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

" A Court for matrimonial causes should have conciliation for its first object, should have the carriage of the cause in its own hands, and should be entrusted with wide discretion."

—Rt. Hon. Sir Frederick Pollock, Bart., K.C., in the *Daily Telegraph* (London) on the extension of the powers of Courts of summary jurisdiction.

Vol. XIII. Tuesday, March 2, 1937. No. 4

Interest Rates Under Voluntary Adjustments.

THROUGH the courtesy of the Department of Justice we are able to reproduce on another page the Court of Review Practice Rules for the information and use of practitioners. These Rules are made under the authority conferred on the Court by s. 17 (2) of the Mortgagors and Lessees Rehabilitation Act, 1936, whereby the Court's practice and procedure are to be determined by the Court as it thinks fit.

The first clauses of the Rules prescribe the form and method of filing of applications for extension of time made in accordance with the proviso to s. 29 (5) of the Act. As the latest day fixed by the statute for filing such applications, February 28, will have passed before this number of the Journal is due for publication, we have omitted this part of the Rules as spent.

We draw special attention to the part of the Rules dealing with Voluntary Adjustments, as they contain what is, in effect, an interpretation by the Court of the application to securities, the subject of voluntary adjustments, of subss. 4 and 5 of s. 43 of the Act. These subsections are as follows:

> (4) The interest payable on any adjustable security (or on any new security given pursuant to this section) in respect of any period after a date to be specified in that behalf by an order of the Adjustment Commission shall not exceed the appropriate rate of interest to be prescribed for the purpose pursuant to the provisions in that behalf of the next succeeding subsection. The date so specified may be earlier or later than the date of the order of the Adjustment Commission.
>
> (5) The Governor-General may from time to time, by Order in Council, fix rates of interest for the purposes of the last preceding subsection. Different rates of interest may be fixed in respect of different classes of securities.

For the purpose of the last-mentioned subsection, the Governor-General in Council, by Order made on November 30, 1936 (No. 72/1936), fixed as the rate of interest (*a*) for first mortgages of land, a rate not exceeding $4\frac{3}{4}$ per centum per annum; (*b*) for puisne mortgages of land, a rate not exceeding 6 per centum per annum; and (*c*) for mortgages of chattels, a rate not exceeding 6 per centum per annum.

Considerable doubt has been expressed as to whether these rates of interest applied in respect of voluntary adjustments made by agreement between the parties to a mortgage, since, as some considered, these parties were acting voluntarily, they had the power to agree to the rate of interest (even if it exceeded the rate prescribed by the Order in Council) as a term in a settlement that was mutually acceptable.

Any such doubt has been resolved by the new Practice Rules.

Rule 4 (*a*) provides for the terms of a voluntary adjustment of the liabilities of an applicant being reduced to writing and signed by the parties thereto; and Rule 4 (*b*) is as follows:

> Any such agreement shall comply in all respects with the provisions of the Act, and in particular the rate of interest agreed to be paid on any mortgage or chattel security shall not exceed that prescribed by the Order in Council of the 30th day of November, 1936, fixing rates of interest pursuant to s. 43 of the Act.

This Rule is equivalent to a judicial pronouncement of the Court of Review that the maximum rates of interest on which the parties to a voluntary adjustment may agree are those prescribed by the Order in Council. If the voluntary settlement is made on the basis of a higher rate of interest than is prescribed by that Order, the Court will not approve it or render it effective by the making of an order.

There is, however, nothing in the new Practice Rules to prevent the parties to an adjustable security from agreeing upon a rate of interest higher than that specified in the Order in Council, and, subsequently, filing an application for withdrawal of the mortgagor's application for adjustment of his liabilities.

The Late Mr. Blacket, K.C.

WITH feelings of sorrow and a sense of loss, we record the death of our old and valued contributor, Mr. Wilfred Blacket, K.C., particulars of whose career appear on another page.

Mr. Blacket won and retained for himself a place in the affections of our readers that is unique. He was well-equipped for his task of telling them the week-to-week legal happenings of the Commonwealth and the States of Australia. A distinguished journalist before he accepted the Law as a new mistress, he became in the course of years one of the leaders of the Bar in his native city of Sydney. When he retired from active practice, after a long and a full life which touched humanity at many points, for us he warmed his hands at the fire of reminiscence in so humorous, and at the same time so useful a manner, that his contributions to our pages had a freshness and charm that was inseparably their own. At the age of seventy-seven years, he was a living contradiction of the Shakespearean adage that when age is in, wit is out. His brilliance in epigram and exposition lasted until the end.

When an editor drops the task in hand to read the latest instalment of one of his regular contributors, there is paid to that contributor a compliment the quality of which every journalist will appreciate. This was the usual practice of our editorial predecessors, as it was ours, whenever Australian Notes came to hand. Our readers appreciated Mr. Blacket, as we did, as a

writer of the short paragraph with few living equal to him in skill. He could combine in a few lines a solid expression of legal principle, an application to new facts, and a pithy comment spiced with a felicitous witticism. His reminiscences, told in a crisp anecdotal manner that never descended to mere anecdotage, provided, out of a wealth of experience, valuable practice points and practical hints in the art of advocacy.

Alas, poor Yorick! . . . a fellow of infinite jest and most excellent fancy.

Summary of Recent Judgments.

SUPREME COURT.
Wellington.
1937.
Feb. 5.
Myers, C.J.

THE KING v. AVES.

Criminal Law—Trial—Discharge of Jury for Non-agreement—Right of Prosecutor to Further Trials—Juries Act, 1908, ss. 513, 514.

Although s. 154 of the Juries Act, 1908, provides that (where a jury does not agree and had been discharged)

"if at the time of such discharge the Court thinks fit so to order, another trial may forthwith, or at some other time during the same or some future sittings, be commenced and proceeded with as if such first-mentioned trial had not been commenced,"

it must be read in conjunction with s. 153, which confers the power of discharging the jury, and provides that on such a discharge "such proceedings may thereupon be taken anew as if no trial had been commenced before the jury so discharged."

The effect of the two sections is to authorize the discharge of the jury, to confer on the parties a right to a new trial, and to empower the Court to make such order as it thinks fit as to the time at which the new trial is to take place.

In a criminal case, therefore, if the jury disagrees and is discharged, the prosecutor is entitled as of right to one or more further trials until a verdict has been obtained or until the Attorney-General chooses to exercise his statutory authority to enter a stay of proceedings under s. 435 of the Crimes Act, 1908, and the Court has itself no authority to stay the proceedings by refusing an order for a new trial.

Stevens v. Florence and Harry Parkin, [1924] N.Z.L.R. 619, applied.

Counsel: **Lusk,** for the Crown; **Harker,** for the accused.

Solicitors: **H. B. Lusk,** Crown Solicitor, Napier, for the Crown; **Harker, Helleur, and Le Pine,** Hastings, for the accused.

SUPREME COURT.
Auckland.
1936.
Dec. 16, 17;
1937.
Feb. 16.
Callan, J.

BALDWIN AND ANOTHER v. McIVER.

Contract—Restraint of Trade—Restrictive Covenant—Reasonableness—Severability.

An agreement for service of eighteen months as a salesman contained the following clause in restraint of trade:

"8. Except in the event of the determination of this agreement by effluxion of time and the employer or Universal Business Directories Limited being unwilling to continue or renew the employment upon the same terms and conditions (*mutatis mutandis*) as are herein contained the employee shall not within ten years from the time of his ceasing to be employed by the employer or Universal Business Directories Limited and at any place in New Zealand or Australia and either alone or conjointly with or as agent for or on behalf of any other company firm or person and whether directly or indirectly be employed engaged concerned or interested in any business similar to the 'Universal Business Directory' or to any other business carried on or which may hereafter during the term of this agreement be carried on by the Employer or Universal Business Directories Limited."

A. M. Goulding, for the plaintiffs; **I. B. Stevenson,** for the defendant.

Held, on the facts, refusing a permanentin junction, that the only legitimate purpose of a restraint clause in such a case was the protection of a trade connection, but that the attempted extension of the restriction to all New Zealand was neither necessary nor reasonable, and that the clause, as its contents could not be reduced to limits that were reasonably necessary without rewriting it, was not severable but was void in its entirety, although it would have been reasonable for the employer to have subjected the employee to some restraint.

Attwood v. Lamont, [1920] 3 K.B. 571, applied.

Lamson Pneumatic Tube Co. v. Phillips, (1904) 91 L.T. 363, distinguished.

Solicitors: **Goulding, Rennie, Cox, and Cox,** Auckland, for the plaintiffs; **J. S. Sinclair and Stevenson,** Dunedin, for the defendant.

