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"Nowadays, Judges are perfectly free to get at the facts of any case that comes before them. When they have got at the facts or, at all events, thought they have got at them, or say they have got at them without thinking so, it is amazing how seldom any law is left. Get at the facts and most cases will decide themselves. It is painful to think how much subtle law has been manufactured upon a purely imaginative state of facts."

—THE LATE RT. HON. AUGUSTINE BIRRELL, K.C., in an address on Legal Education.

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The Court of Arbitration.

IN announcing the appointment of Mr. Justice O'Regan, the learned Attorney-General, the Hon. H. G. R. Mason, said that for some time the Government had had under consideration the question whether the work of the Court of Arbitration was not sufficient to require the services of two Judges. This question, he added, would be decided between now and the next session, when, in the event of a change being decided upon, the necessary legislation could be passed.

This announcement, coupled with the well-known fact that the combination of industrial and compensation matters, which must come before the Court of Arbitration, has caused considerable delay in the sittings of this overburdened tribunal, brings again before us the consideration as to how this unwelcome situation can best be removed. An improvement in the speeding up of the work of Court has long been advocated by this JOURNAL. The question is how this may be best effected.

The Court of Arbitration, as at present constituted, exercises two wholly distinct functions: the hearing and determination of industrial matters and of claims under the Workers' Compensation Act, 1922. As its district is the Dominion as a whole, it has to perform its complete duty handicapped by the limitation of time and by an increasing volume of work to be accomplished. It is required to sit at least once in every three months in each of the four chief cities to deal with disputes under the Industrial Conciliation and Arbitration Act, 1925, which have been referred to the Court, and sittings elsewhere are to be held at such times and places as are from time to time fixed by the Judge: Industrial Conciliation and Arbitration Act, 1925, s. 78. Under its prevailing pressure of work, compliance with the statute is an obvious impossibility. The fault is not the Court's: it has always worked at high pressure and with commendable expedition. Yet, six months must often elapse before it may visit even the four principal cities, to deal with its accumulated work, including claims arising from accident; and an interval of a year sometimes elapses between sittings at the larger provincial towns.

The position outlined might temporarily be tolerated were there any prospect of a reduction in the present lengthy intervals between sittings of the Court in any one centre. Experience, however, points the other way. The increased scale of benefits under the Workers' Compensation Act, and the less costly means of litigation in the Court of Arbitration, impel claimants in actions founded on negligence to seek settlement of their claims, when founded on the relationship of master and servant, there, rather than in the Supreme Court. In 1931, when we last had the figures before us, it was shown that the number of compensation claims heard and determined in the Court of Arbitration annually had doubled in five years; and the increase appears to be a progressive one. The position in respect of delay in the determination of these claims, which inevitably have to wait for the industrial matters to be dealt with, is one of national concern.

Delay in the settlement of claims under the Workers' Compensation Act often means delay in the complete recovery of injured workers. This necessarily results in increased payments by employers and insurance companies. Moreover, complaints are frequently made by unions that their members are compelled by financial stress to accept payments in settlement that, rightly or wrongly, they consider unfairly small; since even greater hardship would result from the inescapable delay which must intervene before their claims could be heard by the Court. In the interests of justice and common humanity, this position should not be allowed to continue.

In regard to the fact that delayed recovery of claimants is a result in delay in the final determination of their claims by the Court, the late Dr. Keith Macky, who had an extensive practice and experience in examinations of claimants for workers' compensation, and as a witness in their actions, referred in this JOURNAL in September, 1931, to what he termed "litigation neurosis," which arises from and is aggravated by delayed settlements of accident claims and which, he said, "is purely a legal complaint"; and he compared the course of recovery of persons receiving the same injuries: (*a*) on the football field; (*b*) at work. In all the neuroses, Dr. Macky said, delay is the main aggravating factor, and there is surely some way of avoiding this delay. He continued:

> "It is quite obvious that the Arbitration Court as at present constituted, and visiting the main centres at long intervals, is not going to prevent neuroses. Two methods of obviating the delay present themselves: (1) separation of the work of the Arbitration Court, which is already congested with industrial matters and compensation claims, into two sections: (*a*) industrial, (*b*) compensation. If this were done, and an experienced Judge, sitting alone, were appointed to the latter section, then everyone would be satisfied. Such a Court would be able to visit the main centres every two months. The present head of the Arbitration Court [then Sir Francis Fraser] has proved that it is possible for a layman to acquire a profound knowledge of industrial disabilities, and that he is well acquainted with the anatomical and physiological facts is very evident when he questions a medical witness."

The gravity of the position arising from delay in the hearing of workers' claims for compensation was recognized by the Dominion Legal Conference of 1930, which impliedly affirmed the principle of a separate Court being set up to deal with compensation claims: see 6 N.Z.L.J. 123. A Royal Commission in 1930 reported in favour of the establishment of a distinct Compensation Court: see *Parliamentary Papers*, 1930, H.—11A, p. 6. Moreover, it is the settled opinion in industrial countries the world over that the Court

dealing with this special class of case requires specialized knowledge of an intricate branch of the law, extensive experience in medical and surgical cases, and accurate understanding of industrial conditions. In practically every part of the British Commonwealth of Nations, excepting Great Britain and New Zealand, and in the United States and in Germany, the legislation corresponding to our Workers' Compensation statutes is administered by special tribunals.

The insurance interests will welcome any change. The chief executive officer of one of the largest local companies informed us some time ago that he would always avoid litigating workers' compensation claims, if possible; under present conditions, he would usually concede a few pounds to have a case settled out of Court, as the longer the hearing were postponed the longer an injured man was likely to be off work. On the other hand, if settlement were not possible at an early stage, the claimant usually failed to recover until the Court concluded his case. This, as Dr. Macky pointed out, was not a condition arising from intention or design, but it is an inseparable subconscious condition arising out of delayed settlement; and, in addition, it was clearly bad for an injured worker to become the victim of a medical wrangle, often to be followed by a legal one.

It is impracticable for the Supreme Court to undertake workers' compensation claims, because, if there were a number of Judges dealing in their respective Courts with these cases, an almost certain conflict of opinion would require the authority for appeals. This would strike at the very root of the distinctive benefit conferred by the Workers' Compensation Act in making available to people of limited means a Court of final determination. These considerations are even more important in regard to the necessity for a special Judge, who would combine knowledge of the problems confronting the Arbitration Court in its workers' compensation jurisdiction and uniformity of treatment of the claims before him.

Other proposals for the relief of the present Court of Arbitration include the suggestion that the Judge of the Compensation Court could sit as chairman of a Wages Board, to meet, as in South Australia, half-yearly to determine the basic wage for the ensuing half-year, employers' and workers' interests being represented by nominated members. Then there is the further proposal that, ancillary to the separate Compensation Court, there should be a permanent medical tribunal in the several centres to examine claimants at the earliest possible moment, either at their request or by direction of their employers, but to leave the quantum of compensation to the Compensation Court Judge, sitting alone or with the assistance of independent assessors of eminent medical or surgical standing. To each of these proposals there may be objection.

Finally, there is another mode of relief for the Court of Arbitration, in addition to the appointment of a Judge to hear and determine compensation claims. Owing to the specialized nature of industrial cases, even minor ones, and the gradual increase in their number in recent years, and the unlikelihood of their diminishing, a further improvement might be effected by the appointment of Industrial Magistrates, the number of whom and the area over which each should exercise jurisdiction being determinable by the amount of work available. It cannot be expected that a Stipendiary Magistrate can become an expert in industrial law, or in dealing with cases involving the penal sections of the Industrial Conciliation and Arbitration Act and corresponding and complementary statutes. It is true that cases of this kind form only a proportion of the many varied matters calling for the attention of any individual Stipendiary Magistrate; but, taking the aggregate, their number is considerable throughout the Dominion.

Again, there are many minor matters, such as the joining of parties and the striking-out of parties to awards, which have to await the local sitting of the Court of Arbitration for decision, with resulting delays that are the cause of irritation and hardship to the parties. These could be taken more conveniently and more expeditiously before an Industrial Magistrate. In these, as in all cases coming before such a Magistrate, there should be a right of appeal to the Court of Arbitration; just as there should be a right of appeal from every decision of a Stipendiary Magistrate exercising any special jurisdiction.

The most important practical result of the appointment of Industrial Magistrates would be the securing of uniformity of practice in the administration of industrial statutes, and, what is essentially important in the interests of workers and employers, uniformity of decision upon any questions arising out of them. So far, such uniformity has not been possible, and it must necessarily remain lacking when so many different Magistrates are hearing industrial cases. The machinery of industrial legislation could be improved if this reform were instituted when the reconstitution of the duties of the Judge of the Court of Arbitration is being considered.

Whatever be the Government's intentions with regard to the appointment of a second Judge for the Court of Arbitration, we think that the primary consideration is the speedy hearing of claims under the Workers' Compensation Act. All interests concerned are now agreed that the now unavoidable and uneconomic delays are due to the overburdening of the existing Court. That this state of affairs should be speedily and effectively changed is, unquestionably, in the interests of the community at large.

Effect of Husband's Death on Wife's Maintenance.

In an article in the first issue of the JOURNAL of the current year, we discussed the judgment of the Court of Appeal, Slesser and Scott, L.JJ., Eve, J., dissenting, in *Kirk v. Eustace*, [1936] 3 All E.R. 520. We referred to this as being, from a drafting viewpoint, a particularly startling decision; and we expressed respectful doubts as to the reasons given by their Lordships of the majority, and to the correctness of their judgments.

