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

" Everybody who has been in a Court of Law knows perfectly well that the evidence often presents a case in a very different aspect from the opening of the plaintiff's counsel. A very learned counsel, now dead, used to speak of counsels' openings to the jury as fairy tales, which is a very correct description."

—PRING, J., in *Kohan v. Stanbridge*, (1916) 16 N.S.W.S.R. 576, 584.

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Sudden Terror Causing Shock Without Physical Injury.

DAMAGES which are recoverable for negligence must be the natural and reasonable result of the defendant's act, such a consequence as in the ordinary course of things would flow from the act. But, as the law stands in New Zealand to-day,

> " Damages arising from mere sudden terror unaccompanied by any actual physical injury but occasioning a nervous or mental shock cannot under such circumstances be considered a consequence which, in the ordinary course of things, would flow from the negligence of the defendant."

This is the much-criticized doctrine propounded by the Judicial Committee of the Privy Council in *Victorian Railway Commissioners v. Coultas*, (1888) 13 App. Cas. 222, 225. It is our purpose to show that there should be in New Zealand a statutory reversal of this doctrine, which in the past fifty years has rendered impossible the recovery of damages for much suffering and loss; and which, in these days of fast-moving vehicles, now causes unnecessary hardship on innocent parties.

After reading many judgments of the Courts of Great Britain, Ireland, and the overseas Dominions, we think that it is not overstating the position to say that wherever the *Coultas* case has been mentioned in argument the presiding Judges, in their subsequent decisions, have expressed their dissent from the principle there enunciated. In the Courts of the Dominions it has had to be followed, whenever it could not be distinguished on the facts; in all other Courts, it has been repudiated and not followed.

In an action claiming damages for shock caused by apprehension of injury to the plaintiff by negligent driving, *Dulieu v. White and Sons*, [1901] 2 K.B. 669, 673, 677, in the Court of Appeal, Kennedy, J., said,

> " It may, I conceive, be truly said that, viewed in relation to an action for negligence, direct bodily impact is, without resulting damage, as insufficient a ground of legal claim as the infliction of fright. That fright—where physical injury is directly produced by it—cannot be a ground of action merely because in the absence of any accompanying impact, appears to me to be a contention both unreasonable and contrary to the weight of authority. . . . Why is the accompaniment of physical injury essential? For my own part, I should not like to assume it to be scientifically true that a nervous-shock which causes serious bodily illness not actually accompanied by physical injury, although it may be impossible, or at least difficult, to detect the injury at the time in the living subject. I should not be surprised if the surgeon or the physiologist told us that nervous shock is or may be in itself an injurious affection of the physical organism.
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> " Let it be assumed, however, that the physical injury follows the shock, but that the jury are satisfied upon proper and sufficient medical evidence that it follows the shock, as its direct and natural effect, is there any legal reason for saying that the damage is less proximate in the legal sense than damage which arises contemporaneously. ' As well might it be said,' (I am quoting from the judgment of Palles, C.B. in *Bell v. Great Northern Railway Company of Ireland*, (1890) 26 L.R. Ir. 428, 439) ' that a death caused by poison is not to be attributed to the person who administered it because the mortal effect is not produced contemporaneously with its administration.' . . .
>
> " As a matter of experience, I should say that the injury to health which forms the main ground of damages in actions of negligence, either in cases of railway accidents or in running-down cases, frequently is proved, not as a concomitant of the occurrence, but as one of the *sequelæ*."

Among many decisions in the English and Scottish Courts the cases against the *Coultas* doctrine have not been better or more strongly expressed than in *Coyle or Brown v. John Watson, Ltd.*, [1915] A.C. 1 (an appeal in the House of Lords from the Court of Session in Scotland under the Workmen's Compensation Act), where Lord Shaw of Dunfermline, at p. 12, said that the exclusion of cases, however serious—say, of shock and the like—unless physical impact or lesion had occurred, had no justification in the state of the authorities, the one case cited in its favour being *Victorian Railway Commissioners v. Coultas* in the Privy Council. He proceeded,

> " But in England, in Scotland, and in Ireland alike, the authority of *Victorian Railway Commissioners v. Coultas* has been questioned, and, to speak quite frankly, has been denied. I am humbly of opinion that it can no longer be treated as a decision of binding authority."

His Lordship went on to say that the subject was examined with much erudition and care by the Lords Justices in *Dulieu v. White and Sons* (*supra*), and the *Coultas* case was held not to be binding; and he agreed with the judgment of Kennedy, J., in his observations thereon; and that these were in line with certain *dicta* of Lord Esher, M.R., on the same topic in *Pugh v. London, Brighton, and South Coast Railway Co.*, [1896] 2 Q.B. 248. In Scotland, he added, that very learned Judge, Lord Stormouth Darling, stated broadly and emphatically that the *Coultas* decision was no part of the law of Scotland; and, further, that probably, however, no better analysis of it had been made than by Palles, C.B., on the Irish case of *Bell v. Great Northern Railway Co. of Ireland*, (1890) 26 L.R. Ir. 428. His Lordship desired to tender his respectful adhesion to and approval of that judgment. He also said that other cases had been cited showing it to be fully established by authority—recent and strong authority—that physical impact or lesion is not a necessary element in the case of recovery of damage in ordinary cases of tort.

Finally, Lord Shaw put the case for the rejection of the *Coultas* decision in these words:

> " On principle, the distinction between cases of physical impact or lesion being necessary as a ground of liability for damage caused seems to have nothing in its favour—always on the footing that the causal connection between the injury and the occurrence is established.
>
> " If compensation is to be recovered under the Workmen's Compensation Act or at common law in respect of an occurrence which has caused the dislocation of a limb, on what principle can it be denied if the same occurrence has caused an unhinging of the mind? The personal injury in the latter

case may be infinitely graver than in the former, and to what avail—in the incidence of justice, or the principle of law—is it to say that there is a distinction between things physical and mental? This is the broadest difference of all, and it carries with it no principle of legal distinction. Indeed it may be suggested that the proposition that injury so produced to the mind is unaccompanied by physical affection or change might itself be met by modern physiology or pathology with instant challenge."

In *Janvier v. Sweeney*, [1919] 2 K.B. 316, where the plaintiff recovered damages for physical injury resulting from a nervous shock caused to her by false statements maliciously made to her by the defendants, the verdict was upheld by the Court of Appeal. Bankes, L.J., adopted the above-cited passages, from the judgment of Kennedy, J., in *Dulieu v. White and Sons*, which he said, seemed to him to state the law accurately; and Duke, L.J., as he then was, said that the two cases already cited seemed to him to state elementary principles of law.

In *Salmond on Torts*, 9th Ed., 369, the present law is stated as follows:

"The term bodily harm includes illness due to mere nervous shock: as when the plaintiff suffers in health through the terror of a narrow escape from sudden death, or through agitation caused through a false alarm wilfully given by the defendant or by unlawful threats made by him."

In a footnote, the learned author says:

"The contrary decision of the Privy Council in *Victorian Railway Commissioners v. Coultas*, (1888) 13 App. Cas. 222, has been repeatedly disapproved, and may be taken to be unsound."

Not only have the Courts of England, Scotland, and Ireland repudiated the *Coultas* doctrine that damages arising from mere sudden terror unaccompanied by actual physical injury but occasioning a mental or nervous shock "are too remote and thus irrecoverable," but its correctness is contrary to the decisions of the Courts of the United States, for example, *Sloane v. Southern California Railway Co.*, (1896) 111 Cal. 668; *Purcell v. St. Paul City Railway Co.*, (1892) 48 Min. 134, followed by the Supreme Court of South Carolina in *Mack v. South Bound Railway Co.*, (1898) 40 L.R.A. 679; and *Spade v. Lynn and Boston Railway Co.*, (1897) 168 Mass. 285.

Notwithstanding the foregoing, and many other like expressions of high judicial authority, and the opinions of authoritative writers of text-books, *Victorian Railway Commissioners v. Coultas* continues to be an authority binding on the Courts of the various British Dominions.

In *Lapointe v. Champagne*, (1921) 64 D.L.R. 520, 521, Orde, J., said that the Canadian Courts had held the *Coultas* case binding in all cases which came within the scope of the decision.* Later, and more specifically, in *McNally v. City of Regina*, [1924] 2 D.L.R. 1221, Lamont, J.A., said *obiter*, of the *Coultas* doctrine:

"That decision has not only been severally criticized, but has been flatly repudiated in England, Scotland, and Ireland. It is a decision of our highest Court of Appeal, and for cases coming within the ambit of the decision it is still a binding authority. . . .

"To my mind the argument of Lord Shaw in *Coyle v. Watson, Ltd.*" [*cit. sup.*] "is unanswerable but, so long as the *Coultas* case remains unreserved, Canadian Courts are, in my opinion, obliged to follow it where the result of a nervous shock produces only a mental disturbance 'unaccompanied by physical injuries.'"

And in *Henderson v. Canadian Atlantic Railway Co.*, (1898) 25 A.R. (Ont.) 437; affirmed on appeal, (1899) 29 S.C.R. 632, Moss, J. A., at p. 445 of the former report, says:

"Whatever weight may be or ought to be given to the views [of the *Coultas* decision] of other Courts, it is now incumbent on this Court to accept and follow that case as a decision of the ultimate Court of Appeal for this country."

The *Coultas* decision has been held to be an authority binding all the Courts in Australia, notwithstanding the doubts cast upon it elsewhere, as Ferguson, J., said in delivering the judgment of the Full Court of New South Wales in *Johnston v. The Commonwealth*, (1927) 27 N.S.W.S.R. 133, 135; and, more recently, as Piper, J., said in *Brown v. Mount Barker Soldiers' Hospital, Inc.*, [1934] S.A.S.R. 128, 130.

In New Zealand, the *Coultas* decision is binding in our Courts in Workers' Compensation cases, Deaths by Accidents Compensation cases, and at common law. The position was stated by Herdman, J., in *Stevenson v. Basham*, [1922] N.Z.L.R. 225, when, after referring to the *Coultas* case and the contrary views expressed by Lord Shaw of Dunfermline in *Coyle or Brown v. John Watson, Ltd.* (*cit. sup.*), and by the English Court of Appeal in *Dulieu v. White and Sons, Ltd.*, *supra*, and in *Janvier v. Sweeney*, *supra*, he said, at p. 231,

"Although modern opinion in Great Britain seems to be unanimous in holding that the statement of the law in the *Victorian* case is either erroneous or obsolete, we in New Zealand are no doubt bound to follow their Lordships' judgment unless the facts of the present case can be distinguished from the facts of the case which the Privy Council decided."