Case Annotation: *Attwood v. Lamont,* E. & E. Digest, Vol. 43, p. 11, para. 56; *Lamson Pneumatic Tube Co. v. Phillips, Ibid.,* p. 30, para. 243.

SUPREME COURT.
Wellington.
1936.
Nov. 16, 17, 19;
1937.
Feb. 12, 19.
Myers, C.J.

NEW ZEALAND BREWERIES, LTD. v. McKENDRICK BROS., LTD.
NEW ZEALAND BREWERIES, LTD. v. CALLINGHAM.
J. McILRAITH & CO., LTD. v. SAME.
TUI BOTTLING CO., LTD. v. SAME.

Bailment—Invasion of Proprietary Rights—Notice Embossed on Bottles that Bottle the Property of Vendor of Contents—Property in Bottles—Estoppel as to ownership of Bottles—Injunction.

The plaintiffs in the several actions sold bottled beer and other fermented liquors (hereinafter referred to as "beer"), and, in the fourth action, aerated water as well. In each case there were embossed on the bottles words indicating that the bottle was or remained the property of the particular plaintiff, and, in the case of J. McIlraith and Co., Ltd., statements to the effect that the bottle was not sold.

In the case of the New Zealand Breweries, Ltd., there was also embossed on the bottle a shield surrounding the letters N.Z.B. Ltd., the trade-mark of such company, which issued to every purchaser on terms a document or documents each of which had on its face a printed notice in the following form:

"Bottles bearing the Trade-mark 'New Zealand Breweries, Ltd.,' moulded or blown thereon are not sold but remain the sole property of New Zealand Breweries Limited, Murphy Street, Wellington. When emptied of the present contents the bottles must be forthwith on demand handed, given, or returned to the said Company or the Agents, who will, for the care and such service in keeping and promptly delivering such bottles, pay to the person from whom such bottles are received such sums as are payable from time to time for bottles delivered at the Company's store."

In the case of J. McIlraith and Co., Ltd., its printed form of invoice in case of sales of bottled beer to hotels and merchants contained the following notice:

"All bottles branded J. McIlraith and Co. remain the property of J. McIlraith and Co. absolutely, who do not hereby sell them. They shall be delivered back on demand

when emptied of their contents. These goods are sold on this condition only."

In the case of the Tui Bottling Co., Ltd., there was no special notice on its invoices.

In each case the Hildreth Co. was the sole agent for the plaintiff in Wellington for the purposes of the collection, storage, and return to it of its empty bottles, paying varying sums per dozen to persons on the return of the bottles and receiving from the plaintiff a commission of so much per dozen on the bottles so collected and returned. The New Zealand Breweries, Ltd., also received from time to time at its own store bottles from its customers and small collectors and for these bottles paid 1s. 6d. per dozen, but as far as possible discouraged the delivery of bottles to their own store, referring tenderers of such bottles to the Hildreth Co. J. McIlraith & Co., Ltd., had received from the defendant in its action marked bottles and paid 1s. per dozen. Tui Bottling Co., Ltd., which sold only to wholesale wine and spirit merchants, also accepts empty bottles at its store from such customers, paying 1s. per dozen. The New Zealand Breweries sold their beer to hotel-keepers, wholesale wine and spirit merchants, and householders in wholesale quantities of not less than two gallons.

Defendants, secondhand or marine dealers, collected and held large quantities of such bottles, and their conduct generally amounted to, first, a claim to the bottles themselves; secondly, a refusal to deliver up the bottles except on their own terms; and, thirdly, a threat to sell or dispose of the bottles thereafter acquired in any manner they pleased if the terms they demanded were rejected by the plaintiff.

A long course of dealing in each case had made it generally known that any person might accumulate, collect, or gather the bottles, and on taking them to the plaintiff or its agents receive a reward, the holders of such bottles merely disposing of their interest in the bottles, *viz.*, to deliver them to the plaintiff or its agent and receive a reward and in the meantime to retain until demanded.

In actions for injunction *simpliciter* for the protection of the plaintiffs' ownership or property in the bottles in which its products were sold,

James, for the plaintiffs; **Spratt** and **Neal,** for the defendant; McKendrick Bros., Ltd.; **Yaldwyn** and **Neal,** for the defendant, Callingham.

Held, 1. That the bottles continued the plaintiff's property, and that the plaintiff was not estopped from setting up its ownership by reason of its conduct and acquiescence in a certain course of dealing in these bottles, as far as bottles containing beer purchased by hotel-keepers or householders were concerned, because of not only the wording on the bottles but also the express notices to the hotel-keepers or householders, and so far as other persons were concerned the bottle itself had an express notice negativing what might involve an inference of title in the purchaser of the beer or other persons into whose hands the bottles might come.

2. That the whole of the dealing by the plaintiff was consistent with its retention of its ownership and where the plaintiff had issued documents conformed with the statements contained in its documents.

3. That the plaintiff was entitled to an injunction that (providing on delivery and return of the bottles it paid the customary reward) the defendant be restrained from detaining the bottles or refusing to deliver them up after demand.

New Zealand Breweries, Ltd. v. Grogan, [1931] G.L.R. 412, and **Curtis v. Perth and Freemantle Bottle Exchange Co., Ltd.,** (1914) 18 C.L.R. 17, applied.

Wilson v. Shepherd, [1913] S.C. (Ct. of Sess.) 300, **Barlow & Co. v. Hanslip,** [1926] N.I. 113, **Cantrell and Cochrane Ltd. v. Neeson,** [1926] N.I. 107, referred to.

Leitch & Co., Ltd. v. Leydon, [1930] S.C. (Ct. of Sess.) 41; aff. on app. [1931] A.C. 90, distinguished.

Solicitors: Chapman, Tripp, Watson, James, and Co., Wellington, for the plaintiffs; **Nicholson, Gribben, Rogerson, and Nicholson,** Auckland, for the defendant, McKendrick Bros. Ltd.; **Levi, Yaldwyn, and Neal,** Wellington, for the defendant Callingham.

Case Annotation: *Cantrell and Cochrane, Ltd. v. Neeson,* E. & E. Digest Supp. No. 11, Vol. 3, p. 6, para. 30 (ii); *Curtis v. Perth and Freemantle Bottle Exchange Co., Ltd.,* E. & E. Digest, Vol. 3, p. 111, para. 352 (iii); *Wilson v. Shepherd, Ibid.,* Vol. 28, p. 474, para. 810 (iii).

The Law Relating to Motor-vehicles.

Noteworthy Decisions in 1936.

By W. E. Leicester.

(*Concluded from p. 34.*)

The opinion that to fail to give the Act such fair, large, and liberal construction as would best ensure the attainment of its object would be to frustrate it—a view adopted earlier in *South British Insurance Co. Ltd. v. Feeley and Soteros,* [1932] N.Z.L.R. 1392—is expressed by Kennedy, J., in *W. L. Gray and Son v. South Island Motor Union Mutual Insurance Association,* [1936] N.Z.L.R. 916. A firm of Dunedin bricklayers engaged carriers to remove scaffolding from place to place and, in accordance with custom, the bricklayers' labourer was conveyed in the same truck as the scaffolding. During one of these journeys, the bricklayers' labourer was injured and he obtained judgment against the carriers who were unable to pay. It was contended for the defence that the motor-vehicle was illegally used to carry passengers for hire and that the plaintiff might claim if he were a stranger but not, however innocent his knowledge of the legality might be, if he or his employer were contractually associated, as was the employer of the bricklayers' labourer, with the owner of the vehicle. This contention was dismissed, and the carriers declared entitled to claim indemnity from the defendant Association on the basis that the vehicle in question was used in the course of the business of carrying passengers for hire although it was also used in the course of the business of carrying goods. It may well be, however, that a similar view would not be taken were the hire of the vehicle casual only or for one or two specified journeys: see *Shirley v. MacDougall and the Royal Insurance Co., Ltd.,* [1932] N.Z.L.R. 1059.

In *Linekar v. Hertford Fire Insurance Co., Ltd.,* [1936] N.Z.L.R. 776, the defendant company sought to resist liability under a comprehensive policy under the general exception to liability that the vehicle was being driven with the consent of the insured by a person who to the insured's knowledge was unlicensed. At the time of the accident that gave rise to liability, the plaintiff who was driving the car did not hold a license; but it was decided that the exception did not apply to the assured but to "any *other* person who to the insured's knowledge was unlicensed." The defence also failed on the further ground that the policy was a joint one which included the General Motors Acceptance Corporation as owner of the car. As there was no evidence that the Corporation had knowledge that Linekar was unlicensed, Ostler, J., considered that the consent of one of two insured persons was not the "consent of the insured."