It is important for draftsmen of maintenance agreements to know at the earliest moment that the House of Lords has reversed the Court of Appeal's decision: *Kirk v. Eustace*, [1937] 2 All E.R. 715 (not yet in New Zealand). The effect of their Lordships' judgment is that, in the absence of any express intention in a separation deed that the husband's covenant to pay a weekly sum to his wife during her life is not to bind his real and personal estate, the weekly payments will continue to be payable after the husband's death.

The principal judgment was delivered by Lord Atkin, one of the greatest of common lawyers, and we learn that he scouted the decision that the so-called doctrine of frustration had anything to do with the matter; and the other learned Lords agreed with him.

Summary of Recent Judgments.

SUPREME COURT. Palmerston North. 1937. May 7, 20. *Reed, J.*

MOUTOA DRAINAGE BOARD v. EASTON AND OTHERS.

Land Drainage—Right of Board to order Removal by Occupier of Obstructions in Drain under its Management—Notice to remove Trees or Portions of Trees lodged in Drain without Specific Reference to Obstructions—Whether valid—Procedure to recover Cost of Work done by Board consequent on Failure of Occupier to comply with Order—Land Drainage Act, 1908, ss. 25, 62—Land Drainage Amendment Act, 1913, s. 7—Finance Act, 1935 (No. 2), s. 47.

A Land Drainage Board has power to order an occupier of any land on the banks of a drain vested in or under the management of the Board to remove obstructions from it, the decision in *Thompson v. Wakapuaka Drainage Board*, [1929] N.Z.L.R. 548, having been abrogated by s. 47 of the Finance Act, 1933 (No. 2).

A notice by such a Board under the provisions of s. 62 of the Land Drainage Act, 1908, and its amendments, ordering such an occupier to remove from such a drain "all trees or portions of trees, which as the result of recent winds, or other causes, have become lodged in or across" the said drain, is not invalid because it does not specifically require the removal only of such trees or portions of trees as are creating an obstruction.

When the occupier fails to comply with the order, and the Board causes the necessary work to be done, the Board is not compelled to prosecute upon failure to comply with the order; but it is, by virtue of s. 62 (2) of the Land Drainage Act, 1908, in the position of a rating authority which has taken the necessary steps under the Rating Act, 1925, and it may recover the cost of the work as a debt in any Court of competent jurisdiction.

Counsel: **Baldwin,** for the appellant Board; **Bergin,** for the respondents.

Solicitors: **L. C. H. Sinclair,** Palmerston North, for the appellant Board; **Moore and Bergin,** Foxton, for the respondents.

SUPREME COURT. Wanganui. 1937. May 19, 25. *Reed, J.*

GUYTON BUILDINGS, LIMITED v. W. T. STEWART MOTOR COMPANY, LIMITED.

Landlord and Tenant—Lease—Construction—Option to renew Lease—Offer by Lessor imposing Condition of Lessee's obtaining approved Guarantee of payment of Rent and of performance of Lessee Covenants—Whether a valid Condition—"Otherwise."

A lease contained the following clause:—

"Provided always and it is hereby agreed and declared by and between the lessor and lessee that if the lessor shall be desirous at the expiration hereof of selling or again leasing the said premises or the whole of the premises comprised in the said leases to the lessor of the same and shall be offered or be able to obtain a rental or price satisfactory to the lessor then the lessor shall and will give to the lessee the first option for a period not exceeding fourteen (14) days of purchasing or leasing such premises at such price or rental and otherwise upon such terms and conditions as the lessor may decide."

The lease having expired, the lessee continued in possession under a tenancy determinable at a month's notice. The lessor, having received an offer for the lease of the whole of the premises, gave written notice to the lessee thereof with the option of a further lease. Such notice set out the rent, rates, insurance premiums to be paid, and particulars of certain expenditure on renovations and alterations; and it proceeded to call upon the lessee to notify the lessor within fourteen days whether it required a lease of the premises on those terms. The notice also asked for a guarantee by some person or firm, to be approved by the lessor, of payment of the rent and of the performance and observance of the covenants, conditions, and agreements in the proposed lease. Within the specified time the lessee purported to accept the option on the terms specified, with the exception of the clause relating to the guarantee, which, it claimed, could not be imposed. All necessary times having elapsed, the lessor brought an action for possession against the lessee.

The question for the Court's decision was whether the plaintiff lessor was entitled to impose the guarantee requirement as a condition without which the new lease would not be granted.

B. C. Haggitt, for the plaintiff; **A. A. Barton,** for the defendant.

Held, That, on the true construction of the option clause in the expired lease (as above set out), all that the plaintiff lessor had covenanted to do was to give an option at the price or rent offering; the terms of the lease, and the covenants, conditions, and agreements, were to be on such terms and conditions as the lessor might decide, the word "otherwise" in the clause meaning "in other respects"; and, consequently, the plaintiff was entitled to impose the condition objected to, and, as the defendant refused to agree, the plaintiff was entitled to possession of the premises.

Solicitors: **Treadwell, Gordon, Treadwell, and Haggitt,** Wanganui, for the plaintiff; **Armstrong and Barton,** Wanganui, for the defendant.

SUPREME COURT. Auckland. 1937. May 28; June 2. *Callan, J.*

HEATH v. HEAP.

Magistrates' Courts—Practice—Application for Adjournment to enable Removal of Action into Supreme Court refused—Adjournment granted to allow Filing of Formal Application for Leave to Defend—During Adjournment Motion for Removal filed in Supreme Court—Abuse of Process of Court—Magistrates' Courts Act, 1928, s. 162.

Plaintiff sued in the Magistrates' Court for an alleged debt, and defendant filed a notice of special defence but no notice of intention to defend. When the case was called, defendant's solicitor asked for an adjournment, stating that defendant was moving the action into the Supreme Court, such removal being as of right. On objection by plaintiff's solicitor that no application for removal had been filed and no security lodged, the Magistrate refused the adjournment. Plaintiff's solicitor asked for judgment by default, but defendant's solicitor asked for leave to defend. The Magistrate then adjourned the case until that afternoon to enable defendant's solicitor to prepare a formal application for leave to defend. Before the afternoon sitting of the Magistrates' Court, defendant's solicitor lodged in the Supreme Court a motion for removal of the action into that Court; and, when the matter was again before the Magistrate, defendant's solicitor stated that the application for removal had been made. No application for leave to defend was filed in the Magistrates' Court.

On motion under s. 162 of the Magistrates' Courts Act, 1928, by defendant for removal of the action into the Supreme Court,

North, for the defendant, in support; **Leary,** for the plaintiff, to oppose,

Held, refusing the application, That the defendant had used a respite given by the Magistrate for one purpose for another purpose for which the respite had been refused, and this was an abuse of the process of the Magistrates' Court, and an abuse of the process of the Supreme Court inasmuch as it was an attempt to use the process of the Supreme Court as a means of defeating the decision of the Magistrate on a matter within his jurisdiction.

Campbell v. Fairlie, (1880) 49 L.J.Q.B. 445, applied.
Gibbs v. Galbraith, [1935] N.Z.L.R. 230, distinguished.
Round v. Todd Motor Co., [1926] N.Z.L.R. 495, mentioned.

Solicitors: **L. G. Simpson,** Auckland, for the defendant; **E. V. McLiver,** Auckland, for the plaintiff.

Case Annotation: *Campbell v. Fairlie*, E. and E. Digest, Vol. 13, p. 482, para. 322.

Law Reform Act, 1936.

Procedure to Enforce Contribution.

By R. G. McElroy, Ph.D. (Cantab.), LL.D. (N.Z.), and T. A. Gresson, B.A. (Cantab.).

The following is an extract from a section of a chapter in the authors' forthcoming book, *The Law Reform Act, 1936*, publication of which is delayed until the House of Lords decision in *Rose v. Ford* is delivered; in the meantime, for the convenience of the Journal's readers, and through the courtesy of the authors and publishers, this extract on a topic of present-day urgency is reproduced from the manuscript of the work, as adapted to the usual style of the Journal.

Claims for contribution are now enforceable between either joint or independent tortfeasors liable in respect of the same damage: Law Reform Act, 1936, s. 17 (1) (c). The Law Revision Committee in England suggested that such claims might be determined by means of third-party procedure, and in England this procedure has been followed: see *Burnham v. Boyer and Brown*, [1936] 2 All E.R. 1165; but it seems that in New Zealand this claim must in all cases be enforced in a subsequent action, until our Third-party Procedure is reshaped, and the English rules adopted.

Third-party Procedure.

Where a defendant claims to be entitled to contribution, indemnity, or other remedy or relief, over against any person not a party to the action, the defendant may, by leave of the Court, issue a notice (known as a "third-party notice") to that effect: Code of Civil Procedure, R. 95; Magistrates' Courts Act, 1928, s. 65.

In New Zealand, the object of third-party procedure is only to secure a binding decision with a view to future relief and not to enable a defendant to obtain any actual present relief against the third party: see *Stout and Sim's Supreme Court Practice*, 7th Ed. 98; Rhodes's *Practice Precedents*, 163; *Treleaven v. Bray*, (1875) 45 L.J. Ch. 113. For example, B. sued S. for damages for breach of a contract to sell shares to him, the contract note being signed by S. S. obtained the leave of the Court under R. 95 of the Code of Civil Procedure to issue a third-party notice against A. on the ground that A. had instructed him to sell the shares to B., and was therefore liable to indemnify him, S. The defendant S. admitted that he had made a personal contract with B., and as between B. and S. the only question to be determined was the amount of the damages. As between S. and the third party A., however, there was the further question—namely, that of agency and the right of the defendant S. to an indemnity. Cooper, J., held that all that the Court could decide in the original action was the amount of the damages, the only jurisdiction it had over the third-party A. being to make an order binding him as to this amount. The question of A.'s liability to indemnify S. had to be determined in a subsequent action: *Balting v. Sharp, Adams (Third Party)*, (1909) 11 G.L.R. 703.

