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

" The world is wide, human nature is infinitely various, there are more patterns than one, and the man of practical wisdom, though he has preferences, does not permit himself exclusions."

—LORD HEWART, L.C.J., at the Annual Dinner of his old School.

Vol. XII. Tuesday, June 2, 1936. No. 10

"A Fair and Reasonable Standard of Comfort."

SECTION 3 of the Industrial Conciliation and Arbitration Amendment Act, 1936, provides for the making by the Court of Arbitration of a general order within three months after the commencement of the Act and subsequent general orders at intervals of not less than six months, fixing a basic rate of wages for adult male workers employed in any industry to which any award or industrial agreement relates, and by the same or a similar order to fix a basic rate of wages for female workers so employed. In making any such order, the Court must have regard to the economic and financial conditions affecting trade and industry, the cost of living, and any fluctuations in the cost of living since the last order, if any, was made. The section then provides, by subs. 5, as follows:

> The basic rate of wages for adult male workers fixed under the authority of this section shall be such a rate as would, in the opinion of the Court, be sufficient to enable a man in receipt thereof to maintain a wife and three children in a fair and reasonable standard of comfort.

We have nothing to say regarding the family unit indicated, because this is the same as was adopted in fixing a living wage in Western Australia and in South Australia, and in the Queensland legislation, and it approximates that laid down by the Commonwealth Arbitration Court (" about five persons "). But in providing that the basic wage is to be referable to " a fair and reasonable standard of comfort," we think that the Legislature has provided a difficult problem for the Court, and that great difficulty will be found in providing a solution satisfactory to employers or to workers.

" Basic wage " and " living wage " are not synonymous in the context to which we refer; both, of course, differ from " minimum wage." Viscount Snowdon in his book, *The Living Wage*, says that the trend of all industrial and social legislation for more than a century has been in the direction of establishing a living standard. " The Living Wage," he says, " is a principle which will take a thousand different forms in the concrete." But the idea is, he adds, that every workman should have a wage which will maintain him in the highest state of industrial efficiency, which will enable him to provide his family with all the material things which are needed for their health and physical well-being; enough to enable him to qualify to discharge his duties as a citizen. In other words, the living wage is the manifestation of the ethical principle that the worker has a fundamental right to a living wage as the least reward for his labour. This principle was enunciated internationally in the Versailles Treaty by Article 427, which enumerates methods and principles for regulating labour conditions " which all industrial communities should endeavour to apply, so far as their special circumstances will permit." Among these methods and principles which to the High Contracting Parties seemed to be of special and urgent importance was the following:

> The payment to the employed of a wage adequate to maintain a reasonable standard of life as this is understood in their time and country.

This is a general statement of principle, which does not attempt an exact definition: even so, " reasonable standard of life " is, we think, more definite than " a fair and reasonable standard of comfort," which is the language used in the subsection we have quoted from the recent legislation.

At best, " comfort " is no more than a relative concept, and fairness and reasonableness must relate to some standard if they are to be applied with any precision. But none of these words in the statute, " fair," " reasonable," or " comfort," is controlled by any context. The famous judgment of Mr. Justice Higgins, *Ex parte H. V. McKay*, (1907) 2 C.A.R. 1, known generally as "the Harvester judgment," dealt with the meaning in the Commonwealth Excise Tariff Act, 1906, of the words " fair and reasonable." The learned Judge said:

> " The first difficulty that faces me is the meaning of the Act. The words are few, and, at first sight, plain of meaning; but, in applying the words, one finds that the Legislature has not indicated what it means by 'fair and reasonable'—what is the model or criterion by which fairness and reasonableness are to be determined."

This difficulty becomes apposite to the subsection under present consideration when it is recalled that the statute to which Mr. Justice Higgins was referring was one which imposed excise duties on certain specified goods, with the proviso that the Act should not apply to " goods manufactured by any person in any part of the Commonwealth under conditions as to remuneration of labour which . . .

> (*d*) are, on an application made for the purpose to the President of the Commonwealth Court of Conciliation and Arbitration, declared to be fair and reasonable by him or by a Judge of the Supreme Court of a State or any person or persons who compose a State Industrial Authority to whom he may refer the matter."

The word " comfort " was not used, but the " conditions of remuneration " had to be declared " fair and reasonable." The learned Judge came to the conclusion that he must adopt some standard as a living wage, and he defined it as " the normal needs of the average employee, regarded as a human being living in a civilized community," and, having so determined a standard, he declared it to be " the primary test in ascertaining the minimum wage that would be treated as 'fair and reasonable' in the case of unskilled labourers."

Incidentally, it may be remarked, that after leaving undefined " normal needs " and " average employee," he arbitrarily fixed the amount he deemed " fair and reasonable " at 42s.: food, groceries, and fuel, 25s. 5d.; rent, 7s.; and other expenditure, 9s. 7d. But, later, he expressed his difficulties in coming to a conclusion as to what was " fair and reasonable." In his book, *A New Province of Law and Order*, he said that at the time and in the place of delivery of the Harvester judgment, he found that:

> the average necessary expenditure on rent, food, and fuel, in a labourer's household of about five persons, was £1 12s. 5d.;

but that, as these figures did not cover light, clothes, boots, furniture, utensils, rates, life insurance, savings, accident or benefit societies, loss of employment, union pay, books and newspapers, train or tram fares, sewing machine, mangle, school-requisites, amusements and holidays, liquors, tobacco, sickness or death, religion or charity, he could not certify that any wages less than 42s. per week for an unskilled labourer would be fair or reasonable.

It is seen, therefore, that he was not considering "comfort," but "necessary expenditure." Yet, in coming to his determination of 42s. as "fair and reasonable conditions as to remuneration of labour," as he afterwards admitted, he fixed that wage on incomplete and inconclusive evidence: see *Australian Workers' Union v. Adelaide Milling Co.*, (1919) 13 C.A.R. 823, 840. And, in *Waterside Workers' Federation of Australia v. Commonwealth Steamship Owners' Association*, (1919) 13 C.A.R. 599, the same learned Judge, at p. 619, said:

"But I am still left without any guide as to the actual cost of living of an average employee, other than my rough estimate made in 1907."

In determining a living wage, the Courts in Australia have failed to reach a common standard as a basis of computation, as the following citations from judgments show:

"All seducing words as 'fair and reasonable' are essentially relative, and introduce existing circumstances into the problem": Heydon and Edmonds, JJ., in The Cost of Living and Living Wage Inquiry, *N.S.W. Industrial Gazette*, September, 1916, p. 925.

"Needs may be normal which are not reasonable: needs may be reasonable though not normal. So far as 'normal needs' are concerned, the assessment is actuarial and based on budgets of actual expenditure of unskilled workers in the locality concerned, in so far as those budgets may be taken as accurate and typical. The term 'reasonable needs,' however, opens a much wider field. . . . While, as a general rule, normal needs may be assumed to be reasonable, to accept them as a final and conclusive test of the statutory meaning of 'reasonable' needs is to confess to an abdication of the judicial function, and to sanction a policy of stagnation rather than an enlightened outlook on the progressive character of modern civilization. Modern progress is, of course, not a regular and sustained movement. But one can at least say that, while the waves ebb and flow, the tide comes in": Powers, P., in *The Women's Living Wage* (*Cardboard Box Makers*) case, (1919) 3 S.A.I.R. 11, 16.

"The Living Wage Act, 1920 (South Australia), speaks of the 'normal and reasonable needs of the average employee.' In *The Living Wage* (*Printing Trades*) case, (1920), 3 S.A.I.R. 215, 221, the learned President says: '"Reasonable" is a question-begging epithet. "Normal," too, is an abstraction.' In any case the two terms have to be read as complementary."

In all these judgments, the Australian industrial tribunals had to determine as best they could what constituted a living wage. In each of them the word "reasonable" proved a stumbling-block, although the Court had to concern itself only with the necessary things of life, and not the desirable ones, as our Court of Arbitration is asked to do when called upon to make a general order referable to such an abstraction as is implied by "comfort." That word does not seem to have been considered in any British Court, but, to quote a judgment of the Court of New York, it is a word

"which embraces whatever is required to give security from want and furnish reasonable physical, mental, and spiritual enjoyment. 'It implies,' says Webster, 'some degree of positive animation of spirits, or some pleasurable sensations derived from happy and agreeable prospects.'"

Even admitting that our Court of Arbitration in making its general order must have regard to

the general economic and financial conditions affecting trade and industry in New Zealand, the cost of living, and any fluctuations in the cost of living,

how can these considerations be applied to the cost of "comfort"; and how, where such a word is so obviously relative, can our Court of Arbitration fix any standard, when the terms "normal," "fair," "average," show that Industrial Courts in Australia cannot find a common standard upon which to base a living wage that is conditioned by necessities and not by comforts?