With the sweeping alterations now introduced into the Motor-vehicles Act, 1924, by the Minister of Transport, cases involving breaches of the regulations may be expected to reach the Supreme Court. Last year there was none of any great importance. *Gillingham v. McCourtie,* [1936] G.L.R. 221, is not another *Storey* case, but it involved an expression of judicial opinion that there should be short as well as long periods of

suspension and where a good driver is guilty solely of going too fast, and is a first offender, a short suspension of license should be sufficient. In this instance the Magistrate's suspension of three months was reduced to one week.

Practice decisions provide a miscellaneous assortment. In *Wood v. Reid*, [1936] G.L.R. 80, Fair, J., on a motion by defendant for non-suit, reiterates the proposition that the evidence may be very strong on one side, and weak on the other, but the Judge has not to withdraw the case, and must leave it to the jury to determine the issues of fact. The principles in relation to the right to non-suit are, despite the wealth of later decisions, as well summarized in *21 Halsbury's Laws of England*, 1st Ed., 444, as elsewhere; but, of course, the real difficulty lies in deciding what is weak evidence and what, on the other hand, is a mere scintilla of evidence—a point on which it is safe to say that two out of three people may readily disagree. Counsel, no doubt, will prefer to continue making applications for non-suit rather than relying upon motions for a new trial in collision cases upon the grounds that the verdict is against the weight of evidence. This may especially be so in the future in view of the note of warning given by Smith, J., in *Wright and Another v. Anderson and Another* (No. 2), [1936] N.Z.L.R. 724. He says at page 727,

> "Motions for a new trial in collision cases have become common in New Zealand. This may be understandable in view of the regularity with which juries to-day find for the plaintiff and award substantial damages. Nevertheless, I think it not inappropriate to draw the attention of practitioners to the recent observations of their Lordships in the case above cited (*Mechanical and General Inventions Co., Ltd., and Lehwess v. Austin and The Austin Motor Co., Ltd.*, [1935] A.C. 346), and to suggest a close consideration of them. If there is any evidence in support of the issue found by the jury, then, in the absence of facts uncontroverted or uncontrovertible, as Lord Atkin described them, such as those established by unimpeachable documentary evidence, it is not to be readily expected that a Court will find the jury's verdict to be perverse on the ground that it is against the weight of evidence."

In *Hodgson v. Orr-Craig and Hawke's Bay Farmers' Meat Co., Ltd.*, [1936] G.L.R. 464, the appellant, who was the wife of a dairy farmer, and assisted her husband on his farm, brought action against the respondents for damages for personal injuries suffered by her being run down while on a cycle. Negligence was admitted and the jury allowed the full amount of general damages claimed, £2,500. Ostler, J., vacated the judgment and ordered a new trial upon the ground that, having regard to all the circumstances of the case, the damages awarded were so large that no jury could reasonably have given them. The appeal to the Court of Appeal from this order appears to be the first of its kind in this country. The decision dismissing the appeal does not rest upon the size of the damages awarded, but upon the fact that in reaching its conclusions the jury had awarded damages in respect of the loss to the husband of his wife's services on the farm. The husband was not a party to the action and had, subsequent to the decision, indicated that he proposed himself to claim a substantial sum for this loss of services. The Court considered that if the present verdict stood, the respondent was in danger of having to pay twice for the one loss and, although the point had not been taken in the Court below, it was available in the Court of Appeal and sufficient to justify their conclusion that the damages awarded were excessive.

The tendency of counsel to refer to the statements of Coroners and Magistrates in the hope that these will weigh with the jury in arriving at its decision received a check by Fair, J., in *McLeigh v. Shuter*, [1936] G.L.R. 519. He held that such statements made in other proceedings were not admissible in evidence in the Supreme Court and should not be referred to. Thus, where a witness in a motor-collision case was sought to be questioned as to the findings of the Coroner and the reasons stated by him for those findings, the Court ruled such line of questioning to be inadmissible. The judgment does not deal with the frequency with which Coroners seem to regard themselves as a jury sitting on the civil trial; and their tendency to give verdicts allocating blame or finding the accident inevitable may possibly lead to injustice. It is certainly a practice not to be commended.

A helpful decision as to the mode of obtaining a compromise of right of action on behalf of an injured infant is to be found in *Habberfield-Short v. McQuillam*, [1936] G.L.R. 418.

Finally, in *Corbett v. Gayton*, [1936] N.Z.L.R. 811, leave to deliver interrogatories was refused where it appeared to the Court that answers to interrogatories would or might tend to expose the person called upon to make them to real and appreciable risk of a criminal indictment without limit of time. This case together with *Warner v. Fortune*, [1935] N.Z.L.R. 607, gives rise to a consideration as to whether in motor-collision cases in New Zealand the plaintiff can obtain much assistance by means of interrogatories from a defendant who relies on the principles underlying these cases. A wider licence to interrogate is granted in Australia where interrogatories have been allowed as to the course taken by the defendant's car from a point some distance from the collision to the point of impact, and as to the application of brakes: *Cappadona v. Sullivan* (1924) 30 A.L.R. C.N. 13; and as to speed at the time of the collision and the position of the respective vehicles upon the road both before and at that time: *May v. Bowering*, [1928] S.A.S.R. 226. Here, the Full Court considered that although the party's knowledge is not precise as to the circumstances surrounding the accident he is bound to answer as to his belief, if he has any. A writer in the *Australian Law Journal* last year on the subject of Interrogatories in Collision Cases submitted that, on the whole, these interrogatories served a useful purpose, particularly to a plaintiff who is not in the same position as was a defendant in being able to know all the facts alleged against him before commencing his own case.

The Next Legal Conference.

Christchurch, Easter, 1938.

By cordial agreement between the Law Societies of Wellington and Canterbury, it has been decided that the next Dominion Legal Conference is to be held at Christchurch, during Easter-week of next year.

This will leave the way clear for the Wellington practitioners to entertain their brethren of other parts of the Dominion in the Capital City during the Dominion Centennial year, 1940.

Catholic Lawyers and Divorce Suits.

Can they accept Instructions ?

The position of the Catholic Church in regard to marriage is a subject that is constantly arising in conversation or in a discussion of social questions. While it is a matter of interest in general, it is of importance to practitioners, whose clientele usually comprises people of many religious beliefs and of none. Particularly is this so at the present time, owing to alleged utterance of a Catholic clergyman in Sydney, in addressing members of the profession during the past week. The cabled report of this alleged statement of the position of Catholic lawyers in relation to divorce proceedings, which appeared in the daily Press, leaves much to be desired as an exposition of Catholic principle.

Any obligation on Catholic lawyers in regard to a matter of Catholic belief or practice can be imposed on them only by the law of their Church. In fairness, therefore, to Catholic members of the profession (who, here, as in other countries, appear in the divorce jurisdiction of the civil Courts), as well as for the information and assistance of their fellow-practitioners of other faiths, it is only proper that their position should be clearly stated.

The law and practice of the Catholic Church, by which her members are bound in relation to marriage, are based by her upon divine precept as set forth or interpreted in the New Testament*, and may be stated briefly, but quite comprehensively, as follows :

(*a*) A consummated valid marriage between Christians is indissoluble ;

(*b*) No power on earth can dissolve such a marriage ; and, consequently,

(*c*) No Catholic may marry a divorced person whose spouse of a consummated valid marriage is alive ; nor may a Catholic divorced person remarry during the lifetime of his spouse of a consummated valid marriage.

This was the marriage law of Europe for fifteen hundred years, and during that time there was no such thing as civil divorce *a vinculo* (as opposed to divorce *a mensa et thoro*). It was, and is to-day, the law of the Catholic Church and is binding on her members everywhere.

In England, the ecclesiastical courts had complete control over marriage, but, up to 1843, they had no power to pronounce a divorce *a vinculo* if there had been a valid marriage ; and the temporal courts had no doctrine of marriage. For a short time after the Reformation, the ecclesiastical courts considered they had this power, but this opinion was overruled in 1602 ; and thereafter a valid marriage was indissoluble in English law, except with the aid of the Legislature. In 1857, all jurisdiction over divorce and over " all causes and suits and matters matrimonial " was taken from the ecclesiastical courts and vested in the Divorce Court, in which was vested the jurisdiction and powers of the ecclesiastical courts and the powers of the Legislature to grant a divorce *a vinculo* : *Holdsworth's History of English Law*, vol. 2, 622, 633.