We ask: Are we always to say, "We must treat the matter as concluded as far as we are concerned," as Moss, J.A., did in the Ontario Court of Appeal in *Canada Atlantic Railway Co. v. Henderson*, (1899) 25 A.R. (Ont.) 437, 445, after referring to the rule laid down by the Judicial Committee in the *Coultas* case, within which the facts fairly came?

"The legal effects of injury by shock have undoubtedly developed in the last thirty or forty years," said Atkin, L.J., as he then was, in one of the last decisions on the question, *Hambrook v. Stokes Bros.*, [1925] 1 K.B. 141, 153, which further extended the principle of the decisions opposed to the *Coultas* case. This was an action under the Fatal Accidents Act (our Deaths by Accidents Act, 1908), brought by a husband for the death of his wife, who died after a shock caused by a motor-lorry, through the negligence of the defendant's servant left unattended with the motor running. Her children had just left her for the street from which the derelict motor-lorry approached her round a bend, ricochetting from one side of the road to the other. It was held that, on the assumption that the shock was caused by what the woman saw with her own eyes, as distinguished from what she was told by bystanders, the plaintiff was entitled to recover for the loss of her services, notwithstanding that the shock was brought about by fear for her children's safety and not for fear for her own.

* Only in one Canadian case has a Judge had the courage to reject the *Coultas* decision, on the ground that a decision of the Privy Council is not binding on the Courts outside of Victoria, Australia, whence the *Coultas* appeal went to the Privy Council. Middleton, J.A., in *Negro v. Pietro's Bread Co., Ltd.*, [1933] 1 D.L.R. 490, after saying of the *Coultas* case that "No decision of recent years has received more adverse criticism," could, we think have distinguished the case before him on its facts, without further parley; but he preferred to find that it was open to him to refuse to follow the decision of the Australian case, which, he said, stood alone and was out of harmony with the whole trend of the English cases. The learned Judge admitted his boldness in reaching that conclusion. In the title, *Judgments and Orders*, in *8 Halsbury's Laws of England*, 2nd Ed. 259 (*r*), the view so expressed in *Negro's* case, it is submitted, is wrong.

The judgment of Atkin, L.J., in *Hambrook's* case shows the wide divergence between the law in England to-day and that which the Dominions must still apply as the continuing result of the *Coultas* decision which is binding on them. Speaking of the contention put forward that the shock must be a shock which arises from a reasonable fear of immediate personal injury to oneself, he said, at p. 157 :

> " It appears to me inconsistent with the decision in *Pugh v. London, Brighton, and South Coast Railway Co.*, ([1896] 2 Q.B. 248), and with the decision in *Wilkinson* v. *Downton*, ([1897] 2 Q.B. 57), in neither of which cases was the shock the result of apprehension of the injury to the plaintiff. It would result in a state of the law in which a mother, shocked by fright for herself, would recover, while a mother shocked by her child being killed before her eyes, could not ; and in which a mother traversing the highway with her child in her arms could recover if shocked by fright for herself, while, if she could be cross-examined into an admission that the fright was really for her child, she could not. In my opinion, such distinctions would be discreditable to any system of jurisprudence in which they formed part.
>
> " Personally, I see no reason for excluding the bystander in the highway who receives injury in the same way from apprehension of or the actual sight of injury to a third party. There may well be cases where the sight of suffering will directly and immediately physically shock the most indurate heart ; and if the suffering of another be the result of an act wrongful to the spectator, I do not see why the wrongdoer should escape."

(His Lordship would have had to find in New Zealand, that there was no cause of action maintainable in any of the events to which he referred.) He went on to say that the effect of his judgment might be to increase possible actions. He thought this might be exaggerated, as he found only about half-a-dozen cases of direct shock reported in about thirty years, and he did not expect that shocks to bystanders would outnumber them.

Apart from the wealth of judicial authority disapproving the principle of the *Coultas* decision, the development of modern medical and psychiatric science, during and since the Great War, has completely reoriented ideas on the subject of nervous system and nervous shock. A condition of permanent or temporary mental or nervous incapacity, such as followed the bursting of shells, for example, without even a slight skin abrasion, much less physical impact, can surely no longer be held not to be " a consequence which in the ordinary course of things would flow " from fright, concussion, or an overstraining of the nervous system. In the conditions of life to-day, no one can say that the hazards of " sudden terror unaccompanied by physical injury, but occasioning mental or nervous shock " are uncommon.

That the *Coultas* decision is binding on our Courts seems too well settled for argument. That it debars persons and their dependants (justly entitled as in Great Britain) from being compensated in damages where nervous or mental shock is the result of a wrongful act, is similarly unarguable. The matter can be rectified only by an overruling of the *Coultas* decision by appropriate legislative enactment, and we hope that the learned Attorney-General, in his zeal for reform and passion for justice, will give our suggestion for such remedial legislation his best attention.

It may be objected that the " shock " cases may be found difficult of proof. Kennedy, J., in *Dulieu v. White and Sons*, *supra*, at p. 681, did not think so. He said :

> " My experience gives me no reason to suppose that a jury would really have more difficulty in weighing the medical evidence as to the effects of nervous shock through fright, than in weighing the like evidence as to the effects of nervous shock through a railway collision or a carriage accident, where, as often happens, no palpable injury or very slight palpable injury has been caused."

In answering another objection, Atkin, L.J., in *Hambrook v. Stokes Bros.*, (*supra*), said :

> " One may conclude by saying that this decision in no way increases the burden of care to be taken by drivers of vehicles, and that the risk foreshadowed in one of the cases, of an otherwise careful driver being made responsible for frightening an old lady at Charing Cross, is non-existent."

If the learned Attorney-General be disposed to consider our suggested abrogation of the existing common-law doctrine to which we have referred, he may fortify himself with the approval by Atkin, L.J., in *Hambrook's* case of the words of Kennedy, J., in *Dulieu v. White and Sons*, *supra*, at p. 681, in reference to the *Coultas* doctrine :

> " I should be sorry to adopt a rule which would bar all such claims [for physical injuries naturally and directly resulting from nervous shock which is due to the negligence of another in causing fear of immediate bodily hurt], on the ground of policy alone, and in order to prevent the possible success of unrighteous or groundless actions."

And His Lordship's concluding words give a further argument for a statutory abrogation of the *Coultas* doctrine, for, he says, it " involves the denial of redress in meritorious cases, and it necessarily implies a certain degree of distrust in the capacity of legal tribunals to get at the truth in this class of claim."

Summary of Recent Judgments.

SUPREME COURT.
Napier.
1937.
March 3, 18.
Ostler, J.

BEAMISH AND OTHERS
v.
COMMISSIONER OF STAMP DUTIES.

Public Revenue—Death Duties—Debt to Estate by Beneficiary under Will—How Values Ascertainable—Death Duties Act, 1921, s. 71.

The value of a debt due by a beneficiary of a deceased testator for death duties purposes is no more than could have been recovered in bankruptcy from the estate of the beneficiary had he been made bankrupt at the date of the testator's death, irrespective of benefits acquired by him under the testator's will.

In fixing the value of the land of such beneficiary as an asset for the purpose of assessing the value of such a debt, the Commissioner of Stamp Duties is not bound to accept the Government valuation.

Dolbel v. Commissioner of Stamps, (1904) 23 N.Z.L.R. 1003, applied.

Commissioner of Stamp Duties v. Haynes, [1924] N.Z.L.R. 339, mentioned.

Counsel : A. L. Martin, for the appellants ; **L. W. Willis,** for the respondent.

Solicitors : Carlile, McLean, Scannell, and Wood, Napier, for the appellants ; **Crown Law Office,** Wellington, for the respondent.

COURT OF REVIEW.
Wellington.
1937.
March 17, 20.
Johnston, J.

IN RE P. A., A LESSEE.

Mortgagors and Tenants Relief Acts—Leases—Extension of Adjustable Lease—Jurisdiction—Mortgagors and Lessees Rehabilitation Act, 1936, s. 45.

An Adjustment Commission has no jurisdiction under s. 45 of the Mortgagors and Lessees Rehabilitation Act, 1936, which empowers it to "make such orders as it thinks fit . . . for the variation of the provisions of any adjustable lease," to grant an extension of any such lease.

Counsel: J. H. Miles, in support; **Harding,** to oppose.

Solicitors: O. and R. Beere and Co., Wellington, for the applicant; **Meek, Kirk, Harding, and Phillips,** Wellington, for the lessor.

SUPREME COURT.
Wellington.
1937.
Feb. 27;
March 16.
Ostler, J.

WAIROA ELECTRIC-POWER BOARD
v.
WAIROA BOROUGH.

Electric-power Board—No Contract by a Municipal Corporation to pay Price fixed by Board for Electricity supplied—Monopoly of Supply of a Commodity of Prime Necessity—Implied Condition that Terms of Supply should be fair and reasonable—Electric-power Boards Act, 1925, s. 82 (*n*), (*o*)—Municipal Corporations Act, 1933, s. 154—Wairoa Electric-power Board License, *1922 New Zealand Gazette,* **2689.**

The contract between the Board and the Corporation having terminated and the parties being unable to come to terms, the Board wrote a letter to the Corporation the effect of which was that, if the Corporation continued to take electricity from the Board, the latter would charge at the same rate as the Corporation formerly agreed to pay under the contract. The Corporation, after a formal acknowledgment, did not reply further, but continued to receive a supply of electricity from the Board for three months, and then objected to the account rendered on the ground that the price was not fair and reasonable.

The Board purchased from the Crown the whole of the energy required to supply their load, and the Minister of Public Works thought the charges the Board was making were reasonable.

In an action to recover the amount alleged to be due by the Borough to the Board for electrical energy supplied to March 31, 1936,

H. B. Lusk and **Sainsbury,** for the plaintiff; **O'Shea,** for the defendant.

Held, 1. That s. 154 of the Municipal Corporations Act, 1933, restricted the contracting power of a municipal Corporation in such a way that the Borough could not be held to have bound itself to pay the price asked by the Board merely by using the commodity supplied.

Reynolds v. Nelson Harbour Board, (1904) 23 N.Z.L.R. 965, and **Young v. Mayor of Royal Leamington Spa,** (1883) 8 App. Cas. 517, applied.

2. That the Board, being prepared to take from the Minister the whole of the energy required to supply their load and the Minister considering its charges reasonable, had a practical monopoly of a supply of a commodity of prime necessity—electrical energy.