The recent amendment of the Industrial Conciliation and Arbitration Act has apparently set a problem for the Court, the employers, and the workers, in asking the Court, in effect, to make, of equal application throughout the Dominion, a definition of the measure of comfort that it is fair and reasonable for workers in any industry to enjoy. It is submitted that the Government Statistician will not be of much assistance to the Court in its finding an answer to such a conundrum; though his index numbers can, from time to time, deal with commodities purchasable by the wage-earners, he cannot ever effectively supply material for determining the ratio of "fair and reasonable comfort" to which those wage-earners are entitled under the subsection of the new statute to which we have referred.

Summary of Recent Judgments.

SUPREME COURT
In Chambers.
Nelson.
1936.
Mar. 19; May 15.
Smith, J.

A. AND ANOTHER v. D. AND OTHERS.

National Expenditure Adjustment—Incumbrance creating Rent-charge in pursuance of a Devise in a Will—Whether a "contract"—"Incurring Obligation"—Jurisdiction—Effect of substitution in Incumbrance of words "powers and remedies" for words "covenants, conditions, and powers" implied in every Mortgage—Construction—National Expenditure Adjustment Act, 1932, ss. 31, 42—Land Transfer Act, 1915, ss. 2 (d), 35 (7), 88, 103 (1).

An incumbrance, although within the definition of "mortgage" in s. 2 (d) of the Land Transfer Act, 1915, is not operative to impose contractual liability where in an incumbrance the words "powers and remedies" are substituted for the words "covenants, conditions, and powers" implied in every mortgage by s. 103 (1) of that Act, and there is no covenant by the incumbrancers to pay the rent-charge created by the incumbrance.

Section 88 of the Land Transfer Act, 1915, is not designed to create a liability to pay a principal sum where a transferor is not liable to pay it.

There is, accordingly, no contract in force within the meaning of s. 31 of the National Expenditure Adjustment Act, 1932, and no person "incurring obligation" within the meaning of s. 42 of that Act, where a registered incumbrance creating a rent-charge expressed to be pursuant to a devise in a will was created by three executors in favour of one of them who was entitled to the rent-charge, as no contractual liability was created by the will or the incumbrance, and under neither of them were the two executors under any obligation incurring liability to a legal claim by the person entitled to the rent-charge.

If an action lies against terre-tenants at the suit of a rent-charge incumbrancee, the Court has jurisdiction under the National Expenditure Adjustment Act, 1932, only if the action can be said to arise out of a contract within s. 31 of the Act or from an obligation under a will or deed under s. 42 of the Act.

Dictum of *Kennedy*, J., in **John Bates and Co., Ltd. v. Inwood,** [1933] N.Z.L.R. s. 65, adopted.

Counsel: W. V. Rout, for the plaintiffs; **Glasgow,** for the defendants.

Solicitors: Rout and Milner, Nelson, for the plaintiffs; **Glasgow, Rout, and Cheek,** Nelson, for the defendants.

SUPREME COURT
Wellington.
1936.
May 4, 12.
Reed, J.

FITZGERALD
v.
ASSOCIATED MOTORISTS PETROL CO., LIMITED.

Company Law—Directors—Directors' Resolution—Test applied by Court when Resolution attacked as not being *Bona Fide* Exercise of Directors' Discretion.

In the absence of evidence to the contrary the Court will assume that directors, who are trustees of the powers reposed in them by the company, have acted reasonably and *bona fide*; and it is for those who allege that the directors have not done so to produce some evidence which would justify the Court in coming to the conclusion they have not done their duty. If it be proved that directors have acted on a wrong principle, or otherwise than *bona fide*, the Court will overrule their decision.

In re Gresham Life Assurance Society, Ex parte Penney, (1872) 8 Ch. App. 446, **Re Bell Bros., Ltd., Ex parte Hodgson,** (1891) 65 L.T. 245, **In re Coalport China Co.,** [1895] 2 Ch. 404, **Weinberger v. Inglis,** [1919] A.C. 606, and **Australian Metropolitan Life Assurance Co., Ltd. v. Ure,** (1923) 33 C.L.R. 199, applied.

The above principles were held to be applicable to the refusal of directors to approve plaintiff as a suitable person for the office of director representing the preference shareholders of the defendant company, the articles providing such approval by the directors as essential for eligibility for nomination as such director.

On the construction of Art. 30 of the company's articles, namely,—

> "In the event of the election of a director or directors representing the holders of preference shares . . . nominations in writing for such office . . . must be received by the secretary of the company at its registered office at least fourteen days before such meeting or postal ballot. The directors shall thereupon express their approval or disapproval of such candidate as a suitable person which expression shall not be open to question and if they fail within six days to express their disapproval such candidate shall be deemed approved,"

notice to the nominee of disapproval of his candidature within any limited time, or at all, is not required.

In re European Central Railway Co., Gustard's case, (1869) L.R. 8 Eq. 438, referred to.

Counsel: E. P. Hay, for the plaintiff; **Spratt,** and **L. K. Wilson,** for the defendant.

Solicitors: Mazengarb, Hay, and Macalister, Wellington, for the plaintiff; **Morison, Spratt, Morison, and Taylor,** Wellington, for the defendant.

Case Annotation: *In re Gresham Life Assurance Society, Ex parte Penney,* E. & E. Digest, Vol. 9, p. 212, para. 1321; *Re Bell Bros., Ltd., Ex parte Hodgson, ibid.,* Vol. 9, p. 372, para. 2368; *In re Coalport China Co., ibid.,* Vol. 9, p. 380, para. 2409; *Weinberger v. Inglis, ibid.,* Vol. 8, p. 506, para. 11; *In re European Central Railway Co., Gustard's case, ibid.,* Vol. 9, pp. 271-272, para. 1672.

SUPREME COURT
Wellington.
In Chambers.
1936.
May 8, 13.
Smith, J.

HARLEN v. HARLEN AND ANOTHER.

Divorce—Alimony and Maintenance—Husband's Successive Petitions on Same Grounds—Dismissal of First Petition—Order for Alimony *pendente lite* made in Proceedings thereon—Non-payment of same—Stay of Proceedings on Second Petition—Agreement by Wife not to seek Maintenance in Destitute Persons' Proceedings—Whether an Agreement not to seek Alimony.

A husband's petition for divorce on the ground of adultery was dismissed because of his failure to comply with an order for security for costs, but an order for alimony *pendente lite* was made in the course of the proceedings. No payment of such alimony was made.

On summons to dismiss a second petition which alleged the same grounds, or, alternatively, to stay the proceedings thereon,

Hanna, for the respondent in support; **J. Dunn,** for the petitioner to show cause.

Held, 1. That the proceedings on the second petition should be stayed until the alimony *pendente lite* was paid.

The principle enunciated in **Sanders v. Sanders,** [1911] P. 101, as to unpaid costs on a previous petition on the same ground, applied.

2. That a finding by the Supreme Court on appeal from the Magistrates' Court in proceedings under the Destitute Persons Act, 1910, cannot create an estoppel binding the Supreme Court in its jurisdiction in divorce.

Harriman v. Harriman, [1909] P. 123, and **Keast v. Keast,** [1934] N.Z.L.R. 316, referred to.

3. That an agreement by the wife that if the husband would leave her she would not ask for maintenance in proceedings under the Destitute Persons Act, 1910, does not amount to an agreement not to ask for alimony *pendente lite* in a suit for divorce on the ground of adultery brought against her by her husband.

Solicitors: Duncan and Hanna, Wellington, for the respondent; **Alexander Dunn,** Wellington, for the petitioner.

Case Annotation: *Sanders v. Sanders,* E. & E. Digest, Vol. 27, p. 443, para. 4554; *Harriman v. Harriman, ibid.,* Vol. 27, p. 479, para. 5068.

SUPREME COURT
Christchurch.
1936.
Mar. 18; May 1.
Northcroft, J.

IN RE HUMPHREYS (DECEASED): BOULTON AND OTHERS
v.
BECKETT AND OTHERS.

Will—Construction—Bequest to Churchwardens towards "the building fund of the new church" as Named—Church Erected and free of Debt when Will made—Evidence—Testator's means of knowledge of position of Church Funds before Court—Whether Bequest applicable by *Cy-près* Doctrine to new Sunday-school as part of Parish Comprehensive Building-scheme—Whether Bequest absolute as regards Testator's Estate.

Testator's will, made in 1926, contained the following provision:

> 3. (*q*) To the churchwardens of St. Barnabas Anglican Church at Fendalton the sum of seven hundred and fifty pounds to be applied by the said churchwardens towards the building fund of the new church and until required for any such purpose to be held by them upon trust to invest the same upon any of the investments authorized by law for the investment of trust funds.

A will in identical terms was executed in 1928, and a codicil, which did not affect the above provision, in 1934.