The modern State and the Catholic Church look upon a valid marriage as a contract between the spouses.† Both, by their respective domestic legislation, lay down the conditions of validity. But there is this essential and fundamental difference of viewpoint : the civil law regards marriage as a contract which may be dissolved at the suit of one of the parties to it, provided there are present the conditions for dissolution prescribed by the relevant statutory enactment ; but the Catholic Church, which regards marriage as a divine institution, holds that there is no power on earth which can effectually dissolve a valid contract of marriage between Christians.

As any good mother would do in like case, the Catholic Church counsels forbearance and careful deliberation on the part of any of her children who are encountering marital difficulties ; she warns them of the potential moral dangers that are present in separation, which is opposed to the designs of marriage ; and she recommends them to use spiritual aids for the overcoming of their troubles. But she does not condemn separation, where separation is inevitable, as her own law makes provision for divorce *a mensa et thoro* ; and, in her eyes, a decree absolute in divorce can never, for the reasons we have indicated, in any circumstances amount to anything more than that, *viz.*, a judicial separation, where a valid consummated marriage is concerned.

Consequently, when the Catholic Church speaks of divorce *simpliciter*, she always means divorce with a right to remarry, or divorce with an intention of remarriage on the part of one or both of the spouses. (There is no genuine conflict here between the law of the State and the law of the Catholic Church, for the law of the one society does not compel disobedience of the law of the other ; though, if the Catholic party to a decree absolute in divorce went through a ceremony of marriage during the lifetime of the spouse of the first marriage, he would be doing something which the State permits but which the Catholic Church disapproves.)

It is clear, therefore, that the law of the Catholic Church does not touch those Catholic citizens of the State who seek and obtain a dissolution of the civil contract of marriage (and its consequences), which, by the authority and within the law of the State they have entered into : for that is all that a decree absolute of a civil Court in its divorce jurisdiction can possibly mean to a professing Catholic. The Catholic who obtains a decree absolute, breaks no law of the Catholic Church ; but he cannot, in the eye of that Church, remarry during the lifetime of his spouse nor may his spouse remarry so long as he lives. To both of them, *qua* Catholics, the effect of the decree absolute in divorce is no more than the effect of a decree of judicial separation.

We now ask the question : May a Catholic lawyer accept instructions to act or appear for one of the parties to a suit in a civil Court for the dissolution of a valid consummated marriage between Christians ?

Bearing in mind the foregoing principles, one supplies the answer :

1. There is nothing in the legislation of his Church and nothing contrary to her principles in his acting for any respondent in a divorce suit, because he is opposing the dissolution of a civil contract of marriage.

*Mark x, 9-12 ; Luke xvi, 18 ; Matt. xix, 9 ; 1 Cor. vii, 10, 11 ; vii, 39 ; Rom. vii, 2-3.

†The only kind of marriage which the English law recognizes is one which is essentially " the voluntary union for life of one man and one woman to the exclusion of all others " : *Nachimson v. Nachimson*, [1930] P. 217 ; *16 Halsbury's Laws of England*, 2nd. ed. p. 560, para. 836.

2. There is nothing in that legislation or contrary to those principles in his acting for a co-respondent in a divorce suit, any more than there is in his appearance for a defendant in any suit where character is impugned or damages are claimed.

3. There is nothing in that legislation or contrary to those principles in his appearing for a petitioner (even if he or she be a Catholic) who is seeking divorce in order to dissolve the civil contract made in the form prescribed by civil law. It is clear that the Catholic lawyer co-operates in his client's divorce merely in so far as that divorce entails separation *a mensa et thoro*, with the cessation of certain civil effects. But, secondly, it is clear that he does not in conscience approve of a subsequent marriage on his client's part during the lifetime of the spouse of the marriage. His interest is limited exclusively to the separation and its immediate civil effects.

As to the position of a Judge, who is a Catholic, sitting in the civil divorce jurisdiction: He is not acting contrary to the law of his Church in pronouncing decrees of dissolution of marriage, because, as a Judge, his function is purely ministerial—to grant or refuse a decree according to the party's compliance or non-compliance with the statutory requirements; and, as a Catholic, the decree to him cannot be more than the dissolution of a civil contract into which the parties have entered in the form prescribed by the civil law.

New Zealand Law Society.

Council Meeting.

(*Concluded from p. 41.*)

Appeals under the Mining Act, 1926.—Mr. F. B. Adams wrote as follows;

"Under s. 370 of the Mining Act, 1926, appeals on fact, or on fact and law, were by way of rehearing. Section 34 of the Mining Amendment Act, 1934, incorporated s. 166 of the Magistrates' Courts Act, 1928, but without repealing the first-mentioned section; and the effect of the amendment on section 370 became a doubtful question. By s. 2 (4) of the Mining Amendment Act, 1935, however, section 370 was repealed; and the result is that appeals on fact, or on fact and law, from the Warden or Warden's Court are now assimilated to appeals on law, or on fact and law, from the Magistrate's Court.

The jurisdiction of the Warden and of the Warden's Court is unlimited as to the amount or value of the subject-matter in dispute, whereas the jurisdiction of the Magistrates' Court is strictly limited.

Under s. 377 of the Mining Act, 1926 (as amended in 1935), actions in the Warden's Court may be removed into the Supreme Court where the amount or value in dispute exceeds £500, but the consent of both parties is required. There is no power to remove any matter coming before the Warden in his administrative capacity, no matter what the value involved may be.

There is a series of decisions from which it is clear that, in an appeal from the Magistrates' Court under s. 166 of the Magistrates' Courts Act, (1) the power of taking additional evidence, or of re-hearing evidence, is sparingly exercised and only in special circumstances; and (2) the Magistrate's decision on the facts will not be interfered with unless it is 'demonstrably wrong.' In the result it is seldom possible to appeal with success from a Magistrate's decision on the facts. Moreover, the Magistrate's notes of evidence, even though defective, are in general the only material to which the appellate Court may look. The position in appeals under the Mining Act is now necessarily the same.

In these respects such appeals do not differ greatly from appeals to the Court of Appeal from decisions in the Supreme Court; but in the last-mentioned case there is the material difference that the facts have been considered and passed upon by a Judge of the Supreme Court. In appeals from the Magistrates' Court the position is not unsatisfactory because the value at stake is always limited to a comparatively small amount. Under the Mining Act, however, there is no such limitation, and no means by which a party can now insist on having the evidence heard and considered by a Supreme Court Judge.

The values at stake under the Mining Act are apt to be very considerable. On the last occasion when I was concerned in an appeal under that statute, the amount which had been spent in acquiring and preparing to work the licenses which were the subject-matter of the suit was approximately £175,000. Cases under the Mining Act are complicated and difficult. The original hearing almost invariably takes place in a country town where the Warden goes on circuit, and the proceedings are apt to be more or less casual and hurried. Before the 1934 and 1935 Amendments, irregularities or omissions at the original hearing were of little importance, as the dissatisfied party could always have the case re-heard by a Judge. This was a valuable and necessary safeguard in view of the unlimited jurisdiction of the Warden and Warden's Court. Errors and omissions in the notes of evidence were immaterial, and the parties were not finally bound by mistakes or oversights on the part of counsel or the tribunal.

Appeals by way of re-hearing are, of course, more expensive because witnesses have to attend, but this inconvenience was far outweighed by the greater security afforded to litigants.

I think the present system of appeal under s. 166 of the Magistrates' Courts Act may be satisfactory, even under the Mining Act, in cases where the amount at stake is small, and also in cases where the appeal is against the exercise of a discretion on undisputed facts. In all other cases I suggest that, unless the parties otherwise agree, the appeal by way of re-hearing under s. 370 of the Mining Act, 1908, should be restored. The matter is of considerable importance to persons concerned in the mining industry."

It was decided to forward a copy of the above letter to the Minister of Justice for his consideration.

Deposit Regulations—Whether Moneys on Deposit or Loan.—The following letter was received from the Disciplinary Committee:—

"This question was discussed by the Disciplinary Committee at a meeting held on the 25th September, when it was decided that it was not within the power of the Committee to give a decision on the matter.

The Committee, however, desire to point out that there is a considerable doubt as to whether the Deposit Regulations, which are dependent on the power to make rules given in s. 93 (*e*) of the Law Practitioners Act, 1931, are valid; and they therefore recommend that these Regulations should be re-enacted under the provisions of s. 26 of the 1935 Amendment, which widens s. 93 (*e*) by providing for rules for the purpose of 'protecting the Fund,' under which heading the Deposit Regulations undoubtedly fall."

It was decided to ask the District Societies to forward any comments they desired to make on the present Deposit Regulations, and then to seek a new Order in Council covering the requisite points.

