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"There are parts of the Roman law which we have made part of our own law and they are binding upon us, not because they are part of the Roman law, but because they have become part of our law."

—LORD HALSBURY, L.C., in *Keightley Maxsted & Co. v. Durant*, [1901] A.C. 240, 244.

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Taxation of Costs of a Solicitor-Trustee.

THE provision in s. 83 of the Trustee Act, 1908, namely, that

> "no solicitor who acts as a trustee shall be allowed the costs of any professional services performed by him in the execution of the trust unless the contrary has been expressly declared by the instrument whereby such trust was created,"

is merely a particular application of the general rule that a trustee may not make a profit out of his office. A solicitor-executor is in the same position: *In the Will of Edward Costley*, (1884) N.Z.L.R. 3 S.C. 155; and the Trustee Act, 1908, s. 2 ("Trust"). In the case of a solicitor-executor or trustee, this is, of course, met by a suitable direction in a will or instrument of trust making provision for the payment of professional services only, or for payment of services of whatever kind the solicitor performs in the execution of his duties as executor or trustee: see, generally, hereon, *Garrow's Law of Trusts and Trustees*, 123-125, 386.

When the costs of a solicitor-trustee come to be taxed, certain considerations arise which were the subject of a recent judgment of Mr. Justice Callan in *Guardian Trust and Executors Company of New Zealand, Ltd. v. Veale*, [1936] N.Z.L.R. 530, in which that learned Judge has clearly set out the matters to be taken into consideration by the taxing officer and the correct principles to be applied by him. The judgment is one of particular interest to the profession.

The matter arose in *Veale's* case on a motion to review a taxation of costs by the Registrar of the Supreme Court at Auckland, who applied to the bill of costs of a solicitor-executor the principles enunciated by Prendergast, C.J., in *Arihi te Nahu v. Locke*, (1887) N.Z.L.R. 5 S.C. 408, 415, where the learned Chief Justice said, in part:

> "As to the question of the allowance of costs as between solicitor and client to be paid out of a fund in which others are interested, I am of opinion that where such costs are allowed, the taxing officer should take the scale in the Code as his guide, but that where other ordinary and necessary proceedings have been taken, not covered by the scale, then in a taxation between solicitor and client, some allowance should be made in respect of these, but the taxing officer should still so far as possible guide himself by the scale."

Mr. Justice Callan pointed out that it was important to consider the facts in *Arihi te Nahu v. Locke* and to ascertain what was there attempted; and, when that was done, it would be discovered that the attempt was made by a beneficiary to obtain out of a fund in which others were interested costs which were characterized by Prendergast, C.J., as "enormous" and "excessive." It would also be found that the costs there in question were not the costs of solicitors to trustees.

His Honour was of opinion that the principles enunciated by Prendergast, C.J., as cited above, have no application to the costs of solicitors to executors who have successfully propounded testamentary dispositions of which, despite attack, probate is granted in solemn form. Such executors are entitled to a full indemnity out of the trust estate against all costs and charges not improperly incurred: *In re Plant, Wild v. Plant*, [1926] P. 139.

In *Veale's* case, the motion to review taxation arose out of an action to prove in solemn form a will and two codicils. The codicils were attacked on the ground of alleged testamentary capacity. Mr. Bennett, of the firm of Messrs. Thwaites and Bennett, solicitors, was one of the executors propounding such codicils. His firm were solicitors to the executors, and he gave what the learned Judge referred to as "valuable evidence." The codicils were upheld; and there was an order for the taxation of the costs of all parties as between solicitor and client, and for payment of such taxed costs out of the estate.

The will contained the following clause, which will be recognized as a common form:*

> "12. Any executor or trustee for the time being hereof who is a solicitor or engaged in any profession or business shall be entitled to charge and be paid all usual professional or other charges for work or business done or transacted by him or his firm in proving my will or in the execution of or in connection with the trusts hereof including work or business not of a strictly professional nature which a trustee could do personally."

It was contended that, because of this clause, Mr. Bennett and his firm became persons interested in the common fund, and, therefore, the principles enunciated in *Arihi te Nahu* (*supra*) applied. This was controverted by the argument that the presence of the clause strengthened the position of the solicitors, whose right to costs rested upon it. On this point, the learned Judge said:

> "I cannot see that the existence of the clause puts the solicitors in any worse position than would be occupied by solicitors none of whom was an executor, but who had been employed in the litigation as the solicitors for the executors. The intention of the clause in the will was to put Mr. Bennett or his firm in the position of such solicitors so far as charges for solicitors' work are concerned; and, in my view, the clause is effective for that purpose. I do not agree with the contention that the presence of the clause puts Mr. Bennett or his firm in any better position, so far as charges for solicitors' work are concerned, than would be occupied by solicitors none of whom was an executor, but who had been employed as solicitors by the executors. But the clause entitles Mr. Bennett to charge for work not of a strictly professional nature, which a trustee could do personally."

But the most important part of the judgment under notice is the direction given by the learned Judge, in referring the matter back to the Registrar, upon the matters to be considered by a taxing officer when a bill of costs for work done by executors comes before him for taxation. He said, at p. 533,

> "I think it proper to say that, in determining whether or not costs have been not improperly incurred by the executors, it is necessary to consider what work they have authorized, and whether it was necessary to authorize it;

* *Goodall's Conveyancing in New Zealand*, 398, 404.

and where no special but only a general authority was given, whether the work done was necessary; and in all cases whether charges, whether fixed by agreement or left to the solicitors to fix, were reasonable.

"In determining these questions of necessity of work and reasonableness of charges, two factors that ought to be kept in mind are the difficulties to be coped with, and the interests at stake."

Regarding the case before him, His Honour added that, once it became clear that only the codicils were attacked, the value of the interests at stake became limited to what was dealt with in the codicils.

Summary of Recent Judgments.

SUPREME COURT
Gisborne.
1936.
May 25;
July 17
Reed, J.

LUNKEN
v.
GISBORNE FIRE BOARD AND OTHERS.

Prerogatives of the Crown—Practice—Discovery—Objection to Inspection—Documents in possession of Local Government Loans Board—Not State Documents—Allegation that such Documents Official and Confidential insufficient—Court's inherent Power of Examination when Document dealt with as a Class—Local Government Loans Board Act, 1926, ss. 7 and 10—Code of Civil Procedure, RR. 161, 164.

The Local Bodies Loans Board, constituted under the Local Government Loans Board Act, 1926, is not a servant of the Crown or a department of the executive Government; and information placed before the Board, at a formal meeting to consider and determine whether a loan should or should not be sanctioned, are not State documents; and no prerogative of the Crown extends to the Board.

Metropolitan Meat Industry Board v. Sheedy, [1927] A.C. 899, and **Robinson v. State of South Australia,** [1931] A.C. 704, applied.

The fact that the documents are alleged to be official and confidential is alone not a good reason for their non-production, and where objection is made as to their production as a class, the grounds of the claim for protection are insufficient.

Asiatic Petroleum Co., Ltd. v. Anglo-Persian Oil Co., Ltd., [1916] 1 K.B. 822, followed.

Where the documents are dealt with as a class, the Court has inherent power to examine the documents and to decide whether their production would be detrimental to the public interest; and, if there be submitted to the Court any of such documents which, after examination, the trial Judge is satisfied would be detrimental to the public interest, a supplementary order withdrawing such document or documents from inspection may be made.

Robinson v. State of South Australia (*supra*) referred to.

Counsel: Burnard and **Iles,** for the plaintiff; **Blair,** for the Gisborne Fire Board; **F. W. Nolan,** for the last-named defendants.

Solicitors: D. W. Iles, Gisborne, for the plaintiff; **Blair and Parker,** Gisborne, for the Gisborne Fire Board; **F. W. Nolan,** Gisborne, for the remaining defendants.

Case Annotation: *Metropolitan Meat Industry Board v. Sheedy,* E. & E. Digest, Supplement No. 11, title *Companies,* Vol. 11, p. 66, note *so*; *Robinson v. State of South Australia, Ibid.,* Vol. 11, title *Constitutional Law,* p. 54, note *j*; *Asiatic Petroleum Co. Ltd. v. Anglo-Persian Oil Co., Ltd.,* E. & E. Digest, Vol. 18, title *Discovery,* p. 166, para. 1202.

NOTE:—For the Local Government Loans Board Act, 1926, see THE PUBLIC ACTS OF NEW ZEALAND (REPRINT), 1908-1931, Vol. 5, p. 415.

COURT OF APPEAL
Wellington.
1936.
June 18; July 17.
Reed, A.J.C.
Smith, J.
Johnston, J.
Northcroft, J.

POOLEY v. POOLEY.

Divorce and Matrimonial Causes—Alimony and Maintenance—Permanent Maintenance—Husband Respondent making regular but diminishing Payments during Four Years—Wife's Petition for Permanent Maintenance Four Years after Decree Absolute—Whether within Reasonable Time—"On any decree"—Principles applicable—Divorce and Matrimonial Causes Act, 1928, s. 33 (1).

The wife's application for maintenance must be made within a reasonable time after the decree absolute. What is a reasonable time depends on all the circumstances of the case, the lapse of time alone not being a bar.

These principles, deducible from the English cases, are applicable in New Zealand.

Bradley v. Bradley, (1878) 3 P.D. 47, **Robertson v. Robertson and Favagrossa,** (1888) 8 P.D. 94, **Scott v. Scott,** [1921] P. 107, and **Legge v. Legge,** (1928) 45 T.L.R. 157, referred to.

The phrase, "on any decree," in s. 33 of the Divorce and Matrimonial Causes Act, 1928, which, in part, provides,—

(1) The Court may, if it thinks fit, on any decree for divorce . . . , order that the husband shall, to the satisfaction of the Court, secure to the wife such gross sum of money or annual sum of money for any term, not exceeding her life, as . . . the Court may deem reasonable. . . ,

means that the wife is required to make her application for maintenance within a time after the decree which is reasonable in all the circumstances.

So Held by the Court of Appeal (*Reed,* A.C.J., and *Smith* and *Johnston,* JJ., *Northcroft,* J., dissenting in regard to the application of the above-stated principles to the facts) dismissing an appeal from the judgment of *Fair,* J., reported *ante,* p. 125.

Counsel: James, for the appellant; **Singer,** for the respondent.

Solicitors: Sullivan and Winter, Auckland, for the respondent.

Case Annotation: *Bradley v. Bradley,* E. & E. Digest, Vol. 27, title *Husband and Wife,* p. 512, para. 5509; *Robertson v. Robertson and Favagrossa, ibid.,* p. 502, para. 5370; *Scott v. Scott, ibid.,* p. 510, para. 5486; *Legge v. Legge, ibid.,* Supplement No. 11, para. 5487A.

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

SUPREME COURT
Wanganui.
1936.
May 29; June 1.
Smith, J.

RE PATERSON (A DEBTOR), EX PARTE BOYACK AND OATES.

Bankruptcy—Act of Bankruptcy—Notice of Suspension of Payments—Debtor's Letter to Creditors that he would pay if given Time—Oral Statements of Debtor to Creditors' Meeting that he was unable to pay his Debts—Bankruptcy Act, 1908, ss. 26 (g), 40.