English Procedure.—In England the scope of third-party procedure was enlarged in 1883 to prevent a multiplicity of actions: *Benecke v. Frost*, (1876) 1 Q.B.D. 419, 422; *Baxter v. France (No. 2)*, [1895] 1 Q.B. 591, 593; and *cf. Barclay's Bank v. Tom*, [1923] 1 K.B. 221, 224; and Order 16, r. 52, was made, enabling the Court to direct that the question of the liability of the third party to indemnify the original defendant should be tried in such manner, either at or after the trial, as the Court or Judge should direct. This rule has never been adopted in New Zealand, and the third party here is never in the position of a defendant *quoad* the defendant bringing him in: *Balting v. Sharp, supra*, 704; contrast *McCheane v. Gyles*, [1902] 1 Ch. 287, 301, and *Barclay's Bank v. Tom*, [1923] 1 K.B. 221, 225.

In 1929, Order 16, r. 52, was revoked, and Order 16A, rr. 7 and 9, was substituted. Rule 7 empowered the Court as before to direct that any question of contribution or indemnity between the defendant and the third party should be determined either at or after the trial as the Court should direct: O. 16A, r. 7: *1937 Yearly Practice*, 259. In addition r. 9 allows the Judge, either at or after the trial, to enter such judgment as the nature of the case may require for or against the defendant serving the notice against or for the third party, and to grant to the defendant or to the third party any relief or remedy which might properly have been granted if the third party had been made a defendant to an action duly instituted against him by the defendant; provided that execution is not to be issued without the leave of the Court or a Judge until after satisfaction by the defendant of the judgment against him: O. 16A, r. 9, *ibid.*, 263.

Under the English Third-party Procedure, therefore, questions of contribution between tortfeasors can be conveniently determined at the conclusion of the plaintiff's action against the defendant: *Gerson v. Simpson*, [1903] 2 K.B. 197, 201; but in New Zealand a subsequent action is necessary. This involves much needless repetition of evidence and considerable delay, and it is to be hoped that our New Zealand procedure will be reformed shortly in this respect.

Nevertheless, any defendant intending later to enforce a claim for contribution against another tortfeasor who is, or would if sued have been, liable in respect of the same damage, should apply to the Court for leave to serve a third-party notice on such tortfeasor so as to bind him as to the amount of the damages: Code of Civil Procedure, R. 95. It would seem that this application can be made *ex parte*: *Furness Withy and Co., Ltd. v. Pickering*, [1908] 2 Ch. 224, 226; see *1937 Yearly Practice* 255, and *Stephens's Supreme Court Forms*, 45; but the Court may require the plaintiff or any other person to be served. In certain cases it may be possible to apply under R. 90 to join the other tortfeasor as a co-defendant, but this can only be done without plaintiff's consent: *Norris v. Beazley*, (1877) 2 C.P.D. 80; *McCheane v. Gyles (No. 2)*, [1902] 1 Ch. 911; and if plaintiff chooses to make no allegation against the other tortfeasor the latter can ask to be dismissed from the action: *McCheane v. Gyles (supra)*, at p. 917.

The third-party notice must state the nature and grounds of the claim for contribution, and unless otherwise ordered by the Court it must be served within the time limited for delivering the statement of defence: Code of Civil Procedure, R. 96, and see RR. 97–99.

The Granting of Leave.—The granting of leave is a matter for the discretion of the Court: *Glasgow Corporation v. Robertson*, [1936] 2 All E.R. 173. In giving leave to a defendant to serve notice of a claim for contribution on a third party, the Court will not consider whether the claim is valid against the third party, but only whether it is *bona fide*, and whether (if established) it will result in contribution: *Carshore v. North Eastern Railway Co.*, (1885) 29 Ch.D. 344. It will not go into any question as to the merits of the action: *Edison and Swan United Electric Light Co. v. Holland*, (1886) 33 Ch.D. 497.

Leave will not be granted, however, where the decision on any particular point in dispute between the plaintiff and defendant is not so identified with that in dispute between the defendant and the third party as to determine finally the question as between the defendant and the third party: *Brown v. Samson*, (1889) 7 N.Z.L.R. 496; or where there has been unreasonable delay in making application: *Mere Roihi v. Assets Co., Ltd.*, (1902) 21 N.Z.L.R. 673, 680.

The Court will also refuse leave to serve a third-party notice if the granting of leave would unfairly hamper the plaintiff or cause him to be materially embarrassed in the conduct of his action: *Bower v. Hartley*, (1876), 1 Q.B.D. 652; *Wye Valley Railway Co. v. Hawes*, (1880) 16 Ch.D. 489; *Corrie v. Allen*, (1883) 48 L.T. (N.S.) 464, 468; *Carshore v. North Eastern Railway Co.*, (1885) 29 Ch.D. 344, 346; *Kevi v. Anglo-Continental Gold Reefs of Rhodesia, Ltd.*, [1902] 2 K.B. 481, 483; though this is less likely to occur in New Zealand than under the English procedure: see *Stephens's Supreme Court Forms*, 45 (*c*).

Similarly, if the granting of leave would raise an additional issue on the pleadings and thus put the plaintiff to further difficulty: *Barron v. City and Suburban Tramway Co., Ltd.*, (1890) 8 N.Z.L.R. 393; *Dwan v. Brandon*, [1919] N.Z.L.R. 810. To justify the refusal of leave, however, the embarrassment must be material. For example: The plaintiff, a passenger in one of two motor-vehicles involved in an accident, decides to sue the driver of the other car only. The latter asks for leave to serve a third-party notice on the driver of the car in which plaintiff was a passenger. The plaintiff, in the belief that he would thus be losing a valuable witness, might be tempted to oppose the granting of leave on the ground of "material embarrassment": see *supra*. Leave would nevertheless be granted, for the third party does not become a defendant *quoad* the plaintiff, and furthermore he is obliged to give his evidence on oath. He does not become defendant's witness by virtue of the third-party notice: *cf. Lipman v. Fox and the London and General Omnibus Co.*, (1911) 40 L.T. Newsp. 746.

Discharge of Order.—The third party on whom notice is served may apply by summons for a discharge of the order joining him on the ground that the defendant is not entitled to any contribution, indemnity, or relief against him, and that, therefore, he ought not to be a party to the action: *Barton v. London and North Western Railway Co.*, (1888) 38 Ch.D. 144, 147, applied in *Morton v. Paykel Buildings, Ltd.*, [1930] N.Z.L.R. 878, 880; *Quinlan and Foster v. Redstone*, [1906] 26 N.Z.L.R. 576.

After Service of Notice.—After service of the third-party notice and the filing of a statement of defence pursuant to the notice, the defendant may apply to the Court for directions as to the mode of having the question in the action determined. On the hearing of such application, the Court may, if it appears desirable to do so, give the person so served liberty to defend the action upon such terms as seem just; or the Court may direct amendments to be made in the statements of claim and of defence, or the delivery of fresh statements, and, generally, may direct such proceedings to be taken and give such directions as it thinks proper for having the question conveniently determined, and as to the mode and extent in or to which the person so served shall be bound or made liable to the decision of the question: Code of Civil Procedure, R. 99; and, as to directions, proceedings at the trial, and costs, see the cases in the *English and Empire Digest*, Practice Volume, 454 *et seq.* In New Zealand, however, this provision only enables the Court to direct how the question in the action between the plaintiff and defendant shall be tried, and it confers no jurisdiction on the Court to determine questions of contribution or indemnity between the defendant and the third party: *Balting v. Sharp, supra.*

Procedure to Enforce Contribution between Co-defendants.

Where two or more tortfeasors are liable for the same damage, plaintiff would normally sue all of them in the one action, for all persons may be joined as defendants against whom the right to any relief, in respect of or arising out of the same transaction or event, is alleged to exist, whether jointly, severally, or in the alternative. And judgment may be given against such one or more of the defendants as may be found to be liable according to their respective liabilities without any amendment: Code of Civil Procedure, R. 61; Statutes Amendment Act, 1936, s. 50; *Bullock v. London General Omnibus Co.*, [1907] 1 K.B. 264, 271. Judgment for the full amount of the damages suffered by the plaintiff is usually given both jointly and severally against such of the co-defendants as are found liable: *Devonshire (Owners) v. Leslie (Owners)*, [1912] A.C. 634; *Morgan v. Nicoll*, [1933] N.Z.L.R. 1087, 1092; but, where two independent tortfeasors have caused distinct and different damages, judgment can be given for different amounts against the respective co-defendants: Code of Civil Procedure, R. 61; Statutes Amendment Act, 1936, s. 50. For example if, in an hotel brawl, A. blacked plaintiff's eye, and B. quite independently fractured plaintiff's skull, plaintiff could sue A. and B. in one action under R. 61 or s. 50, but judgment would be given against the tortfeasors in proportion to the different damage which they had caused. In the ordinary motor-collision case, the damage is never distinct and severable; and each tortfeasor is liable for the full amount of the plaintiff's damage. Furthermore, plaintiff can execute his judgment in full against whichever one of the defendants he pleases.