3. That, as there was nothing inconsistent in the statute and license under which it derived its authority to supply, it was an implied condition of its authority that the terms in which it supplied should be fair and reasonable, and the matter was not concluded by the opinion of the Minister.

Minister of Justice for Dominion of Canada v. City of Levis, [1919] A.C. 505, **State Advances Superintendent v. Auckland City Corporation,** [1932] N.Z.L.R. 1709, **Lee v. Horowhenua Electric-power Board,** [1934] N.Z.L.R. s. 125, applied.

Solicitors: Sainsbury and Sainsbury, Wairoa, for the plaintiff; **John O'Shea,** Wellington, for the defendant.

Numerology.

In the Court of Appeal.

A Court constituted of more than one Judge has its advantages provided the numbers are odd; but practitioners are at times acutely conscious of its disadvantages, says "Outlaw" in a recent number of the *Law Journal* (London). The advocate, as he proceeds with his argument, greatly desires to know whether and how he is affecting the three individual heads, two of which, it may be, show no outward indication of approval, disapproval, interest, or intelligence. One of the three is almost certain to be an interrupter of argument, a frequent questioner; and it would be nice to know whether the answer designed to satisfy him might adversely affect the judgments of his silent colleagues. The address demanded of the forensic orator is different and of a higher order than that required for use on a single judicial mind; and talking to a jury, provided you have the knack of it, is the lowest form of speech.

And when, at the end of all argument, or at the conclusion of the appellant's case, the "outside" Judges heave themselves from their seats and the three heads get together in shamrock or trefoil formation, the young and anxious advocate would give much to hear what is passing and to correct, if need be, the misconceptions of those who do not appear to agree with him.

But until the last judgment is fully spoken one may not tell the end. More than once you have heard a Judge proceed strongly for three-quarters of his speech in your favour and suddenly, as if moved by the supernatural, switch over and in the last few decisive words give judgment for the other side.

Lord Darling, when Darling, J., during his salad days on the Bench, once figured somewhat ingloriously in the Divisional Court. "The arguments having been concluded," says a report, "and the three learned Judges having put their heads together, the Chief Justice announced that, while he and his brother Darling had formed one opinion, his brother Channell held another. The latter would therefore deliver his judgment first. This Channell, J., proceeded to do. It then became the duty of Darling, J., to offer his reasons for dissenting.

"There was a pause, during which the dropping of a pin could have been distinctly heard in the crowded and expectant Court; and then Mr. Justice Darling, pale but determined, declared in a firm voice that, though before his brother Channell had delivered judgment he agreed with the Chief Justice, the lucid statement of the facts and the law to which he had just listened had converted him. He therefore agreed with Mr. Justice Channell." A criticism of the course adopted was that it would have been better to have waited until the C.J. had also spoken; and if still in doubt he might have reserved judgment to a later day. That, however, was an incident of Lord Darling's judicial youth; his later performances were not open to similar criticism.

The Late Sir Frederick Pollock, K.C.

The Close of an Age.

By JOHN M. LIGHTWOOD.

Sir Frederick Pollock has died at the age of ninety-one. When anyone of great fame and of great age dies, it is natural to say that he was the last of the Victorians. At any rate, Pollock prided himself on being a Victorian. "I am," he wrote in *For My Grandson*, "a Victorian if anyone is. In 1845, when I was born, only eight years of that reign were past and fifty-five more to come; I do not think the wisest man then living could have foreseen any of the surprising events which the Queen

Sir Frederick Pollock (*Circa* 1900).

lived to see. It was about the middle of the reign when I was called to the Bar." And his eminence as a lawyer was in these last days like a solitary peak illumined with the rays of the setting sun. For of those who can be classed with him, Maine, Maitland, Holmes, the two first passed away many years ago and Justice Oliver Wendell Holmes, the great writer on the Common Law and one of the greatest Judges who has sat in the Supreme Court of the United States, died two years ago at the age of 93. I do not disparage their successors when I say that the death of Sir Frederick Pollock closes an age.

An appreciation of Sir Frederick Pollock's career was given in *The Law Journal* (London) when he retired from the editorship of the *Law Reports* (*80 Law Journal*, 358), and now that in the inevitable course of things his life has ended, it is fitting again to speak of what his long devotion to the law has meant. A familiar figure in Lincoln's Inn, he did not engage in the work of the Courts, the branch of practice which chiefly attracts aspirants at the Bar. Had he so chosen, no doubt he would have succeeded. He was a fluent and interesting speaker, as those will remember who heard him reply at the Jubilee dinner in July, 1936, of the *Law Quarterly Review* to the toast of the *Review*, proposed in a felicitous speech by Lord Tomlin, unhappily no longer with us; and the Courts would readily have listened to his arguments as they did to Vaughan Hawkins, in whom great learning was not associated with ready words. But, like Maine, who, it used to be rumoured, once held a brief in a Chancery Court, Pollock gave himself to the study of the law, from an historic and academical view certainly, but so as to turn them to account for the elucidation of practical law. And so, while working with Maitland at the *History of English Law before the time of Edward I*, and producing his First Book on *Jurisprudence*, he planned and carried out the two works on Contract and Tort which have been for many years the basis of exposition of these branches of the Common Law. The *Law of Torts* reached its thirteenth edition in 1929; the *Principles of Contract* has recently been published in the tenth edition, still edited by the author. And the *Digest of the Law of Partnership*, in its twelfth edition, incorporating the Partnership Act, 1890 (which Sir Frederick Pollock drafted), is the lawyer's best friend in partnership matters, reserving *Lindley* for more spacious research. Willes and Lindley, indeed, were Pollock's ideals of what a learned lawyer should be. He dedicated the *Torts* to the memory of Willes, "Sometime a Justice of the Common Bench, a Man Courteous and Accomplished, a Judge Wise and Valiant," and to Oliver Wendell Holmes; and the *Contract* to "My Master in the Law, Nathaniel, Lord Lindley," for happily the end of his life found Lindley in the House of Lords.

Pollock began his work in Jurisprudence in 1882 as Professor of that subject at University College, London. I happened to be one of those who attended his first lecture, opening, if after these years I remember rightly, with the opening sentence of the Digest: *Justitia est constans et perpetua voluntas jus suum cuique tribuens.* But he soon left for Oxford and was Corpus Professor of Jurisprudence there till 1903. Before this he had become editor, in 1885, of the newly founded *Law Quarterly Review*—the early numbers were enriched by Maitland's articles, which should still be remembered, on *The Beatitude of Seisin*—and he retained the editorship till 1919. In this period the *Law Quarterly* became a worthy rival of the Harvard and Yale Law Reviews; now the States have a number of such journals all tending to raise the study and practice of the law. In 1891 Pollock commenced the editing of the *Revised Reports*, a well-meant plan for reducing the volume of reported cases and retaining only such as were of permanent value. The series was useful, but it has been overshadowed by the *English Reports*, which do not aim at selection; for the lawyer in search of an authority is not concerned so much with permanent value as to find a case just covering his own particular point. From 1895 till his retirement at the end of 1935 Pollock held the post of editor of the *Law Reports*.

In August, 1903, Sir Frederick Pollock attended the meeting of the American Bar Association at Hot Springs, Virginia, and read a paper, reprinted in *Essays in the*

Law, in which he gave an interesting account of the *Law Reports*. Until 1866 law reporting was carried on by a number of private reporters and legal journals. The *Law Reports* were founded in order to bring the work of recording judge-made law under unified control. At first there were several independent editors under the general supervision of the Council of Law Reporting; but this system was abandoned, and in 1895 Sir Frederick Pollock became the first editor of the *Law Reports* as a whole. He told his American audience that the staff of the *Law Reports* considered themselves as exercising an office of trust on behalf of the legal profession, not only in England but in every jurisdiction where the Common Law was received or its authorities quoted. As to what cases should be selected for reporting, he gave utility to the profession as the only test. This, as appears from the various series of reports now issued, leaves a wide field for discretion. For the principles on which that discretion should be exercised, reference may usefully be made to Sir Frederick Pollock's paper.

But law, though the chief, was only one of Sir Frederick's many interests. How wide these were was revealed in *For My Grandson*, to which I have already referred. Literature, music, the stage, alpine climbing, fencing, all attracted him. It is not given to everyone to pick out on the Parisian stage an actress who is to become famous. But seeing "some time in the first years of the Third Republic" an unknown actress playing at the Comédie Français the minor part of Aricie in *Phèdre*, Pollock said to his mother who was with him, "That young woman will go far." The Aricie was Sarah Bernhardt. Nor was it everyone who could remember Tennyson reading his *Boadicea*:—

> *Thine the liberty, thine the glory, thine the deeds to be celebrated,*
> *Thine the myriad-rolling ocean, light and shadow illimitable.*

In music Pollock was associated with the Under-Treasurer of Lincoln's Inn, Sir R. P. P. Rowe, and others in enabling the Joachim Quartet to continue its work, and, to return to the law, he had interesting reminiscences of the "Apostles" at Cambridge, many of whom became well known later in the Inns of Court. They included Maine, Fitzjames Stephen and Maitland, and Charles Sanger, a name well known in Lincoln's Inn, who died just as his great edition of *Jarman on Wills* was completed.

But with all these varied interests, Pollock through his long life stood primarily for the learning of the Common Law and its advancement in accordance with justice. Nor did he overlook the wider sphere of law. His *League of Nations* is a book of great value. Work like his bears fruit in the stability of the State. A character like his preserves his life in the hearts of his friends. From memories of many years I am glad to render this tribute.

Stop-watch Evidence.—Recently the Gateshead justices dismissed a case of an alleged offence against the speed-limit when it was pointed out that the police, who relied on stop-watches in arriving at the speed of a motorist, had failed to produce evidence that the stop-watches worked correctly.

The Supreme Court of the United States.

A New Zealander's Recent Impression.

By A. T. S. McGhie, LL.B.

> "The Honourable the Chief Justice and the Associate Justices of the Supreme Court of the United States. Oyez! Oyez! Oyez! all persons having business before the Honourable the Supreme Court of the United States are admonished to draw near and give their attention for the Court is now sitting.
>
> "God Save the United States and this Honourable Court."

As the stentorian tones of the marshal died away the members of this impressive tribunal, the highest Court in the land, bowed gravely to counsel before taking their seats.

Let me try to picture them as they appeared during those days in early February, when their judicial calm was as yet unruffled by any whisper of the approaching storm, which, with such dramatic suddenness, was to transport them from guardians over the peaceful routine of their court-room into fit subject-matter for the streaming headlines of a propagandist Press.