Debtor, in a circular letter sent to his creditors by his solicitors, proposed to pay his creditors out of a monthly sum to be given to his solicitors for distribution *pro rata.* In a subsequent letter to a creditor, debtor's solicitors said:

"Referring to our circular of 22nd October, we have been in communication with several of the creditors and have advised Mr. Paterson that the only satisfactory course is to call a meeting of creditors and put his position before them. We shall therefore be glad if you will attend a meeting at the Chamber of Commerce, Swanson Street, Auckland, on Thursday, 28th November, at 2.30 p.m.

"We have accurate cash books in connection with the business and a statement of the disposal of the purchase-

money of the business and will submit full details to the meeting. In the meantime we may say that Mr. Paterson and his father obviously underestimated the liabilities. It is Mr. Paterson's intention to pay everyone if given time."

At a meeting held on November 28, debtor stated to his creditors, assembled in response to debtor's formal notice, that he was unable to pay his debts.

C. P. Brown, for the debtor, to oppose; **C. F. Treadwell,** for the creditors, in support.

Held, 1. That the letter, quoted above, amounted to a notice that the debtor had suspended or was about to suspend payment of his debts in the ordinary course as a trader, and amounted to an act of bankruptcy.

In re Scott, ex parte Scott, [1896] 1 Q.B. 619, and **In re Dagnall, ex parte Soan and Morley,** [1896] 2 Q.B. 407, followed.

Clough v. Samuel, [1905] A.C. 442, and **In re Reimer, ex parte the Official Assignee,** (1896) 15 N.Z.L.R. 198, distinguished.

2. That the proper inference from the debtor's own statement to the meeting of his creditors was that he thereby gave notice to his creditors that he had suspended or was about to suspend payment of his debts; and such oral statement was sufficient to establish an act of bankruptcy.

Ex parte Nickoll, in re Walker, (1884) 13 Q.B.D. 469, followed.

3. That, in the circumstances, any discretion which might exist under s. 40 of the Bankruptcy Act, 1908, should not be exercised by the Court.

In re Alison, ex parte Boyd, [1930] N.Z.L.R. 871, and **Bond v. Morrah's Building, Ltd.,** [1931] G.L.R. 231, referred to.

Solicitors: C. P. & C. S. Brown, Wanganui, *for the debtor*; **Treadwell, Gordon, Treadwell, and Haggitt,** Wanganui, as agents for **Potts and Hodgson,** Opotiki, for the petitioning creditors.

Case Annotation: For *In re Scott, ex p. Scott,* see E. & E. Digest, Vol. 4, title *Bankruptcy*, p. 105, para. 943; *In re Dagnall, ex p. Soan and Morley, ibid.*, p. 107, para. 963; *Clough v. Samuel, ibid.*, p. 108, para. 971; and *Ex p. Nickoll, in re Walker, ibid.*, p. 105, para. 941.

NOTE:—For the Bankruptcy Act, 1908, see THE PUBLIC ACTS OF NEW ZEALAND (REPRINT), 1908-1931, Vol. 1, title *Bankruptcy*, p. 466.

SUPREME COURT
Hamilton.
1936.
June 10.
Fair, J.

IN RE CUNNINGHAM (DECEASED), CUNNINGHAM v. CUNNINGHAM AND OTHERS.

Family Protection—Application by Testator's Second Wife—Period during which Marriage Subsisted—Considerations moving the Court on such Applications—Family Protection Act, 1908, s. 33.

A factor of importance, in cases where there has been a second marriage of the testator, is the period during which his second wife had lived with him, as the moral claim of a second wife on his bounty and on his consideration is not so great as that of a widow who has lived with the testator for the whole of his married life; and the children are entitled to regard themselves as successors not only to their father's rights, but, in a measure, to their mother's rights. The position of the second wife must correspondingly be less strong in her claim for consideration either as against the testator himself or under the Family Protection Act, 1908, than the position of a first wife.

Counsel: McDiarmid, for the plaintiff; **W. J. King,** for the executors and certain defendants; **F. A. Swarbrick,** for the other defendants.

Solicitors: McDiarmid, Mears, and Gray, Hamilton, for the plaintiff; **Swarbrick and Swarbrick,** Hamilton, for the executors and certain defendants; **King and McCaw,** Hamilton, for the other defendants.

COURT OF ARBITRATION
Dunedin.
1936.
June 1, 12.
Page, J.

FRY v. THE KING.

Workers' Compensation—Liability for Compensation—Common Carrier employed in Carriage of Camp Requirements—Payment by the hour for Time Occupied in Carting—Not a "Worker"—Workers' Compensation Act, 1922, s. 2.

F. was a common carrier owning and operating a 2½ ton truck, which he provided and bore the expense of running and with which he did general carrying. He was employed in carrying work incidental to a military camp and for such work quoted a price per hour for the time occupied in his operations. A record of the hours during which his carrying operations continued was kept by the quartermaster, and at the conclusion of them a voucher was made out in his favour and a cheque was sent to him.

The contract was for the doing of the whole of the required carrying which F. could have delegated to another; and little detail control was exercised over the manner in which the carrying was to be done. He controlled the method of handling the goods, and of loading, handling, driving, and unloading his truck, and generally the manner of performing his duties under the contract.

Held, That the relationship was one of principal and independent contractor.

Solomon v. The King, [1934] N.Z.L.R. 1, followed.

Counsel: P. S. Anderson, *for the suppliant*; **F. B. Adams,** for the Crown.

Solicitors: Brent and Anderson, Dunedin, for the suppliant; **F. B. Adams,** Crown Solicitor, for the respondent.

SUPREME COURT
Auckland.
1936.
June 6, 10.
Callan, J.

BILTON v. GUARDIAN TRUST AND EXECUTORS COMPANY OF N.Z., LTD., AND ANOTHER.

Will—Devisees and Legatees—Widow to receive during her Lifetime "the sum of Ten pounds every calendar month"—Daughter to receive Residue of Income during Widow's Lifetime—Construction—Family Protection Order increasing Widow's Payments to "a total annuity of £250"—Statutory Reduction to "£169 per annum"—Whether Terms of Order or of Statutory Reduction affected Legal Position of Widow and Daughter.

Testator provided, *inter alia*, by his will as follows:

"6. My trustees shall out of the income of my residuary estate pay to my wife Letitia Harriett Parker during her life the sum of ten pounds every calendar month and as to the residue of the income of my residuary estate my trustees shall during the life of my said wife pay such residue to my said daughter.

"7. After the death of my said wife my trustees shall hold my residuary estate in trust for my said daughter absolutely."

By an order made in 1929, as the result of an application by the widow for further provision out of the estate, her gift under the will was increased to "a total annuity of £250." This was reduced to "£169 per annum" by s. 42 of the National Expenditure Adjustment Act, 1932.

Upon an originating summons for interpretation of the will,

A. M. Goulding, for the plaintiff; **R. N. Moody,** for the trustee; **Milne,** for the widow.

Held, 1. That, on construction of the two clauses above set out, the daughter is entitled at all times to any surplus income for the time being in the hands of the trustee, subject only to the withholding from her presently surplus income to a sufficient extent if at any time the trustee should foresee or reasonably anticipate that otherwise a deficiency of income to meet the widow's periodic payments would occur.

2. That the only alteration made by the order under the Family Protection Act, 1908, to the respective rights of the parties was to increase the monthly sums to which the widow

was entitled, and no change in the legal position was affected by the circumstances that, whereas the will referred only to a monthly sum, the order used the word "annuity" or referred to an annual sum payable by monthly instalments.

3. That the reduction by virtue of the National Expenditure Adjustment Act, 1932, of "£250 per annum payable to the widow" to "£169 per annum" merely altered the quantum of the monthly sum that the widow had the right to receive.

Solicitors: **Goulding, Rennie, Cox, and Cox,** Auckland, for the plaintiff; **R. N. Moody,** Auckland, for the trustee; and **Milne and Meek,** Auckland, for the widow.

SUPREME COURT
Wellington.
1936.
Mar. 27; Apr. 2; June 10.
Smith, J.

SAUNDERS v. PEET.

Indemnity—Relief—Claim by Shareholder for Indemnity in respect of Moneys paid and to be paid on Shares—Guarantee of Interest on such Moneys—Full Amount of Shares not paid to Liquidator before Action—Amount of Interest not determinable at Date of Hearing of such Action—Nature of Relief—Form of Order.

Plaintiff was indemnified by the two directors of a company, A. and P. (the defendant), against the amounts paid at their request by him as the holder of 1,000 £1 contributory preference shares until such time as such directors should "either transfer or otherwise dispose of the shares," so that the plaintiff's liability should come to an end. He was also guaranteed by them interest at the rate of 10 per cent. per annum on such moneys as he paid on the shares during the continuance of the indemnity concerning them.

The shares were not sold before the company went into voluntary liquidation, but some of the interest was paid on account by A. out of his own funds. The liquidator sued plaintiff for the balance of the capital owing on the shares. Plaintiff had not paid the liquidator in full, but he might be compelled to make further payments.

As A. was declared bankrupt, the plaintiff issued a writ against the other director, the defendant, P., claiming that he be indemnified by defendant in respect of moneys paid and to be paid by him as a shareholder; that defendant be ordered to pay him interest at the agreed rate on moneys paid by him as such shareholder, and that an order be made for accounts to be taken. At the time of the hearing, the amount of such interest could not be determined.

Sargent, for the plaintiff; **H. R. Cooper,** for the defendant.

Held, 1. That, as plaintiff was entitled to an indemnity for the moneys he had paid and was liable to pay on the shares, and the action having been brought after the moneys owing on the shares allotted to the plaintiff had been called up and sued for by the liquidator, plaintiff was entitled to an order against the defendant for the full amount of the shares.

Hughes-Hallett v. Indian Mammoth Gold Mines Co., (1882) 22 Ch.D. 561, applied.

Lacey v. Hill, Crowley's Claim, (1874) L.R. 18 Eq. 182, and **British Union and National Insurance Co. v. Rawson,** [1916] 2 Ch. 476, followed.

2. That, as to the amount of interest which was undetermined at the date of judgment, plaintiff was entitled to a declaration that the defendant was liable to pay him interest at the agreed rate on all moneys which the plaintiff had paid or should thereafter pay on the shares, less interest already paid to him on account; and, having regard to the foregoing declaration, an inquiry and account be directed before the Registrar to determine what amount was payable for interest up to the date of the last hearing of the present action.

Solicitors: **Slater, Sargent, and Connal,** Christchurch, for the plaintiff; **Logan and Williams,** Masterton, for the defendant.

Case Annotation: *Hughes-Hallett v. Indian Mammoth Gold Mines Co.*, E. & E. Digest, Vol. 26, p. 128, para. 913; *Lacey v. Hill, Crowley's Claim, ibid.*, p. 129, para. 922, and *British Union and National Insurance Co. v. Rawson, ibid.*, 231, para. 1802.

Death in Relation to the Law of Torts.

And the Rule in Baker v. Bolton.

By T. A. GRESSON, B.A.(Cantab.).

The question of death in relation to the law of Torts is of particular interest since the Law Reform (Miscellaneous Provisions) Act, 1934 (24 and 25 Geo. V, c. 41); and the recent majority decision of the English Court of Appeal in *Rose v. Ford*, [1936] 1 K.B. 90, has illustrated the difficulty of the problem.

As Professor P. H. Winfield has pointed out, two totally different questions arise when considering this problem:

1. If I have committed a tort against you and either of us dies, does your right of action survive?
2. If I cause your death, is that a tort either (*a*) against you, or (*b*) against persons who have an interest in the continuance of your life?