In New Zealand, therefore, it appears that the Court has no jurisdiction to apportion contribution between co-defendants at the conclusion of the plaintiff's action, and a subsequent action may thus become necessary for this purpose.* This will involve a repetition of much of the evidence; and, to avoid this, the English rules of procedure permit a defendant, who is claiming

**Quaere*, whether the co-defendants could, by consent, give the Court jurisdiction to assess contribution: see *16 English and Empire Digest*, 117. See *In re Shelley, Shelley v. Public Trustee*, [1937] N.Z.L.R. 342, 346 (judgment of Myers, C.J., Ostler, J.), which is interesting on this topic.

contribution or indemnity from another defendant, to serve such defendant with a notice specifying his claim, and the Court can then make such order for the determination of the question as it would make if the defendant were a third party duly served with a third-party notice: O. 16A, r. 12; *In re Burford*, [1932] 2 Ch. 122.

There is no corresponding provision in New Zealand, and, if our Third-party Procedure is amended in accordance with the English rules, a new rule will be necessary to make the new procedure available to co-defendants.

MODE OF TRIAL: JUDGE OR JURY?

Whether or not claims for contribution should be tried before a Judge or jury is difficult to determine. The Law Revision Committee clearly contemplated contribution being assessed by a Judge, see *Burnham v. Boyer*, [1936] 2 All E.R. 1165; but under the English rule, which is governed by O. 36, rr. 2–6, the mode of trial is before a Judge alone unless a jury is ordered: contrast s. 2, Judicature Amendment Act, 1936.

Section 17 (2) of the Law Reform Act, 1936, stipulates that the contribution to be recovered shall be such as is found *by the Court* to be just and equitable, and the Court is also given power to exempt any person from liability to make contribution or to award a complete indemnity. "Court" is unfortunately not defined in the Act itself, nor in the Judicature Act, 1908, and little help can be obtained from the Code of Civil Procedure.

Section 2 of the Judicature Amendment Act, 1936, allows a jury in cases where the relief claimed is payment of a debt, pecuniary damages, or the recovery of chattels. In all other cases the action must be tried before a Judge alone, although express power is given to the Court to direct that an action or an issue be tried before a jury on the grounds of convenience: s. 3.

The right of contribution is an equitable remedy: *Deering v. Winchelsea*, (1787) 1 Cox Eq. Cas. 318, 29 E.R. 1184; and it is not strictly either a debt or a claim for damages. It would seem, therefore, that claims for contribution should be set down for hearing before a Judge alone. The quantum of contribution, however, depends upon the proportion of blame—*cf. The Peter Benoit*, (1915) 84 L.J. P. 87, 91; *The Aeneas* [1935] P. 128—and this is clearly a question of fact. It is probable, therefore, that in contribution suits the Judge will order a jury under s. 3 of the Judicature Amendment Act, 1936, on the grounds of convenience: see *Stout and Sim's Supreme Court Practice*, 7th Ed. 197.

As soon as the New Zealand third-party procedure is amended to conform with the English rules, it would certainly be far more convenient to have the degress of blame fixed and the contribution assessed by the jury at the conclusion of the plaintiff's action: *cf. Gerson v. Simpson*, [1903] 2 K.B. 197.

A SCOTTISH EXPEDIENT.

In Scotland, where the rule in *Merryweather v. Nixan* had no application, if one of two joint-tortfeasors against whom jointly and severally there was a judgment, paid the full amount and took an assignment of the judgment and the moneys thereby secured, he could recover from the other joint-tortfeasor one-half of the amount so paid, the foundation of the claim resting on a decree which created a civil debt: *Palmer v. Wick and Pulteneytown S.S. Co.*, [1894] A.C. 318, and *Glasgow Corporation v. Robertson*, [1936] 2 All E.R. 173.

This method of enforcing contribution is presumably not excluded by the Law Reform Act, 1936, but it is scarcely applicable now for s. 17 (2) of the new statute permits the recovery from any tortfeasor of whatever contribution is found to be just and equitable, having regard to the extent of his responsibility for the damage.

It is interesting to consider the methods of enforcing contribution adopted in European countries, where contribution between tortfeasors has been almost universal for centuries: see hereon *51 Law Quarterly Review*, 468, 499.

Contributory Negligence.

Proposed Modification of the Doctrine.

The Law Revision Committee in England has issued its Sixth Interim Report, which recommends, *inter alia*, the repeal of ss. 4 and 17 of the Statute of Frauds, and that the enforceability of contracts be placed on a new basis. To these matters, further reference in detail will appear later in these pages.

The Lord Chancellor has referred the following additional subjects to the Committee:

A. Whether, and, if so, in that respect, the doctrine of contributory negligence requires modification, and, in particular, to consider the following statutory enactments bearing upon that doctrine:—

(*a*) (In so far as the provisions of the Convention for the unification of certain Rules of Law respecting collisions signed at Brussels on September 23, 1910, may permit) the rule applicable to collisions at sea in s. 1 of the Maritime Conventions Act, 1911;

(*b*) The rule contained in s. 6 of the Law Reform (Married Women and Tortfeasors) Act, 1935, regarding contribution between joint tortfeasors. [Law Reform Act, 1936, s. 17.]

B. Whether, and, if so, in what respect the rule laid down or applied in *Chandler v. Webster*, [1904] 1 K.B. 493, requires modification, and in particular to consider the observations made thereon in *Cantiare San Rocco S.A. v. Clyde Shipbuilding and Engineering Co.*, [1924] A.C. 226, by Lords Dunedin and Shaw at pp. 247, 248, and 259. [Impossibility of Performance of Contract: erroneously termed "the doctrine of frustration."]

The Conscientious Devil.—There was once a Devil who, Reading in a Judgment for a Plaintiff that a Number of Cases had been Cited for the Defendant, but that none of them was very Helpful, Observed that the Report contained no Reference to any Authorities. He therefore Inquired of Junior Counsel for the Defendant what Authorities had been Mentioned. Upon Looking Up the Cases, this Sceptical though Industrious Person discovered that Several were so Very Unhelpful to the Plaintiff as to Show that the Judgment against the Defendant would be Somewhat Difficult to Uphold.

Moral: Evidence is Admissible to Explain a Latent Ambiguity.

Court of Review.

Summary of Decisions.*

By arrangement, the JOURNAL is able to publish reports of cases decided by the Court of Review. As decisions in this Court are ultimately determined by the varying facts of each case, it is not possible to give more than a note of the actual order and an outline of the factual position presented. Consequently, though cases are published as a guide and assistance to members of the profession, they must not be taken to be precedents.

CASE 43. Motion by second mortgagee of land and bill of sale holder for leave to sell hotel premises by public auction, conditionally upon the purchaser purchasing stock and chattels at valuation. The second mortgagee had applied to have the mortgagor's liabilities adjusted, but the mortgagor had failed to comply with s. 30 (3) in not filing a complete list of his creditors and debtors and a statement of his assets and liabilities.

Held, upon the first mortgagee agreeing not to enforce his rights, that leave be granted as moved, it being shown that a higher price could be obtained in the aggregate than by separate sales of the land and the stock and chattels.

CASE 44. Motion by mortgagees for leave to argue questions of law before the hearing of the application by a Commission. It was submitted that the facts were complicated, and involved the hearing of a number of witnesses.

Held, dismissing the motion, That the facts found would determine what questions of law were to be argued, and the determination of the questions submitted would not substantially determine the whole matter of the application.

CASE 45. Appeal by mortgagees against an order of a Commission as to the basic value of a farm comprising both freehold and leasehold lands over which there were separate mortgages held by different persons. As the appeal proceeded it was realized that the Court would be unable to determine the matter without having the basic value of the freehold and leasehold lands separately assessed.

Held, That the matter be referred back to the Commission for separate valuations on a productive basis in accordance with s. 42 (4).

CASE 46. Appeal against the order of a Commission fixing the annual rent at 10s. per acre. Applicant's land was subject to flooding and had recently suffered from a bad flood, which destroyed crops to be used for winter feed.

Ordered, fixing the rent at 8s., That no rent or interest be payable or chargeable for twelve months, and that funds held by the Intermediate Credit Association be paid to the mortgagor to make provision for wintering his stock.

* Continued from p. 145.

CASE 47. Notice withdrawing application. A lessor made application under s. 30 to have the lessee's liabilities adjusted, but later filed a notice requesting withdrawal of the application. The stock-mortgagee filed an objection to such withdrawal.

Held, That the application be refused, as the stock-mortgagee may have considered it unnecessary, in the circumstances, to file an application. (The Commission was asked to fix an early date for hearing.)

CASE 48. Appeal against the order of a Commission fixing the basic value of land upon the basis of 210 lb. of butterfat per cow. The applicant's own figures over the past ten years showed a return of 250 lb.; his stock, valued at £650, was mortgaged for £120.