Dwarfed against a towering background of whitest marble topped by sculptured tableaux, and offset by grilled gateways of burnished gold, they sat in the central hall of their new ten-million-dollar court-house, resplendent with its generously-proportioned pillars and massive doorways, rivalling even the Capitol across the street in the magnificence of its design. Theirs is in every sense a temple worthy the dignity of the Law.

These were those "nine old men" who by their interpretation of the Constitution of their country had ruthlessly destroyed the Statutes of N.R.A., A.A.A., etc., until, as a wit put it, "there remains nothing of the Blue Eagle except a feather in the hat of Herbert Hoover."

First and foremost, and outstanding anywhere, is the Chief Justice, Charles Evans Hughes. Tall and commanding in presence, with massive bald head, and flowing white moustache and beard, Hughes has had an arresting career. An Associate-Justice of the Supreme Court from 1910 to 1916, he resigned in the latter year to contest the Presidency as a Republican, being narrowly defeated by Woodrow Wilson. He then engaged in private practice until 1930, when he was again appointed to the Supreme Court Bench, this time as Chief Justice, by President Hoover. In the interim between his two periods on the Bench, Milton's description of the lawyer, "grounding his purpose on pleasing thoughts of litigous terms, fat contentions, and flowing fees," might have been true of him; and there was much ill-feeling among his professional brethren who considered that he used his former position to obtain unfair advantages over them. So much was this so that when his appointment as Chief Justice came before the Senate for confirmation, it was bitterly attacked, and a very enlightening debate on the qualifications of an ideal Judiciary ensued. He is now seventy-five years of age, and years ago was so indiscreet as to write concerning aged men, that "they seem to be tenacious of the appearance of adequacy." The President, in his message of February 5, quotes these

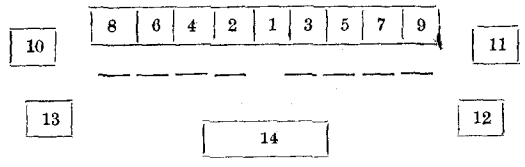
words in support of his proposals for a compulsory retiring age!

Next to catch the eye would be Associate-Justice Brandeis, the oldest member of the Court, now in his eighty-first year. He certainly looks no more than sixty, holds himself very erect, is positive and precise in his speech and actions, and striking in appearance, since, far from being bald, he has a crop of thick grey hair, which stands straight up to a height of about three inches, all over his head. Although the "father" of the Bench he is probably its most radical member, and he has upheld President Roosevelt in all the Constitutional cases except the N.R.A. itself, on which the Court was unanimous.

Between Associate-Justice Brandeis and the Chief Justice, on the latter's right, sits Associate-Justice Van Daventer, a little old man of seventy-eight, who strikes one as being very tired, and of whom the President's remarks seemed to ring true:

> "Little by little, new facts become blurred through old glasses fitted, as it were, for the needs of another generation; older men, assuming that the scene is the same as it was in the past, cease to explore or inquire into the present or the future."

THE COURT.



1. Chief Justice Hughes.
2. Mr. Justice Van Devanter.
3. Mr. Justice McReynolds.
4. Mr. Justice Brandeis.
5. Mr. Justice Sutherland.
6. Mr. Justice Butler.
7. Mr. Justice Stone.
8. Mr. Justice Roberts.
9. Mr. Justice Cardozo.
10. The Clerk's Desk.
11. The Marshal's Desk.
12. The Reporter's Desk.
13. Atty. General's Desk.
14. Counsel's Desk.

Silence is Requested.

A Spectator's Ticket.

On the left of the Chief Justice sits Associate-Justice McReynolds. Not without a sense of grim satisfaction, the President stated in his message that "in 1913, 1914, 1915, and 1916, the Attorneys-General then in office recommended to the Congress that when a district or circuit judge failed to retire at the age of seventy, an additional judge be appointed in order that the affairs of the Court may be promptly and adequately discharged." McReynolds, who is now seventy-five, and who has been one of those chiefly responsible for checkmating the President's legislation, was one of those Attorneys-General; but, as an outspoken practitioner said to me, "if the President will only be patient, that fellow McReynolds will soon die of his own meanness anyway." He certainly strikes one as a grim old Scot.

Away down at the end of the row on the left of the Chief Justice, sits Associate-Justice Cardozo. His smile as sweet and his face as gentle as that of many a woman, his is perhaps the most outstanding intellect of them all. At the other end of the Bench sits the youngest Judge, Associate-Justice Roberts, a mere boy of sixty-two. Such are the vagaries of fate, that this Judge in his pronouncements has shown himself to be the most conservative of them all; and he has made himself the majority spokesman on more than one occasion, in decisions against the President.

Of the other members of the Court I can say but little. On no occasion when I was present did Associate-Justice Stone show that he was even conscious of his surroundings; but he has just recovered from a serious illness, while—except that Associate-Justice Sutherland, the only bearded Judge besides the Chief Justice, listens with his head on one side in a manner reminiscent of the early bird listening for the worm, and that Associate-Justice Butler struck me as being somewhat ponderous in his remarks—I carried away no particularly lasting impressions concerning them.

A point that struck me about all the Judges was the fact that none of them seemed to make any notes of arguments presented to them, although they kept a staff of clerks running in and out continuously with volumes of law reports, to which they seemed to refer very often.

Counsel, when arguing their cases, stand at a lectern placed in front of the Chief Justice. In addressing a Judge they will say "you" rather than "Your Honour," and they are generally much more direct, and, to our way of thinking, less respectful, than a New Zealand barrister would be. I was particularly impressed with one of them who could not have been more than thirty, and who spoke for about two hours, subject to a running fire of questions from members of the Court, with considerable eloquence, and without a single note.

* * * *

President Roosevelt in his "sensational" message to Congress of February 5, 1937, proposing reorganization of the Judiciary, dealt with what he termed "four present needs." These were, first, to eliminate congestion of calendars and to make the Judiciary as a whole less static by the constant and systematic addition of new blood to its personnel; secondly, to make the Judiciary more elastic by providing for temporary transfers of circuit and district judges to those places where Federal Courts are most in arrears; thirdly, to eliminate inequality, uncertainty, and delay now existing in the determination of constitutional questions involving Federal statutes by providing for preliminary notice to the Attorney-General and giving him the right to plead; fourthly, to furnish the Supreme Court practical assistance in supervising the conduct of business in the lower Courts by the appointment of an official to be called a Proctor.

So far as I know, we have not in New Zealand got an official corresponding to the Proctor. As to the first proposal, for many years Judges of the Supreme Court in New Zealand have automatically retired on reaching the statutory age-limit of seventy-two years; as to the second point, we have provision for the transfer of Judges from one district to another, and for appointment of temporary Judges where arrears of litigation become unwieldy, a provision which has frequently been invoked well "within living memory," while, as to the third point, the Crown Suits Act, 1910, provides for preliminary notice to the Attorney-General in all suits affecting the Crown, and gives him the right to enter an appearance.

So that either New Zealand is a very "sensational" country, or, on the face of it, there is but small excuse

for the present constitutional crisis in the United States.

* * * *

I saw the Judges once again after the publication of the President's candid remarks concerning them. The charged atmosphere of the court-room was very evident. Everyone was tense. Of course, whereas only a handful of the general public had been present before, the Court was now packed with hundreds of curious laymen who daily waited patiently in the corridors, in the hope of estimating for themselves the faculties of these aged law-givers.

What will be the outcome of the present furore we do not yet know. It seems inevitable that it cannot but be accompanied by abject humiliation for some at least of these "nine old men."

The Technique of Nisi Prius Advocacy.

Another Treatment of the Subject.*

By J. C. White, LL.B.

The aspiring advocate very soon realizes that, although he may "sigh for the Leader's silken robe to come," he must first succeed in lowlier spheres. This being so, it may seem somewhat presumptious for him to write on a subject which can only be authoritatively dealt with by those who have passed through the hard school of experience. The young lawyer must, and does, look ahead, however; and, by studying the methods of the advocates of the past, and by observing the leaders of the Bar to-day, he is able, despite lack of experience, to learn something of that great art in which he must excel if he is to succeed in his profession.

The object, then, of this paper is to consider the fundamental rules governing the conduct of a witness-action either before a Judge and jury or before a Judge alone. In doing so, it will not be possible to cover the whole of the subject; and various aspects of nisi prius advocacy, including the special considerations which arise in a criminal case, will be omitted. I propose, therefore, to follow the course of a civil case from the moment the solicitor receives his instructions until counsel finally sits down, leaving the matter to the tender mercies of the Judge or jury. A convenient division of the subject is to take the period before trial, and after the trial itself; and, under these two headings, we may proceed to consider the various departments of the art of advocacy.

Preparation For Trial.

Mastering the Facts.—The first step in all cases is the full investigation of the facts and the law applicable to them. Taking the ideal detective as an example, the case must be reconstructed as soon as possible and statements must be obtained from all witnesses who may be useful—even from those who appear adverse. It will be very useful if counsel is able to remind a witness who is called against him that at an earlier date he made a statement, such as, "I saw nothing."

It should be possible to "get to the cause of things" by examining and comparing the mass of exaggeration and over-statement of the client with the less biased stories told by the witnesses.

The Pleadings.—The importance of the pleadings cannot be over-emphasized, for they are the foundation of the whole case. Very briefly, their function is this: In the statement of claim the material facts, as they can be proved to exist, are set out in intelligible language. They are the assertions which the defendant must specifically admit or deny in the statement of defence, while at the same time raising any particular defence. In the result, the litigation should be narrowed down to two or three points which are the real questions in dispute.

Evidence Required.—The issue having been clearly defined, the next question is to decide what evidence is to be called. Some facts will have been admitted: the length to which the admissions go must be examined for they may make it unnecessary to call evidence of some other facts alleged in the claim, and they may go further than the other side contemplated. Then there are the facts denied: it is necessary to make certain that the witness or document you are calling in support does go as far as required. Every allegation which is denied must be proved, however easy that may be.

On the question of what evidence is required, it is important that counsel and not his client should control the trial.

Value and Preparation of Witnesses.—The "evidentiary" value of each individual witness must be carefully weighed, and no witness should be called who does not prove a material fact or some fact which is necessary for the proof of one which is material. The deportment of a witness is most important "for a witness disbelieved is a witness against you," and he may well give the case the appearance of being supported by perjury. To be of value, a witness must fulfil a function; he should confirm, corroborate, supplement, or contradict. Corroboration is not repetition, the latter giving the case a machine-made look.

