary certain consequential alterations of the law. In some cases a reference to the Minister or the General Manager has been substituted for a reference to the Board and in other cases—*e.g.*, in cls. 6 to 10—the existing law has been repealed and re-enacted with the necessary alterations.

The only substantial alterations that are not purely consequential on the abolition of the Board are contained in cl. 4 (authorizing the Minister to delegate his powers to the General Manager); in cl. 8, which extends the existing law so as to authorize the Minister to carry on services by air as well as by land or water; and in cl. 14, which provides for the appointment from time to time of tribunals consisting of representatives of the Minister and the employees, with an independent Chairman, to report to the Minister upon matters relating to the conditions of employment in the Government Railways Department.

Primary Products Marketing.—This Bill is expressed to be for the purpose of making better provision for the marketing of dairy produce and other primary products, so as to ensure for producers an adequate remuneration for the services rendered by them to the community. It is divided into three parts. Part I (which relates to administration) sets up a new Department of State, called the Primary Products Marketing Department, and provides for the appointment of a new Minister who will be in charge of the Department. Cl. 5 relates to the appointment of officers of the Department, and cl. 6 sets out the functions of the Department. Cl. 7 relates to the delegation by the Minister of his powers to the Departmental Heads. Cl. 8 provides for the transfer of the functions of the Executive Commission of Agriculture (constituted by the Agriculture (Emergency Powers) Act, 1934) to the Department and for that Commission to be abolished. Cl. 9 provides that the Director and Assistant Director of the Department may together act as a Commission of Inquiry for the purpose of obtaining information necessary for the administration of the Department. Cl. 10 provides for the establishment of a special Dairy Industry Account with the Reserve Bank, and provides for the Government receiving accommodation by way of overdraft in aid of the account. Cl. 12 provides for the funds that are to be paid into and out of the account. Part II provides in general for the State ownership and marketing of dairy produce both exported and for consumption in New Zealand. Cl. 15 defines dairy produce. Cl. 16 provides that the Act will apply to butter and cheese made from milk or cream delivered to a dairy factory after August 1, 1936, and to any other dairy produce to which the Minister by notice in the *Gazette* applies the Act, and gives power to the Minister to give directions relating to the handling and transport of the produce to which the Act applies. Cl. 17 provides that all dairy produce to which the Act applies shall become the property of the Crown when it is placed on ship for export. Cl. 18 provides that the price payable in respect of exported dairy produce shall be payable to the factory or person from whom the Crown acquired the same immediately the property passes to the Crown. Cl. 19 fixes the prices to be paid by the Crown in respect of exported dairy produce from time to time by the Governor-General in Council and provides for different prices for different grades and qualities. The prices to be fixed for the period between August 1, 1936, and August 1, 1937, shall be based on prices ruling for the past eight to ten years; and the prices to be paid after August 1, 1937, are to be based on additional considerations such as the standard of living of producers, the necessity for stability in the industry, and costs of production and marketing. Having taken these matters into consideration, the efficient producer working under normal conditions is to receive (after August 1, 1937) sufficient to maintain himself and his family in a reasonable state of comfort. Cls. 20 and 21 relate to the acquisition by the Crown and the price to be paid for dairy produce for consumption in New Zealand. Cl. 22 provides that the validity of any Order in Council fixing prices shall not be questioned on any ground. Cl. 23 restricts dealing in dairy produce otherwise than under the proposed Act, and cls. 24 and 25 create offences and prescribe penalties in respect of breaches of the Act. Part III provides for the reconstitution of the New Zealand Dairy Board, and restricts the functions of the reconstituted Board most of which will be carried out by the Minister.