In 1926, when the first will was made, the new church referred to was in course of erection as part of a proposed comprehensive scheme to provide a new church, vicarage, and Sunday-school. The new church was completely erected and free of debt when the will of 1928 and the codicil of 1934 respectively were executed. The "building fund of the new church," which was isolated in accounts and reports, was closed in 1928. Evidence as to the testator's means of knowledge of the affairs and accounts of the parish were before the Court in support of an originating summons for interpretation of the above clause.

W. J. Sim, for the plaintiff trustees; **K. M. Gresson,** for the churchwardens of St. Barnabas Church; **L. J. Hensley,** for Clara Dorothea Humphreys.

Held, 1. That the bequest was intended to relate only to the funds for the building of the new church which was completed in 1927, and the testator's words had not any wider application to include a proposed new Sunday-school.

2. That the bequest was not of such general charitable purpose as to let in the *cy-près* doctrine.

3. That the bequest was not absolute as regards the testator's estate and consequently failed.

Lassence v. Tierney, (1849) 1 Mac. & G. 551, 41 E.R. 1379, applied.

Solicitors: Duncan, Cotterill, and Co., Christchurch, for the plaintiff trustees; **K. M. Gresson,** Christchurch, for the churchwardens.

Case Annotation: *Lassence v. Tierney,* E. & E. Digest, Vol. 44, pp. 554-555, para. 3715.

Indirect Legislation.

Protecting the Crown against the Subject.

By C. Palmer Brown, M.A., LL.B.

Section 29 (2) of the Finance Act (No. 3), 1934, provides as follows :—

> " Every [Education] Board shall be deemed to be the agent of the Crown in respect of its property *and the exercise of its functions*, and shall be entitled accordingly to all the privileges which the Crown enjoys in respect of exemption from taxation and the payment of fees and charges, and from other obligations."

The section is interesting, both by reason of the history of the subject and by virtue of the tendency to diminish local control which it illustrates.

In *Wanganui Borough v. Wanganui Education Board*, [1923] N.Z.L.R. 524, Chapman, J., held that certain lands bought by an Education Board through a Technical School Committee for hostel purposes in connection with the Technical School but not actually used for that purpose were in effect the property of the Crown and exempt from rates. He based his decision mainly on Part VIII of the Education Act dealing specifically with Technical Schools, but his judgment is not in terms limited to lands held for purposes of technical education. He followed his own decision in *Napier Borough v. Hawke's Bay Education Board*, [1924] N.Z.L.R. 596, but held that so far as special rates were concerned the express provisions of s. 112 of the Local Bodies' Loans Act, 1913, applied, and special rates were payable.

In *McCallum* v. *Official Assignee of Sagar and Lusty*, [1928] N.Z.L.R. 292, Blair, J., was asked to extend the principle, and to hold that the funds of the Board were the funds of the Crown and so not liable to a charge under the Wages Protection and Contractors' Liens Act, 1908. He refused to do so, pointing out that the Board's funds came from many sources, and that it was declared by statute (s. 24 of the Education Act, 1914) to be a corporate body and so distinct from the Crown.

In *Southland Boys' and Girls' High Schools Board v. Invercargill City Corporation*, [1931] N.Z.L.R. 881, lands held by a High School Board incorporated by statute were held not to be the property of the Crown, and so when not used for school purposes liable to rates. The principle stated by Kennedy, J., was adopted in the Court of Appeal that

> " The Southland High Schools Board is not, by its origin or history, so closely associated with the Crown that it might be regarded as an emanation from the Crown as in England are the great Departments of State, nor may it be said to have been created for the purpose of dealing with and controlling Crown property or of discharging duties previously discharged by an exempted Department. It may be said that the Board was constituted for public purposes, but not, I think, for Government purposes.
>
> " . . . Education is not an exclusive function of Government, and, greatly as has the Crown's control increased, I think it cannot be said, in the words of Lord Blackburn, that the Board's occupation is for 'public purposes . . .'"

The report of this case is interesting, for the claim by the Solicitor-General that the lands of the Board had been, as he put it, " tactfully annexed " or, as the Chief Justice put it, " confiscated " by a series of statutes centralizing authority in the matter of secondary education, and for the comments of MacGregor, J., on the inconsistency of the Crown as *parens patriae* and protector of the charity claiming that charity lands had become Crown property.

A few months after the decision Parliament intervened by a Finance Act (No. 4 of 1931), and after repealing s. 158 of the Education Act, 1914 (which applied only to lands used for school purposes under the Education Act), re-enacted the section so as to include land held by or on behalf of any education authority otherwise than as an endowment. The amendment does not appear to interfere with the principle of the *Napier* case.

A courageous attempt to extend the principle of the *Wanganui* case was made in *Beel v. Bruhns*, [1932] N.Z.L.R. 1374, where it was suggested that cemetery trustees were an " emanation " of the Crown and that their lands were exempt from charges under the Workers' Compensation Acts. The Arbitration Court had no difficulty in rejecting the claim, remarking that the burial of the dead had always been within the jurisdiction of local governing bodies.

In *Christchurch City Corporation v. Canterbury Education Board*, [1934] N.Z.L.R. s. 22, an Education Board again claimed the privileges of the Crown so as to obtain exemption from fees under the Heavy Motor-vehicles Regulations. The claim was rejected by Ostler, J., after a full examination of the authorities.

The section in question is probably intended to reverse this decision, but it goes very much further. If the Board is the agent of the Crown in the exercise of its functions, the remedy both in contract and in tort is against the Crown, and so the driver of an Education Board's motor-lorry may make the Crown liable. No mandamus can now issue against an Education Board for breach of a statutory duty, for a writ of mandamus will not issue against the Crown. Every claim against a Board must be by petition of right. If the Crown directs the Board to pursue a certain policy, or to build a certain school, how can the Board refuse ? The position of teachers is well enough defined by Act and regulations, but the other servants of the Board are apparently servants of the Crown and subject to its directions.

In a recent address over the air Mr. Stanley Baldwin emphasized the point that the English knack of self-government (which is the English contribution to civilization) was based on centuries of experience of local government in village Councils and Committees. Our system of local government, unnecessarily complicated as it may be in places, is equally valuable for the training of national character, and our diffusion into four centres with a scattered surrounding population makes it all the more important that local government should be efficiently carried on. A considerable amount of central control is inevitable in educational matters, especially as the bulk of the funds come from the public purse, but the local Education Board should retain its proper function as a safety valve for the community in its special subject, and not be reduced to the status of an agent of the Crown. It will be interesting to see whether men of independence will be found willing to serve on such a body—invested certainly with the privileges of the Crown, but stripped of its proper function of the exercise of local powers.

London Letter.

BY AIR MAIL.

Temple, London,
May 1, 1936.

My dear N.Z.,

Spring has come to London, and the Temple to-day presents a very different picture from what it did when I wrote to you last month. Then all was drab and dull, and, with bitterly cold north-east winds, it seemed more like mid-winter. Now the trees in the gardens are bursting, daffodils, hyacinths, and tulips are in full bloom, and we are able once again to dispense with fires and sit with windows open. Mind you, this has only just happened (which is, I suppose, chiefly why I feel compelled to write about it), for our Easter vacation was the coldest for many years.

The Cause Lists published at the beginning of the new term showed a considerable decline in business in almost all Divisions of the High Court, and although the appointment of extra Judges, and the rapidity with which the work was disposed of last term, account for a good deal of this decline, there seems to be no doubt that there is in fact less litigation. You may have seen the cartoon in a recent number of *Punch* depicting out-of-work barristers singing for alms outside the Law Courts with a caption referring to the "welcome" decline of litigation. I am glad to report that things are not as bad as there depicted, but nevertheless there is nothing "welcome" to us about the present conditions. The worst decline seems to be in ordinary King's Bench work, the number of causes set down for trial at the beginning of the term being only two hundred and twenty-seven, compared with six hundred and sixty a year ago. There are rather more appeals, however, and at the present time we have three Courts of Appeal sitting.

Cases of the Month.—One of the most interesting cases heard this month was a petition from Jersey which came before the Judicial Committee of the Privy Council. The interest lay not perhaps so much in the matter of the petition itself, which was for special leave to appeal from a conviction for motor manslaughter, but in the history of Jersey, which was discussed in considering whether an appeal lay at all in a criminal case from that island. The Board held there was clearly no such appeal as of right, but that the King had a prerogative right to grant special leave to appeal in a proper case. Such cases were, however, of rare and exceptional character, and the present case was not one in which the Board could advise His Majesty to grant special leave.

There has been another "enticement" case, meaning a case in which a married woman sues another woman for enticing away her husband. This cause of action is now well recognized, but I believe that the case, which came before Hawke, J., and a special jury this month, had a novel feature in that the woman defendant was herself a married woman. Judgment was entered for the plaintiff for £3,500 damages, but the defendant has since obtained leave to appeal, so we will not say anything more about this case at present.