Thanks to Delegates.—Prior to the conclusion of the meeting, the President expressed to the delegates his thanks for the great assistance given by them during the year, and wished them all the Compliments of the Season.

Mr. Munro, in reply, stated that the thanks of the members were due to the President for his unfailing courtesy and his ability in controlling the meetings, and that all present reciprocated the President's good wishes.

Court of Review.

Practice Rules.

Pursuant to the powers conferred upon the Court of Review by the Mortgagors and Lessees Rehabilitation Act, 1936, the Court has approved of the following rules relative to its practice and procedure.

1.—Applications for Extension of Time.

(*Omitted as spent.*)

2.—Withdrawal of Applications.

(*a*) Where an applicant wishes to withdraw his application for adjustment he shall lodge with the Registrar an application in the form provided.

(*b*) The creditors to be notified by him of such withdrawal shall be in the case of a farmer applicant all his creditors, and in the case of any other applicant shall be such of his creditors whose debts constitute adjustable debts or adjustable securities within the meaning of the Act.

(*c*) Fourteen days after such application is lodged, unless an objection is filed, the Registrar shall seal the notice which shall then become a Court order.

(*d*) Where intimation is made to the Registrar or Secretary that the applicant wishes to withdraw his application, but the Registrar is unable to get a form of withdrawal signed, the Secretary shall set down such application under s. 36 giving notice to each mortgagee and to all other creditors whose debts constitute an adjustable debt or adjustable security.

(*e*) If the applicant does not appear, the Commission may make an order striking out the application and such order shall be lodged with the Registrar for sealing under s. 26. The Secretary shall notify the applicant and those creditors whose debts constitute adjustable debts or adjustable securities of the filing of such order.

(*f*) A form of application for withdrawal is being printed, and supplies will be forwarded to Registrars shortly. A specimen form (which has been approved by the Court) is attached. No Court fee is payable for lodging the application.

3.—Sealing Orders of Commissions.

After the lapse of the time for appeal, if the Court has not within that time intimated its desire to review under s. 27 (2), Registrars are to seal the orders without reference to the Court.

4.—Voluntary Adjustments.

(*a*) Parties agreeing voluntarily to an adjustment of the liabilities of an applicant may reduce the terms of their agreement into writing, and such agreement shall be signed by the parties thereto. Sufficient copies as will comply with the rule relating to registration of orders shall be prepared and lodged with the Secretary of the Adjustment Commission. For the purpose of this rule the term "parties" shall mean and include the mortgagor lessee or guarantor and those of the creditors whose debts constitute adjustable debts or are secured by adjustable securities.

(*b*) Any such agreement shall comply in all respects with the provisions of the Act, and in particular the rate of interest agreed to be paid on any mortgage or chattel security shall not exceed that prescribed by the Order in Council of the 30th day of November, 1936, fixing rates of interest pursuant to s. 43 of the Act.

(*c*) The Adjustment Commission may then make an order in the form set out hereunder. One copy of such order shall be attached to each of the signed copies of the agreement provided for in para. (*a*).

(*d*) The Secretary shall transmit such order and copies to the Registrar of the Court of Review, who shall file the same.

(*e*) If no notice of appeal has been filed within the time fixed by s. 27 and if the Court has not directed that the order be reviewed, the Registrar shall seal such order.

5.—Registration of Orders.

(*a*) Every order made by an Adjustment Commission affecting any property of an applicant shall, unless the Commission otherwise directs, be registered in respect of that property under the provisions of the Land Transfer Act, the Deeds Registration Act, the Chattels Transfer Act, or any other Act relating to the registration of the property. Except where the Commission directs that the order be not registered, there shall be inserted in each order a clause that registration is directed. Such clause shall specify the name of the registering authority or authorities with whom the order is directed to be registered.

(*b*) The order shall contain a description of the property reasonably sufficient for the purpose of registration.

(*c*) When filing an order under the provisions of s. 26 the Secretary shall file with the Registrar the original order together with one signed copy for each registering authority specified in clause (*a*) hereof.

(*d*) Forthwith on the sealing of the order the Registrar shall transmit a sealed copy to each registering authority named therein.

6.—Form of Orders.

The subjoined forms of order have been approved by the Court.

7.—Searches of Names of Applicants for Adjustment.

Any person who satisfies the Registrar that for the purpose of any business carried on by him it is necessary or desirable that he should be so informed may be informed of the names and addresses of persons in respect of whom applications have been made for adjustment under the Act. The information given under this rule is limited to the names and addresses of applicants and no disclosure should be made of the details given in applicants' statements other than that provided for in s. 34 of the Act.

Application for Withdrawal.

IN THE COURT OF REVIEW,
Holden at .

In the matter of the Mortgagors and Lessees Rehabilitation Act 1936,
AND
In the matter of an application for an adjustment of liabilities.

I HEREBY APPLY to withdraw my application for adjustment and I declare that I have given notice of this withdrawal to the mortgagee [*or* lessor] and to all creditors whose debts constitute adjustable debts or adjustable securities.

Dated at this day of , 1937.

.....
[*Signature.*]

Witness to signature :
Name :
Occupation :
Address :

To the Registrar of the Court of Review at .

Order approving Voluntary Settlement.

(*Same heading.*)

Before the day of , 193 .

UPON READING the application of for an adjustment of his liabilities, the Adjustment Commission DOTH HEREBY ORDER that the terms of settlement agreed upon by the parties thereto (a copy of which signed by or on behalf of the parties is hereunto annexed) be and the same is hereby approved as a voluntary adjustment under the provisions of the above Act and made binding on the parties : AND DOTH FURTHER ORDER that a sealed copy of this order be registered by the District Land Registrar [*or* Registrar of the Supreme Court, as the case may be] at against the title of the land [*or* chattels] described in the Schedule hereto.

Schedule.

[*Minimum description required is registration number, whether a deed or memorandum, and office of registration.*]

Chairman [*or* Member] of the Adjustment Commission.

Sealed at the office of the Court of Review at this day of , 193 .

Adjustment Order.

(*Same heading.*)

Before the day of , 193

UPON READING the application of for an adjust-

ment of his liabilities, AND UPON HEARING and and :

THE COMMISSION DOTH HEREBY DETERMINE

(*a*)
(*b*)
(*c*)

AND THE COMMISSION DOTH HEREBY ORDER

(*a*)
(*b*)
(*c*)
(*d*) That a copy of this order when sealed shall be registered by the District Land Registrar at against the title of the land described in the Schedule hereto.

SCHEDULE.

[*Minimum description required is registration number, whether a deed or memorandum, and office of registration.*]

Chairman [*or* Member] of the Adjustment Commission.

Sealed at the office of the Court of Review at this day of , 193 .

Wellington District Law Society.

Annual Meeting.

The Annual Meeting of the Wellington District Law Society was held on February 22, in the Small Court-room, Supreme Court Buildings, Wellington. There were ninety-three practitioners present.

The retiring President, Mr. D. Perry, occupied the Chair until the election of his successor, Mr. D. R. Richmond.

Report and Balance-sheet.—The retiring President, Mr. D. Perry, moved the adoption of the Annual Report and Balance-sheet. The year had been a busy and eventful one, but one pleasing feature had been the absence of serious complaints against practitioners.

The speaker drew attention to the necessity of paying practising fees by the due date, January 31, and pointed out that a small number of practitioners caused trouble in this respect; the New Zealand Law Society had considered the question, and steps were being taken to obtain uniformity in enforcing payment. He commented upon the various statutes passed during the year and reference made to the advertisements inserted by the Society in connection with the Mortgagors and Lessees Rehabilitation Act. The finances of the Society were in a satisfactory state, but owing to the drop in admission fees it would be necessary to keep a careful watch on any further expenditure. The income from the accumulated funds was very helpful.

The motion was then put to the meeting and carried unanimously.

Election of President.—Mr. D. R. Richmond, the only nominee, was then declared duly elected, and on taking the Chair expressed his thanks for the honour accorded to him.

Election of Vice-President and Treasurer.—Mr. P. B. Cooke, K.C., and Mr. S. J. Castle, the only nominees, were declared duly elected to the position of Vice-President and Treasurer respectively.

Election of Council.—(*a*) Members elected by Branches: The following members, nominated by the Branches, were declared duly elected:—Feilding, Mr. J. Graham; Palmerston North, Mr. J. W. Rutherfurd; Wairarapa, Mr. C. C. Marsack.

(*b*) Wellington Members: Ten nominations having been received for the eight places on the Council, a ballot was held and the following were elected:—Messrs. H. E. Anderson, A. B. Buxton, T. P. Cleary, W. H. Cunningham, H. J. V. James, D. G. B. Morison, D. Perry, and A. T. Young.