The first question assumes that a right of action in tort already exists, and the sole question is, "Does it survive?" The second question assumes nothing except that I have caused your death, and the question is, "Is this a tort?"

The first question is usually discussed under the maxim, *Actio personalis moritur cum persona*—liability for a personal tort is extinguished by the death of either party—and the second question under the rule in *Baker v. Bolton*, (1808) 1 Camp 493: "in a Civil Court the death of a human being cannot be complained of as an injury."

It is with the rule in *Baker v. Bolton* that this article is chiefly concerned. This rule had two entirely different applications:—

(1) It prevented the personal representatives of A. from suing B., who inflicted the injury which caused A.'s death. The Act of 1934 repealed this part of the rule.

(2) It prevented C., *e.g.*, employer, who had an interest in the continuance of A.'s life, *e.g.*, servant, from suing B. for inflicting the injury which caused A.'s death. The Act of 1934 has not altered this part of the rule.

The Law Reform (Miscellaneous Provisions) Act, 1934, does not make death a cause of action, but under s. 1 (1),

> "On the death of any person after the commencement of this Act all causes of action . . . vested in him shall survive . . . for the benefit of his estate."

And under s. 1 (2)

> "where a cause of action survives as aforesaid for the benefit of the estate of a deceased person, the damages recoverable for the benefit of the estate of that person . . .
>
> "(*c*) Where the death of that person has been caused by the act or omission which gives rise to the cause of action, shall be calculated without reference to any loss or gain to his estate consequent on his death."

The facts in *Rose v. Ford*, [1936] 1 K.B. 90, were as follows: Through the negligence of the defendant a young woman was severely injured in a motor-car collision on August 4, 1934, sustaining a compound fracture of her leg. On August 6 the leg was amputated, as gangrene had set in, and on August 8 she died as the result of her injuries, having been unconscious nearly all the four days. The plaintiff, the father of the deceased, brought an action against the defendant as

her Administrator claiming damages, *inter alia*, under the Law Reform (Miscellaneous Provisions) Act, 1934, for the benefit of her estate. The damages were claimed under three heads: (*a*) In respect of pain and suffering; (*b*) For the loss of the leg; and (*c*) For diminution of the deceased girl's expectation of life. The Court of Appeal held: 1. That the plaintiff as administrator of the deceased was entitled to recover damages for the benefit of her estate in respect of the claim for pain and suffering, but that such damages must be limited to the four days during which the deceased lived after the accident, and the Court fixed those damages at £20.

2. That the deceased would have been entitled to only nominal damages in respect of the loss of her leg, as she survived the amputation only for two days. The Court fixed the amount at forty shillings, and the plaintiff, as administrator of the estate, was entitled to recover that amount.

3. That the claim for damages allowed in *Flint v. Lovell*, [1935] 1 K.B. 354, for the loss of a reasonable expectation of life, was not founded on the mental suffering caused to the plaintiff by the shortening of his expectation of life. That damages are specifically recoverable for "loss of expectation of life."

4. That the plaintiff as administrator of the deceased was *not* entitled to claim damages for the diminution of her expectation of life, inasmuch as that would be to complain of the death of a human being in a Civil Court, per Slesser and Greene, L.JJ.

5. Per Greer, L.J. (dissenting), That the deceased acquired a cause of action for the diminution of her expectation of life which survived to her administrator under s. 1 of the Law Reform (Miscellaneous Provisions) Act, 1934, and he assessed the damages in respect of the loss of expectation of life in the sum of £1,000.

The net result of the elaborate provisions of the Law Reform (Miscellaneous Provisions) Act, 1934, was, therefore, to award the Administrator in this case the sum of £22. "So strange and remarkable a result can hardly have been intended by Parliament": 52 L.Q.R. 4. It is submitted that the true purpose of the Act was "to make it as expensive for a negligent driver to kill his victim as to injure him," and that the dissenting judgment of Greer, L.J., is correct.

The administrator, therefore, can recover damages under the Law Reform (Miscellaneous Provisions) Act, 1934, for "pain and suffering," suffered by someone else, *i.e.*, the deceased, but he cannot recover damages for the "loss of expectation of life" of the deceased, for:

1. That would be to complain in a Civil Court of the death of a human being as an injury (per Slesser, L.J., and Greene, L.J.);
2. Or, alternatively, per Slesser, L.J., "it would amount to awarding damages in respect of the felony of causing her death."
3. *Flint v. Lovell*, [1935] 1 K.B. 354, should not be extended beyond the actual decision, namely, that a *living* person may recover damages for the shortening of his expectation of life by a wrongful act of the defendant.

The rule in *Baker v. Bolton* is not absolute. Lord Campbell's Act, 1846, is a statutory exception to the rule: also *Jackson v. Watson and Sons*, [1909] 2 K.B. 193. The first application of the rule which formerly prevented the personal representatives of A. from suing B., who inflicted the injury which caused A.'s death, is expressly repealed by the Law Reform (Miscellaneous Provisions) Act, 1934, for all causes of action vested in the deceased at the time of his death survive for the benefit of his estate. Provided the cause of action has vested in the deceased, therefore, there is little doubt that the right of action survives for the benefit of his estate. This, it is submitted, does not amount to a complaint in a Civil Court of the death of a human being as an injury. It simply recognizes the fact that the right of action vested in the deceased passes under the Act of 1934 to his administrator. It is not a claim for damages for the death of the deceased. Greer, L.J., at p. 99, says, "It is to be observed that the causes of action vested in the deceased was not her death"; and Slesser, L.J., at p. 107, says: "It is clear to my mind that had deceased been killed instantly . . . no cause of action would have vested in her."

It is submitted that the second objection, per Slesser, L.J., that to award damages in this case would amount to an award of damages in respect of the felony of causing death, is not well-founded. Statute has overruled this principle in the Fatal Accidents Act, 1846; it is not unreasonable to hold that s. 1 of the Act of 1934 has the same effect. And in this case it is not clear that the conditions of criminal culpability, as laid down in *R. v. Bateman*, (1925) 41 T.L.R. 557, were satisfied. If there were no felony, this objection would fail. In any case, the right of action is merely *suspended* until the felon is prosecuted on the grounds of public policy: *Smith v. Selwyn*, [1914] 3 K.B. 98.

The third objection is that *Flint v. Lovell*, [1935] 1 K.B. 354, applies only where a *living* person, *i.e.*, alive at the trial, sues for damages for the shortening of his expectation of life. That no right of action vested in the deceased in this case as she was not alive at the date of the trial. It is respectfully submitted that if there is a right in the plaintiff at all it must vest in the plaintiff on the breach of the corresponding duty by the defendant, *i.e.*, when the act of negligence occurs. Greer, L.J., takes this view: "Such damages (under *Flint v. Lovell*, [1935] 1 K.B. 354) are damages which the defendant would have had to pay in respect of the cause of action vested, *i.e.*, already vested, in the deceased *at the time of her death*. The right to them in my judgment survives to her personal representatives by reason of the words of s. 1 of the Act of 1934": [1936] 1 K.B. 90, 101.

On October 28, 1935, leave was granted to the plaintiff to appeal to the House of Lords. It is to be hoped that the whole question of death, and its relation to tortious liability, and the effect of the Law Reform (Miscellaneous Provisions) Act, 1934, will be reviewed. It would seem that whether or not a right of action passes to the administrator under the Act of 1934 will depend on whether the death of the deceased was instantaneous, *i.e.*, whether deceased lived long enough for a right of action to vest in him. If he did, the right of action will pass to his administrator under the Act of 1934. If, on the other hand, death is instantaneous, no right of action will survive. Where is the doctor who is prepared to swear in the case of a motor accident that death was instantaneous? May not the deceased have lived for several seconds, perhaps for several minutes, and, if so, has a right of action vested in him? These are some of the questions awaiting the consideration of the House of Lords.

The difficulties that this case illustrates could be avoided in New Zealand if, now that similar legislation

(*Concluded on p. 207*).

Appropriation of Payments.

A Recent Application of the Rule.

A modern illustration of an old equitable rule occurred in *Leeson* v. *Leeson*, [1936] 2 All E.R. 133. The parties had formerly been married, but had separated under an oral agreement, whereby the plaintiff received £3 a week for the maintenance of herself and one child, Barry. The house in which they had lived was their joint property, and the defendant agreed in writing to buy the plaintiff's moiety for £300, payable at the rate of £2 a week. For two years the plaintiff therefore received £5 a week, being £3 under the separation agreement and £2 as the instalment for the house. On March 22, 1935, the plaintiff obtained a decree *nisi* for divorce, and she received her last £5 the following week. On and after April 2, 1935, she only received £3 a week, which she treated as the amount receivable under the separation agreement. This meant that the instalments for the house were in arrear, and the plaintiff therefore claimed £92 as the whole balance had become due on default being made. The defendant's explanation was that his liability under the separation agreement had ceased with the divorce. Therefore, with the first £3, he had enclosed a slip of paper, stating: "This is for the house and Barry.—Billy." The plaintiff denied having received this slip, and was not served with notice to produce it. His Honour Judge Drucquer nevertheless admitted secondary evidence of its contents, on the ground that it had been inadvertently destroyed by the plaintiff. Judgment was therefore given for the defendant (on the finding that he had kept up his payments for the house), but this decision was reversed by the Court of Appeal. The admission of secondary evidence was not supported, and Greer, L.J., held that the mere intention of the debtor, uncommunicated to the creditor, was insufficient to support an appropriation. Greene, L.J., and Talbot, J., agreed that judgment should be entered for the plaintiff, and the appeal was therefore allowed, with costs.

The Court approved the principle, with regard to inference of appropriation, laid down in *Parker* v. *Guinness*, (1910) 27 T.L.R. 129. The plaintiff claimed £12,000 as principal and interest on promissory notes, some of which were given by the defendant, and others by the defendant and a surety jointly. In an affidavit the defendant swore that he owed £4,474 on all the notes, and asked for the accounts to be reopened, on the ground that the interest charged was harsh and unconscionable. Leave to defend was given, on condition that the defendant paid into Court £4,474. Judgment was eventually given for the plaintiff, but a question arose as to the amount, according to whether the above sum had been paid into Court in respect of the defendant's own or the joint debt. On further consideration, Lush, J., stated in his judgment:

> "What is to be considered is this: Is the true inference . . . that the debtor paid the moneys generally on account, leaving the creditor to apply them as he thought fit, or is the true inference that he paid them on account of special portions of the debt, for the purpose and with a view to wipe these out of the account? His undisclosed intention so to do would, of course, not benefit him. It is what he did in fact, and not what he meant to do that is to be regarded."

It was held that the effect of the affidavit had been to appropriate the payment to the joint debt, and judgment was given accordingly.

The rule in *Clayton's* case *Devaynes* v. *Noble*, (1816), 1 Mer. 529, 572, 35 E.R. 767, 781, is that where distinct debts are owing, the debtor has the right to appropriate the money to any of the debts. If, however, the debtor does not make any appropriation at the time of payment, the right of appropriation devolves on the creditor.

The difficulty in the *Leeson* case was that, as pointed out by Greer, L.J., the learned County Court Judge, in his desire to be polite, had believed both parties. The result was that, as the defendant's appropriation was not in fact communicated, his undisclosed intention to appropriate was inoperative. The plaintiff's right of appropriation therefore arose, and she exercised it in a manner which left the defendant indebted to her in the amount claimed. This was unfortunate for the defendant, whose evidence was believed, but the judgment reversed was an illustration of the saying that hard cases make bad law.