Another case of interest came before Macnaghten, J., in which a restaurant-keeper was sued for payment alleged to be due to the band engaged to play at the restaurant. The claim arose out of the closing of the restaurant during the week of national mourning last January. The contract under which the band was engaged contained a "no play, no pay" clause, and the restaurant-keeper contended that in view of this clause he was not liable to pay the band anything during the days on which he had reasonably, as he alleged, closed the restaurant. The Judge held that the restaurant-keeper was justified in closing his restaurant for two nights, but that, as regards the other four nights, the closing of the restaurant was not a necessary but a voluntary act on his part, and that the musicians could therefore recover in respect thereof.

The Entente Cordiale of the Law.—It is pleasant to note the very friendly feeling that exists among members of the legal profession all over the world. Not only does this feeling exist in all parts of the British Empire (and in that connection I recall the kind courtesy extended to me in your country), but it also extends to foreigners. This was exemplified a short time ago in our Courts, when certain members of the French Bar were waiting to be called as witnesses in Mr. Justice Mackinnon's Court. As soon as he became aware of their presence, he addressed them, and, apologizing for not having done so earlier in the case, as he did not know they were there, invited them to sit within the Bar.

Coming Legislation.—A draft Bill for the codification and reform of the Income Tax law has been prepared by the Income Tax Committee which was appointed in 1927 by Mr. Churchill, the then Chancellor of the Exchequer, and which has just issued its report. The special aim of the Bill was said to be to make the law of Income Tax as intelligible to the taxpayer as the nature of the legislation admits. This was, I fear, an almost impossible task, and, as the Bill is said to leave the present law substantially unchanged, it seems that if the ordinary taxpayer is to understand the law of Income Tax he must either increase his intelligence or continue to be mystified.

Another Bill which is now before the House of Lords is the Bill introduced by Lord Sankey for the abolition of the trial of peers by peers. The Bill passed its second reading only last night.

Wembley Stadium *v.* **British Movietonews, Ltd.**—War was recently declared between the Wembley Stadium, where the English Cup Final was played last Saturday, and British Movietonews, Ltd., and certain other film companies, over the rights of the latter to take and exhibit moving pictures of the Cup Final. An interim injunction had been granted by Porter, J., a week before, restraining the film companies from trespassing or causing others to trespass on the property of the Wembley Stadium for the purpose of taking photographs, but subsequently, on the film companies giving an undertaking to the same effect, he refused to continue the injunction or to grant an extended injunction restraining them from selling, distributing, or dealing with films taken at the Cup Final. The Wembley Stadium entered an appeal, and on the day before the Cup Final applied to the Court of Appeal to expedite the hearing of the appeal, but the Court of Appeal refused to do so. The next day persons entering the Stadium were carefully scrutinized for cameras, but the film companies abode by their undertaking. They did not trespass, but by means of aeroplanes and telephoto-lenses they took some excellent photographs of the match which have since been exhibited throughout the country.

Yours ever,
H. A. P.

New Zealand Law Society.

Annual Meeting.

(*Concluded from p. 138.*)

Revision of Society's Rules.—A report was received from Mr. A. M. Cousins on proposed amendments to the Rules of the New Zealand Law Society. It was decided that the Rules as a whole, including the amendments suggested by Mr. Cousins should be referred to a committee, consisting of the Wellington delegates and Messrs. Rout and Wright, for consideration and report to the next meeting of the Council.

Law Practitioners Amendment, 1935, s. 38: Applications by Officers of Departments of State as Barristers.—The following reports were received :—

"Pursuant to the resolution of the Council set out in the above minute, Messrs. H. F. O'Leary, K.C., G. G. G. Watson, and the Secretary interviewed the Rt. Hon. the Chief Justice on December 18, 1935.

"The circumstances leading up to the passing of Section 45 were explained to his Honour, who was then asked if it would be possible to arrange some course of action by which an interested District Law Society should in every case of an application by an officer of a Department of State under the section be served in good time with a copy of the affidavits filed in support of the motion for admission. It was pointed out that in many cases the supporting affidavits were filed on the morning of the day on which the motion was heard and no opportunity whatever was given to the Law Society to peruse the documents, and, if necessary, oppose the motion. It was suggested that a Regulation might be introduced to the effect that supporting affidavits must be filed and a copy served on the District Law Society at least three weeks before the motion was heard.

"His Honour was of opinion that the Law Society should have the opportunity of intervening if it so desired, and thought that a Regulation in the direction indicated should be submitted to the Rules Committee for its consideration. He also thought that the Society should be represented on the hearing of the first application under the section.

"It was accordingly arranged to get in touch with the Secretary of the Rules Committee and ask him to draft and submit to the Chief Justice a Regulation on the lines indicated. It was also decided that the President should appear at the hearing of the first application under Section 45 and explain the Society's attitude.

"NOTE: A Rule has since been drafted, and the Society has been given to understand that this Rule has been approved and will be gazetted shortly."

The President reported that, with the Secretary, he appeared on the first motions for admission as barristers of officers of State Departments under s. 45 of the Law Practitioners Amendment, 1935.

Several members raised the question of opposing applications by State officials in small towns, where the official had been very obliging and was personally popular with practitioners; and thought it might be better for such opposition to be undertaken by the New Zealand Society. Others thought that all such applications should be regarded with jealousy. It was clear that personal influence on a local application might allow a man to be admitted without opposition, and it seemed hardly fair that the smaller Societies should be asked to pay counsel's fees. The matter was one for the New Zealand Society, though it might be necessary to leave it to the District Law Societies until a contested case fixed the standard required. The opinion was expressed that no District Law Society should ask to be relieved of the unpleasant task of taking the responsibility upon itself. It was decided to set up a committee consisting of the four Auckland delegates at the meeting to consider the matter and try to define the standard necessary for admissions of this character.

Rules of Court of Review.—The following letter was received from the Under-Secretary of Justice :—

"I enclose herewith for your information a copy of rules setting out the procedure which has been determined by the Court of Review pursuant to s. 13 (2) of the Rural Mortgagors Adjustment Act, 1934-35, relating to appeals to that Court.

"Copies of the rules have been forwarded to the Registrars of the Court of Review and Secretaries of Adjustment Committees, with a request that the rules be brought under the notice of practitioners."

Rules of Court of Review.

1. Appeals to the Court of Review of Mortgagors Liabilities will be by way of rehearing, as in the Court of Appeal, and shall be brought by Notice of Motion in a summary way.

2. The Notice of Appeal shall be served upon all parties directly affected by the appeal and such other persons as the Court of Review may direct.

3. The Notice of Appeal may be served by registered letter addressed to the last known place of business or abode of the addressee and posted within the time allowed for the filing of the Notice of Appeal.

4. On appeal there shall be filed in the Court (a) the direction or order of the Adjustment Commission appealed from, (b) the report of the Adjustment Commission, (c) valuations, statements of account, reports, and affidavits filed with the Commission, (d) a copy of the Commission's notes of evidence, and (e) such other matter as the Court may order.

5. Where a party intends to admit further evidence by affidavit or orally notice of such intention is to be served on the parties to the appeal not less than 7 days prior to the date of hearing.

Scale for Certifying Procedure of Local Authorities in Raising Loans.—Mr. Strang drew attention to the following letter from a Hamilton firm of practitioners :—

"We shall be glad if the Hamilton Law Society will bring before the New Zealand Law Society the question of the provision of a scale of charges for certifying the procedure of local authorities in raising loans.

"The work entailed consists of the checking of the forms of resolutions, debentures, and other documents, and the checking of the procedure, including advertising, adopted by the local authority. Although the procedure varies somewhat, the amount of work involved is practically the same, whatever the amount of the loan raised.

"We have found considerable divergence of opinion as to what is a proper charge to be made for this work and from time to time we have been asked to advise local authorities as to the correctness of the charges made. Also, as local bodies discuss these matters before the Press and express themselves freely on the charges, it is in the interests of the profession that a proper standard should be fixed in order that uniformity may be obtained and the public given no opportunity to express opinions derogatory to the profession."

It was decided to set up a committee consisting of Messrs. Rogerson, Stanton, and Watson to deal with the matter and report to the next meeting.

Finances of District Law Societies.—The following report was received from the President :—

"I wish to report that Mr. Watson and myself attended at the meeting of the Council of Law Reporting held at Wellington on the 28th February and asked for a grant to the New Zealand Law Society for the purpose of assisting the smaller Societies to meet the expenses incurred in the upkeep of their libraries. A sum of £249 was granted but it was made clear that this grant could not be repeated because of the lessened income to the Council of Law Reporting. I am bound to say that on the figures disclosed I had to agree with this.

"The hope was expressed that the New Zealand Law Society would be able to assist the lesser Societies out of the additional income it now receives consequent on the amending legislation of the last session and the grant from the Government in respect of the Judges' Library."