Delegates to the New Zealand Law Society.—Messrs. H. F. O'Leary, K.C., D. R. Richmond, and G. G. G. Watson, the only nominees, were declared duly elected.

Mr. O'Leary, then gave an outline of the work carried out by the New Zealand Law Society during the past year.

Delegates to Council of Law Reporting.—Mr. P. B. Cooke, K.C., and the Hon. W. Perry, the only nominees, were duly elected.

Mr. Richmond said he could not let the occasion pass without placing on record the gratitude of the Society to the late Mr. C. H. Treadwell for his work on the Council of Law Reporting, on which he had been the Wellington representative from 1916 to 1936. As Treasurer of the Council for the whole of that period, he was mainly responsible for the policy which had resulted in the splendid position now occupied by the Council.

Auditors.—Messrs. Clarke, Menzies, Griffin & Co. were appointed Auditors for the forthcoming year.

Easter Holidays.—On the motion of Mr. J. D. Willis, seconded by Mr. W. H. Cunningham, it was decided to close for Easter at 5 p.m. on Thursday, March 25, and re-open at 9 a.m. on Monday, April 5.

Christmas Holidays.—After some amendments had been put to the meeting and been declared lost, a motion that the Christmas Holidays should be from noon on Friday, December 24, to 9 a.m. on Tuesday, January 11, was carried.

Outgoing Members of the Council.—A hearty vote of thanks to the members of the Council, Messrs. P. Levi and G. G. G. Watson, who had vacated their seats in pursuant of the Rules in that behalf, for their services was carried with acclamation.

The Hon. W. Perry, M.L.C., said that he could not let the occasion pass without drawing attention to the long and distinguished services of Mr. P. Levi on the Council. Mr. Levi had first been elected in 1917 (in which year he was Treasurer), he was Vice-President in 1918, President in 1919, a member of the Council in 1920, Treasurer again from 1921 to 1924, and a member of the Council from 1925 to 1936. During this twenty years of continuous service, he had always been of the greatest assistance on the many and varied committees of which he had been a member, and the gratitude of the Society was due to him for his ungrudging services.

Mr. Perry moved that the meeting should place on record its deep appreciation of the great services rendered to the Society and to the profession of the law by Mr. Levi, the motion being carried with great acclamation.

Appreciation was then expressed at the appointment of Mr. D. J. Dalglish as a member of the Wellington Mortgagors Adjustment Commission, it being a matter for congratulation that a member of the Society should be chosen for this important position.

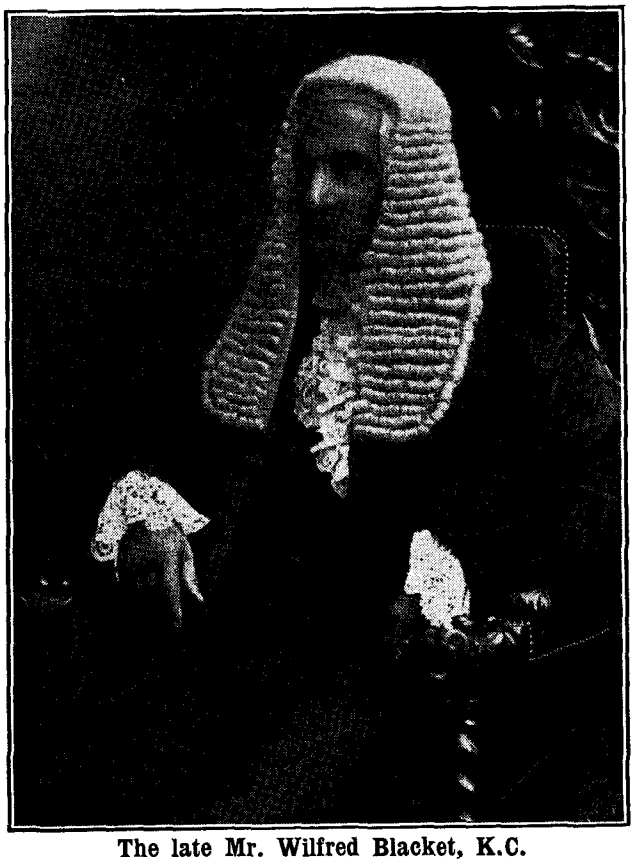
The meeting closed with a vote of thanks to the staff for their services during the past year.

Obituary.

Mr. Wilfred Blacket, K.C., Sydney.

The death of Mr. Wilfred Blacket, K.C., who had been ill for some months, occurred at his home, Lindfield, Sydney, on February 8, at the age of seventy-seven years.

The late Mr. Blacket was born at Redfern, Sydney, in September, 1859, and received his early education at Keira Valley, Wollongong, where his father, Mr. Russell Blacket, was headmaster. After leaving school, he was a clerk in the English, Scottish, and Australian Bank for nine years. He then became a journalist, and, in addition to contributing to the daily Press, he became sub-editor of the *Bulletin* (Sydney) under Archibald's editorship.



The late Mr. Wilfred Blacket, K.C.

Forsaking journalism for a legal career, Mr. Blacket was called to the New South Wales Bar in 1887. At the outset of his practice as a barrister, he followed the Newcastle-Maitland circuit, and he became one of the leading figures in the legal world of Sydney, practising chiefly in the common-law and criminal Courts. He took silk in 1912.

One of the most important cases in which Mr. Blacket was briefed was that of *McIntosh v. Dun*, [1908] A.C. 390, a libel action where the defence was privilege, in which respondents, who carried on a trade-protection society, suffered in damages at the hands of the Supreme Court, were awarded a new trial by the Full Court, and received a verdict from the High Court of Australia, which was reversed in the Privy Council. Mr. Blacket appeared with Mr. Pilcher, K.C., and Mr. Want, K.C., as his leaders in the New South Wales Courts, and with Mr. Gordon, K.C., in the High Court of Australia. He did not appear before the Judicial Committee. He represented the N.S.W. Railway Commissioners before the Royal Commission on railway administration after the 1917 strike.

As assistant to the late Mr. Justice Heydon, when that learned Judge was engaged on the consolidation of statute-law, as secretary to the New South Wales Statute Law Consolidation Committee, and afterwards as Commissioner, he played a prominent part in the codification of statutes and did valuable work in their compilation.

Mr. Blacket sat as one of the Commission which inquired into the early administration of the Federal capital, Canberra, and for a period he acted as a District Court Judge. During the past seven years, he took no active part in practice.

Among the late Mr. Blacket's literary works was *May It Please Your Honour*, which enjoyed considerable popularity, and is considered one of the most delightful volumes of reminiscences published in Australia. Its first edition appeared in 1928.

In his years of retirement, Mr. Blacket was a regular contributor to this JOURNAL. Commencing in May, 1929, his Australian Notes and occasional papers endeared him to its every reader; and members of the profession in New Zealand feel that with his death they have lost a familiar friend.

Mr. Blacket is survived by his widow, to whom the JOURNAL'S sincere sympathy is extended.

Legal Literature.

My Sixty Years in the Law. By F. W. ASHLEY. pp. 323 London: John Lane, The Bodley Head.

Undoubtedly, this is a book which ought to have been written. It would have been a misfortune indeed if Mr. Ashley, clerk to Horace Avory for thirty years at the Bar and to Mr. Justice Avory for twenty-four years on the Bench, had not yielded to pressure and agreed to record for the benefit of the profession and the public his reminiscences of a remarkable and interesting career.

The author commenced his legal life at an early age and in a very junior capacity in the Chambers of Hardinge Giffard and H. B. Poland. Thereafter his whole life was wrapped up with the life of that "great and sincere man" (*vide* Preface by the Lord Chief Justice of England), Avory, J. Necessarily, therefore, the book is written largely around the cases in which that eminent lawyer was engaged, and is, indeed, intended as a tribute to his memory from one who was at once his servant and his friend.

But the book is no mere record of cases. It abounds in anecdotes of the leading legal personalities at the Bench and Bar of England from the reign of Victoria to that of Edward VIII—the most interesting period, the author claims, in the history of the world. The great men of the day are brought before us in a cavalcade of legal history. Stories—not all new, of course, but all most colourfully told—of Poland, Webster, Giffard, Ballantine, Montagu Williams, Mathews, C. F. Gill, Sir Edward Clarke, Carson, and other leaders of the Bar, with a particularly intimate and delightful sketch of Marshall Hall. In addition, there are anecdotes concerning the Bench, and sketches of

familiar figures there—Lord Russell of Killowen, Mr. Justice Hawkins, Sir Peter Edlin, Mr. Justice Bigham, Lord Chief Justice Hewart, and others. Many celebrated criminal trials are touched upon in engaging fashion, and Mr. Ashley emphatically records his dissent from the appellation of "the hanging Judge" as applied to the man he served so long.