Compulsory Land Registration.

Progress in England.

The annual report on the English Land Registry makes interesting reading in the light it throws on the progress being made in registration of title. In some districts, it is compulsory (County of London and Boroughs of Eastbourne and Hastings); and compulsion is prescribed for the County of Middlesex next year, and foreshadowed in Surrey and Sussex. In the rest of England and Wales, it is voluntary. Altogether there are now 643,000 separate titles on the Register of the estimated aggregate value of £483,000,000.

The report does not give any analysis of the nature of the properties which are put on the Register from non-compulsory areas. In the counties which rumour reports as being likely to be brought within the compulsory area, no doubt many titles are registered on the ground that registration is inevitable sooner or later, therefore the job had better be done sooner. In the other non-compulsory areas, the position is different. There the extension of compulsory registration is not imminent. Those who register probably fall largely into two groups. In the first class are a considerable number of solicitors who recommend the registration of titles which have become so entangled as to be unintelligible except to the more senior conveyancers of Lincoln's Inn, who show in regard thereto a pretty wit in disagreeing with each other. The second class of persons with whom registration is popular are builders who are developing and selling an estate in small lots. They find the Registry provides an efficient and inexpensive machinery for vesting, with the minimum of trouble and the maximum of speed, the small house in the small man.

In 1935, titles to land brought under the Act in London were issued within an average of 4·7 days, but it took an average of 3·4 days to register dealings. The Registry officials carry out searches for the public and profession with a guarantee of accuracy: if a mistake is made, the Department pays. In 1935 there were 38,441 such searches made, all of which, excepting twenty cases on Saturdays, were issued on the day of the receipt of the application therefor. A similar system prevails in the Land Charges Department and out of 846,379 searches made in 1935 there were only thirty-four instances in which substantive errors in the searches came to light. As a writer in the *Law Times* (London) said: "The solution of the difficulty which is inevitable, lies in the Registry paying up like a gentleman should a loss ever in fact result from a mistake."

The Pound in Contracts.

The Natural Function of Money.

By the Rev. J. A. Higgins.

The Adelaide Case Considered.

I.

(*Continued from p. 190.*)

It is submitted that Lord Atkin is also correct when he says: "We do not seem to get very far by describing the 'pound' as a unit of account." Surely, moreover, it is very difficult to agree with the statement in the article referred to, that "both on principle and, now, on authority, it is proper, when construing a contract expressed in pounds, to consider the pound only as a unit of account." Surely, still, Lord Atkin was correct: with the pound as a unit of account only we could not get along; and the *Adelaide* case was not, and could not have been, settled on the pound considered simply as a unit of account.

Lord Warrington of Clyffe, at p. 136, says:

> "The solution of the question depends upon the true construction and effect of the contract . . . having regard to the monetary conditions prevailing in England and Australia respectively."

But if contracts expressed in pounds are to be construed by considering the pound as a unit of account, no regard to monetary conditions is necessary, because the pound, as unit of account, is outside any conditions. It is the specific pound, the unit of value which is subject to conditions here and there.

Lord Tomlin, at the top of p. 146, says:

> ". . . the obligation to pay is an obligation to pay a sum of money expressed in a money of account common to the United Kingdom and Australia, and when the payment under the terms of the obligation has to be discharged in Australia it has to be made in what is legal tender in Australia for the sum in that common money of account."

I submit that this dictum of Lord Tomlin is equivalent to asserting that, though the money of account is common to England and Australia, it is, as common, practical only as a unit of account, and not practical for payment: and that, therefore, the money of account must be construed in terms of money of value—the unit of account must be rendered real in unit of value: the generic must be rendered specific.

It seems clear that money as a unit of account is merely numerical: and as such amounts to this:

A. owes B. 4.
But what 4 does A. owe B.?
A. owes B. £4.

If the symbol "£" symbolized only one reality, all would be well; but when "£" symbolizes several different realities, I submit that it is impossible to find a practical meaning for the statement: A. owes B. £4. Therefore the further question must be asked:

What £4 does A. owe B.?

Lord Tomlin answers: "four Australian pounds."

Lord Russell of Killowen, at p. 148, says: "The question is now how can the company discharge that indebtedness?"

I have already referred to Lord Russell's statement that a debt is not incurred in terms of currency; and it is noted here that he discovered that the problem was really one of pounds as units of value. I respectfully submit that, when debts are incurred in unit of account, it should be with reference of that unit of account to a unit of value or to a determined currency.

Lord Wright, at p. 155, says:

> "There falls to be decided in the present case which currency is intended on the true construction of the special resolution which altered the place at which dividends are declared and payable."

Exactly. For the problem was one of discharge of debt; and it is impossible to discharge a debt with the money that is only a unit of account: such money does not exist outside of legal instruments.

I beg permission to say that the notion that money at least may have a physical value leads to misunderstanding. Gold, as money, is a measure of value in exchange and nothing more. To say that the sovereign, the gold pound, has its own metallic value is to regard it as something other than money. But, in the case of a contract expressed in terms of the pound, performance will be in money, as money and not as metallic. That is: performance will be in money as in its natural function; and, for money to perform its natural function, one condition only is required, that it be legal tender.

It is a legality which makes money to be real practical money. (In crude societies, convention or custom decides money's practical character.) And with the pound difficulties arise because several legalities operate it as their medium: consequently contracts made simply in terms of the pound will be clear only as long as several legalities happen to agree in action, but will be obscure as often as they differ. As Lord Russell, at p. 148, says:

> "It is a question of discharging a debt incurred in terms of units of common account to more than one country, in the currency which is legal tender in the particular country in which the debt has to be paid."

In the result their Lordships were able correctly to give their decision for payment in Australian money because of the special resolution of the appellant company of January 19, 1921. The effect of this resolution was to decide that the generic pound, the unit of account, was to be specified as the Australian pound. Had this resolution not been passed, the specific pound for performance would have been the English.

Finally it is submitted that money has its natural function, and that only with reference to that function should it be used. The *Adelaide* case gives most high authority to the principle that all other uses to which money may be subject are relative to and are ultimately ruled by money's natural function as being a measure of value in exchange. I contend that, to solve questions arising in the *Adelaide* case, their Lordships were forced back upon the natural function of money, or, in other words, upon the essential quality of money as such. They were driven to regard money as it fundamentally is, as that which derives its perfection, its practical use, from the legal authority of a people.

(*Next issue: The Alliance Case Considered*).

"Vigilance is watching opportunity; tact and daring in seizing upon opportunity; force and persistence in crowding opportunity to its utmost of possible achievement—these are the martial virtues which must command success."

—Austin Phelps.

New Zealand Conveyancing.

By S. I. Goodall, LL.M.

Memorandum of Lease of Mines and Minerals with incidental Rights and Liberties of working (with respective Covenants and other Provisions relegated to Schedules to the Instrument).

(*Continued from p. 193.*)

Third Schedule.

Lessee's Covenants.

The Lessee doth hereby covenant with the Lessor :

1. To pay to the Lessor the several rents royalties and other payments hereby reserved at the times and in the manner hereinbefore appointed for payment of the same without any deduction whatsoever.

2. To pay all rates taxes charges and outgoings whatsoever imposed or charged upon the said land (including the minerals) for or during the said term or any part thereof forthwith upon the same becoming due and payable (except alone the Lessor's land-tax).

3. To work and manage the minerals according to the best and most approved methods of mining practised in similar mines in the district in which the said land is situated and so as to obtain in the best possible condition the greatest possible quantity of the minerals.

4. Not to do any act or suffer any omission which may be negligent or improper working of the minerals or whereby an undue proportion of slack coal shall be produced.

5. To observe and comply with throughout the course of working of the minerals the provisions of the Coal-mines Act 1925 or any Act passed in substitution therefor and any regulations thereunder and not to do any act or suffer any omission which shall be negligent or improper and which may occasion or tend to occasion the drowning of the minerals or overcharging the same with water or fouling the air thereof.

6. To observe and keep proper levels and efficiently to get all minerals fairly before the workmen and leave sufficient pillars for supporting and keeping open such ways and passages as shall be necessary for preserving proper communication from the entrances with the unworked minerals at the expiration of the tenancy.

7. To leave sufficient support under all the buildings on the surface lands as shall be necessary for their protection or safety.

8. To keep true and correct plans of the mines and all workings thereof and have the same at all times accessible to the Lessor for inspection and to permit the Lessor to take tracings or copies thereof as well as of all or any books of account kept in connection with the minerals to enable the Lessor to verify the quantity of minerals obtained and worked by the Lessee.

9. To fence with good and sufficient fences and gates such part or parts of the surface lands as the Lessee shall enter upon and use for the purpose of working the minerals.

10. To keep all buildings engines machinery railways tramways and roads pits shafts adits exits watercourses and aircourses now or at any time hereafter in or upon the said land in good and substantial repair and condition and working order except where the same shall cease to be required for the effectual working of the minerals and the Lessor shall have consented thereto in writing.

11. To pay to the Lessor or other person or persons entitled or interested in any building on the surface lands full compensation for any injury done thereto in consequence of the Lessee's neglecting to leave a sufficient support for such building.

12. To erect on the said land a suitable and accurate weighing machine in the place directed by and to the satisfaction of the Lessor and keep the same in good order and repair.

13. To cause all minerals won by the Lessee to be accurately weighed within days from the time of raising the same and cause to be kept a full and true record thereof including particulars of dates of weighing and quantities of minerals respectively and all other facts which may be relevant and proper.

14. To deliver to the Lessor with each of the payments of rents or royalties hereunder a full true and accurate statement accounting for such payment and if so required by the Lessor to cause such statement or account and any number of them from time to time to be verified by the statutory declaration of the proper officer or agent of the Lessee.

15. Not to assign under-let mortgage or part with possession of the minerals or any part thereof without the consent in writing of the Lessor first had and obtained.

16. To deliver up the minerals (except so far as the same shall have been worked out hereunder) at the end or sooner determination of this lease with all pits buildings railways tramways and fixed machinery used in connection therewith in good and substantial repair condition and working order.

17. To take all reasonable precautions against occurrence of fire in or upon the said land and to provide and keep in good working order and condition during the said term in a convenient place on the said land proper appliances for extinguishing fire.

18. Not to do any act or suffer any omission which may pollute the waters of any spring or stream upon the said land and to indemnify the Lessor against all claims for damage arising from the use or pollution by the Lessee of the waters of any such spring or stream.

Fourth Schedule.

Lessor's Covenant.

The Lessor doth hereby covenant with the Lessee as follows :

1. The Lessee paying the several rents and royalties hereby reserved and observing and performing all and singular the covenants restrictions and provisions herein on the Lessee's part contained or implied shall quietly hold and enjoy the minerals together with the said liberties powers and privileges during the said term without any interruption by the Lessor or any person rightfully claiming under or in trust for the Lessor.

(*To be concluded.*)

London Letter.

By Air Mail. Temple, London,
June 29, 1936.

My dear N.Z.,

There is no doubt about it, there is a slump at the English Bar. The new term started on the 9th of this month with a bare 200 cases set down for hearing in the King's Bench Division, including in that number non-jury cases in the New Procedure List as well as in the ordinary list, special and common jury cases, and cases in the Commercial list. Fortunately, the Summer Assizes have removed from London all but six or seven King's Bench Judges, or we should have Judges as well as members of the Bar wholly unemployed. As to the latter, one hears complaints on all sides of the absence of work. One can only consider it fortunate perhaps that this slump should have come upon us in the summer, when one is at least prevented from being bored by the numerous attractions of the season, such as the tennis championships at Wimbledon, the test match, and other cricket matches at Lords and at the Oval, and Henley regatta.