The Finance Committee were empowered to apportion the £249 among the needy District Law Societies.

Secretarial Work of Council of Law Reporting.—The President reported that at a meeting of the Council of Law Reporting held on February 28, it had been resolved that the New Zealand Law Society be asked to undertake the secretarial work of that Council. It was decided that the Secretary should carry out this secretarial work.

Disciplinary Committee.—The following report was received from the President, as the Committee's chairman :—

"The Disciplinary Committee desires to report that a meeting was held on January 23, 1936, all members being present.

"The President was elected Chairman, and the Secretary was appointed Clerk, of the Committee.

"The main purpose of the meeting was to settle the Rules concerning applications to the Committee, and these Rules, which had already been circulated, were discussed in detail and finally adopted. Steps were then taken to have the Rules printed, and copies have been sent to each District Law Society for distribution to practitioners.

"The Under-Secretary of Justice was asked to arrange for the gazetting of the Rules, and has since replied that as soon as the Rules Committee has settled the regulations concerning appeals from decisions of the Disciplinary Committee, both sets of Rules will be gazetted together. This should save the Society the very considerable expense which would otherwise have been incurred.

"An application has been made by a practitioner himself that his name should be removed from the Roll. A meeting of the Committee is therefore being held at the conclusion of this meeting of the Council in order to deal with this application."

The opinion was expressed that statutory power should be sought fixing a definite term of office for members of the Committee, and arranging for the retirement of members and for the proper representation of all practitioners in the country. It was decided to take the appropriate steps to obtain legislation making it clear that no member of the Disciplinary Committee should be ineligible to sit merely because he was on the Council of the District Society preferring the charge against a practitioner.

The President undertook to have rules concerning the Disciplinary Committee drafted and brought before the next Council meeting for consideration.

Legal Conference.—The Secretary of the Legal Conference forwarded the proposed programme for the Conference, and asked for the formal approval of the Council. This was accordingly granted.

Agency Fee on Production of Title.—The Wellington Society asked for a ruling on the point raised in the following letter :—

"We should be glad if you would obtain a ruling from the New Zealand Law Society on the following matter. The scale charge with reference to production of titles reads as follows :—

'For the production of a certificate of title or other muniments of title held by a solicitor in the place of registration 10/6 for the first title and 2/- for each additional title. Where held by a solicitor who is outside the place of registration £1/1/- for the first title and 2/- for each additional title, which fee is to include agency charges.'

"It has always been our understanding of the rule as to these charges that the extra charge of £1/1/- payable to a solicitor who is outside the place of registration is only payable if he is required to pay agency charges for production of the title. We find, however, that some practitioners in districts outside the place of registration contend that they are entitled to the charge of £1/1/- whether they pay agency charges or not, and we should be glad to have the ruling of the Society on the matter, as we understand that at the present time there is no ruling on this particular point."

The Council ruled that the £1 1s. is not payable unless agency charges have been actually incurred.

New Zealand Conveyancing.

By S. I. Goodall, LL.M.

Agreement between Foreign Company (Principal) and New Zealand Company (Agent) for Manufacture and Sale in New Zealand of Non-patentable Machines and Apparatus.

Agreement made this day of 19 between A.B. Limited a company duly incorporated under the Companies Acts (Imperial) and having its registered office at in England (hereinafter called "the principal") of the one part and C.D. Limited a company duly incorporated under the Companies Act 1933 (New Zealand) and having its registered office at in New Zealand (hereinafter called "the agent") of the other part

Whereas the parties hereto are desirous of providing for the manufacture and supply to the public in New Zealand by the agent of certain machines and apparatus upon the basis of payment in respect thereof of a royalty to the principal as hereinafter set forth

Now therefore it is agreed and declared by and between the parties hereto as follows :—

1. The agent may manufacture assemble sell dispose and generally deal with in New Zealand solely and not elsewhere the machines and apparatus designed and heretofore made by the principal and known as .

2. For the purposes of such manufacture and dealing with the said machines and apparatus the principal will with all reasonable speed deliver and lend in duplicate to the agent full and complete working-plans drawings specifications and technical data of all sizes of the said machines and apparatus heretofore manufactured and disposed of by the principal.

3. The said plans drawings specifications and all documents connected therewith shall be and remain the sole and exclusive property of the principal and the agent shall keep the same absolutely secret and will not disclose or distribute or permit to be communicated the same or any copies thereof to or amongst any person or persons whomsoever during the term of this agreement or at any time thereafter save and except in so far as it shall be absolutely necessary to impart the same to the manager foreman or other superior servant of the agent from whom the agent shall exact a similar undertaking of secrecy and non-disclosure and for whose acts and defaults in that regard the agent shall be wholly responsible and the agent will forthwith at the expiration or sooner determination of the term of this agreement deliver up and return to the principal all the said plans drawings specifications and documents and all such copies thereof as shall have been made whether with or without the consent or knowledge of the principal.

4. The agent will manufacture and generally use its best endeavours to promote the sale of the said machines and apparatus in New Zealand and shall not nor will at any time engage or be engaged concerned or interested whether as principal agent contractor or otherwise howsoever in the manufacture supply importation exportation holding and in any wise dealing with any apparatus or machine competitive with the said machines and apparatus the subject-matter hereof or any improvement thereon (including therein any process relating to the art) or any apparatus or machine

of any kind whatsoever used or to be used for nor will convert or alter any other machine or apparatus for any such use or purpose.

5. The agent shall pay to the principal in respect of every such machine or piece of apparatus complete or incomplete manufactured and sold hired out or otherwise disposed of by it a royalty equal to £ per centum of the gross selling price or prices as set forth in the Schedule hereto (in New Zealand money) and in respect thereof the following provisions shall apply :—

(1) The agent will on the last days of September December March and June in every year during the continuance of this agreement and on the last day thereof (whether at the expiration or sooner determination of its term) make up a return full and complete of all such machines and apparatus theretofore manufactured and/or assembled or disposed of by them and not already returned. Every such return shall be verified by the statutory declaration of a responsible officer of the agent and shall be forwarded to the principal at the address from time to time directed within fourteen days of the respective due date.

(2) Every such return shall include the name address and occupation of the purchaser or hirer or consignee of any and every such machine or piece of apparatus the serial number and type letter and general description thereof.

(3) The agent will keep true and full books and records properly and punctually posted up of the manufacture assembly sale and disposal by the agent in all parts of New Zealand of all such machines and apparatus and will permit any duly authorized agents or nominees of the principal to have access to all such books and records during business hours wherever the same shall be and any such agent or nominee of the principal shall be at liberty to make such perusal thereof and take such extracts therefrom as he shall think fit PROVIDED that all information thereby obtained shall be regarded as confidential and shall not be disclosed except to the proper officers of the principal or to any tribunal trying or settling a dispute between the parties.

(4) The said royalty shall be paid and reckoned upon the price as aforesaid of all such machines and apparatus and all improvements thereto (as above defined) but not upon and other used in connection therewith.

(5) The said royalty shall be paid to the principal by sight bank draft accompanying each such return and exchange thereon and banker's fees (if any) at London by the principal's bankers shall be paid by the principal.

6. The minimum royalty payable by the agent to the principal hereunder for any one such quarterly period shall be £ (in New Zealand money) and shall be payable notwithstanding that but for this present clause a less sum or nothing at all would be payable.

7. The term of this present agreement shall be the period of years from the day of the date hereof subject to determination as hereinafter provided.

8. This agreement is a purely and absolutely personal agreement with the agent and the agent shall have no right of assignment or delegation whatsoever thereunder.

9. This agreement is declared to have been made in and shall be construed according to the law of New Zealand and either party may take any proceedings in any competent Court in New Zealand for settlement of any disputes or determination of any questions arising between the parties hereto.

10. If the agent shall not manufacture and dispose of sufficient such machines and apparatus as aforesaid to satisfy the demands therefor of trade and industry in New Zealand or shall not use reasonable efforts to dispose thereof according to such demands the principal may by six calendar months' notice in writing to the agent determine the rights of manufacture of the agent under this present agreement but the agent shall not thereby be released from payment of any royalty or rendering of any return theretofore or thereupon due and the agent shall nevertheless be and continue to be restrained and bound by the express terms hereof for the full said term of years and the principal may thereupon proceed to appoint another agent or agents in the premises or itself proceed to market the said machines and apparatus.

As witness etc.

SCHEDULE.

(List of prices).

The common seal etc.

The common seal etc.

Bench and Bar.

Messrs. M. H. Hampson and W. L. Wiseman, of Auckland, have dissolved partnership. The practice will be continued by Mr. Wiseman alone.

Messrs. Jeune and Woodward have dissolved partnership, and Mr. K. A. Woodward and Mr. G. J. Jeune are now practising separately in Gisborne.