Shops and Offices Amendment.—This Bill amends the Shops and Offices Act, 1921-22, so as to shorten working hours and improve wages, overtime rates, and conditions generally for employees to which the principal Act applies. Cls. 3-7 set out the hours of work and minimum wages to be paid to shop assistants. Cl. 8 prohibits the receipt of premiums in respect of the employment of shop assistants, and, except in certain circumstances, in respect of the teaching or training of any person in any trade or business. Cl. 10 limits the weight of goods to be carried by juvenile shop assistants. Cls. 11-15 relate to the employment of assistants in hotels and restaurants and define the hours to be worked by them. Cl. 16 extends the definition of the term "office" to include solicitors', mining companies', and miners' unions' offices. Cl. 19 provides for overtime rates to be paid in certain cases which were formerly excluded by s. 49 (4) of the principal Act, and for payment for meals where overtime is worked. Cl. 20 applies certain provisions of the principal Act relating to payment of wages and the keeping of wages and time books in shops and offices. Cl. 21 provides that no person shall be dismissed or have his wages reduced by reason of changes in the law made by the proposed Act.

Transport Licensing Amendment.—Part I relates to motor services for the carriage of passengers and goods on roads, and Part II to aircraft services. Cl. 3 empowers the Minister of Transport to substitute a District Licensing Authority of one member for any such Authority of three members. Cl. 4 abolishes the Central Licensing Authority established under s. 5 of the Transport Licensing Act, 1931. The functions of the Central Licensing Authority will, in future, be functions of a District Licensing Authority. Cl. 5 defines the extent of the jurisdiction of the Metropolitan and other Licensing Authorities; and is substantially consequential on the abolition of the Central Licensing Authority. Cl. 6 simplifies the procedure for the hearing of applications for the renewal, transfer, or annulment of licenses. Cl. 7 substitutes the service of personal notice on all persons interested for notice by advertisement in cases where the Licensing Authority proposes to hold an inquiry into the manner in which any passenger service is being carried on by the licensee. Cl. 8 gives the Licensing Authority wider powers to review licenses granted by it. Cl. 10 abolishes the Transport Co-ordination Board as from April 1, 1936. Cl. 11 confers on the Minister the powers formerly exercised by Board as to certain matters. Cl. 12 gives a right of appeal to the Minister from decisions of Licensing Authorities. The decision of the Minister on such appeals will be final. Cl. 15 relates to the restriction of passenger-service licenses where similar licenses are held by the Minister of Railways. Cl. 16 widens the scope of the principal Act as to certain classes of motor-services that are not technically passenger-services. Cl. 20 enables the provisions of the Bill relating to passenger-services to be applied to goods-services. Cl. 22 provides that the Minister will in future be the sole licensing authority for aircraft services.

New Books and Publications.

Terrell's Law of Running Down Cases. Second Edition. By E. Terrell, Barrister-at-Law. (Butterworth & Co. (Pub.), Ltd.) Price 42/-.

Students Income Tax. By Stanley W. Rowland, LL.B., F.C.A., 1936. (Butterworth & Co. (Pub.), Ltd.) Price 28/-.

Kime's Directory, 1936. (Butterworth & Co. (Pub.), Ltd.) Price 21/-.

Willis' Workmen's Compensation Acts, with Notes, Rules, Orders, Regulations and Schemes. Thirtieth Edition, 1936. By W. Addington Willis, C.B.E., LL.B. (Butterworth & Co. (Pub.), Ltd.) Price 27/-.

Death Duties, 1936. By G. M. Green, LL.B. (Butterworth & Co. (Pub.), Ltd.) Price 42/-.

The Law Finder. Third Edition. By H. H. Maxwell. (Sweet & Maxwell, Ltd.) Price 3/6.

Here May a Young Man Speak Subtly in Court. Translated from a Thirteenth and Fourteenth Century Mss., by Helen M. Briggs. (Sweet & Maxwell, Ltd.) Price 3/6.

Judgment Summonses in the High Court of Justice in Bankruptcy. By C. W. Chandler, 1936. (S.L.S.S.) Price 10/6.

The Restriction of Ribbon Development Act. By Wm. Marshall Freeman. (S.L.S.S.) Price 12/6.

Railway, Canal, and Road Traffic Cases. Vol. 23, 1936. (Sweet & Maxwell.) Price 47/-.

Law of Property Acts, 1925. Series of Lectures, by A. F. Topham, Oct.-Dec. 1935. (S.L.S.S.) Price 10/6.