Lord Darling.—Shortly after I penned my last letter to you, the legal profession suffered the loss of one of the best known of its characters by the death of Lord Darling. Lord Darling, although eighty-six years of age, had been in good health until recently and had gone to stay near Lymington, when he was taken suddenly ill and died a few days later at the local hospital.

Lord Darling was the elder son of Charles Darling of Langham Hall, Essex, and, after being privately educated, commenced his career by practicing as a solicitor in Birmingham. In 1874, however, he was called to the Bar by the Inner Temple and joined the Oxford circuit. He took silk in 1885. He took a keen interest in politics and unsuccessfully contested South Hackney in the Conservative interest in that year, and again in the following year. In 1888, he was more successful and was elected to Parliament as member for Deptford—a seat which he held until he was appointed a Judge in 1897. His elevation to the Bench came as a surprise to most people, for he had never acquired a large practice, and many looked upon the appointment as a purely political one. This choice was nevertheless fully justified, for he was a good Judge. So great was his reputation for humour on the Bench that his judicial qualities have perhaps tended to be overlooked ; but he had a great understanding of human nature, which made him peculiarly fitted to try that type of case which most frequently came before him, namely, the ordinary non-jury action. At one time, during the War, he acted as Deputy Lord Chief Justice during the absence of Lord Reading in America, and he was rewarded by being appointed a Privy Councillor. He retired in 1923 and shortly afterwards was given a peerage. But that was by no means the end of his work, for he subsequently undertook many public duties, including the membership of more than one Royal Commission. He also found time for writing, and produced a number of books, of which the best known perhaps are *On the Oxford Circuit* and *Scintillae Juris*. He had a wide knowledge of literature and a great love of verse in particular, and many were the judgments he gave which were besprinkled with apt quotations from this or that poet. In the world of sport, Lord Darling was a good horseman and a leading member of the Pegasus Club. For many things, therefore, we shall remember him ; but doubtless, above all, we shall remember him for his unsurpassed wit, of which I always think one of the best examples is that story, recalled by the writer of his obituary article in the *Times*, of the counsel appearing before him on one occasion who had an unfortunate habit of dropping his "h's." Still more unfortunately the action concerned a horse, which the said counsel constantly referred to as an "'orse." Mr. Justice Darling (as he then was) stood this for some time. Then he turned to a witness who was being examined and asked "How high was this horse ?" "Thirteen hands," replied the witness. "Then," said Mr. Justice Darling to counsel, "do you mind if from now on we refer to this horse as a pony" ?

The Budget Leakage.—You have doubtless read about the report of the Tribunal which was appointed to inquire into the alleged leakage of Budget secrets. The report did not actually occasion surprise, but I think few people expected the Tribunal to reach such a definite conclusion. The Tribunal found unanimously, as you may remember, that there was an unauthorized disclosure by Mr. J. H. Thomas to Mr. Bates and Sir Alfred Butt, and that the latter two gentlemen made use of the information they thus obtained for the purposes of their private gain. The Tribunal did not, however, find that Mr. Thomas had any share in that gain or that he otherwise profited by giving the information. Some talk was heard subsequently to the issue of the Report as to whether criminal proceedings would be taken, under the Official Secrets Act or otherwise, against any of the parties concerned ; and the question was in fact considered by the Attorney-General, but the latter, to the relief of most people, declined to take any action. Most people felt, I think, that it would be rather like hitting a man when he is down, and were only too glad to allow the whole matter to be buried in oblivion as soon as possible. The only thing left now seems to be a general feeling of sympathy for Mr. Thomas.

Cases of the Month.—I have already mentioned that this term only began on the 9th of this month and that since then most of the King's Bench Judges have been out of town, so that it is scarcely surprising that not many cases of interest have come before the Courts this month. I will, however, refer to two decisions of the Court of Appeal which may interest you. One was a case of libel, where the secretary of a hospital furnished information to a newspaper, the editor of which subsequently published it in a libellous form, and the secretary found himself one of the defendants to a libel action. Judgment was given against him as well as against the newspaper in the Court of first instance ; but the Court of Appeal reversed that decision so far as he was concerned, saying that a man should not be held liable for an innocent statement made to a newspaper where that statement is subsequently made the basis of a libellous paragraph by the newspaper.

The other decision related to motor-car insurance. The plaintiff in an action consequent upon a collision between two motor-cars included in his claim for damages a claim for a sum which had already been paid to him by his insurance company for damage to his own car. The payment had been made by the company under what we call "knock for knock" agreement with the defendant's insurance company. The plaintiff's insurance company had told the plaintiff that they did not wish him to sue for this sum, but he nevertheless persisted in including it in his claim. The defendants contended that where a person has a right to recover damages as a trustee for another and the

cestui que trust makes it clear that he does not want that right exercised, there is no cause of action; but the Court of Appeal, affirming the judgment of the County Court Judge, held that the plaintiff was entitled to recover.

Judges' Sunday.—It is not generally known that at St. Paul's Cathedral the first Sunday after Trinity is known as Judges' Sunday, when, according to ancient custom (the origin of which I do not know), the Judges of the High Court attend service in the Cathedral. This year the service was held a fortnight ago, and the Master of the Rolls and other Judges attended after being first entertained at a luncheon given by the Lord Mayor of London at the Mansion House.

The Bar Point-to-Point.—The Pegasus Club held their annual point-to-point races over the usual course on April 4 last, and provided an excellent afternoon's entertainment. Fortunately the weather was fine, though cold, and the racing was as good as has been seen at this meeting for some years. There was a larger entry than usual in both the Bar Heavy-Weight and Bar Light-Weight races, while two races ended in dead heats, and at least one other provided a very close finish. Many members of the Bench and of the Bar attended.

The Honest Pickpocket.—Sir Chartres Biron, who was Chief Metropolitan Magistrate from 1920 to 1933, tells many amusing anecdotes in his reminiscences recently published under the title of *Without Prejudice*. One of these concerns a pickpocket who asked for the services of Mr. Biron (as he then was) in his defence. He was interviewed by the clerk and told that he must produce the requisite fee as Mr. Biron never went into Court without having his fee paid. The pickpocket had no money, but said that he would raise the necessary amount and come with it in a few days. To the surprise of the clerk he returned in under half an hour together with the necessary cash. The clerk expressed his astonishment that the pickpocket had raised the amount so quickly, whereat the pickpocket remarked "Oh, I had a bit of luck in the Strand."

Yours ever,
H. A. P.

Wellington Law Ball.

Citation of Parties to New Award.

The Wellington Law Students' Society and Victoria University Law Faculty Club have formed a Union for the purpose of furthering the romantic and convivial interests of the profession. All employers and employees have been cited as parties to the Amusements Award, and are ordered to attend before Rudolph's Commission of Musical Assessors at 8.30 o'clock on Friday, August 21, in the St. Francis Hall, Hill Street. Various forms of procedure are to be adopted, including the Trustee's Trot, Criminals' Creep, Matrimonial Meander, and Arbitrators' Amble. A levy of 4s. 6d. per head has been imposed, and, if there are any profits after the basic rate of enjoyment has been raised to the highest possible standard, then the Victoria University Building Fund will benefit from its affiliation with the aid Union.

New Zealand Law Society.

Council Meeting.

(*Continued from p. 194.*)

Scale of Costs for Local Body Loans.—The following report was received:—

"At the last meeting of the Council of the Society a Committee consisting of Messrs. Stanton, Rogerson, and G. Watson, was set up to consider the question of the scale of charges in connection with Local Body Loans.

We are of the opinion that it is impossible to establish a rigid scale applicable in all circumstances to all classes of Local Body Loans, as the nature and extent of the work varies considerably in different cases. We are further of the opinion, however, that the scale attached hereto may usefully be treated as some guide in the matter of arriving at a fair and reasonable charge under average circumstances."

Copy of Scale attached.

LOCAL BODIES' LOANS.

Amount of Loan. £	Suggested Scale. £ s. d.	Amount of Loan. £	Suggested Scale. £ s. d.
1,000 ..	5 5 0	90,000 ..	125 0 0
2,000 ..	8 15 0	95,000 ..	125 0 0
2,500 ..	10 10 0	100,000 ..	125 0 0
3,000 ..	12 5 0	105,000 ..	131 5 0
4,000 ..	15 15 0	110,000 ..	137 10 0
5,000 ..	19 5 0	115,000 ..	143 15 0
6,000 ..	20 11 3	120,000 ..	150 0 0
7,000 ..	21 17 6	125,000 ..	156 5 0
8,000 ..	23 3 9	130,000 ..	162 10 0
9,000 ..	24 10 0	135,000 ..	168 15 0
10,000 ..	25 16 3	140,000 ..	175 0 0
11,000 ..	27 2 6	145,000 ..	181 5 0
12,000 ..	28 8 9	150,000 ..	187 10 0
13,000 ..	29 15 0	155,000 ..	193 15 0
14,000 ..	31 1 3	160,000 ..	200 0 0
15,000 ..	32 7 6	165,000 ..	206 5 0
16,000 ..	33 13 9	170,000 ..	212 10 0
17,000 ..	35 0 0	175,000 ..	218 15 0
18,000 ..	36 6 3	180,000 ..	225 0 0
19,000 ..	37 12 6	185,000 ..	231 5 0
20,000 ..	38 18 9	190,000 ..	237 10 0
25,000 ..	45 10 0	195,000 ..	243 15 0
30,000 ..	52 1 3	200,000 ..	250 0 0
35,000 ..	58 12 6	205,000 ..	256 5 0
40,000 ..	65 3 9	210,000 ..	262 10 0
45,000 ..	71 15 0	215,000 ..	268 15 0
50,000 ..	78 6 3	220,000 ..	275 0 0
55,000 ..	84 17 6	225,000 ..	281 5 0
60,000 ..	91 8 9	230,000 ..	287 10 0
65,000 ..	98 0 0	235,000 ..	293 15 0
70,000 ..	104 11 3	240,000 ..	300 0 0
75,000 ..	111 2 6	245,000 ..	306 5 0
80,000 ..	117 13 9	250,000 ..	312 10 0
85,000 ..	124 5 0		

Mr. Watson mentioned that the suggested Scale was much lower than the statutory charges made by the Public Trustee, being less than half in some cases.

On the motion of Mr. Strang, the Report and Scale were adopted.

Council of Law Reporting.—The following letter was received from the Council of Law Reporting:—

Wellington,
18th May, 1936.

"I have to inform you that the Council of Law Reporting at a meeting held on the 15th instant, after receiving a deputation from your Society consisting of Messrs. R. A. Howie and G. G. G. Watson, discussed thoroughly the question of the future of this Council, and finally decided as follows:—

'That this Council should put before the New Zealand Law Society a scheme for the incorporation of the Council of Law Reporting as a separate statutory body, consisting of: two Judges (if prepared to act), the Attorney-General, the Solicitor-General, the President of the New Zealand Law Society, and four members to be nominated by the New Zealand Law Society, such nominated members to hold office for not less than four years. The new incorporated

Council should use its funds for purposes of Law Reporting and, if so authorised by a three-fourths majority, should have power to make grants for the purpose of assisting the New Zealand or District Law Societies.' "

After discussion, the following motion was carried unanimously :—

" That the proposal of the Council of Law Reporting is not acceptable to this Society, and that that Council should be asked to meet the Society at its next meeting as a body to settle the matter."