Held, varying the order of the Commission by increasing the basic value of the basis of 250 lb. of butterfat, That consequent adjustable debts be discharged, except £200, which is to be paid in six equal annual payments. In giving judgment the Court stated:

"In this case the applicant is admittedly an efficient farmer, and on the evidence of returns of farmers in the district is probably of more than average efficiency. The facts are not in dispute. The Commission has found the return an average efficient farmer would obtain from cows on this property would be 210 lb. of butterfat per cow. Applicant himself has put in returns showing that during a period of ten years his return per cow has been 250 lb. The Commission state in their report that land in the district in which applicant's farm is situate is of exceptionally uniform quality and the average butterfat production ranges from 160 lb. to 260 lb. The usual inference to be drawn, if such disparity is shown in the case of land of equal natural fertility, is that the farmers themselves are the cause, those who are inefficient obtaining the lower yields and those who are efficient the higher. The Commission has, it appears, struck an average over the whole range of production. Such an average, though it could be statistically true of the district returns, and if the quality of the land were good amount to pungent criticism of the district farmers as a whole, does not demonstrate what the Act requires the Commission to find—namely, the average income the average efficient farmer should obtain. Assuming that applicant is slightly more than an efficient farmer, it is clear on the evidence an average efficient farmer would obtain returns not much below those obtained by applicant. Indeed, we are told other efficient farmers on similar lands obtain a higher yield than applicant. It is not suggested these men are of super-efficiency. It appears, however, to obtain such returns a farmer must have sufficient finance to keep his land and stock in the best heart and condition."

CASE 49. Motion by a mortgagee under s. 30 (4) for an order that the land cease to be subject to the Act. The mortgagee had filed an application to have the mortgagor's liabilities adjusted, but the mortgagor had failed to comply with the requirements of s. 30, whereupon the mortgagee was given leave to sell. The mortgagee being unable to sell now wished to lease the property.

Order accordingly.

CASE 50. Appeal by a mortgagee against the order of a Commission fixing the value of the property at £550 and reducing the mortgage to £517 1s. 5d., the arrears of rates being £32 18s. 7d.

Held, varying order of Commission, 1. That the mortgage be reduced to £550, and the term thereof be extended for ten years. 2. That arrears of rates be paid by eighteen equal monthly instalments, the City Council being at liberty to protect its rates by judgment if necessary. 3. That improvements and repairs to a value of £72, as specified in valuer's report,

be effected by mortgagor within a period of twelve months. 4. That principal repayments of mortgage be made on a twenty-year table mortgage with interest at 4 per cent.

CASE 51. Appeal by a mortgagee against the order of a commission reducing the mortgage and discharging the guarantor. The mortgagee had insisted upon the guarantor being given as consideration of renewal of mortgage, and it was shown that guarantor was in a substantial position.

Held, varying the order of the Commission, That the guarantor be not discharged.

CASE 52. Motion by the Public Trustee for an order or directions under s. 88. When this application came before an Adjustment Commission, questions of law arose, which by consent of the parties had been referred by the Commission to the Court of Review for decision.

Applicant was entitled to a share in the estate of his father, and the first question which arose was whether the trustees of the estate had rightly been reducing applicant's debit with the estate by setting-off distributions due to him from his share in the estate. The mortgagee contended that the trustee, appointed under the Rural Mortgagors Final Adjustment Act, 1934–35, when a stay-order was made, was entitled to receive those moneys by virtue of the provisions of s. 38 of the Rural Mortgagors Final Adjustment Act, as amended by s. 5 of the Amendment Act, 1935. Under s. 38 the trustee had the sole right to receive moneys payable to the mortgagor, and, by the amendment referred to, moneys payable to the mortgagor included all moneys which being the subject-matter of any assignment, charge, or order would be payable to the mortgagor if such assignment, charge, or order had not been made or given. By s. 5 the principal Act is amended in this respect as from the passing of the Act so that the amendment is incorporated in s. 38 as from the date of its passing.

Held, 1. That, while the object of the amendment is to include moneys subject to a charge, the amendment does not extend the definition of " moneys payable to the mortgagor " so as to render payable to the trustee moneys which by operation of law are not payable to the mortgagor till the mortgagor establishes in an estate an equality that entitles him to receive moneys from the estate. The contention that before such an equality is established the mortgagor was entitled to be paid is against established principle, and to describe, before equality is established and a beneficiary is entitled to share in distribution, the position of the beneficiary as a mortgagor and the trustees as mortgagees is contrary to the true position. The true position is sufficiently set out in *28 Halsbury's Laws of England*, 1st Ed. 152–53, paras. 314–15. Paragraph 315 says that a beneficiary, who is indebted to the trust estate, or has received from it more than his due share, or has rendered himself liable in respect of a breach of trust, can claim nothing from the trust estate until his liability to it is made good. Accepting this as a correct exposition of the law, since the advances to the applicant against his share were made prior to the passing of the Act of 1934–35, it is clear the trustee's right to set-off applicant's share in subsequent distributions is absolute. In such case, till the applicant satisfied his debt to the estate, no moneys were payable to him from the estate and the trustee under the stay-order was not by virtue of s. 38 entitled to claim that moneys so retained by the trustees to satisfy applicant's debt to the estate should be paid to him.

2. That a second question arose out of the fact that applicant had subsequently assigned his share in the estate to secure advances from his brother. It had been admitted that such moneys as the trustees of the estate were ready to pay applicant or his assignee after applicant's debt to the estate had been satisfied must be paid to the trustee under the stay-order and not to the brother. Section 38 clearly covers this case.

3. That a third question related to shares held by applicant's estate in a co-operative dairy company, limited. One hundred £1 shares were held on which £42 5s. 9d. had been paid. Applicant's estate sent its milk to this factory. From the milk cheques payable during the period July 4, 1935, to December 31, 1935, a sum of £21 11s. 1d. was deducted by the company on account of unpaid capital on the shares, thus bringing the total paid-up value to £63 16s. 10d. The trustee claimed a refund of the moneys so deducted. The transaction in question was one ordinarily entered into between a supplier and a co-operative company. The right to make the deduction was the basis of co-operative dairy company's method of finance and a condition of supply, and to the interest of suppliers as well as of the co-operative company. The articles of the company in question provided, as usual, that directors might enter into an arrangement with shareholders for payment of any amount owing in respect of shares by deduction from moneys due to the shareholder as a supplier. This policy, it was agreed, had applied for the past twenty years to dairy companies in the district. The arrangement made was, in fact, a fundamental term of a contract entered into by supplier and company without which the supplier could not sell nor the company buy. It was a term of the contract of sale, and the price payable to the supplier was agreed to be paid subject only to this deduction. If this was the true construction of the arrangement, the deduction being precedent to the right of the supplier to obtain payment takes moneys so deducted out of the class of moneys payable to the mortgagor as defined in s. 38.

Held, finally, that the trustee under the stay-order is not entitled to receive the moneys so deducted and cannot succeed in his claim for a refund of them. The questions submitted are therefore answered accordingly.

CASE 53. Appeal by a mortgagee against a Commission's declaration that applicant was entitled to be retained in the use and occupation of his farm. The evidence established that applicant produced 2,000 lb. less butterfat than when he purchased the farm in 1919; that the farm and dairy herd had deteriorated during his occupation; and that ragwort had been allowed to spread practically unchecked over the farm and was in places breast-high.

Held, allowing the appeal, and setting aside the Commission's order, That leave be granted to the mortgagee to exercise his power of sale on condition that, in the event of a deficiency on sale, no claim for such deficiency be made against applicant; as, owing to applicant's conduct in the management of the farm and the consequent loss of capital value, it would be an economic loss to continue him in the occupation of the property.

London Letter.

BY AIR MAIL. Strand, London, W.C. 2,
May 19, 1937.

My dear EnZers,—

The Official Programme for the Coronation of Their Majesties King George VI and Queen Elizabeth begins by saying: "There are sermons in stones and the sermons are innumerable on the route of the Coronation Procession." Innumerable, too, are the lapidary exhortations to be found elsewhere in London; and I wish that I could draw from my pen an eloquence only half as expressive as some of these ancient legal backwaters draw from their mellowing stones. Then perhaps in fitting phrases I could tell something of that innate dignity of the Law, which strikes the callow wanderer from the Dominions as he strays at this time amid these sheltered oases where the lawyers of London live and move and have their being. Let me, however, try to convey something of the atmosphere of almost utter immutability which broods over these ancient haunts. Late in the afternoon of May 11, Coronation Eve, I turned left, out of the roar and bustle of Kingsway with its flaming streamers, grandiloquent banners, and multi-coloured flags, into the calm peacefulness of Lincoln's Inn Fields.

Lincoln's Inn.—Crossing the Fields, with their fresh green trees and profusion of spring flowers, I entered the Inn. Here barristers, sombrely clad, as always, in morning dress, were unconcernedly setting out for home, while clerks might be seen returning from a late sitting with bags of bulging briefs, or taking the day's letters to the post. All was quiet, no display, no decorations, nothing that would suggest that on the morrow a new King was to be crowned. It is true that the gardens of the Inn were ablaze with masses of glorious tulips, and it may be that in the freshness of their flowers the Benchers found adequate expression of their feelings of loyalty: happy the King who was recipient of so sweet a tribute.

And so onwards, leaving Equity behind, down Chancery Lane to Fleet Street where it meets the Strand, with the huge brown-grey block of the Royal Courts of Justice to the right, the City to the left, and ahead, lying between the Strand and the River, the Temple. Along this way, the newly-crowned King will come on his way to the Guildhall to dine with the Lord Mayor. Fleet Street is heavily decorated with red and white streamers and row upon row of the flag of the City of London, a red cross on a white ground with a red sword upraised.