Having decided on the witnesses and the evidence to be given, the next step is to prepare the witnesses for battle. Loquacity should be curbed, pertness repressed, and timidness reassured; and all witnesses should be tested out with the probable questions of the cross-examining counsel. Just prior to the trial they should go through their own statements, for a sudden loss of memory in the box is by no means unusual.

Expert Evidence.—In many cases in this age of specialization expert evidence is called. In the prevalent running-down case, for example, there are mechanics, doctors, and even actuaries; while other actions call for varying types of expert assistance. It is essential for counsel to be well-versed in the subject he is to examine on, for he must understand both the evidence and the reasons prompting it. He will then be in a position to cross-examine experts called on the other side.

* This paper was placed second by the Hon. Mr. Justice Blair, in the Wellington Law Students' Society's competition for the prize given by Mr. C. H. Weston, K.C. As, in His Honour's opinion, this paper was a very close second, and he had difficulty in separating it from Mr. Wild's treatment of the subject, reproduced on p. 62, *ante*, we publish this one as, in the Judge's view, "the general summing-up of the whole subject is admirable." He added that the writer covers a wider field than the winner. As any fresh treatment of the subject of advocacy is always welcome, we think our readers will appreciate having the opportunity of reading both these papers.—Ed.

Interrogatories and Discovery.—There are two important matters—Interrogatories and Discovery—which must be briefly mentioned. The former are very useful, but they are dangerous to use, being likely to expose your attack; and great technique is required both in drawing and answering them. The skilful interrogator will lay the foundation for cross-examination if he can, while his opponent will see that his answers are true and as invulnerable as possible against cross-examination. Discovery is a very useful procedure which allows one party "without scruple to go into the enemy's camp, peep into his cupboards, and inspect his deeds." If the other side have committed themselves to a definite version of the transaction, Discovery may result in documentary evidence being found to contradict the pleadings and affidavits.

A Settlement.—The possibility of a settlement, "peace with honour," is always to be considered by the advocate up to the time of trial and sometimes during the trial. Various circumstances, such as weak evidence or unsatisfactory witnesses, will influence each particular case. For this reason, the plaintiff should not make his claim exorbitant. If he does and will not accept a reasonable sum, it is sometimes good tactics to pay the less amount into Court with a denial of liability.

The Trial.

Attempts to come to terms having failed, we now enter the court-room ready for a fight to the finish.

Challenging the Jury.—Of course, the object of exercising the right to challenge six prospective jurors is to eliminate any who will be sympathetic to the other side. For example, if you appear for a man who has been knocked down in the street you will endeavour to exclude motorists and tram-drivers. To prepare for this the jury-panel should be examined before the trial; and a client should certainly see it, so that he cannot come to you afterwards and say, "you let my worst enemy on to that jury!" If counsel knows nothing about a man, he must judge by appearances. The technique of waiting to give the other side the opportunity of challenging first requires good timing; while the "suspense" in which each potential juror is kept until he connects with his seat is one of the lighter sides of Court life.

The Plaintiff's Opening.—"A clear and successful opening wins more cases than anything else." These words of Lush, L. J., apparently represent the opinion of the majority of experienced barristers and Judges. Counsel for the plaintiff has an advantage, especially if there is a jury, for it is ready to hear him with a receptive mind, aptly described by an American lawyer as "a clean piece of blotting-paper, which counsel has an opportunity of saturating."

The opening, then, should be prepared with the greatest care. It should not be used for a true-to-life description of each witness with a full summary of his evidence; but it should be a clear, logical, moderate statement, in simple language, presenting to the Court the *substance* of the case. The facts should be put in their best light, and, possibly above all, the speech should ring with sincerity and conviction. Facts only are required at this stage; argument, illustration, and any anticipation of the defendant's case are generally out of place. The picture should be clear and well-defined, so that the Judge and jury are able to recognize the force and relevance of the evidence when it is called, and assign it to its proper place.

If there are weaknesses they should be brought out in opening, for a man is always tenderer than others in the treatment of his own faults; and an opponent will relish the opportunity of displaying them before the jury.

Order of Calling Witnesses.—The witnesses must be placed in such an order that the picture is gradually unfolded to the jury in an interesting way. The defendant will, of course, have other things to consider besides design; he must arrange his witnesses with a view to contrast, and with a view to showing that theirs is the more probable story. The plaintiff or the defendant, as the case may be, is usually called first; and if the witnesses are excluded from the Court the party concerned *should* be called first. It is advisable, especially before the jury, to ensure that a good effect is made at the beginning and at the end, and to see that the first witnesses stand up to cross-examination. If they do, the ardour of cross-examining counsel will be considerably dampened, and a favourable impression will be made with the jury. Apart from these considerations, the order of time should be strictly adhered to.

Under this head should be mentioned the question of viewing the scene of the "*casus belli*." It is often of great value both to Judge and jury; but the point is that it should be carried out early before any evidence has been given.

Examination-in-Chief.—Many have placed this branch of advocacy first, because the case depends on the evidence and the way it is adduced. In this department the able advocate stands out above the rank and file. He makes his witness feel at home, speaks to him clearly and deliberately, and makes sure that the witness is making himself heard, and only after these tests are over does he ask important questions. The witness, unless he is tongue-tied or stupid, should be left to tell his own story in his own words so that a plain and coherent version reaches the jury. If matters are omitted, they can be referred to later. It is sometimes necessary to keep a witness to the point to prevent his evidence from becoming confused with extraneous and irrelevant matter, but it should be done tactfully. In short, the art of examination-in-chief consists in framing questions the relevancy of which is clear to the witness, and thereby gradually defining and adding light and shade to the picture sketched in the opening.

Leading questions are not only unfair but dangerous to the counsel who puts them; because a witness, quite innocently, will accept phrases as they are suggested to him, and later will find himself in grave trouble when he is cross-examined.

Cross-examination.—Next to examination-in-chief, the most difficult and important branch of advocacy is cross-examination, which has been described as being "as dangerous as an icy pavement."

The development of a quick brain for the mental duel between advocate and witness is essential, but with this must go a sound knowledge of human nature. Counsel about to cross-examine, watches during the examination-in-chief and decides whether he is truthful, biased, prejudiced, or false. He looks for the quick movement, change in tone of voice, or anything which

will betray character. Then, very politely, for both Judges and juries dislike "nastiness" with a witness, he will proceed to reduce statements to their true dimensions and will place the evidence in its most favourable light from the point of view of his client. He will also elicit matters passed over by the other side and will open the way for calling evidence in contradiction of the witness. Sometimes, and here severity and ridicule may be used, he will destroy testimony altogether by showing that a witness is not to be believed. Before he does this, counsel must be *sure*, for it must be remembered that two perfectly truthful people may give quite different accounts of an event.

There are some strict rules to guide counsel in the art of cross-examination. He should never ask a question without an object; and, further than that, he should never, except in exceptional circumstances, ask a question the answer to which can possibly be adverse to his case. A further important point is that, once an answer is obtained, it should be left well alone; the wonderful effect of it can best be dwelt upon in the reply when explanations are no longer possible. These rules, which are often broken, limit the field of activity very considerably; and it would appear that the technique of cross-examination is to know "what not to ask."

Re-examination.—The object of re-examination is to restore the damage caused by cross-examination. During the latter, the advocate watches what parts of his edifice are demolished, shaken, or painted another colour; often he sees his weaknesses for the first time. He must then endeavour to repair the breaches, beginning at the first and working to the end. This opportunity of explaining is invaluable as the explanation of a single slip in cross-examination may restore the case as magically as a camera-man reversing his film of a dynamited building. Bad questions in cross-examination, which may allow in evidence otherwise inadmissible, will be looked for; but opportunities such as this must be examined with suspicion; they may not be slips! Finally, it should be remembered that re-examination is not for the purpose of repeating evidence-in-chief.

Non-suit.—An application by defendant for a Non-suit will probably be reserved and counsel will be asked to proceed with his case. It may prove invaluable later, however, to upset the verdict of an adverse jury, and it is well worth while.

Opening the Defendant's Case.—Counsel for the defendant does not occupy the advantageous position of the plaintiff when he rises to open. The "blotting-paper" is, or should be, well inked, but in some way he must get *his* ink on to that blotter. Unlike the plaintiff, he will need to use argument; and, calling attention to the improbabilities and inconsistencies of the plaintiff's case, he will endeavour to show that, even if the evidence is true, it is not necessarily conclusive proof. He will remind the jury of the facts elicited in cross-examination, and will place before them the facts which are to be supported by his witnesses, and will endeavour to contrast them in such a way that they appear more natural than the facts adduced by the plaintiff.

The Defendant's Reply.—Between his opening and reply, the defendant's witnesses have given evidence. His counsel has at this stage a final opportunity of using reasoning and making an "analytical comparison" of the evidence before the Court. He must also prepare for the plaintiff's reply by bringing into prominence those parts of his case which seem to have their foundations on the rock, and strengthening as far as possible those open to attack. Throughout the case he must have watched and anticipated where the attack will come, as it may well be fatal if he leaves unexplained some weakness, or even some remark or circumstance, which his opponent is able to dangle before the jury with telling effect.

The Plaintiff's Reply.—The value of the "final word" has been the subject of much controversy, some disbelieving in its value and others sacrificing evidence for the sake of it. Whether or not it is worth while sacrificing evidence seems to depend on the value of what is available, taking into consideration its value in cross-examination.

The final reply must be a good speech. Trivialities are put aside and the *effect* of the evidence which constitutes the defendant's case must be dealt with, the object being to show that, however *possible* it may be, your own evidence supports the only *probable* case. Then the material witnesses of the defendant must be disposed of by showing, for example, that they had little opportunity for forming a proper judgment, by displaying points of contradiction, by indicating important variations in the versions of the different witnesses, and, if necessary, by attacking their credibility. The plaintiff's reply, as an English barrister aptly put it, is the "March past" of his forces, showing their full strength, after they have passed successfully through an engagement with the enemy.

Judge and Jury.—The necessity for study of the jury has already been mentioned. Similar principles apply to the Judge, except that he cannot be selected, or rather rejected, by learned counsel. If the Judge is with you, you have a good start; if not, the art of advocacy is to make the jury disagree with him. A Judge is very human; and an advocate should know "his idiosyncracies, his leanings, his prejudices, his foibles." This knowledge is obviously valuable, for it means that a case will run more smoothly if counsel falls in with the ways of the Judge. The manner in which a Judge will sum up to a jury should also be known, and the case should be conducted accordingly.