Law Practitioners Amendment, 1935, s. 45.—(*a*) **Rules concerning applications for admission** : The Secretary reported that the following Rule had been gazetted on March 19, 1936, and a copy had been sent to all practitioners :—

" 1. In addition to giving the notice of intention provided for by Regulation XVIII (4) of the rules made on the 23rd day of April, 1926, every person applying for admission as a barrister on any of the grounds set out in paragraph (*e*) of subsection (2) of section 4 of the Law Practitioners Act, 1931, as amended by the Law Practitioners Amendment Act, 1935, shall cause to be served on the proper District Law Society not less than twenty-one days before the date when the motion is to be heard a copy of his notice of motion for admission and of every affidavit filed in support thereof."

" 2. The proper District Law Society to be served under this regulation shall be the Law Society within the district of which is situated the place where the notice of motion for admission is intended to be heard."

(*b*) **Standard necessary for admissions under the five years' qualification.**—The following report was received :—

" Pursuant to the resolution of the Council of the 20th March last, we have considered the standard which, in our opinion, the Council should expect applicants for admission as barristers to achieve, who, being officers employed in Departments of State, make application for admission under s. 4 of the Law Practitioners Act, 1931, as amended by s. 45 of the amending Act of 1935.

" We find it difficult to define any precise standard by which all such applicants may be judged. In general terms, however, we think that no such applicant should be admitted unless his experience over the prescribed period has been sufficiently wide to ensure his possession of a reasonable knowledge of legal principles, and unless, in addition, his work has, during the period, been of such a nature as to have required him to assume responsibility for advice upon and the determination of important legal questions of a general character. These requirements will, we apprehend, establish a standard of knowledge, experience, and attainment reasonably comparable with that which is to be expected in a Managing Clerk, who has occupied his position as Managing Clerk for not less than five years."

After Mr. A. H. Johnstone had stated that what the Committee sought was to ensure that candidates should have had breadth of experience, with considerable general practice, and should have assumed responsibility for their work, it was resolved on the motion of the President that the Report should be adopted and the Committee thanked.

Resolutions referred to the Council by the Legal Conference :—

(*a*) *Amendments to Workers' Compensation Act.*

" That this Conference requests the New Zealand Law Society to recommend to the Government that any amendments to the Workers' Compensation Act should include the following provisions :—

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

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

(3) That in every case where the employer provides the means of conveying workers to and from work, compensation should be payable in respect of accidents happening to workers in transit.

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

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

(*b*) *Proper Attire of Barristers at the Outer Bar.*

" That it is desirable that the proper attire of barristers at the outer Bar be defined by the New Zealand Law Society."

(*c*) *Improvement of the Law of Real Property in New Zealand.*

" That this Conference recommends to the New Zealand Law Society that early consideration be given to the possible methods of improving the Law of Real Property, in New Zealand and to facilitate its doing so that the paper read to this Conference by Mr. C. H. Weston, K.C., be brought to the knowledge of the New Zealand Law Society."

(*d*) *Extension of Land Transfer Assurance Fund to cover Claims Due to Forgery.*

" That it be a recommendation to the New Zealand Law Society that it should consider whether the provisions governing the Land Transfer Assurance Fund should be extended to satisfy claims for loss due to forgery of Land Transfer documents."

(*e*) *Date and Venue of Next Legal Conference.*

" That the next Dominion Legal Conference be held in 1938 and that the venue be decided by the Council of the New Zealand Law Society."

The President referred to the Law Reform Bill, which had just been introduced by the Hon. Mr. Mason, who desired the opinion of the District Law Societies on its provisions. Mr. O'Leary suggested that the various Societies should consider the Bill and forward their views immediately to the Secretary, and the Standing Committee would then appear before the Statutes Revision Committee.

A motion was carried that all matters dealing with Law Reform should be referred to the Standing Committee to be dealt with as they should think proper, these matters to include resolutions (*a*), (*c*), and (*d*) above, and the next item (*infra*).

(*b*) It was decided to ask the General Council of the Bar in England for a ruling on the proper attire of Barristers at the Outer Bar.

(*c*) The question of the date and venue of the next Legal Conference was held over until the last meeting of the Council this year.

Conveyancing Charges : Request for Ruling.—The Taranaki Society asked for a ruling on the point raised in the following letter :—

" We shall be obliged if you will advise the Scale charge for the preparation and execution of a Satisfaction of an Instrument by way of Security and the release of a collateral Memorandum of Mortgage securing (originally) £450, and attendance settling. The Instrument by Way of Security is probably the principal security. On behalf of the mortgagor we contend that the Scale charge is £1/11/6 plus half of £1/11/6, and that such view is supported by paragraph K (b) of the Conveyancing Scale. Messrs ——— ——— acting for the mortgagee have claimed, and have been paid under protest, £3/3/-."

It was decided to refer the question to Messrs. J. B. Johnston and L. K. Munro for a report.

(*To be continued*).

Death in Relation to the Law of Torts.

(*Concluded from p. 201*).

has been introduced here, a section corresponding to s. 4 of the Law Reform (Miscellaneous Provisions) Act, 1934, were included to provide expressly for the case where the unfortunate plaintiff is killed outright. It is to be sincerely hoped that such a section will be included in the Bill now before Parliament, for otherwise we shall immediately become involved in the same difficulties as faced the English Court of Appeal in *Rose v. Ford.*

Obituary.

Mr. William Macalister, Invercargill.

In the death of Mr. William Macalister, of the firm of Messrs. Macalister Bros., of Invercargill, the Southland Bar loses the one whom it had long considered its leader, and his city mourns one of its most respected citizens. As the *Southland Times*, in a leading article on the day following his death, said: "His was a full and useful life, guided by high purpose, and animated by a high sense of duty. Rarely has the injunction, *Carpe diem!* been more sedulously obeyed through more than three score years and ten, and his influence, like his works, will survive him."

The deceased gentleman commenced work at the age of fourteen years in a commercial firm, and, with the assistance of tutors, studied for matriculation after the conclusion of his twelve-hour working day. Later, on winning a Church bursary, he attended lectures at the University of Otago with a divinity course in view; but he entered the teaching profession and rose to be headmaster of Wairio School from 1885 until the beginning of 1889, when he joined the staff of the Southland Boys' High School. He obtained his B.A. and, later, his LL.B. degrees while still in the teaching profession.

In 1896, the late Mr. Macalister joined his elder brother, Mr. John Macalister, in practice in Invercargill, and in 1909 he was appointed Crown Solicitor, a position which he held until 1925, when he resigned and his son, Mr. Horace Macalister, succeeded him. For some time he was president of the Southland District Law Society.

The late Mr. Macalister was a member of the Southland Education Board from 1897 to 1914, and its chairman in 1899 and 1905. He was a member of the High Schools Board for seventeen years, and its chairman twice. For a period he was a member of the Council of the University of Otago. In local-body affairs, Mr. Macalister played a long and distinguished part, as member of the Invercargill Borough Council, the Greater Invercargill Association, and other public activities. As solicitor to the Southland County, he drafted the Southland Land Drainage Bill, and he was the draftsman of the Electric-power Boards Bill, now on the statute-book. He was the foundation president of the Invercargill Rotary Club, a foundation member of the Southland League, and a foundation member of the Society for the Study of Economics, and of the Southland Branch of the League of Nations Union, in all of which he took an active part until laid aside by his last illness.

Mr. Macalister is survived by Mrs. Macalister and a family of one daughter and five sons, who include Messrs. H. J. Macalister and A. B. Macalister, who are members of their late father's firm.

Sorrow of the Local Bar.

In the Supreme Court, Invercargill, on July 30, many tributes were paid to the memory of the late Mr. William Macalister. His Honour, Mr. Justice Kennedy, presided and in addition to the local Magistrate (Mr. W. H. Freeman, S.M.), members of the Southland Bar, the Mayor of Invercargill (Mr. John Miller), the Town Clerk (Mr. W. F. Sturman), many representative citizens were present.

"Since the last session in Invercargill of this Honourable Court, one of the senior members of the local Bar has gone to his last rest. I refer to the late Mr. William Macalister," said Mr. F. G. O'Beirne, president of the Southland District Law Society, addressing His Honour, "It is my privilege supported by other members on behalf of the Southland District Law Society to now pay tribute to his memory." Mr. O'Beirne then traced Mr. Macalister's career in his profession and as a public-spirited citizen, summarizing his activities in the interests of education, local Government, and the various other bodies that have made for the advancement and progress of Invercargill and Southland. "In every one of these interests his energy and efforts made for the firm establishment of these bodies, all of which had their beginning in recent years, and have proved most successful," concluded Mr. O'Beirne. "Such is the monument that our late fellow-practitioner has left us. His life was a full one. To his widow, sons, and daughter, and other relatives, who are left to mourn their loss we respectfully offer our sincere sympathy and trust that their sorrow may be tempered by the successful achievement by the deceased of the many activities undertaken by him in the interest of the district, and by the knowledge that throughout a long period of years he has always been held in the highest esteem by his fellow-practitioners."

Mr. W. O. Stout said he first met Mr. Macalister thirty-eight years ago, and the intervening years had served to justify and fortify the high opinions then formed.

He had almost a life-time of friendship with the late Mr. Macalister, said Mr. C. S. Longuet, and he had always held him in the highest esteem.

Mr. Eustace Russell joined with the previous speakers in paying tribute to their late fellow-practitioner. In addition to a busy legal life he had many other activities, said the speaker, who referred to his connection with Mr. Macalister as a co-director of the *Southland Times*.

Mr. Justice Kennedy's Eloquent Tribute.

"Gentlemen, a loss, such as has befallen the Bar in Southland by the death of William Macalister, is felt also by the Bench," said His Honour, Mr. Justice Kennedy. "It was in this city many years ago that I first met him. While I was at the Bar I knew him and enjoyed his friendship, and in the years that I have been presiding in this Court I have always been conscious that a practitioner of rare experience and of great kindness and goodwill to his fellows was watching the part taken by them in the administration of justice and in the transaction of public business.

"He was, as you have told me, a great figure in the law in this city. Men, such as he was, are much missed and are not easily replaced. They leave behind them an honourable tradition and in the years that follow they are referred to. He was always, as we know, an idealist but, in him, there was happily blended a singular capacity for action and for doing things. He was often, as you have said, a pioneer in thought but, as his record of public service shows, he had an equal capacity to accomplish. Exactness, thoroughness, and care marked every stage of the work in which he was engaged, and outstanding energy went hand in hand with fairness and a keen sense of justice. His death, to our great regret, sensibly diminishes the ranks of the senior men.

"To recount his work as a barrister and solicitor is to retail important events in the history of this province; for his activities extended over fifty years and he took an important part in its development. I imagine that he was justly proud of his draftsmanship

of the Power Board Act for Southland which was adopted as the form for the Power Boards' legislation for New Zealand. The Southland Land Drainage Act was the fruit of legal skill and equal practical knowledge. He was not content to theorise about the problems of penal administration but, as I know from my own visits to the Borstal Institution of this city, he threw himself into the beneficent work of the Borstal Committee for the redemption and education of young men.