The Temple.—Perhaps because of the splendour without their gates, the brethren of the Middle Temple have so far overcome their natural dignity that they have actually affixed a scroll in gold lettering on a blue ground above the Fleet Street gate to Middle Temple Lane, in which they say: *Medii Templi hospitium vos salutat.* Enter this gateway, however, and we are at once amid surroundings whose day and generation were those of immemorial antiquity "than which the memory of man runneth not to the contrary," whose traditions are far superior to the little celebrations of modern times, even though they be for the Coronation of a King. Where would be found anyone of so poor a calibre that he could find it in his heart to defile these sacred precincts with garish bunting? The worthy Templars have scorned to cheapen their hallowed sanctuary with any such vulgar display. If there is loyalty here, and who will doubt it, it is a loyalty that is above the need of tangible evidence wherewith to emphasize its existence. It is true that as you issue, with almost breath-taking suddenness out of the dinginess of Fig Tree Court into the light of Crown Office Row—where are masses of tulips, set off this time by beds of azaleas, irises, and geraniums, and the greenest of green centuries-old turf stretching down the Embankment—you find a battery of flood-lights trained upon the Library and its Clock-tower. Return again, however, by way of the passage under the Hall of the Inner Temple, into the narrow Cloisters about the Temple Church, with Pump Court on the left and Lamb House on the right (oh these delightful names!) and stand timidly, as I did, in the doorway of the church listening to the compelling sweetness of that famous organ the choice of which was adjudicated on by the Lord Chief Justice Jeffreys, and all remembrance of the outside world seems foreign and far away. What matters it in the lives of those men who are buried here, whose effigies take up a good part of the area of the floor and whose worth is depicted in the beauty of the windows, whose lives began almost in the beginning, are now (in their modern prototypes) and perhaps ever shall be, that Londoners in this year of grace 1937 see fit to decorate their premises? These men of the Temple passed their days in that City, but they were never of it; their lives were something apart—for they were something apart, for they were of the Law. And so the Coronation message of the Inns of Court seemed, to one accustomed to work amidst the almost juvenile (when compared with these) surroundings of the New Zealand practitioner, a message of the superiority even to Kings and their Coronations. But if the law is superior it is by no means careless of these ancient ceremonials.

The Law and the Coronation Ceremonies.—It is true that in the magnificent procession which wends its way from Buckingham Palace to Westminster Abbey, and so after a wait of two hours or a little more, back again to the Palace, while dignitaries of the Church, the State, the Empire, and the Municipality, and to a preponderating degree of the Services, are much in evidence, no lawyers or legal dignitaries, except incidentally, are to be seen; we must not forget, however, that all this pageantry is a sequel to an investigation which has preceded it and placed the seal of the law upon it. As long ago as May 28, 1936, a Proclamation "Declaring His (then) Majesty's pleasure touching his royal Coronation and the solemnity thereof" was given at Buckingham Palace reciting that

> "forasmuch as by ancient Customs and Usages of this Realm, as also in regard of divers Tenures of sundry Manors, Lands, and other Hereditaments many of our loving Subjects do claim and are bound to do and perform divers Services on the said day, and at the time of the Coronation as in times precedant their Ancestors and those from whom they claim have done and performed at the Coronations of Our famous Progenitors and Predecessors, Kings and Queens of this Realm,"

His Majesty in care for the preservation of those Rights, published this his Resolution and appointed a Commission therefor under the Great Seal.

The Commissioners "appointed therefor and authorized" include the Lord Chancellor, who is described as "Our right trusty and well beloved Cousin and

Counsellor"; the Lord Chief Justice, Lord Hewart; and Lords Thankerton and Wright. So that until this Court of Claims—which was "to receive, hear, and determine the petitions and claims which shall be to them exhibited by any of our loving subjects on this behalf" and which dates back in unbroken sequence through every Coronation since that of Richard II in 1377, when John of Gaunt sat "in the White-hall of the King's Palace at Westminster"'—had sat, heard such evidence as it considered fit, deliberated, and finally delivered judgment, an Earl Marshal, an Archbishop, a King-of-Arms, a Lord Warden of the Cinque Ports, or a King's Waterman might parade the virtues of his office and parade them in vain. Until the Court of Claims has completed its sittings, until the due forms of the law have been observed, none can safely claim to assist in any of the ancient customs and usages of the Realm touching the Royal Coronation, or claim to receive his fees therefor.

The Statute of Westminster.—It must have been with feelings of pride that those "learned in the law" listening in far-off lands to their King in the great broadcast of Coronation Night, heard him, with his very first words after introducing himself, go on to refer to that milestone of British Constitutional History and Law, the Statute of Westminster, in these words:

> "Never has the ceremony itself had so wide a significance; for the Dominions are now free and equal partners with this ancient Kingdom, and I felt this morning that the whole Empire was in very truth gathered within the walls of Westminster Abbey."

This pride must have been heightened by the many references, express and implied, in the speeches that preceded His Majesty's, or originated in celebrations in other parts of the Empire, perhaps most happily phrased of all being that of General Smuts, himself a Barrister-at-law and Bencher of the Inner Temple, who, at a Coronation Day gathering in Cape Town, said:

> "The King who is being crowned to-day is not the head of the kingdom to which many other Dominions and possessions belong, but of a group of equal States of whose free association together he is the common symbol. His kingdom has thus a meaning which no previous kingdom ever had, and his crowning for the first time as Sovereign of such a constellation of free States is a unique event in history. A new chapter has been written in the constitutional development of mankind."

There is pride in the realization that, in thus imparting into the framework of the Empire a new element, and one which (as is so evident at this time in the contrast between the added freedom of its reform on the one hand, and the sorry state of so many countries wracked with the rigidity of dictatorship on the other) is so exceedingly significant, their calling had once again demonstrated its ubiquitous nature as touching life at every point and profoundly influencing everything it touches.

The Whole Empire at the Palace Gates.—But it was not only from the seats of the mighty that came the expression of this truth. For the individual who was fortunate enough to stand as a humble unit in that cheering mob outside the gates of Buckingham Palace just after the King's speech was past, and who had the time to think about these things amid the clamorous and increasingly insistent cry, "We want the King!" or a little later their demands being acceded to, amid the thunderous enthusiasm of 100,000 voices united in singing the National Anthem, there could be absolutely no doubt about it. These people had come in their thousands from every corner of the globe; in their persons the whole Empire was present and one could not but feel that throughout that vast concourse, unconsciously perhaps in many cases but none the less real, was a very positive intention of expressing the unity of the British peoples in the free recognition of a common King, an intention of proclaiming, almost flaunting, the success of their remarkably flexible Constitution before the people of other countries less happily situated at this time. They had thrilled at the sight of their own representatives in the procession, and they had found common ground in their admiration of each other's representatives in the procession. (Whether it was because of his natural modesty, his resplendent Privy Councillor's uniform, or the fact that he had no lady to give him courage, I do not know, but the Rt. Hon. M. J. Savage seemed to be outrivalled by the representation of the New Zealand Mounted Rifles who formed his bodyguard. He received no cheers from isolated New Zealand groups because he got the cheers of people from all the Dominions, who seemed to take a delight in cheering everybody else's Prime Minister, in return for everybody else's cheering of their own particular one.) Who so dull as to fail to be captivated by the colour of the Indians or the romance of the Royal North West Mounted Police in their scarlet tunics? And now, for the second time on that memorable day, they saw and in an unforgettable manner saluted their common King, finding hitherto undreamt-of ties of sympathy in the diversity of their races and the unity of their Crown.

That this is no flight of imagination may be gauged from the expressions almost of delight with which the reports of the Italian Press on the Coronation have been received in this country (outside that of the Vatican City, which was completely satisfactory; but it is outside the Italian Press, isn't it?). In the Italian Press it was said: "A series of disasters marked the Coronation of King George VI. The hospitals are overflowing with wounded, following the brawls, incidents, and arrests. There were popular manifestations against British Imperialism, numerous dead, stands collapsed," &c., &c.

A "Coronation Case."—I know of only one incident, one stand that collapsed, and it happened in this wise: An imaginative coster with an eye to business manoeuvred a somewhat aged barrow into position behind a five-deep row of sightseers ranged along the footpath in the Mall; and he proceeded to sell standing-room upon it. He had mounted some nine loyal subjects out to see their Sovereign drive past, when the collapse came. Keeping in mind the principles of the "Coronation Cases" of a generation ago, it might prove a congenial exercise for some student of the law of contract, or even some briefless barrister (if such there be in New Zealand now) to "consider the rights of the parties concerned."

Next mail, I hope to tell you something of the Lawyers of the Empire who are here to witness the King's Crowning, and to take their part in the attendant rejoicings.

The new Master of the Rolls.—You will probably have learnt with interest of the promotion of Lord Justice Greene to the fine judicial position occupied by the Master of the Rolls. It was sometimes said that Lord Wright had merely been "lent," by the House of Lords and Judicial Committee, and that his appointment was transitional until Greene, L.J., had been tried out and given a little experience in the Court of Appeal. The appointment seems an

ideal one, and it had been enthusiastically received: both on personal grounds and because the "youth" of the new M.R. will be of advantage to the Court as he must, in the ordinary course, have many years of useful service ahead of him. Many nice things have been said about him, but I like the remarks of Mr. Fergus Morton, K.C., at one of the recent dinners, namely, that Lord Justice Greene was the embodiment of all that was best in the legal profession. At school, he said, the Lord Justice was a bowler of some distinction, with an easy and attractive action and an appearance of deceptive innocence; balls which appeared to be off the wicket had a habit of breaking and taking the middle stump. At Oxford he had been made a Fellow of All Souls. A man of modest and cheerful disposition, nobody had so completely the affection and respect of both branches and every side of the profession of the law. All this is true: we love him as a man, and respect him for his fine judicial temper and great legal ability.