Mr. J. Allison, of Lower Hutt, and Mr. J. H. Reaney, of Wellington, have entered into partnership, and will practise in the city and suburb.

Miss M. A. Taylor, of Lower Hutt, was recently admitted as a solicitor by His Honour Mr. Justice Blair, on the motion of Mr. Haldane.

Mr. J. Hessell, of Kaponga, has joined Mr. D. S. Syme in partnership at Eltham, where the practice formerly conducted prior to Mr. J. L. Weir's death will be known as " Syme, Weir, and Hessell."

Sir Herbert Hart, who has been appointed a member of the Imperial War Graves Commission in Palestine and Egypt, with probable headquarters in Jerusalem, has left to take up his duties.

Mr. J. J. Sullivan, Auckland, has been joined in partnership by Mr. R. M. Winter, LL.M., late of the office of Messrs. Meredith, Hubble, and Meredith. The practice will be carried on under the name of Messrs. Sullivan and Winter.

Recent admissions in Christchurch as barristers and solicitors include Mr. J. R. Crawford, on the motion of Mr. G. T. Weston, and Mr. D. J. Hewitt, on the motion of Mr. R. A. Young ; as barrister, Mr. T. K. Papprill, on the motion of Mr. E. E. Papprill ; and, as solicitor, Mr. I. M. Walton, on the motion of Mr. R. L. Ronaldson.

Legal Literature.

For My Grandson: Remembrances of an Ancient Victorian. By The Rt. Hon. Sir FREDERICK POLLOCK, Bt., K.C. London: John Murray.

The American Library Association has indubitably instructed its followers that this book belongs to Class Biography, sub-class Autob-. *Qui haeret in litera* . . . Actually it falls into that division of Belles Lettres styled Table Talk. An autobiography might be reviewed, table talk is to be talked about . . .

When first we read the *First Book of Jurisprudence*, and went on to *Contracts* and *Torts*, we might have imagined a writer wrapped heart and soul in the service of that jealous mistress, the law; a stylist, no doubt, but not necessarily concerned with style further than as an essential of lucid exposition; a linguist, clearly, or, in the old phrase he himself chooses, "well seen in the tongues" (p. 166), but perhaps only for reading the jurists. The *Leading Cases* shewed us his love of letters for their own sake. Such titles as "The Dog and the Potman: Or 'Go It, Bob'" in the *Law Quarterly* gave a fresh picture of the writer. The *Etchingham Letters* shewed another facet of personality: *Who's Who* offered hints, not necessarily reliable, of wide interests in life. But nobody from Sir Frederick's other works alone could have guessed how wide those interests are. The word "amateur" is following the word "dilettante" into that abasement from which "cognoscente" never rose; some periphrasis is therefore necessary to say that he is one of those who has made himself a master, and is able to speak with authority, of many matters outside his own profession.

This, for example, for literary criticism: "If perfection were the sole test, Hérédia's one casket of gems would outweigh the whole mass of Victor Hugo's gold and silver—and copper" (p. 86). Or this: "As for the silly depreciation of Tennyson which has been made rather common of late years, it can be made to look plausable only by wilful neglect of the principle that every author is entitled to be judged by his best work" (p. 89). This for musical criticism: "Usually the second act" (of Lohengrin) "which may be said to consist of Ortrud and Telramund conspiring on a doorstep in the dark, is rather tedious" (p. 117). Too right it is! This for dramatic criticism: "All art has to be conventional, not mere imitation but interpretation through a particular medium, and, though it may seem a paradox, dramatic art is the most conventional of all. Pretended returns to nature are only new conventions which may be good or bad" (p. 130). This of esthetics at large: "Live art, certainly, must justify itself by capacity of producing new forms. But mere negation of rule and proportion will not make a new form; and it is worth observing that those who do invent new forms neither boast of their novelty nor affect to despise the old ones" (p. 151).

Here, in another field of experience, is Alpine wisdom: "You shall understand, my grandson, that as a general rule of prudence a party crossing a snowfield where there may be hidden crevasses must not consist of less than three members; it is a matter of unavoidable danger, for the best of leaders may fall into a crevasse, and one other man on the rope is not enough to pull him out" (p. 103). And here: "Note, my grandson, that the infallible warning of a hard spell coming is when the leading guide puts out his pipe." (p. 215). Criticism of life: " . . . a truth which I have at sundry times observed and am unable to explain, namely, that a head master invariably puts himself in the wrong when he writes to *The Times*" (p. 37).

In this book he is as much a stylist as ever; there is not one slackly-framed sentence in over two hundred pages. There is a reminder of Judge Maning in the great play made with parentheses, sometimes four pairs to a page.

Here is an article from a Law Report Editor's creed: "I am clearly of opinion that since Blackstone (in Bentham's words) taught our jurisprudence to speak the language of a scholar and a gentleman and a series of accomplished judges have followed the example, it is the duty of the Law Reports not to fall behind" (p. 189). The author adds: "In the days before the War there were scholarly printers' readers quite capable of giving efficient aid to an editor in these matters and even of correcting quotations in foreign tongues. The remnant of their tribe has taken refuge in the University presses and one or two leading London houses." Messrs. Butler and Tanner, Limited, are not one of these houses—or "On" would not have been misprinted "Ou" (p. 142), nor would the apostrophe, the compositor's *tabula in naufragio*, have intruded into "the 1890's" (p. 7), or "all our little ego's" (p. 95). Still, one notes French dialogue correctly pointed, wholly enclosed in the quotes and not speech by speech (p. 118); and in the phrase (lucid enough to hear or read) "William Johnson (afterwards Cory)'s pupils" (p. 21), a puzzle in punctuation looks correctly solved.

Perhaps the finest thing in the book is the exemplification of the Victorian virtue of decent reticence. Public characteristics of public men may be set down, but never in malice. As for others, "that is not a matter to speak of in public" (p. 110). Three of the stories do indeed fall short of perfect geniality. One is of Lord Westbury as moralist and book-thief (p. 29). Another is of the *Saturday* reviewer who remarked: "We do not deny that Dr. Jowett's *Thucydides* may be classical: with revision it may even become correct" (p. 86)—which gives us a hint of the imperfect sympathy believed to exist between Balliol College, Oxford, and all other institutions of learning. The third is of Sarah Bernhardt, grown "positively stout," and acting a man's part, being addressed thus by another character: "Aoh! Moi trouvais que vous étiez plus gras et plus vieux que le gros Golaud" (p. 146); which, had Maeterlinck intended the point, would have paralleled Shakespere, getting a little of his own back from the fatuous overweening tribe of actor-managers, by stressing, thrice in the one play, the "too too solid flesh" of the obtusely-unconscious Burbage-Hamlet.

For the message of Pollock, C.B., to Garter King-of-Arms the reader must turn to the book (p. 171). It may respectfully be suggested that the learned author's objection, "that sable on gules is bad heraldry," is not in point. The rule forbidding colour upon colour is not offended by two colours in a single charge, as a devil sable in flames gules. A more pertinent objection would be that flames of fire (as for example accompanying the phoenix, torch, or burning mountain), are generally, if not always, blazoned not "gules," but "proper."

The author has had much good-fortune—and of ill-fortune he makes no complaint. In particular, he had a schoolmaster who put *The Shaving of Shagpat* into his hands: most boys at the fit time miss it or find it only by chance. He saw French comedy, from *Le Misanthrope* to *Le Gendre de M. Poirier*, actually being

acted, and being acted at the Comédie Française in "one of its golden ages" (p. 141). He met, on a plane of easy introduction, many of the Eminent Victorians, not only legal stars. Kipling, by the way, he does not mention. He quotes a Kipling tag, but without ascription; calls it somewhat musty, but admits its truth (p. 192) . . .

He is the oldest practising member of the London Fencing Club, and collects swords and books on the art. "One may have odd surprises with catalogues. Once I sent for a pamphlet described simply as *Fencing*, which turned out to be a polemic against Jesuit casuistry" (p. 225). It is a pity he never came across a catalogue of New Zealand law books containing an entry of the late Mr. J. P. Watt's useful little book on the *Law of Fencing* . . . Whatever may happen in Volapuk or Esperanto, ambiguities of this kind seem inevitable in a language that develops uncontrolled, and even in a language that has the blessing of Academic supervision. Jethro Bithell prefers to read Verlaine's "chanson grise" as "drunken verses," although some people think the adjective means "grey" . . .

The range of the book is enormous; law and the lawyers take quite a small place. At one page-opening (pp. 80–81) there are, *inter alia*, Meredith's own resolution of the ambiguity in the refrain of *Phoebus with Admetus*; a comparison of *The Dynasts* with *The Testament of Beauty*; an account of conveyancing by "church gift" in the Island of Portland; and a note on the use of *de* in the *Pervigilium*, with an opinion as to the date of the poem. (From Thomas Stanley in the seventeenth to Quiller-Couch in the twentieth, every century has given us its translation of the *Vigil*, but not yet "a planet equal to the sun that cast it." Joynt reviewing one of Johannes Andersen's books called Heine "the untranslateable." Surely the epithet belongs to the pseudo-Catullus . . .