If a Judge is sitting alone, the same principles apply; but it will not be necessary to go so far into exaplnations: it has been said that the field before a jury is confined to relevancy, before a Judge to strict logic. The Judge, sitting alone, will certainly demand clarity, conciseness, and arrangement; and he likes to be treated as if he had a "small modicum of common sense."

Conclusion.

It has been said that, in the conduct of a case, "Good Temper is the best companion and Common Sense the surest guide." Add to this a thorough preparation of the facts, a careful arrangement of the evidence, reliance on reason, coolness, brevity, clarity of argument, and firmness and conviction of manner, and we have, perhaps, a good summary of the attributes of the ideal advocate. When we have acquired all these, the technique of *nisi prius* advocacy will be within our grasp!

New Zealand Conveyancing.

By S. I. GOODALL, LL.M.

Agreement between a Sawmilling Company and Bush Contractors for Felling of Timber, Logging-up, and Hauling to Mill, the Company owning One Piece of Land and having Timber Rights over Another Piece : a " Felling Logging and Hauling Agreement."

AGREEMENT made this day of 19 BETWEEN A.B. & C. LIMITED a Company duly incorporated under the Companies Act 1933 and having its registered office at (hereinafter called " the company ") of the one part AND D.E. F.G. and H.K. all of &c. (hereinafter called " the contractors ") of the other part

WHEREAS the company is the owner of the land more particularly described in the First Schedule hereto and is entitled to certain timber rights over the land more particularly described in the Second Schedule hereto by virtue of a certain instrument or grant bearing date &c.

AND WHEREAS the company is the owner of the chattels inclusive of the log-hauler and machinery more particularly set forth in the Third Schedule hereto

AND WHEREAS the company is desirous of letting and the contractors are desirous of undertaking the work of felling logging-up and hauling all the millable timber upon the said lands with the incidental use of the said chattels upon and subject to the terms hereinafter set forth

NOW THEREFORE it is agreed by and between the parties hereto as follows :—

1. The contractors acknowledge that they have inspected the bush situated upon the said several lands and the company's mill-site mill-skids and mill thereon and have inspected the said chattels and are acquainted with the state and repair thereof respectively and have perused the said grant of timber rights.

2. A comprehensive scheme for the working of the said bush to the best advantage shall be drawn up and agreed upon by the company or its manager at or its other representative and the contractors before the contractors shall commence to fell any part of the said bush and thereafter the work of felling cross-cutting logging-up and hauling shall proceed and be done by the contractors in the terms and routine of such comprehensive scheme and the contractors shall not depart therefrom without the previous consent in writing of the company first had and obtained.

3. In the preparation of the said comprehensive scheme the company's representative shall (subject to the provisions relating to arbitration hereinafter contained) be entitled to decide any point at issue and shall have the right to require that any particular species of timber or any tree duly marked or indicated by him for special orders or otherwise shall be felled logged-up and hauled to the mill in priority to any other.

4. Subject to the foregoing the said comprehensive scheme shall be so drawn and agreed upon as to provide for the most advantageous economic and systematic working of the bush generally.

5. The company shall provide the contractors with and deliver to them for use in connection with the said work under this contract a copy of the said grant of timber rights and also the said chattels the same to be delivered to the contractors in good running order and condition and be returned to the company by the contractors on completion or sooner determination of this contract in the like good running order and condition.

6. In taking possession of the said chattels the contractors will be deemed to acknowledge that the same are in good running order and condition and the contractors shall so long as the same remain in their possession repair and maintain the same in good running order and condition and shall if and when necessary renew or replace the same or such of them as may be damaged destroyed lost worn out or otherwise made defective with another or others of a similar nature and value as and when the same were taken over by the contractors.

7. In the event of default by the contractors under either of the two last preceding clauses the company shall in addition to any other remedies it may have be entitled from time to time to deduct from the moneys payable to the contractors hereunder such amount or amounts as may be necessary for the purpose of repairing renewing or replacing all or any of such chattels damaged destroyed lost worn out or otherwise made defective as aforesaid.

8. The contractors shall take delivery of the said chattels in good running order and condition as aforesaid and the company shall give such delivery not later than the day of next and the contractors shall do the work generally let to them under this agreement consistently and with due despatch so as to complete and perform all such work within the period of [*three*] years from the last-mentioned date.

9. Under the particular instructions from the company or its said representative and with a view to accumulating a reserve of logs at the mill the contractor shall fell and deliver to the company at the mill-skids all the millable timber which is now growing upon or is lying on or is upon the several areas of the said lands in routine order according to the said scheme subject only to such departures therefrom as shall be sanctioned by the company or its said representative in writing.

10. For purposes of this agreement " millable timber " shall include all sound timber and timber-like trees with a girth at the centre of not less measurement than [*six*] feet in diameter clear of all bark and a minimum length of barrel of [*ten*] feet or such other lesser minimum girth and length respectively as the company or its said representative may from time to time in writing specify.

11. All trees of whatsoever species as seem to be defective for milling or by reason of their species or otherwise are not millable shall be left standing but the questions as to defective or not millable state or species shall be finally decided by the company or its said representative.

12. The contractors shall in the course of such felling logging-up and hauling trim all slovens draws large knots other common defects and limbs from all logs before delivery thereof at the mill-skids and for the purpose of such delivery shall place and stack and safely chock the logs upon the said mill-skids.

13. The contractors shall deliver to the said mill-skids the full length of the barrel whenever possible and generally shall endeavour to arrange the felling cross-cutting logging-up and hauling so that the logs delivered to the mill shall be as long as each particular tree will permit and shorter lengths shall be permitted only where the shorter length contains the full millable timber in the barrel of any one tree or is such that the shorter length comprises the maximum capable of being hauled with reasonable convenience to the mill.

(*To be continued.*)

Court of Review.

Sittings of the Court.

The Court of Review proposes to sit regularly at the Courts mentioned in the first column of the accompanying schedule, but, upon application from parties, may, having regard to all the circumstances of the case, sit at other Registries.

The Registrars of Courts mentioned in the second column are to forward all appeals and contentious matters immediately on the filing thereof, and all documents subsequently filed, to the Registrar of the Court mentioned immediately above their Courts in the first column, unless the parties agree to a hearing at another Court in the first column, in which event the papers will be sent to the selected Court. All non-contentious and *ex parte* matters will be forwarded to the Associate-Registrar at Wellington as heretofore; should counsel be required to attend in support the papers will be minuted accordingly and returned.

The Registrars of the Courts mentioned in the first column have been directed to forward to the Associate-Registrar at Wellington at the end of each month a summary of the business awaiting hearing, showing the number of appeals and the nature of any other motions.

The Registrars of the Courts mentioned in the first column will be notified of a proposed sitting of the Court, and they are forthwith to notify the party having the conduct of each proceeding filed and received from other Courts. Such party will then be responsible for the notification of the place and time for hearing to all parties who appeared before the Adjustment Commission, and any other party who may be affected by an order of the Court.

The policy of the Court is to hear those cases first in which counsel from a distance are engaged, and Registrars may use their own discretion in arranging definite times within the days prescribed by the Court for sittings at that particular place, so as to keep the Court, as nearly, as possible, continuously occupied, and, at the same time, meet the convenience of parties.

SCHEDULE.

Whangarei :—	Gisborne :—
Kaitaia	Wairoa
Kaikohe	
Dargaville	Napier :—
	Wairoa (if parties desire)
Auckland :—	Waipukurau
Pukekohe	Hastings
Hamilton :—	Wellington :—
Thames	Lower Hutt
Te Aroha	
Tauranga	Blenheim.
Whakatane	
Opotiki	Nelson.
Rotorua	
Te Kuiti	Greymouth :—
	Hokitika
Palmerston North :—	Westport
Taihape	
Marton	Christchurch :—
Feilding	Rangiora
Dannevirke	Ashburton
Levin	
	Timaru.
Wanganui.	
	Oamaru :—
New Plymouth :—	Waimate
Raetihi	
Taumarunui	Dunedin :—
Stratford	Cromwell
Hawera	Balclutha
Eltham	
	Invercargill :—
Masterton :—	Gore
Pahiatua	

Appeal Rules.

The following are the rules regarding appeals to the Court of Review :—

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

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

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

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

5. A party intending to ask the Court at the hearing to admit further evidence on affidavit shall file such affidavits and serve copies thereof on the parties to the appeal not less than seven (7) days prior to the date of hearing.

The late C.J., of the Irish Free State.—Appreciation of the great qualities of the late Hugh Kennedy, C.J., is not confined to Ireland, and a notable tribute is that of "R. L. S.," recently appearing in The *Times* newspaper:

> "The strong, resolute but kindly face with penetrating eyes, and his shy reserve will long remain, living and vivid, on the minds of all who know him. He hated ostentation, pretence and self-advertisement in all its modern forms. There have been few men in his position who had less of the great man in their manner or more in the way they lived. He had spontaneous wit, but wit that did not hurt.
>
> "As a lawyer, at the Bar he had an excellent business which entailed much burning of the midnight oil. On the Bench he was the Scriptural strong man armed; yet he was patient, courteous, and kindly. During his career as a Judge, by his untiring industry, his gift of lucid expression and his knowledge of law, his judgments will be storehouses of legal learning. . . . As the first Chief Justice of the Free State, he strove to apply the law in the spirit of a reformer. He had a constructive mind, and set himself resolutely to break with the past and to frame a native jurisdiction in a national setting."

Some Memorable Clients.

By the late Wilfred Blacket, K.C.

Too Thin Defences.—One was in a Cobar case where my client was suing under a contract for the erection of a rabbit-proof fence. The netting had to be sunk eighteen inches in the ground; the defence was by way of cross-action that the wire had not been sunk at all but was floating on the surface, whereby . . . well, you know the jargon! My man's reply in his evidence was that the wire had been well and truly laid, but that the blasted emus running along the fence (as is their wont) had pulled it up again. This aspersion on the character and habits of the emus, as described, was indignantly resented by the jury.