The new Master of the Rolls was born in 1883, and he was educated at Westminster School and Christ Church, Oxford, where he took his Master of Arts degree, and got a double first. In addition, he had the distinction of taking off the Hertford Scholarship, the Craven Scholarship, and the Chancellor's Latin Verse Prize. He became a Fellow of All Souls' in 1907, a year before he was called to the Bar at the Inner Temple. He took silk in 1922, and he was made a Lord of Appeal in Ordinary at the end of 1935. A Major in the Oxfordshire and Bucks Light Infantry during the War, he was awarded the M.C., O.B.E., and Croix de Guerre, as well as being created a Chevalier of the Order of the Crown of Italy.

The appointment of Lord Justice Greene as Master of the Rolls was announced last week. At the same time, it was stated that Lord Blanesburgh has retired from his office as Lord Justice of Appeal, which he has held since 1923. Lord Wright reassumes his place in the House of Lords and Judicial Committee from which he very cheerfully retrogressed in precedence on succeeding Lord Hanworth in October, 1935. A Lord of Appeal in Ordinary takes precedence of the Lord Chief Justice, after whom comes the Master of the Rolls.

Sir Frank MacKinnon, a Justice of the King's Bench Division, has been elevated to the Court of Appeal to fill the vacancy. He has been on the Bench since October, 1924, when he succeeded Mr. Justice Bailache.

Grand Days.—Each of the Inns of Court has its "Grand Day" during term, this year at Lincoln's Inn it was April 13. The Inner Temple celebrated on the following day, and the Middle Temple two days later. "Grand" is appropriate to the fare provided by the Benchers for their guests and themselves. The purpose of this note is to record that your good friend, Mr. Justice Blair, was one of the guests at the Lincoln's Inn celebration, which was more Imperial in its scope than the two others. Mr. Justice Saul Solomon, of the Supreme Court of South Africa, and Professor K. Bailey, Dean of the Faculty of Law, University of Melbourne, were also guests; and one notes among other celebrities the name of the President of the Royal College of Surgeons, who apparently balanced the President of the English Law Society.

Some members of the Judicial Committee and other eminent lawyers were, of course, in the ranks of the Benchers.

Yours, as ever,
APTERYX.

Hawke's Bay District Law Society.

Annual Bar Dinner.

A fine example of professional cameraderie was given by the attendance of practitioners, some forty-six in all, at the Bar Dinner held at Napier on the evening of 22nd ultimo; and more would have been present had there been accommodation available.

Members of the Hawke's Bay Society were the sole body of practitioners to receive the serious set-back of the 1931 earthquake, and then, before recovery from this disaster, they suffered in common with their brethren throughout the Dominion the sad vicissitudes of the depression period. Yet this twice-stricken body of practitioners have given a lead to the older, larger, and wealthier Law Societies by holding an annual Bar Dinner, and their enterprise and success deserve the commendations and congratulations of everyone in the profession, and, it may be added, the sincere flattery of emulating that enterprise.

The Bar Dinner of 1937 was no less successful than its predecessors, and the President, Mr. H. B. Lusk, presided over a very happy gathering. The guests of the Society were the Rt. Hon. the Chief Justice, Sir Michael Myers, G.C.M.G.; the Attorney-General, the Hon. H. G. R. Mason; and the local Magistrate, Mr. J. Miller, S.M.

After the loyal toast, the President proposed the toast of the Judges. After alluding in felicitous terms to the new honour then recently conferred by His Majesty the King on the Chief Justice, he expressed the particular pleasure of the members of the Society at having with them the Hon. the Attorney-General. In reply, the Chief Justice, in the course of an interesting and instructive speech, reminded his hearers of the outstanding qualities of the great Judges who in early colonial days had set a high standard of professional ethics, which corresponded, then and now, with that maintained in Great Britain itself.

The toast of the Bar was proposed by the Vice-President of the Society, Mr. M. K. Grant. The Attorney-General replied in a speech which gave further proof of the deep concern felt by the speaker for the due administration of the law in the Dominion, and of his deep-seated desire to promote whatever legislation may be needed to improve the state of the law in the interests of everybody.

The toast of the President and Members of the Council of the Hawke's Bay Law Society gave scope for Mr. Selwyn Averill's gentle raillery and humour, which was displayed at the expense of the subjects of his toast, although it was noticed that praiseworthy respect for the President exempted that worthy gentleman's foibles (if any) from sharing the fate of those of the respective members of his Council. Messrs. Chamberlain and Dorrington replied briefly.

The remainder of the evening was enjoyably spent in social intercourse, and in games.

New Zealand Conveyancing.

By S. I. GOODALL, LL.M.

Agreement between a Sawmilling or Timber Company and Sawmillers for Milling of Logs and delivery of Timber: a "Milling Agreement."

(*Concluded from p.* 147.)

19. (1) The sawmillers and their workmen agents and employees will take all reasonable precautions to prevent fires from commencing in or about the said mill and in the event of any fire occurring in the mill then and in any such case the sawmillers and their employees agents and servants shall use every effort to suppress such fire and to prevent such fire from spreading to the timber of the company and to the company's bush.

(2) The sawmillers shall be responsible for all damage caused to any of the property of the company by fire through the negligence of the sawmillers or of the sawmillers' employees agents and/or servants.

20. (1) In the event of the said mill being either wholly or partially destroyed or damaged by fire or otherwise as aforesaid then and in any of such cases the sawmillers shall forthwith and with all reasonable speed erect a new mill on the mill site or repair the damage done to the sawmill.

(2) In the meantime and until the sawmill shall be ready to commence milling the operation of this agreement shall be suspended

PROVIDED HOWEVER that any payments which shall be actually due and payable to the sawmillers by the company shall (subject to any deductions in terms of this agreement) be paid in terms of this agreement to the sawmillers.

21. (1) In the event of the company's bush being wholly or substantially destroyed by fire or otherwise as aforesaid then this agreement shall immediately cease and determine.

(2) In the event of the company's bush being only partially but not substantially destroyed by fire or otherwise as aforesaid then and in such case the company may by notice in writing forthwith determine this agreement but otherwise it shall remain in full force and effect.

22. The sawmillers and their workmen employees and agents and all persons authorized by the sawmillers shall have the right at all times during the continuance of this agreement to enter into and upon the land of the company and to remain thereon for the purpose of carrying into effect the provisions of this agreement.

23. The sawmillers shall have the right to sublet this contract provided however that the following conditions in respect thereto are first complied with namely:

(1) The intended subcontractors shall be first of all approved of in writing by the company before the sawmillers shall agree to sublet.

(2) The subcontractors shall observe every condition of this agreement and shall enter into a direct covenant with the company so to do.

(3) The sawmillers shall continue liable under this agreement and shall indemnify the company in respect of every breach on the part of the subcontractor.

(4) The company will adjust and make all its payments with and to the sawmillers and shall not incur any liability to the subcontractor.

24. (1) It is acknowledged that the said mill is to be erected for convenience by the sawmillers on a site which is the property of the company.

(2) All materials used in connection with the erection of the mill and all plant and machinery fixed to the land and used in connection with the said mill shall (notwithstanding the fact that they are fixtures) be deemed to be and shall continue to be the property of the sawmillers and the sawmillers shall be at liberty upon the expiration or sooner determination of this agreement to remove the same from the property of the company.

(3) This clause shall be subject to the condition that the sawmillers shall duly and finally discharge all and singular their obligations and liabilities hereunder.

25. In the event of the sawmillers not having the mill ready to commence sawmilling operations within [*three*] calendar months from the day of the date hereof then and in such case the sawmillers shall pay to the company the sum of [*ten*] pounds per week for damages for each and every week beyond the said period of [*three*] calendar months up to the date on which such mill shall be ready to commence operations and such further and other amount of damages as shall be caused to the company through the failure of the sawmillers as aforesaid.

26. (1) If the sawmillers shall make default in delivery of the sawn timber in terms of this agreement or shall fail to comply with any of the conditions of this agreement then and in such case or cases the sawmillers shall pay to the company the amount of loss and/or damage which shall be sustained by the company as a result of any such default or defaults on the part of the sawmillers.

(2) The company shall have the right to deduct the amount thereof from the security above provided.

(3) If the sawmillers shall continue to make default as aforesaid then the company may at its option by notice determine this contract and shall be entitled in such event to retain the amount of security as damages and compensation and to sue the sawmillers for all damage sustained by the company owing to such continued default.

27. In the event of the company's bush contractors failing to supply logs in accordance with the company's contract with the bush contractors of sufficient quantity to enable the sawmillers to fulfil the terms of their contract then and in such case the company shall be at liberty to suspend the agreement with the sawmillers in whole or in part for such time as shall be necessary to enable the company to enforce the performance of the obligations of its bush contractors under their agreement with the company.

28. In the case of any difference or dispute arising as to any clause made or herein contained or implied or as to the construction of these presents or arising in any way in respect of this agreement such difference or dispute shall be decided by an arbitrator if the parties can agree upon the appointment of one person and if otherwise then by arbitration of two indifferent persons

one to be appointed by each party hereto or of the umpire to be chosen by the arbitrators before entering on the consideration of such difference or dispute and if in any dispute arising hereunder either party shall neglect to appoint an arbitrator or shall appoint an arbitrator who shall refuse to act then the arbitrator appointed by the other party shall make a final decision and every such arbitration shall be subject to the provisions in that behalf contained in the Arbitration Act 1908 or any then subsisting statutory modification thereof.

[*Provisions if necessary and so desired for use of company's land for erection of huts for accommodation of workmen, compliance by sawmillers with Employment Promotion Act, 1936, and the Agricultural Workers Act, 1936, and provisions as to binding executors, administrators, successors, and assigns, as in felling, logging, and hauling agreement.*]

In witness &c.