The correctness of the style is due in part to the author's realisation that lawyers in these days must speak by the card or equivocation will undo us. One passage will become the classical instance of his scrupulous accuracy. Somebody asked him whether the Pole Star was always in the same place, and it was not convenient (they were talking German) to discuss the precession of the equinoxes, "so I answered cautiously that for common purposes he might assume the Pole Star's position to be constant" (p. 207).

To anybody who has learned his law in one of the New Zealand colleges, and been taught to study the shortest note in the *Law Quarterly* with a good deal more respect than a judgment of the Privy Council, it is an ironical reflection that Sir Frederick Pollock's only judicial office has been Judge of the Admiralty Court of the Cinque Ports, the decisions of which, if any, are not binding on the House of Lords, or any other tribunal . . .

A treasure of a book for the Grandson, and other grandsons; and a grand book for grangerising.

—A. E. C.

Ancient Precedent.—In the Court of Appeal on March 30, Counsel in a currency case referred to *The Case of Mixed Marenys*, decided in 1604, during the reign of Queen Elizabeth, by the Irish Privy Counsel. On the following day, Mr. C. S. Thanas, in a Family Protection case referred to the antiquity of the previous day's citation, but said he could give an earlier precedent and cited *In re the Prodigal Son*, 15 St. Luke; but he admitted its authority was probably only persuasive.

Practice Precedents.

Recall of Grant of Probate.

Rule 531S of the Code of Civil Procedure states that probate granted by a judgment of the Court shall not be recalled, except in the case of a will subsequent to the will of which probate has been so granted being discovered or lawfully propounded. Rule 531T provides:

> "Where letters of administration have been granted in common form and a will has been subsequently discovered, or where probate of a will has been granted in common form and a will later in date is subsequently propounded, proceedings to recall the grant of letters of administration or of probate, as the case may be, shall be by originating summons, and the rules relating to originating summonses shall apply.
>
> "In all other cases proceedings to have a grant of probate or of letters of administration recalled shall be the same as in an ordinary action."

If the matter is not contentious, originating summons procedure is usually adopted. It may be necessary to proceed by action; but in certain circumstances, as for instance where there is no one who can be properly served by originating summons or who can be sued in an action, then procedure may be by way of motion: *In re Muir*, [1919] N.Z.L.R. 632; G.L.R. 499.

In circumstances where the parties concerned consent to the recall, application by motion has been granted: *Re Wilkinson (deceased)*, [1923] G.L.R. 266; *Re Leech (deceased)*, (1914) 17 G.L.R. 128; and see *Garrow's Wills and Administration*, 593 *et seq.*

The following forms contemplate procedure by way of originating summons. Having regard to the facts adopted herein, it is suggested that this is the correct and best procedure. Rule 540 of the Code of Civil Procedure, *Stout and Sims' Supreme Court Practice*, 7th Ed., p. 348, provides for directions as to service being given at the time when the summons is issued or subsequently. To assist the Court in making the order as to directions for service, such information must be supplied as shall enable the Court to decide by what means the interests of each person or class interested may be adequately represented: Rule 541B.

All persons who are clearly affected by the originating summons should be cited as defendants.

By R. 545 of the Code of Civil Procedure,

> "Any solicitor issuing or attending any such summons shall, before the same is heard, file in the Court an authority to issue, support, or attend the same *before the hearing*."

ORIGINATING SUMMONS.

IN THE SUPREME COURT OF NEW ZEALAND

.....District.

.....Registry.

IN THE MATTER of the Administration Act, 1908

AND

IN THE MATTER of the Judicature Act, 1908

AND

IN THE MATTER of the will of A.B. of cook deceased bearing date the day of 19 .

BETWEEN C.D. of salesman executor of the estate of A.B. above-mentioned deceased

Plaintiff

AND

E.F. etc. G.H. etc. W. etc. Y. etc.

Defendants.

LET the above-named defendants their solicitors or agents attend before this Honourable Court at on day the day of 19 at o'clock in the forenoon or so soon thereafter as the parties can be heard upon the application of the above-named plaintiff FOR AN ORDER

1. Recalling the grant of probate of the will of the said A.B. deceased bearing date the day of 19 made by this Honourable Court at on the day of 19 .

2. For such further or other order as in the circumstances may appear to this Honourable Court to be just and proper UPON THE GROUNDS that a will later in date has been subsequently discovered AND UPON THE FURTHER GROUNDS set out in the affidavits filed in support hereof.

Dated at this day of 19 .

Registrar.

This summons is to be served on each defendant.

Registrar.

This summons was issued by solicitor for the plaintiff whose address for service is at the offices of Messieurs of Number Street .

MOTION FOR DIRECTIONS AS TO SERVICE OF ORIGINATING SUMMONS.

(*Same heading.*)

Mr. of counsel for the above-named plaintiff TO MOVE before the Right Honourable Sir Chief Justice of New Zealand at his Chambers Supreme Court house on day the day of 19 at o'clock in the forenoon or so soon thereafter as counsel can be heard FOR AN ORDER giving directions for the service of the originating summons sealed herein or for such directions as this Honourable Court may deem expedient in the circumstances.

Dated at this day of 19 .

Certified pursuant to Rules of Court to be correct.

Counsel for plaintiff.

REFERENCE: His Honour is respectfully referred to R. 531T, R. 540, and R. 541B of the Code of Civil Procedure, and to the memorandum of counsel attached hereto.

MEMORANDUM BY COUNSEL.

The application herein asks for an order recalling grant of probate of a will dated the day of 19 because a will subsequent in date *i.e.* dated the day of 19 has been discovered.

In both wills the executor is the same but the bequests are different. In the former will a bequest of £ and a devise of all that parcel of land to X. is revoked and in lieu thereof the said bequest and devise are given to XX. the son of the said X. and bequests to the two children are increased. The two children are the only children and are *sui juris*.

In all other respects the later will confirms the prior will.

It is suggested that the originating summons be served on all the defendants who include all those affected or who may be affected by the originating summons.

Counsel moving.

AFFIDAVIT OF PLAINTIFF IN SUPPORT OF ORIGINATING SUMMONS FOR AN ORDER RECALLING PROBATE.

(*Same heading.*)

I C.D. of the city of salesman make oath and say as follows:—

1. That I am the executor of the will of the above-named A.B. deceased bearing date the day of 19 probate whereof was granted by this Honourable Court at on the day of 19 .

2. That a copy of the said will is hereunto annexed and marked with the letter "A."

3. That immediately after the said grant I proceeded to administer the estate and to collect and get in all assets and duly paid all debts funeral and testamentary expenses.

4. That the following legacies were paid out:—

To the sum of £ .

To the sum of £ .

5. That on about the day of 19 and before the estate was further administered than as aforesaid one an auctioneer's clerk engaged to take an inventory of books in the library at the late residence of the above-named A.B. deceased discovered the later will dated the day of 19 in a book entitled " ."

6. That the said will dated the day of 19 copy of which is annexed hereto marked "B" was handed by me to my solicitor on the day of 19 .

7. That the said later will revokes the bequest of £ and the devise of all that piece or parcel of land to X. and in lieu thereof the said bequest and devise are given to XX. the son of the said X.

8. That two sons of the said A.B. deceased mentioned in the said wills of the said A.B. being the only children of A.B. deceased are bequeathed the sum of £ each which is an increase of £ .

9. That all the beneficiaries in the estate of A.B. deceased are *sui juris*.

10. That all the said defendants consent to the recall of grant of probate as appears by the consent attached hereto and marked "C."

11. That the above-named defendant W. who is the widow of A.B. deceased takes the residue of the estate absolutely.

Sworn etc.

AFFIDAVIT OF AUCTIONEER'S CLERK IN SUPPORT OF ORIGINAL SUMMONS.

(*Same heading.*)

I of auctioneer's clerk make oath and say as follows:

1. That I am an auction clerk employed by of auctioneers.

2. That on the day of 19 I was instructed by to proceed to the late residence of A.B. above mentioned there to take an inventory and make a valuation of the books in the library.

3. That on turning over the said books I discovered in a book called " " a will dated the day of 19 .

4. That I immediately handed the said will to E.F. who is the executor therein named.

Sworn etc.

CONSENT OF DEFENDANTS TO RECALL.

(*Same heading.*)

WE E.F. of , G.H. of , W. of , Y. of , having been advised that a will duly executed by the above named A.B. deceased bearing a later date than the will of which probate has been granted has been discovered and having perused the said later will dated the day of 19 and having perused the affidavits of the executor and of auctioneer's clerk filed in support of the originating summons for an order recalling the grant of probate of the will of the above-named A.B. deceased granted by this Honourable Court on the day of 19 sealed herein DO HEREBY CONSENT to an order being made by this Honourable Court recalling the said grant of probate for the purpose of enabling a grant of probate of the later will to be made.