"The law remained always his mistress, and throughout his life he retained his interest in its administration but, as so often happens with men so trained, he combined that interest with a devotion to education which was passionate and lifelong. He had almost a missionary zeal for the spread of knowledge. He played a part in Southland which, upon a larger stage, the great leaders of the profession have always wished to play. I know as well as you do what his work was and one recalls his inauguration of technical instruction in Invercargill, his membership of the Southland Education Board, his chairmanship of the Southland High Schools' Board, and his membership of the Council of his own University.

"I am well aware that, when he occupied an office, he did not merely hold it but amplified it and used it to accomplish something. I remember, during this last year, when the hand of fate lay heavy upon him, his enthusiasm for the spread of economic studies and for the settlement of international problems through the agency and medium of the League of Nations. It is not possible to refer to all the activities of a life rich in service to this city and province. His death deprives the province of a practitioner of great and varied usefulness. The Court loses the services of an honourable solicitor and a very able, sincere, and just advocate. We all lose an old and trusted friend.

"He has had a long life and, the richer by his memory, we may say of his death after so much accomplishment:

'Nothing is here for tears, nothing to wail
Or knock the breast: No weakness, no contempt,
Dispraise or blame; nothing but well and fair.'"

Mr. A. G. Bennett, Manaia.

A long career of service to local bodies, sports clubs, and social organizations in the Manaia and Waimate Plains district was ended with the recent death, at Manaia, of Mr. Albert Gibbard Bennett, aged 66.

Mr. Bennett was born at Auckland in 1870 and entered the legal profession in 1885. He was admitted a solicitor in 1894, and in that year he commenced practice at Manaia, where he remained until his death. He was for many years a member of the Manaia Town Board and was one of the original shareholders in the Hawera County Electricity Company.

Mr. Bennett was keenly interested in the work of the Waimate Horticultural Society, of which he was for a period president, and he was for a time treasurer of the Manaia Presbyterian Church.

Apart from professional and local-body activities, Mr. Bennett was keenly interested in all branches of sport, particularly in the welfare of the Waimate Rugby Football Club, of which he was patron at the time of his death. His interest in the social welfare of the town has a lasting monument in the building he presented as a women's rest-room.

Mr. Bennett is survived by Mrs. Bennett and one son, Mr. R. L. Bennett, who was recently admitted as barrister and solicitor.

Wellington Law Clerks' Union.

First General Meeting.

Rules were adopted and officers were elected on July 30 at a general meeting of members of the newly-formed Wellington Legal Employees' Union, which is to cover Wellington, Wairarapa, Manawatu, Hawke's Bay, and Wanganui.

According to a report placed before the meeting, similar unions have been formed or are being formed in Auckland, Canterbury, Otago, Taranaki, Marlborough, and Nelson.

About sixty law clerks of both sexes attended the meeting, including delegates from Hawke's Bay, Palmerston North, Wanganui, Feilding, and Marton.

The provisional committee reported on the steps leading up to the formation of the union. When the Wellington Clerical Workers' Union was formed the question of whether legal employees would have to join it was discussed with the Minister of Labour (the Hon. H. T. Armstrong). The Minister advised the formation of a union whether or not legal employees intended to apply for an award or industrial agreement. A meeting decided to apply for registration as a union and the certificate of registration was granted on July 20. The union would embrace legal employees in Wellington and Hawke's Bay. Provision had been made for the formation of branches, but none had yet been formed. The committee felt that there was no reason why satisfactory arrangements could not be made between employers and employees concerning conditions of employment, salaries to be paid, and other matters, and at the same time maintain the good relations existing between employers and employees in the legal profession.

The rules adopted provide that membership shall be open to any person employed or about to be employed in the office of any barrister or solicitor or any firm of barristers and solicitors. The object of the union, according to the rules, is to "further the industrial interests of legal employees." The annual subscription is fixed at 2s. 6d.; but the executive is empowered to make additional levies to further the purposes of the union on the authority of a ballot of members. Provision is also made for the formation of branches, each to have a branch secretary and a branch committee, a chairman, and five others, the branches to have the usual powers of branches.

Discussion of a motion authorizing the committee to enter into negotiations with employers concerning an agreement was taken partly in committee. The committee was authorized to enter into negotiations, ratification of any proposed agreement to be accomplished through a special general meeting and a postal ballot.

Mr. J. C. White, the chairman, explained that it was not proposed to seek an industrial agreement.

The following officers were elected: President, Mr. R. C. Christie; vice-president, Mr. I. D. Campbell; secretary, Mr. J. C. White; treasurer, Mr. Trevor Price; committee, Messrs. C. N. Armstrong and H. J. Russell (representing the provincial districts), and Miss L. Niven; auditor, Mr. R. C. Bradshaw.

It was decided to hold a special meeting to discuss the proposed amendments to the rules, including provision for postal ballots and giving branches representation on the committee.

Legal Literature.

Fraser on Libel and Slander (Law and Practice). Seventh Edition by G. O. Slade, M.A., and Neville Faulks, M.A., LL.B., Barristers-at-Law. Pp. lxi–371, and Index. London: Butterworth and Co. (Publishers), Ltd.

In his preface to this welcome new edition of a tried and trusty text-book, Mr. Slade tells that he feels privileged to have been entrusted with the preparation of it by reason of his personal association with the late Sir Hugh Fraser for a number of years prior to his elevation to the Bench. He refers to Mr. Justice Fraser's "Unique knowledge of this branch of the law," a tribute with which all who have to do with it will wish to associate themselves.

It is a difficult and troublesome branch of law. The English law of libel is a fearsome thing, a terror not only to the scurrilous but to the righteous. It is well to punish the saying of some things which ought not to be said, but we have arrived at a point at which many things which ought to be said are withheld for fear of consequences. The restraint is not only the fear of damages; even a successful defendant comes out of a libel action scathed. Mr. Slade knows: he speaks out in his preface of the "uncertainty arising from the present complicated state of the law and the disproportionate penalties which juries are prone to inflict upon an unfortunate defendant," and warns him, in advance, that wisdom lies in observing five things with care,

> "To whom you speak, of whom you speak,
> And how, and when, and where."

The author especially envies the days when a Dickens could use odd names with impunity, holding their fictional possessors up to ridicule without regard to their real owners. He ought, at least, to have some liberty restored to him to comment adversely upon conduct he reprobates without fear of being ruined. We are entitled to be interested in one another and to talk of one another without malice; it is an axiom in journalism that people are more interested in people than in things or places. There must be some happy medium between England and the United States in this regard, and law-reformers ought to try to find it.

There have been numerous changes in the law and practice since publication of the last edition. They have, sensibly, been worked in without impairment of the original structure of the work. Such comprehensive changes as are due to the Law Reform (Married Women and Tortfeasors) Act, 1935, necessarily lead to large changes in the text. It is needless to say that these are adequately and succinctly dealt with.

The work is thoroughly up to date and complete—even the question of whether "sky-writing," if defamatory, would be libel or slander has not escaped the editor's notice.

Practitioners will appreciate the handy arrangement of the work, which appears in three parts: Civil Actions, Criminal Proceedings, and the Conduct of a Civil Action relating to Defamation, and a comprehensive set of precedents some forty-eight in all, with forms of apology, pleadings, and interlocutory proceedings.

Practice Precedents.

The Declaratory Judgments Act, 1908.

Originating Summons to determine certain Questions arising out of Construction of Lease.

Section 3 of the Declaratory Judgments Act, 1908, states, *inter alia*, that any person may apply to the Supreme Court for a declaratory order determining any question as to the construction or validity of any statute, regulation, by-law, deed, will, document of title, agreement, memorandum, articles or instrument or of any part thereof. By s. 10 the jurisdiction of the Supreme Court to give or make a declaratory judgment or order is discretionary, and the Court may, on any grounds which it deems sufficient, refuse to give or make any such judgment or order. Section 5 provides that the Supreme Court or a Judge thereof may direct service of any such originating summons on such persons as the said Court or Judge thinks fit, and such direction may be given at the time when the summons is issued or subsequently. The procedure is by way of originating summons, and, under s. 6 the Rules under the Judicature Act, 1908, relating to originating summonses apply so that a motion for directions is filed when the originating summons is sealed.

There should be attached to the motion for directions a memorandum suggesting the persons who should be served. It should be clearly shown that these persons are the only ones that are affected by the proceedings. It is emphasised that a sufficient memorandum not only helps the practitioner, but it is of great assistance to His Honour the Judge in dealing with any motion.

The Order on the Originating Summons, is drawn as a Court Order, and, in practice, R. 412 of the Code of Civil Procedure is applied, and the Order is submitted to the proper Court officer for approval.

The following forms provide the procedure to be adopted where it is desired to ask for an order determining the construction of certain words in a lease and for an order determining whether the lease expires on a certain day.

No form of authority to issue the summons pursuant to R. 545 of the Code of Civil Procedure is submitted here, as it is a simple form.

ORIGINATING SUMMONS.

IN THE SUPREME COURT OF NEW ZEALAND,
.....District. O.S. .
.....Registry.

IN THE MATTER of the Declaratory Judgments Act 1908
AND
IN THE MATTER of a certain memorandum of lease etc. granted by of , now deceased and formerly of , now deceased as Lessors to formerly of , but now deceased.
BETWEEN A.B. of &c. plaintiff
AND
C.D. of &c. defendant.

LET C.D. the above-named Defendant the Lessee under the above-mentioned Memorandum of Lease attend before the Supreme Court of New Zealand at the Supreme Court House Wellington on day the day of 19 at o'clock in the forenoon or so soon thereafter as Counsel can be heard UPON THE APPLICATION of the

Plaintiff FOR A DECLARATORY ORDER determining the following questions in the construction of the words occurring in the said Memorandum of Lease (*a*) " Are the said lands to be held by the Lessee as tenant for the space of twenty-one years to be computed from the day of next " and (*b*) determining whether the term of the said Memorandum of Lease expires on the day of 19 or on the day of 19 AND FOR SUCH ORDER as in the circumstances may be just AND FOR SUCH FURTHER ORDER as to the costs of these proceedings as this Honourable Court may deem just.

Dated at this day of 19 .

Registrar.

This Summons is issued by Solicitor for the Plaintiff whose address for service is at the Offices of Messieurs Solicitors Street .

This Summons is to be served on the above-named Defendant C.D.

Registrar.

MOTION FOR DIRECTIONS.

(*Same heading.*)

Mr. of Counsel for the above-named Plaintiff TO MOVE in Chambers before the Right Honourable Sir Chief Justice of New Zealand at the Supreme Court House 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 giving directions for the service of the Originating Summons sealed in these proceedings.

Dated at this day of 19 .

Solicitors for the Plaintiff.

Certified pursuant to the Rules of Court to be correct.

Counsel moving.

REFERENCE :—The Declaratory Judgments Act, 1908, s. 3.

MEMORANDUM FOR HIS HONOUR.

The Originating Summons directions for service of which are asked for in this Motion is taken out to determine a dispute which has arisen in regard to the construction of certain words and the date of expiry of the term of the Lease referred to in the proceedings.

The plaintiff is the owner of the reversion and the defendant is the owner of the lease and as no other person has any interest in the lease it is respectfully submitted that service on the Defendant will be sufficient.

Counsel moving.

AFFIDAVITS IN SUPPORT.