The other defence was mentioned in an affiliation case in the Children's Court. My client, the defendant, had in consultation protested vigorously that he hardly knew the girl and had only spoken to her to ask her "to pass the mustard" and that he loved his wife, and so on; and therefore I was not surprised to find that the girl's story was "hot stuff." Her statement was that the defendant and his wife lived with his wife and mother on the ground floor of Emoh Ruo, and that she was maid—or perhaps one should say housemaid—to the father and mother of the wife who lived upstairs; and that on Sunday mornings, the others having gone to church and she and the defendant being alone in the house, he was accustomed to go upstairs "to help her make the beds." I said to the solicitor instructing me, "What does the defendant say as to this tale—it seems pretty strong?" After consulting with our client he turned to me with beaming countenance. "Oh, it's all right," he reported, "he says that he couldn't possibly have been upstairs then because he had to be downstairs preparing his lessons for his Sunday-school class in the afternoon." I compare this defence with that put forward by the prisoner who was spending a pleasant evening with his sick mother-in-law at Boolaroo when the crime was committed at Newcastle.

A Simple Solicitor and a Crafty Client.—Mr. Crooks—I forget his real name, but, as he was a crook in several more ways than one, he deserves to be dignified by promotion to the plural—was a man of parts, and all of them were bad parts. In one day he passed "stumey" cheques for £280 on various farmers, who at the Sessions were wont to be described as "the twelve pillars who at this moment are upholding Magna Charta, the glorious, etc., etc."—a really good phrase when there is no other defence available—and concluded his day's work by cashing a cheque for £2 on an hotel-keeper who had assuaged his recurrent thirst. He was tried on a charge of false pretences in respect of this latter cheque at Maitland Assizes. His attorney* with much pride had brought me the brief nobly marked; and, as he was quite young and artless, I had said that I must have the fee in the good red sovereigns that some old men with long memories are still able to remember; and he, seeming a little nettled that I should have asked this, said: "Oh, that is all right, he paid me your fee and my costs as soon as he got here yesterday."

The case was quite unexpectedly called on at the opening of the Court, and, as the attorney was not present, I had no opportunity of asking for the gold.

* Forty-eight years ago. Attorney long since dead.—W.B.

The publican proved that Crooks had cashed the cheque; the accountant of the branch bank on which it was drawn proved the dishonour, and that the prisoner was a "produce merchant," and had had two and fivepence to his credit for quite a while. The Crown Prosecutor then started on a list of other cheques to the amount of about £300 dishonoured on or about that time, or at least tried to start when I bounced in with a hopeless objection—at least it seemed so, but you can never tell your luck on a pony racecourse or in a Law Court. For after some fierce argument in which my contentions were, as I now admit, ranting and rotten, the Judge—I won't asperse his memory by mentioning his name—decided to exclude evidence as to any other cheques, and then we sailed home. A produce merchant, who had for some time had an account at the bank and a balance to credit! Might he not well expect that a small cheque of £2 would be duly honoured, etc. The jury were not out more than one smoke, and then the "produce merchant" went free.

I did not see my attorney again at that Court, and, as the fee did not come along, I wrote for it. He replied stating regret and affirming the truth of his statement that our client had paid my fee and his costs before the trial; but, he said, "these amounts were paid by Crooks by his own cheque and this has unfortunately been dishonoured. I have instructed my bank to present it again." It will not I think be necessary to add that it has not been paid yet.

It may seem to my readers that this story of the prisoner's cheque was simply an excuse for pinching my fee; but this was not so, for the attorney was in fact the Simple Simon that he represented himself to be. Years afterwards I met him in Maitland and he said he was not getting on very well. "I had two good estates," he said; "but I got telling the people a lot of damn lies about things and they found me out." "And," he added with the air of a Gamaliel expounding a great truth to the disciple at his feet, "and things like that don't do a feller any good." Do I prove my point? I think so.

A Pessimistic Parent.—Young Charlie Caphipps had "snitched" some things that he wanted for his unlawful occasions from an unoccupied house near Brooklyn, N.S.W., forty odd miles from Sydney, and for this wrongful act had to appear for trial at Sydney Sessions. The Crown couldn't prove ownership, so Charlie was acquitted by direction. An elder brother, George, who had brought young Charlie down for the trial and could not find the attorney, came along after the acquittal to get money from me to buy a ticket to Brooklyn for Charlie. He said, "Father gave me the money for a return ticket for myself and asked me who was defending Charlie, and I said you were. And he said, 'Oh well, he won't be coming back for six months—get him a single.'" In spite of the insult I parted up for Charlie; but alas! my little loan had no return ticket!

A Digression.—Which reminds me although you may not see the connection, that it is always a pleasing thing to find that an advocate displays in Court all the delicacy and refinement of expression that the subject-matter permits. Therefore one must commend Mr. McGinty, who when explaining the reason why Wilga Godetia O'Hooligan was not called by him as a witness, said, "For she is a married woman y'r Anner and at this very minyit 'tis *embonpoint* that she is and 'tis

her thirteenth that 'twill be." But an unsympathetic Judge interrupted him then by remarking that he must put "it" on affidavit.

One can hardly hope that the soulful euphemism "embonpoint" graced that affidavit; no doubt something cruder appeared there, but probably not so crude and forceful as in an affidavit made by "Joey" O'Blank who therein described a person whom the opposing faction desired to have appointed as a trustee as "the terror of his neighbourhood, a disgrace to his native country, and the common enemy of mankind." And yet these eloquent words were wasted in Equity, where an unjustly indignant Judge, who loved not the pearls of literature, said they were scandalous and must be struck out with costs.

Dorcas and Ducks.—Sometimes a barrister, especially if he practises in the Criminal Courts almost believes in astrology, for some of the unexpected happenings are so marvellous as to suggest that the stars in their courses fought for or against his client. (He should not quite believe in it though, for in his practice he should believe in one thing only, and that is the imperative necessity of getting cash for his fee in criminal cases upon delivery of the brief.)

In *Jorkins* v. *Jones*, slander claim, £200, in the District Court nearly half a century ago, the stars were on my side. The plaintiff was an elderly lady of much local repute. She was liberal to her Church, and never missed a Dorcas meeting. The defendant, my client, lived next door to her and kept Aylesbury ducks. His custom it was, whenever he went in to Sydney and looked upon the wine when it was red, to become so annoyed at its appearance that he put as much of it out of sight as he could as speedily as possible. Then he went home and for the rest of that day and night wouldn't care, so to speak, which horse won the boat-race. Next day he would "tell the world" that the woman next door had nicked another of his ducks.

My instructions were that defendant would not settle, and that I had to go in and "prove it on her." I went into Court anticipating the moment when I should write "Vdt. Ptf. £200, costs on highest scale."

The plaintiff gave her evidence splendidly as to matters in issue, but she erred as to two other matters. She casually said she had several times seen one of the defendant's ducks out on the roadway. This is obviously wrong. One's hen may wander forth, in search abroad of food and adventure, but a duck is always loyal to its mates and stays with them. (It is because of this faithfulness and natural desirability that the word "duck" has come to be used as a term of endearment in our community.) The other mistake was that she volunteered the statement that the dividing fence was six-feet high, and "there never was anything wrong with any of the palings." "But the duckyard was not roofed over," I interjected fiercely; and then I knew I was on a winner, for she registered terror upon sudden apprehension that I knew the truth. Even now I don't know the exact truth, but the inferior quality of her denials and her terror-stricken manner and some reluctant admissions strongly supported and indeed proved our suddenly-adopted defence that the birds had been lifted over the fence either by means of a baited line or in a box-trap. There should have been a verdict for one farthing, for truth is not a complete defence in New South Wales; but the Judge gave a verdict for the defendant, and, from the gladsome way he did so, it seemed that he would have given him damages if he had dared.

Why is truth not a defence in defamation in this State? It is because in the old times, when many convicted men had risen "on stepping stones of their dead selves to better things," some "lewd fellows of the baser sort" were prone to refer to them as "lags"; so a law was passed providing that truth should not be a defence unless it was for the public benefit that the words should have been published. This is one of the "birthstains" which Lord Beauchamp blunderingly alluded to in his first message sent to the people he had been appointed to govern. But there are no votes hanging to the section—the farmers are not interested—so it has never been repealed.

His Life Work.—John Harris, I forget his real name, was one of the strangest problems in crime that I ever encountered. At the age of forty-four, he had been sentenced to fifty-six years of imprisonment, and had served more than sixteen. Of course some other men have made bigger scores than his, but the exceptional fact of his record was that he had rumbled into exactly the same kind of trouble every time. A horse was not a temptation: not even when it was in a cart; but, if the cart was loaded, the outfit was irresistible. He would get up and drive off and sell the horse, cart, and loading separately: so there were always three counts in the inevitable indictment: three convictions: and three concurrent sentences. He was rarely out of gaol for more than a month, once only for two days. To any one of us it would seem that he had had a dull and monotonous life; but he was quite a cheerful person, and was not at all prone to grieve over the past; nor did I notice any tendency to form any good resolutions for the future. He was a good friend to our profession, too, for he was always able to pay proper fees to attorney and counsel for his defence. It may be that the barrister's fee was part-proceeds of the horse, and that the attorney's costs came out of the cart and loading; but of course I did not inquire, for Lot's wife is standing proof of the evil of seeking to know what your neighbours have been, or are, up to. Of course Harris was convicted, but he was kind enough to say that he had never been better defended. I valued this tribute, for it was the considered opinion of a connoiscur. He had been defended on those charges nine times before.

Betting by Telephone.—At Sydney, in *Police v. Peters*, the Court of Criminal Appeal has decided that booking bets offered by telephone is a breach of s. 42 (1) of the Gaming and Betting Act, which penalizes any person "who uses any house, office, room, or other place for the purpose of betting with persons resorting thereto." In the Act these words "resorting thereto" are defined as including "applying by . . . letter, telegram, or by any other means of correspondence." It would seem to be what the vulgar would call "kidstakes," or the bright young things would, perhaps more elegantly, describe as "sky-bosh," to contend that a man who spent a pleasant Saturday afternoon in an hotel bar betting on the telephone with persons who may in colloquial phrase be kindly described as "punters" or more accurately as "mugs" was not committing a breach of this section; but, as it had been so decided, the Appeal Court had to review and reverse the decision.

—W.B.

Practice Precedents.

Application to Rescind Protection Order.

The procedure to be followed is somewhat the same as the application for a protection order under the Aged and Infirm Persons Protection Act, 1912, s. 7 (1) which empowers the Court, if it thinks fit, to grant a protection order, and by such order appoint a manager to take possession of and to control and manage all or such part or parts of the estate of the protected person as the Court may direct.

Section 7 (2) provides that a protection order may be varied or rescinded wholly or in part from time to time as to the Court shall seem fit, either during the lifetime of the protected person or at such time after the death of the protected person as the Court shall determine.