Signed by the said .....

in the presence of

Name: .....

Address: .....

Occupation: .....

[and so for each signature].

"C."

This is the consent marked "C" referred to in the affidavit of C.D. herein and produced to him at the time of his swearing same. Sworn at this day of 19 .

Before me

A solicitor &c.

ORDER RECALLING GRANT OF PROBATE.

(*Same heading.*)

day the day of 19 .

Before the Honourable Mr. Justice .

UPON READING the originating summons sealed herein and the affidavits filed in support thereof and the consent of the defendants filed herein AND UPON HEARING Mr. of counsel for the plaintiffs by consent IT IS ORDERED that the grant of probate of the will of the said A.B. deceased bearing date the day of 19 made by this Honourable Court at on the day of 19 be and the same is hereby recalled AND IT IS ORDERED that the costs and disbursements of and incidental to this application and of and incidental to the application for and grant of the said probate shall be taxed as between solicitor and client and paid out of the estate of the said A.B. deceased.

By the Court

Registrar.

Bills Before Parliament.

Judicature Amendment Bill (Hon. Mr. Mason).—Prior to February 1, 1925, the rights of parties to have civil actions in the Supreme Court tried before a jury were defined in Rules 254-258 of the Code of Civil Procedure set out in the Second Schedule to the Judicature Act, 1908. Under these rules (in actions where the relief claimed was payment of a debt or pecuniary damages exceeding £50, or the recovery of chattels of a value exceeding £50), either party had a right to trial of the action before a jury; in actions not exceeding £500, the right was to trial before a jury of four; in actions in excess of £500, the right was to trial before a jury of twelve unless the parties agreed to a jury of four or to trial without a jury. These rules were revoked on February 1, 1925 (by Order in Council of December 8, 1924, made under the authority of s. 51 of the Judicature Act, 1908), and new rules were substituted. The new rules deprived the parties of their right to require trial by jury in actions based on breach of contract and in actions for the recovery of chattels, and, in effect, limited the right of the parties to require trial before a jury to actions arising exclusively out of tort. The purpose of the present Bill is, in the first place, to restore to the parties their former rights to require trial before a jury, and, in the second place (by expressly enacting the new provisions as rules of law and not merely as rules of procedure), to avoid the possibility of their being altered except by the Legislature. Cl. 2: Actions in which the only relief is payment of a debt or pecuniary damages or the recovery of chattels, where the debt or damage or the value of the chattels claimed exceeds £50, may be tried by a Judge and jury of four on the application of either party; but if the debt, etc., claimed exceeds £500, the action is to be tried before a Judge and jury of twelve unless both parties consent in writing to trial before a Judge and jury of four. Where a counterclaim exceeds £500, the action, on the plaintiff's application, is to be tried by a Judge and jury of twelve; but, if no such application is made, the action shall be tried according to the amount of the claim, as above, as if no counterclaim had been set up. Cl. 3: All other actions shall be tried before a Judge without a jury, unless the Court, either before or at the trial, directs that the issue can be more conveniently tried before a Judge with a jury of four or of twelve as the Court may direct. Cl. 4: Any action or issue that may be tried before a Judge with a jury of twelve or of four, may on the application of either party, at the discretion of the Judge, be tried before a special jury of twelve or four respectively: but, except with the consent of all parties, no application for trial before a Judge with a special jury shall be granted unless, in the Judge's opinion, a knowledge of mercantile or banking transactions is required on the jury's part. Cl. 5: Rules 254 to 259 of the Code of Civil Procedure are repealed.

Regulation Bill.—This Bill is an adaptation of the Rules Publication Act, 1893 (Imp.), and provides for the printing and publication of regulations, etc., in such manner as the Attorney-General directs. On the Bill's becoming law, regulations of a legislative nature may be published separately from the *New Zealand Gazette*.

Rules and Regulations

Naval Defence Act, 1913. Amended Regulations.—*Gazette* No. 32, May 7, 1936.

Maintenance Orders (New Zealand) (Facilities for Enforcement) Ordinance, 1936 (Western Samoa). Reciprocity Agreement with New Guinea.—*Gazette* No. 32, May 7, 1936.

Noxious Weeds Act, 1928. Variegated Thistle (*Silybum*) declared a Noxious Weed in Hunterville Town District.—*Gazette* No. 32, May 7, 1936.

Shipping and Seamen (Safety and Load-line Conventions) Act, 1935. Notification of Royal Assent.—*Gazette* No. 32, May 7, 1936.

Board of Trade Act, 1919. Board of Trade (Woolpacks) Regulations, 1936.—*Gazette* No. 33, May 14, 1936.

Naval Defence Act, 1913. Regulations for the Government and Payment of the New Zealand Division of the Royal Navy, 1929, amended and supplemented.—*Gazette*, No. 35, May 21, 1936.

Government Railways Act, 1926. General scale of Charges amended.—*Gazette* No. 35, May 21, 1936.

Prisons Act, 1908.—Crimes Amendment Act, 1910.—Crimes Amendment Act, 1920. Regulations, 1932, amended by Addition to Reg. 406.—*Gazette* No. 35, May 21, 1936.

New Books and Publications

Housing Act, 1935. By H. A. Hill, B.A. (Butterworth & Co. (Pub.), Ltd.) Price 42/-.

Craies on Statute Law, Fourth Edition. By W. Scott. (Sweet & Maxwell, Ltd.) Price 50/-.

Land Drainage Act, 1930 (Handbook). (H.M. Stationery Office.) Price 1/6.

Local Government in Scotland. By Sir William Edward Whyte. (Wm. Hodge.) Price 34/-.

Reflections and Recollections. By His Hon. Judge Crawford. (Maitland Press.) Price 17/6d.

Mew's Annual Digest, 1935; English Case Law, 1935. (Sweet & Maxwell, Ltd.) Price 27/-.

Local Government in England. By E. L. Hasluck, M.A. (Cambridge.) Price 17/6d.

Teachers Legal Handbook. By Claude Bridges. (Foyle.) Price 7/-.

Consolidation of Housing Accounts. By C. H. Gardiner. (Shaw & Sons.) Price 10/6d.

Chitty's Annual Statutes, Vol. 29, Part 2. (Sweet & Maxwell.) Price 34/-.

Executors and Administrators. By G. F. Emery, Fifth Edition. (Gee & Co.) Price 3/6d.

Medical Aspects of Crime. By W. Norwood East. (J. & A. Churchill.) Price 24/6d.

Finger Prints. By Nigel Morland. (Street & Massey.) Price 1/6d.

Law of Torts in a Nutshell. By A. J. Conyers, Second Edition. (Sweet & Maxwell.) Price 5/6d.

Mentality and the Criminal Law. By O. C. M. Davis and F. A. Wilshire, 1935. (Wright and Simpkin). Price 7/6d.

Questions and Answers Constitutional Law and History. By D. M. Griffith, Second Edition, 1935. (Sweet & Maxwell Ltd.). Price 7/6d.

International Law. By L. Oppenheim, M.A., LL.D., Vol. II, Disputes, War, and Neutrality. (Vol. I in preparation), Fifth Edition, 1935. (Longmans, Green & Co.). Price 60/-.

The Murder in the Temple. By Sir F. D. MacKinnon, 1935. (Sweet & Maxwell Ltd.). Price 10/6d.

Government of the British Empire. By A. Berriedale Keith, 1935. (Macmillan & Co.). Price 28/-.

A Century of Municipal Progress, 1835-1935. Edited by Harold J. Laski and W. Ivor Jennings. (Allen and Unwin.) Price 28/-.

Alpe's Law on Stamp Duties, Twenty-second Edition. By A. L. Goodman and S. Borrie. (Jordan & Sons). Price 21/-.

Restriction of Ribbon Development Act, 1935. By Hon. Dougall Meston. (Sweet & Maxwell Ltd.). Price 7/-.

Public Control of Road Passenger Transport. A Study in Administration and Economics. By D. N. Chester, (Manchester University Press). Price 12/6d.

Inwood's Tables of Interest Mortality, Thirty-third Edition. By Sir William Schooling, K.B.E. (New Impression Only). (Technical Press). Price 13/-.

The Worker and the State. By Frank Tillyard. (Routledge). Price 17/6d.

Prideax Precedents of Conveyancing (Incorporating Wolstenholmes' Forms and Precedents), Twenty-third Edition, 1936. By R. M. C. Munro, B.A., and Sir L. H. Elphinstone, M.A. (To be published in three volumes). (Stevens & Sons Ltd.). Price £8/6s./9d.

The Institution of Property. By C. R. Noyes. (Oxford Press). Price 34/-.