(*Same heading.*)

I of in New Zealand [*occupation*] make oath and say as follows :—

1. That I am a Solicitor in the employ of Messieurs who are acting for the Plaintiff in this matter.

2. That annexed hereto and marked " A " is a true copy of a Memorandum of Lease purporting to be executed by of , and of , as Lessors and of , as Lessee which said copy shows as written in in ink such words as appear to have been written in in ink in the original Memorandum of Lease and such words in type as in the original lease were either typewritten or printed.

3. That the said , and , have since died and that the reversion in the said Memorandum of Lease is now vested in the Plaintiff and that the interests of the original Lessee are now vested in the Defendant.

4. That a dispute has arisen between the Plaintiff and the Defendant as to the date on which the term of the said Memorandum of Lease will expire.

5. That inquiries have been made of Messieurs whose name appears on the said Memorandum of Lease as the name of the firm of Solicitors preparing the said Lease and I am informed that they have no record of having prepared the said Lease and believe that the said Lease must have been prepared by another Solicitor on a " stock " form of the firm of Messieurs .

6. That the usual practice in preparing a Memorandum of Lease of this nature is for the Lease to be prepared with the date of execution in blank and then executed on a subsequent date convenient for all parties when the date of execution is filled in.

Sworn etc.

AFFIDAVIT OF .

(*Same heading.*)

I of , make oath and say as follows :—

1. That I am an officer of the Bank Limited at .

2. That I have inspected the ledger entries in the account of of , with the Bank Limited at , in the ledger-book of the said Bank from the beginning of the year to the end of the year .

3. That annexed hereto and marked " A " are copies of entries made in the said ledger-book in the account of the said the said entries purporting to record payments out by the Bank to the person named on the dates therein named.

4. That the said ledger was at the time of the making of the said entries one of the ordinary books of the said Bank and the said entries were made in the usual and ordinary course of business. The said ledger-book is in the custody and control of the said Bank.

5. That I have compared the said copy entries with the original entries and the copy entries annexed hereto are correct copies of the original entries.

Sworn etc.

AFFIDAVIT OF .

(*Same heading.*)

I of , make oath and say as follows :—

1. That I am the son of of , deceased.

2. That the said died on or about the day of 19 .

3. That I am the sole surviving executor and trustee of the will of deceased.

4. That my mother the wife of the said deceased predeceased the said .

5. That for some years prior to and up to the year 19 I lived with my father and mother brothers and sisters upon a small block of land of about acres which adjoined the land subsequently leased by my father from of and of , .

6. That about the year 19 my brother took over the land theretofore occupied by us and my father mother my other brothers and sisters and myself removed to a block of land of about acres belonging to a Mr. . This land my father worked upon under an arrangement for share milking with Mr. at £ per annum plus meat milk and butter.

7. That in or about the month of 19 my father agreed to rent the land subsequently included in the lease from and at a rental of £ per year.

8. That the land was then in a very neglected state what was cleared being largely overgrown with thistle and noxious weeds and there was no habitation upon the land.

9. That my mother and my brothers and sisters continued to work upon the land upon which we were share milking for Mr. while my father and one of my brothers spent most of their available time during the year 19 to 19 on the land rented from and fencing doing some clearing and river banking and building also a rough two-roomed whare.

10. That there were no incomings from the land so rented from the said and and my father was hard pressed for money at the time. There was practically no return in the second year from the land so rented. The rent for these two years was paid by my father out of the moneys paid to him by the said Mr. .

11. That it was arranged between my father and myself that I should continue milking for Mr. but my mother was reluctant to remove to the new place until the improvements were secured by a lease.

12. That owing to the bad times my father having no protection for his improvements and not being able to pay the high rental the said agreed to give another year at a lower rental at the end of which time my father was to have a twenty-one years' lease at the rental first agreed upon namely £ per year. This lease was accordingly prepared and signed by my father and the said and and was to take effect as from the day of 19 in order to protect the improvements aforesaid my mother being very reluctant to leave Mr. 's property until such time as these improvements were protected by a lease.

13. That my father and mother then went down and lived in the two-roomed whare upon the land rented from and while my father proceeded to build the house which stands there to this day.

14. That I have inspected the Bank account of the said at the Bank Limited at and I find

that according to the entries therein cheques were drawn on the dates and for the amounts mentioned below: [*Here set out particulars.*]

Sworn etc.

ORDER DETERMINING QUESTIONS IN THE CONSTRUCTION OF A LEASE.

(*Same heading.*)

day the day of 19 .

Before the Honourable Mr. Justice .

UPON READING the Originating Summons sealed herein and the Affidavits filed herein AND UPON HEARING Mr. of Counsel for the Plaintiff and Mr. of Counsel for the Defendant THIS COURT DOTH ANSWER the questions in the Originating Summons as follows:—

Question 1. Answer: Yes.

Question 2. Answer: The Memorandum of Lease expires on the day of 19 .

AND IT IS ORDERED that each party pay his own costs.

By the Court.

Registrar.

Bills Before Parliament.

Law Reform Bill.

The main purpose of this Bill is to make changes in the law of New Zealand corresponding to the changes made in the law of England by the Law Reform (Miscellaneous Provisions) Act, 1934 (Gt. Brit.), and the Law Reform (Married Women and Tortfeasors) Act, 1935 (Gt. Brit.).

The Bill is divided into six parts, each of which deals with a subject not directly related to the others. Part I relates to the survival of causes of action after death. It is an adaptation without substantial alteration of section 1 of the Law Reform (Miscellaneous Provisions) Act, 1934 (Gt. Brit.), and, in effect, abrogates (subject to certain expressed provisions) the rule expressed in the maxim *actio personalis moritur cum persona*. Cl. 3 (2) prescribes limitations in respect of damages which may be recovered in actions brought for the benefit of the estates of deceased persons. Cl. 3 (3) imposes limitations of time within which actions may be brought against the estate of deceased persons. Cl. 3 (5) provides that the rights conferred by the Bill are in addition to, and not in derogation of, any rights conferred by the Deaths by Accidents Compensation Act, 1908, and that so much of Part I as relates to causes of action against the estates of deceased persons is also to apply in relation to causes of action under that Act. One result of this subclause will be that where both the wrongdoer and the person whose dependants have a right of action die, a cause of action under the Deaths by Accidents Compensation Act will survive against the estate of the wrongdoer. Cl. 3 (6) provides in case where the estate against which proceedings are maintainable by virtue of the proposed Act is insolvent, any liability in respect of a cause of action against such an insolvent estate shall be provable in the administration of the estate notwithstanding the provisions of s. 98 of the Bankruptcy Act, 1908. Cl. 3 (7) makes special provision (for one year) in respect of compulsory third-party insurance contracts. Such contracts will not indemnify the insured against liability to pay damages in respect of pain and suffering caused to a person who eventually dies because of the act or omission causing the pain and suffering. Actions for the benefit of the estate of deceased persons will also have to be brought within twelve months from the date when representation is taken out if the insured is to have the benefit of his compulsory insurance cover.

Part II amends the Deaths by Accidents Compensation Act, 1908. Cls. 5 and 6 are based on provisions contained in section 2 of the Law Reform (Miscellaneous Provisions) Act, 1934 (Gt. Brit.). Cl. 5 extends the definition of the term "child" so as to include illegitimate and adopted children, and will result in the provisions of the principal Act extending to those children and their parents. Cl. 6 provides for the award of funeral expenses in an action under the principal Act. Cl. 7 abolishes the present rule that in assessing damages under the principal Act any pecuniary gain—*e.g.*, moneys payable under an insurance policy or a pension receivable—accruing to dependants by reason of the death of the person on whom the claimants depend must be taken into account when assessing damages.

Part III creates a charge on insurance moneys payable as indemnity for liability to pay damages or compensation and makes the charge apply immediately on the happening of the event giving rise to the claim. Similar provisions are already contained in s. 48 of the Workers' Compensation Act, 1922, and in s. 10 of the Motor-vehicles Insurance (Third-party Risks) Act, 1928, but under these provisions no charge is created unless the insured is insolvent or becomes bankrupt. It is proposed in cl. 10 of the Bill to make the rule of general application and repeal the existing provisions.

Part IV relates to the capacity, property, and liabilities of married women and liabilities of husbands. It is an adaptation without substantial alteration of ss. 1-4 of the Law Reform (Married Women and Tortfeasors) Act, 1935 (Gt. Brit.).

Part IV in effect provides that, so far as the capacity to contract, to hold property, and to sue and be sued is concerned, a married woman shall be in exactly the same position as an unmarried woman. A married woman will also be subject to the law relating to the enforcement of judgments, and a husband will not be liable for his wife's torts and ante-nuptial debts. The exceptions which will remain are:—(*a*) A husband will be liable in respect of contracts entered into by his wife after marriage to the same extent that he now is liable—*e.g.*, a husband will be liable in certain circumstances for necessaries supplied to his wife: (*b*) A husband and wife while living together will not be able to sue each other in tort except in order to protect their property. It is proposed by cl. 16 (5) to continue the existing right of a husband and wife who are judicially separated to sue each other for any tort. Cl. 13 (2) prevents the restraint on the anticipation of property being imposed on a woman if a similar restraint could not be imposed on a man.

Part V relates to the liability of tortfeasors and is an adaptation of s. 6 of the Law Reform (Married Women and Tortfeasors) Act, 1935 (Gt. Brit.). In New Zealand by virtue of s. 94 of the Judicature Act, 1908, a judgment against one or more of several persons jointly liable does not operate as a defence to an action against the persons against whom judgment has not been given except so far as the judgment has been satisfied. That section does not, however, deal with contribution between joint wrongdoers, and the general rule now is that there is no such contribution. This Part supersedes s. 94 of the Judicature Act so far as it relates to actions in tort, and provides both for the liability of and contributions between joint wrongdoers, and furthermore provides machinery for assessing the amount of contributions.

Part VI abolishes the defence of common employment—that damages could not be recovered from an employer in respect of the negligence of a fellow-servant. The rule has actually been abolished by s. 67 of the Workers' Compensation Act, 1922, but as that section has no bearing on compensation payable under that Act, it is not appropriate for inclusion therein. That section also imposes a limitation as to the amount of damages recoverable, but no such limitation exists in the Bill.

New Books and Publications.

Mahaffy & Dodson's Road Traffic Acts and Orders. Second Edition, 1936. By Robert P. Mahaffy, B.A. (Butterworth & Co. (Pub.) Ltd.) Price 47/-.

Patents for Inventions. By J. E. Walker, B.A., and J. Roscoe, B.Sc. Second Edition, 1936. (Pitman & Sons.) Price 21/-.

Transactions of the Grotius Society, Vol. 21 (Problems of Peace and War), 1936. (Sweet and Maxwell.) Price 14/-.

Rent and Mortgage Interest Restriction Act, Sixteenth Edition (Law Notes). Price 12/6.

Butterworth's Twentieth Century Statutes, 1935, Vol. 32. (Butterworth & Co. (Pub.) Ltd.) Price 44/-.

Annual Survey of English Law, 1936. (Sweet & Maxwell Ltd.) Price 15/-.

Outline of the Law of Contracts and Torts. Fourth Edition. By A. M. Wilshere. (Sweet & Maxwell Ltd.). Price 10/6.

Vendor and Purchaser. By Williams and Lightwood. Fourth Edition, 2 vols. (Sweet & Maxwell Ltd.) Price £6/8/6.

Hargreaves's Introduction to the Principles of Land Law, 1936. (Sweet & Maxwell Ltd.) Price 17/6d.