A most interesting feature of the book is the record of the many and great changes which have taken place in the administration of the law during the author's life-time, in procedure, in criminal sentences, in the arts of advocacy, in the very Courts of Law themselves, are described with accuracy and with an amazing wealth of recollection. Mr. Ashley's memory, to our everlasting benefit, is marvellous. At the end of his book he almost promises us that he will, "When, if ever, the time and place for them arrive," record further memories; and all who give themselves the pleasure of reading this volume will sincerely hope that that time may come soon.

—A.N.H.

Correspondence.

Catholic Lawyers and Divorce.

The Editor,
NEW ZEALAND LAW JOURNAL,
Wellington.

Sir,

In common with several of my fellow-practitioners I was surprised to see in the daily newspapers a cabled statement from Sydney to the effect that a dignitary of the Roman Catholic Church had told a gathering of lawyers of his faith that, "There is an obligation on Catholic lawyers to have no act, hand, or part in divorce proceedings."

As many friends of mine, who are Catholics, appear in our own Divorce Courts, I am somewhat puzzled: Are fellow-practitioners who are Catholics right in appearing in divorce proceedings, as I feel sure they must be? or is the reported statement an incorrect statement of Catholic principle? I think this should be cleared up without delay, in fairness to everyone concerned. I feel that a legal periodical is the proper place in which such an explanation should appear, and I would like you to consider the inclusion of an article in your JOURNAL to clarify the position.

The matter is of general interest to all practitioners, because even Protestants want to be informed on the correct Catholic viewpoint as they have Catholic clients who are often concerned in matters affecting marriage. I hope you will be able to procure and publish an article on the lines I suggest.

Yours, etc.,
COMMON LAW.

Wellington, February 20, 1937.

[The above letter is one of a number of inquiries which we have had on the matter in question. On another page, we publish an article by a contributor, which, we understand, has been submitted to ecclesiastical authority and approved as being in substance a correct expression of the law and practice of the Catholic Church on its subject-matter. The article is published solely with the intention of its being of assistance to our correspondent, and to practitioners generally.—ED.]

Practice Precedents.

Grant to a Creditor of Administration with Will Annexed.

By Rule 531I of the Code of Civil Procedure the proceedings in order to obtain Letters of Administration with the will annexed, in case the executor or executors named in a will has or have not applied for probate thereof within three calendar months after the death of the deceased, are regulated by the Administration Act, 1908, ss. 29 and 30, and also the Public Trust Office Act, 1908, s. 18, as amended by s. 50 of the Public Trust Office Amendment Act, 1921-22.

Under the provisions contained in Part IV of the Administration Act, 1908, for administration by the Court when an estate is insolvent, a creditor has the right to petition the Court for administration if his debt is not satisfied by an *administrator* on application to him, and he is also given a similar right, if the administrator fails to make application for administration by the Court, where the estate is insufficient to meet all liabilities. Under R. 531V of the Code, notice of the application under Part IV aforesaid must be given to the Official Assignee or to the Public Trustee, as the case may require.

The executor may renounce or refuse or neglect to prove the will; and even the Public Trustee, if named as an executor, is not bound to accept the executorship: s. 10 of the Public Trust Office Act, 1908.

The above provisions do not affect the law allowing a creditor to make application for administration where there is no executor and the Court in its discretion, viewing all the circumstances, deems it expedient to make a grant of administration to a creditor. Where there is more than one creditor, other things being equal, the Court will grant administration to the creditor with the largest claim against the estate; but the Court may refuse the grant to him and appoint another if it deems it expedient so to do: *Menzies v. Pulbrook and Ker*, (1841) Curt. 845, 880.

In England the Court requires every creditor to whom administration is granted to enter into a bond to pay the debts of deceased rateably without any preference of his own debt: see *In the Goods of Brackenbury*, (1877) 2 P.D. 272; and see also *Tristram and Coote's Probate Practice*, 17th Ed. 136, *et seq.*

Here, by the Administration Act, 1908, s. 15, no debt or liability of a deceased person is entitled to any priority or preference by reason merely that the same is made or constituted a specialty debt; but all creditors, as well specialty as simple contract, are to be treated as standing in equal degree and be paid accordingly out of the assets of the deceased person, but without prejudice to any security held by any creditor for payment of his debt.

In the following forms, it is assumed that the Public Trustee as executor has renounced probate, that the applicant is a creditor, and that the only next-of-kin has been notified of the application and does not desire to apply. The only assets in the estate are a small section and a sum of money in the trust account of the deceased. There is only one creditor. The administration bond for the purposes of this application is furnished by an approved insurance company executed by the company's attorney.

MOTION FOR ADMINISTRATION WITH WILL ANNEXED.

IN THE SUPREME COURT OF NEW ZEALAND.

.....District.

.....Registry.

IN THE ESTATE of A.B., &c., deceased.

Mr. of Counsel for C.D. &c., a creditor the applicant herein TO MOVE before the Right Honourable Sir Chief Justice of New Zealand at his Chambers Supreme Court-house on day the day of 19 at 10 o'clock in the forenoon or so soon thereafter as Counsel can be heard for AN ORDER granting Letters of Administration with the will annexed of the estate effects and credits of the deceased to the above-mentioned creditor UPON THE GROUNDS:

1. That the executor named in the will has renounced probate.

2. That the only next-of-kin has neglected or does not desire to apply for a grant.

3. That the above-named C.D. is the only creditor in the estate.

4. And upon the further grounds appearing in the affidavits filed herein.

Dated at this day of 19 .

Certified pursuant to the rules of Court to be correct.

Counsel moving.

REFERENCE.—Rule 531I of the Code of Civil Procedure.

AFFIDAVIT OF APPLICANT IN SUPPORT OF MOTION.

(*Same heading.*)

I C.D. of the City of indent agent make oath and say as follows:—

1. That I am an indent agent and reside at number [*Street*] in the City of .

2. That on the day of 19 I arranged pursuant to an agreement in writing to purchase a property known as from one E.F. &c. for whom the above A.B. was acting as agent.

3. That pursuant to the said agreement I duly paid to the said A.B. the sum of £50 on the day of 19 in order to obtain possession of the said property on the day of 19 .

4. That the said A.B. paid the said sum of £50 into his trust account and died suddenly on the same day that is to say on the day of 19 .

5. That in order to obtain possession of the said property I was required by the vendor to pay and did pay another sum of £50 to the vendor as appears by the receipt attached hereto marked "A."

6. That I have inspected the books relating to the trust account of the said A.B. deceased and find that the only sum in the said trust account is a sum of £50 entered in the account on the day of 19 aforesaid.

7. That I am by virtue of the payment of the said £50 a creditor of the said A.B. in the sum of £50.

8. That it appears the typewritten document now produced and shown to me and dated the day of 19 is the last will and testament of the said A.B. deceased.

9. That the Public Trustee named therein as the executor has renounced probate &c.

10. That in the event of Letters of Administration with will annexed being granted to me as a creditor in the estate to the said A.B. deceased I will faithfully execute the said will by paying the debts and legacies of the said deceased as far as the property will extend and the law binds.

11. That according to my knowledge and belief the estate effects and credits of the said deceased in respect of which administration is sought to be obtained are under the value of £ .

12. That I will exhibit unto this Court a true full and perfect inventory of the estate effects and credits of the said deceased within three months after the grant to me of Letters of Administration with will annexed and that I will file a true account of my administratorship within twelve calendar months after the grant of such letters.

Sworn &c.

AFFIDAVIT OF IN SUPPORT OF LETTERS OF ADMINISTRATION WITH WILL ANNEXED.

(*Same heading.*)

I of the City of Solicitor make oath and say as follows:—

1. That I am a Solicitor practising in the City of .

2. That I knew the said A.B. deceased when alive and that the said A.B. was resident or was domiciled at within this Judicial District and that the nearest Registry Office of this Court to the place where the said deceased resided or was domiciled is in the City of .

3. That the above-mentioned deceased executed the will dated the day of 19 which will is now produced and shown to me and marked with the letter "A" in my presence and in the presence of the witnesses as therein appears.

4. That I believe the said will to be the last will of the said A.B.

5. That the said A.B. died at on or about the day of 19 as I am able to depose from having seen his dead body after death.