It is here assumed that the protected person has recovered from the illness which induced the making of the order, p. 71, *ante*, and desires to apply to have that order wholly rescinded. The manager of the estate of the protected person does not object, and medical testimony shows that the protected person has wholly recovered from his indisposition, and is able to resume his normal life.

IN THE SUPREME COURT OF NEW ZEALAND.
.....District.
.....Registry.

IN THE MATTER of the Aged and Infirm Persons Protection Act 1912
AND
IN THE MATTER of A.B. &c. a protected person.

To The Right Honourable Sir Chief Justice of New Zealand.

THE HUMBLE PETITION of the above-named A.B. of &c. sheweth as follows:—

1. That by a protection order made by this Honourable Court at on the day of 19 C.D. &c., was appointed manager of the whole of the estate of your petitioner with the statutory powers set out in such order.

2. That the said protection order was made on the grounds that the said A.B. was unable to manage his own affairs on account of illness caused through overwork and nervous strain.

3. That your petitioner has now completely recovered from the disability which rendered the said protection order necessary and is now able to manage his own affairs and therefore is desirous that the said protection order be wholly rescinded.

WHEREFORE YOUR PETITIONER PRAYS that this Honourable Court will be pleased to rescind wholly the said protection order.

And your petitioner will ever pray &c.

Dated at this day of 19 .

[*Signature.*]

Witness to signature:
Name:
Address:
Occupation:

VERIFYING AFFIDAVIT.

I A.B. of clerk make oath and say that so much of the foregoing petition as relates to my own acts and deeds is true and so much thereof as relates to the acts and deeds of any other person I believe to be true.

Sworn &c.

MOTION IN SUPPORT OF PETITION TO RESCIND PROTECTION ORDER.

(*Same heading.*)

Mr. of Counsel for the above-named A.B. the petitioner herein TO MOVE before the Right Honourable Sir Chief Justice of New Zealand at his Chambers Supreme Court House at 10 o'clock in the forenoon on day the day of 19 or so soon thereafter as Counsel can be heard FOR AN ORDER rescinding the protection order made herein on the day of 19 in terms of the prayer of the petition herein UPON THE GROUNDS that the said A.B. is now fully recovered and able to manage his own affairs AND UPON THE FURTHER GROUNDS appearing in the petition and affidavits filed herein.

Dated at this day of 19 .

Solicitor for petitioner.

Certified pursuant to the Rules of Court to be correct.

Counsel moving.

REFERENCE.—Section 7 (2) of the Aged and Infirm Persons Protection Act, 19 2.

MEMORANDUM FOR HIS HONOUR.—The protected person has now fully recovered from his incapacity as appears by the affidavit of Dr. . The manager of the protected estate desires the protection order to be rescinded.

Counsel moving.

AFFIDAVIT OF DR. IN SUPPORT OF PETITION.

(*Same heading.*)

I X.Y. of medical practitioner make oath and say as follows:—

1. That I am a duly qualified and registered medical practitioner practising in the City of in the Dominion of New Zealand.

2. That on the day of 19 I examined the said A.B. and am aware that a protection order was subsequently made on the day of 19 .

3. That the said A.B. has been an inmate of the Sanatorium at since the said day of 19 .

4. That I have attended the said A.B. in my professional capacity several times since the said day of 19 .

5. That the said A.B. is still an inmate of the said sanatorium but intends to leave that institution immediately and is about to proceed overseas.

6. That I am firmly of the opinion that the said A.B. has wholly recovered his normal state of health and is quite capable of managing his affairs and is fit to resume his previous activities.

7. That I am of opinion that the said A.B. is well able to take charge of his own estate.

Sworn &c.

AFFIDAVIT OF MANAGER IN SUPPORT OF PETITION.

(*Same heading.*)

I C.D. of &c. make oath and say as follows:—

1. That by a protection order made by this Honourable Court on the day of 19 at I was appointed manager of the estate of the above-named A.B. pursuant to the said Act.

2. That I have acted as such manager of the said estate of the said A.B. since the said day of 19 and am still so acting.

3. That since the said day of 19 I have observed the said A.B. on very many occasions and as the result I am satisfied that he is now fully recovered from the illness which rendered him the subject of the said protection order.

4. That under the circumstances I am desirous of being discharged from the management of the estate of the said A.B.

5. That hereto annexed and marked "A" is a certificate under the hand of Dr. the officer-in-charge of the sanatorium at from which it appears that the said A.B. is now fit to take charge of his own estate.

Sworn &c.

ORDER RESCINDING PROTECTION ORDER.

(*Same heading.*)

day the day of 19 .

Before the Honourable Mr. Justice .

UPON READING the petition of the above-named A.B. filed

herein and the motion and affidavits filed in support thereof AND UPON HEARING Mr. of Counsel for the said A.B. IT IS ORDERED that the protection order made herein on the day of 19 be and the same is hereby rescinded.

By the Court.

Registrar.

Recent English Cases.

Noter-up Service.

FOR

Halsbury's "Laws of England."

AND

The English and Empire Digest.

COMPANIES.

Companies—Private Company—Balance Sheet—Part of Loan Remitted.

The balance sheet of a limited company is not by reason of its being signed by the directors an account stated as against them.

Re GENERAL PRESERVING CO., LTD., **[1937] 1 All E.R. 693. Ch.D.**

As to release of debt: see HALSBURY, Hailsham edn., 7, par. 344; DIGEST, 12 pp. 498-502.

Companies—Scheme of Arrangement—Release of Joint Debtor.

A release of a company's debt by a scheme of arrangement sanctioned by the Court under the Companies Act, 1929, sec. 153 (2), does not release another debtor jointly liable with the company in respect of the same debt.

Re GARNER MOTORS, LTD., **[1937] 1 All E.R. 671. Ch.D.**

As to release of joint debtors: see HALSBURY, Hailsham edn., 7, par. 346; DIGEST, 12, pp. 510, 511.

NEGLIGENCE.

Negligence—Invitee or Licensee—Child—Paddling Pool Provided by Local Authority.

The child of a ratepayer is an invitee to a paddling pool provided by the borough council.

ELLIS *v.* FULHAM BOROUGH COUNCIL, **[1937] 1 All E.R. 698. K.B.**

As to duty to children: see HALSBURY, Hailsham edn., 23, par. 386; DIGEST, 36, pp. 69-71.

SALE OF GOODS.

Sale of Goods—"Price-maintained" Goods—"Stop List"—Attempted Purchase by Person on Stop List—Purchase Money Paid—Refusal to Deliver.

An action cannot be maintained for the recovery of money paid with the intention of obtaining goods by false pretences.

BERG *v.* SADLER AND MOORE, **[1937] 1 All E.R. 637. C.A.**

As to effect of illegality: see HALSBURY, Hailsham edn., 7, pars. 248, 249; DIGEST, 12, pp. 281-289.

SHIPPING AND SEAMEN.

Merchant Shipping Act—Agreement to Contract out of Statute—Invalidity.

The Courts have no jurisdiction to entertain a claim for salvage services excluded from sec. 557 of the Merchant Shipping Act, 1894, and an agreement to contract out of the statute is invalid.

Appeal from Branson, J. (reported [1936] 1 All E.R. 350), allowed.

ADMIRALTY COMMISSIONERS *v.* OWNERS OF M.V. "VALVERDA," C.A.

TRUSTS AND TRUSTEES.

Trusts and Trustees—Duties of Trustees—Beneficiary Absolutely Entitled—Transfer of Trust Estate.

The fact that a testator has authorised his trustees to retain a particular investment as long as they should think fit does not prevent a beneficiary, who becomes absolutely entitled to a part of the investment, calling for a transfer from the trustees.

Re SANDEMAN'S WILL TRUSTS; SANDEMAN *v.* HAYNE. **[1937] 1 All E.R. 368. Ch.D.**

As to transfer of trust property on termination of trust: see HALSBURY, 1st edn., 28, par. 252; DIGEST, 43, p. 758.

WILLS.

Wills—Construction—Intention of Testator.

Where a testator names only one beneficiary and leaves out all description of the bequest, there is not necessarily an intestacy.

Re MESSENGER'S ESTATE; CHAPLIN *v.* RUANE, **[1937] 1 All E.R. 355. Ch.D.**

As to absence of description of bequest: see HALSBURY, 1st edn., 28, pars. 1293, 1294; DIGEST, 44, pp. 610, 611.

WORKMEN'S COMPENSATION.

Workmen's Compensation—Double Remedy—Election—Infant Dependants Claiming Compensation, Widow Proceeding Under Fatal Accidents Act.

Where a widow has not in law or in fact exercised an option to claim compensation under the Workmen's Compensation Act, it is open to her to bring proceedings under the Fatal Accidents Act, and to her children to proceed at the same time under the Workmen's Compensation Act.

TAYLOR *v.* SIR WILLIAM ARROL AND CO., LTD., **[1937] 1 All E.R. 658. K.B.**

As to election of remedies: see HALSBURY, 1st edn. 20, pars. 430-438; DIGEST, 34, pp. 490-494.

Rules and Regulations.

Cook Islands Act, 1915. Cook Islands Fruit Control Regulations, 1937. February 18, 1937. No. 136/1937.

Board of Trade Act, 1919. Board of Trade (Onion) Regulations, 1937. March 18, 1937. No. 137/1937.

Customs Act, 1913. The Customs Importation Order, 1937, No. 7. March 18, 1937. 139/1937.

New Books and Publications.

Law of Life Assurance. By David Housemann. Second Edition. (Butterworth & Co. (Pub.) Ltd.) 15/-.

County Court Notebook. By Erskine Pollock. Second Edition, 1937. (Solicitors' Law Stationery Society). 3/6.

The Law Finder, a Subject-index of Current Law Books and Statutes. Fourth Edition. (Sweet & Maxwell). 3/6.

Cases Illustrating General Principles of the Law of Contract. By John Miles, Kt., and J. L. Brierley. Second Edition, 1937. (Oxford University Press). 28/-.

Principles of Legal Interpretation. Reprinted from Ninth Edition of Broom's Legal Maxims. (Sweet & Maxwell). 10/6.

Goodeve's Personal Property. 8th Edition, 1937 By Potter and Kinalfy. (Sweet & Maxwell). 30/-.

Harris and Wilshere's Criminal Law. 16th Edition, 1936. (Sweet & Maxwell). 21/-.

A Hundred Years of English Government. By K. B. Smellie. (Wm. Duckworth & Co.). 21/-.

County Court Procedure. (Solicitors' Law Stationers Society). 15/-.

Everyone's Own Lawyer, 1937. 64th Edition. (Technical Press). 21/-.