6. That the said will appointed the Public Trustee as the executor thereof but the said Public Trustee has renounced same as appears by the renunciation dated the day of 19 filed herein.

7. That the said A.B. was at the time of his death a bachelor and his only next-of-kin is his father one X. of &c.

8. That the said X. is aged seventy-four years and has advised me by letter dated the day of 19 annexed hereto and marked "B" that he does not desire to obtain a grant of administration herein.

9. That for some years prior to his death and up to the time of his death I acted as Solicitor for the said A.B.

10. That I know of my own knowledge that there are no debts in the estate and that the funeral expenses were paid by the said X.

11. That assets in the estate is a sum of £50 standing in the trust account of the said A.B. and a small section of land.

11. That one C.D. claims the said sum of £50 as moneys belonging to him.

Sworn &c.

LETTERS OF ADMINISTRATION WITH WILL ANNEXED.

(*Same heading.*)

To C.D. of indent agent a creditor in the estate of the said A.B. deceased.

WHEREAS the said A.B. departed this life on or about the day of 19 leaving a will copy of which is hereunto annexed which has been duly proved in this Court; and whereas the executor named in the will has renounced probate. You are therefore fully empowered and authorized by these presents to administer the estate, effects, and credits of the said deceased, and to demand and recover whatever debts may belong to his estate, and pay whatever debts the said deceased did owe and also the legacies contained in the said will, so far as such estate, effects, and credits extend: you having been already sworn well and faithfully to administer the same, and to exhibit a true and perfect inventory of all the estate, effects, and credits unto this Court on or before the day of next, and also to file a true account of your administration thereof on or before the day of , 19 . And you are therefore by these presents constituted administrator with will annexed of all the estate, effects, and credits of the said deceased.

Given under the seal of the Supreme Court of New Zealand at this day of 19 .

Registrar.

BOND BY APPROVED INSURANCE COMPANY BY ITS ATTORNEY (NO SURETIES).

(*Same heading.*)

KNOW ALL MEN BY THESE PRESENTS that the Insurance Company Limited a Company duly incorporated and carrying on business in the City of in the Dominion of New Zealand and elsewhere hereinafter called "the Company" and [*Name of applicant, &c.*) are held and firmly bound unto Registrar of the Supreme Court of New Zealand for the said District at in the sum of £50 for which payment well and truly to be made to the said or to such Registrar

for the time being. The said Company and the said [*applicant*] do bind themselves and each of them and the successors and assigns of the said Company and the executor and administrators of the said [*Applicant*] jointly and severally firmly by these presents.

WHEREAS by order of this Court of the day of 19 IT IS ORDERED that Letters of Administration with will annexed of the estate effects and credits of [*Deceased*] &c. be granted to the said C.D. &c. on his giving security for the due administration thereof AND WHEREAS the said C.D. has sworn that to the best of his knowledge and belief the said estate effects and credits are under the value of £50 NOW THE CONDITION OF THE ABOVE-WRITTEN BOND is that if the above bounden C.D. exhibits unto this Court a true and perfect inventory of all the estate effects and credits of the deceased which shall come into possession of the said C.D. or any other person by his order or for his use on or before the day of 19 [*Three months*] and well and truly administers the same according to law and renders to this Court a true and just account of his said administratorship on or before the day of 19 [*Twelve months*] then this bond shall be void and of none effect but otherwise shall remain in full force.

Executed for and on behalf of the said The Insurance Company Limited by Attorney of the said Company this day of 19 . } The Insurance Company Limited By its Attorney Signature.

Signed by the said C.D. this day of 19 in the presence of .
Name &c.

DEED OF NON-REVOCATION.
(*Same heading.*)

I of the City of manager do solemnly and sincerely declare as follows :—

1. That I am attorney for the Insurance Company Limited in New Zealand in and by virtue of the Power of Attorney dated the day of 19 and that I have executed the within bond under and by virtue of the powers thereby conferred.

2. That I have received no notice or information of the revocation of the said Power of Attorney either by the dissolution or winding up of the said Company or otherwise and I believe the said Power of Attorney to be still in full force and effect.

AND I MAKE THIS SOLEMN DECLARATION conscientiously believing the same to be true and under and by virtue of the provisions of an Act of the General Assembly of New Zealand intituled the Justices of the Peace Act 1927.

Declared at by the said acting as Attorney for the Insurance Company Limited under and by virtue of a Power of Attorney bearing date the day of 19 and sealed by the said this day of 19 .

Before me
A Justice of the Peace in and for the Dominion of New Zealand.

[STAMP.]

RENUNCIATION.
(*Same heading.*)

WHEREAS the above-named deceased died on or about the day of 19 after having duly made and executed his last will and testament bearing date the day of 19 whereof he appointed the Public Trustee of the Dominion of New Zealand the executor NOW the said Public Trustee DOTH HEREBY DECLARE that he has not intermeddled in the estate of the said deceased and will not hereafter intermeddle therein with the intent to defraud Creditors AND HEREBY RENOUNCES all his right and title to probate and execution of the said will.

Dated this day of 19 .

Signed by the Public Trustee [*or* by Y. Assistant Public Trustee] and sealed with the Public Trustee's seal of office in the presence of— } [SEAL]

Name :
Address :
Occupation :

Recent English Cases.

Noter-up Service.

FOR

Halsbury's "Laws of England."

AND

The English and Empire Digest.

CONFLICT OF LAWS.

Conflict of Laws—Stay of Proceedings—Admiralty Action—*Lis alibi pendens.*

A plaintiff is not debarred from his right to proceed in an English Court by reason of the fact that he is a party to proceedings in another country in respect of the same subject-matter.

THE MADRID, **[1937] 1 All E.R. 216. P.D.A.**

As to *lis alibi pendens* : see HALSBURY, Hailsham edn., 6, pars. 414, 415 ; DIGEST, 11, pp. 477-480.

GAMING AND WAGERING.

Gaming and Wagering—Football Pool on Credit Basis—Breach of Instructions by Collector—

Where the promoter of a football pool on a credit basis gives careful instructions to his collectors not to take money at the time of investment, he will not be held liable, if a collector does not carry out his instructions, of an offence against the Ready Money Football Betting Act, 1920.

WILSON *v.* MURPHY. **[1937] 1 All E.R. 315. K.B.D.**

As to football betting : see HALSBURY, Hailsham edn., 15 par. 916 ; DIGEST, 25, p. 449.

MONEY AND MONEY-LENDING.

Money-lending—Memorandum—Actual Rate Stated—Instalments.

Where a money-lender's loan, which is to be repaid in instalments, is one at an acutal rate of interest, the provisions of the Money-lenders Act, 1927, *sec.* 15 (2), *which require instalments to be allocated to principal and interest in the proportion of the principal to the total interest, do not apply.*

MUTUAL LOAN FUND ASSOCIATION, LTD. *v.* SANDERSON. **[1937] 1 All E.R. 380. K.B.D.**

As to calculation of rate of interest : see HALSBURY, Hailsham edn., par. 282 ; DIGEST, Supp. Money and Money-lending, Nos. 353a *et seq.*

Rules and Regulations.

Motor-vehicles Act, 1924. Motor-vehicles Fitness (Fees) Regulations, 1937. February 11, 1937. No. 124/1937.

Board of Trade Act, 1919. Board of Trade (Wheat and Flour) Regulations, 1937. February 18, 1937. No. 125/1937.

Broadcasting Act, 1936. The Broadcasting Regulations, 1937. February 18, 1937. No. 126/1937.

Finance Act, 1931 (No. 2). Education Act, 1914. The University National Bursary Regulations, 1937. February 18, 1937. No. 127/1937.

Education Act, 1914. The Native Schools Regulations 1931, Amendment No. 3. February 18, 1937. No. 128/1937.

Land Laws Amendment Act, 1929.—Land Laws Amendment Act, 1932. Land Act Mortgage Interest Regulations Amendment. February 18, 1937. No. 129/1937.

Agricultural Workers Act, 1936. Agricultural Workers Extension Order, 1937. February 18, 1937. No. 130/1937.

Mortgagors and Lessees Rehabilitation Act, 1936. Court of Review Fee Rules, 1937. February 18, 1937. No. 131/1937.

New Books and Publications.

Wolstenholme's Landlord and Tenant, Third Edition, 1937. By Grange Turner, M.A. (Butterworth & Co. (Pub.) Ltd.) 9/-.

The Law Relating to Local Elections, Third Edition. By Harry Barlow, 1936. (Hadden Best & Co., Ltd.) 34/-.

Mew's Digest of English Case Law, 1924-1935. By G. T. Whitfield Hayes. (Sweet & Maxwell). £8/6/6d.