SCHEDULE.

All that &c. [*Description of company's land.*]
The common seal &c.
Signed &c.

Obituary.

Mr. E. L. Howe, Wellington.

Mr. E. L. Howe, of the firm of Messrs. Douglas and Howe, died last month, at the early age of thirty years. He was born at Wellington, and was educated at Mount Cook School and Wellington College, later studying law at Victoria University College, where he graduated LL.B. in 1929. Subsequently he entered into partnership with Sir Kenneth Douglas, and as a member of the firm of Douglas and Howe was considered one of the most promising of the younger men in the profession in Wellington.

Mr. Howe took a prominent part in youth movements. First entering Bible-class circles in his early youth, he had occupied practically every official position, not only in the Wellington Methodist Young Men's Bible Class Union, but also in the New Zealand Methodist Bible Class Movement. In addition, he was a member of the Christian Youth Council, and was an early member of the Y.M.C.A. Optimists' Club and Round Table. At the time of his death he was superintendent of the Wesley Sunday School, Taranaki Street, the school in which he had been a scholar. For some fourteen years Mr. Howe was an active and enthusiastic member of Wesley choir. He was a keen music-lover, being for some time a member of the Wellington Harmonic Society, and a foundation member of the Schola Cantorum.

He had long association with the Wesley Hockey Club, both as a player, and more recently as a coach, and was largely instrumental in organizing the Indian Hockey Club in Wellington. He was also president of the Methodist Harriers' Club, and prominent in two or three tennis clubs, including the Brougham Hill Club. Mr. Howe is survived by his wife, for whom much sympathy is felt. He was engaged in his office until a few days before his death.

Legal Literature.

Macdonald's Law relating to Workers' Compensation in New Zealand: Second Edition. Supplement No. 1, 1937. Edited by J. Byrne, LL.M. Pp. viii + 99. Butterworth and Co. (Aus.), Ltd.

Amendments to the Workers' Compensation Act, which came into force at the beginning of this year, together with the passing of the Law Reform Act, 1936, have altered and modified the law relating to Workers' Compensation in New Zealand since the appearance of the Second Edition of *Macdonald's Workers' Compensation*. These far-reaching amendments have necessitated the preparation of a Supplement, which brings the law completely up to date in respect of statute-law, and the addition of about 300 cases has the same effect with regard to the case-law on the subject in New Zealand, Great Britain, and Australia.

The arrangement of the Supplement follows that of the main work, to the paragraphs of which it corresponds, thus facilitating quick reference on any of the topics in which any change has been made; and the Workers' Compensation Act, 1922, is reprinted, with all statutory amendments incorporated in the text. The general result is to augment the comprehensive treatment of the subject in the main work so as to show the law relating to workers' compensation claims exactly as it exists to-day.

Aden: The new Crown Colony.—Hitherto it has been tucked away in official records and descriptions under the heading of "Miscellaneous Possessions." This place of growing significance was once a possession of the Emperor of Abyssinia, and later, successively, of the Persians, the early Caliphs, and the Turks. The Peninsula was first occupied by the British in 1839, and they held it and extended, until the new Colony composes what was known as the Aden Protectorate of 42,000 square miles and 100,000 inhabitants. The administration was directly under the Government of Bombay until 1928, when certain changes were made. Administrative control of the Settlement of Aden was transferred from the Bombay Government on April 1, 1932, when Aden was made a separate Province under direct control of the Government of India. Hitherto the Court of the Resident has been the Colonial Court of Admiralty, and its procedure as such regulated by the provisions of the Colonial Courts of the Admiralty Act, 1890, the laws in force being, generally speaking, those in force in India, supplemented on certain points by special regulations to suit local conditions. There is only one Judge, Constantine, J., who is only thirty-five years of age. A Balliol man, he was formerly an Indian Civil Servant; transferred to the judicial branch, he became a Judge of the Court of Bombay, and, in 1936, he went to Aden as Judge and Sessions Judge, and he will shortly become Chief Justice of the new Colony.

Strange Company.—Printed on a number of doorways in East 34th Street in the City of New York, appears the following legend:

"Solicitors, peddlers, and beggars not allowed."

Practice Precedents.

Court of Review: Notice of Motion on Appeal.

An appeal lies to the Court of Review from an order, or any part of an order, made by an Adjustment Commission. This appeal must be made within twenty-one days after the *filing* of the order appealed from, or within such further time as the Court may allow. An appeal may be made by any person affected by the order. If an appeal be not made, the Court of Review, of its own motion, may direct that the order be reviewed before the Court as if an appeal had been lodged, or that the matter be referred to the Adjustment Commission concerned for its further consideration: see s. 27 (1) and (2) of the Mortgagors and Lessees Rehabilitation Act, 1936.

Upon any such appeal or review, the Court of Review may confirm, discharge, or vary the Adjustment Commission's order, or it may direct that the matter be referred to the Commission for further consideration, as it thinks fit, and it may generally make such order as it deems just and equitable in the circumstances of the case: *Ibid.*, s. 27 (3).

For the result of appeals by mortgagors, see the JOURNAL'S current Summary of Court of Review Decisions, cases 13, 22, 24, 26, 28, 35, and 41; for appeals by mortgagees, see cases 14, 18, 19, 20, 21, 23, 27, 32, 34, 36, 42; for an appeal by a lessee, see case 16; for a motion by a lessor, see case 37; for an appeal by an unpaid vendor, see cases 38 and 39; and for cases stated by Commissions, see cases 9, 10, 25, 30.

Rules of the Court, which have been made in regard to appeals, provide as follows:—

Appeals are by way of rehearing, as in the Court of Appeal, and are brought by notice of motion in a summary way. The notice of motion must be served upon all parties directly affected by the appeal, and on such other persons as the Court may direct; it 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.

With the notice of appeal, there must be filed in the Court of Review (*a*) the direction or order of the Adjustment Commission appealed from; (*b*) the report and reasons of the Adjustment Commission; (*c*) the 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.

If further evidence is sought to be admitted by any party to the appeal, he is to file his intended affidavits and serve copies thereof on the other parties to the appeal not less than seven days prior to the date of hearing.

In practice, the following requirements follow from the Appeal Rules:—

The notice of motion on appeal must be in triplicate, and filed in the office of the Court of Review where the application for adjustment was filed. The fee for filing the notice of motion on appeal is 5s. and *this is the only fee payable on any documents in respect of the appeal.*

The order of the Commission is already drawn up by the Commission signed by the Chairman and filed in Court, but two additional copies are required for the members of the Court.

It is impossible to comply directly with the rule as to supplying copies of the report and reasons of the Adjustment Commission, because these reports and reasons as formerly issued are now issued as the order of the Commission.

Where affidavits or declarations have been filed in the Court, copies have already been sent to the Commission. Therefore only two additional copies of these are required.

Valuations, statements of account, and reports that were put in as evidence before the Commission, should be obtained from the Secretary of the Commission and lodged in triplicate with the appeal.

Where a copy of the Commission's notes of evidence is not available, the practice is to place before the Court, in affidavit form, the facts given in evidence before the Commission. Such affidavits may be made by the appellant.

The draft order on appeal should be approved by all parties to the appeal, and submitted to the Registrar. If the appellant does not draw the order, any party may do so.

The effect of the dismissal of an appeal is that the order of the Commission stands, but it is not the practice to seal an order dismissing the appeal and then to seal the order of the Commission. One order only is sealed containing the effect of the decision on appeal—that is to say, the order of the Commission is redrawn as an order of the Court, with, of course, the necessary variations; similarly, where an appeal is allowed or an order of the Commission is varied.

Where registration of an order after appeal is necessary, two original typed copies are required to be furnished to the Registrar, who then attends to the registration thereof.

The following is a precedent for a notice of motion on appeal against the order of an Adjustment Commission.

NOTICE OF MOTION ON APPEAL.

IN THE COURT OF REVIEW,

[ ] No.

IN THE MATTER of the Mortgagors and Lessees Rehabilitation Act 1936

AND

IN THE MATTER of an application by A.B. &c. for an adjustment of his liabilities.

TAKE NOTICE that this Honourable Court will be moved by Counsel for the above-named applicant on day the day of 19 at 10.30 o'clock in the forenoon or so soon thereafter as Counsel can be heard ON APPEAL from so much of the order of The City Adjustment Commission dated the day of 19 in the matter of an application under the above Act by the above-named A. B. as relates to—

(*a*) The valuation of the property as fixed by the Adjustment Commission.

(*b*) The adjustment of the second mortgage No. to C. D. &c. as mortgagee.

UPON THE GROUNDS that the valuation placed upon the said property was not justified by the facts brought before the Commission AND UPON THE FURTHER GROUNDS set forth in the affidavit of F. G. filed herein.

Dated at this day of 19 .

Solicitor for applicant.

To the Registrar, Court of Review, ; and to [*first mortgagee*]; and to C. D. &c. [*second mortgagee*].

This notice of motion is filed by of , Solicitor, whose address for service is at the offices of Messrs. , Solicitors, .

AFFIDAVIT IN SUPPORT OF MOTION.

(*Same heading.*)

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

1. That I am the Solicitor for the above-named A. B. on his application for adjustment of liabilities.

2. That the property comprised in the said application consists of a section with a four-roomed modern bungalow erected thereon and known as No. [*Street*] [*City*].

3. That at the hearing of the application before The City Adjustment Commission the following evidence of value was adduced:—

(*a*) That the Government capital valuation as at the thirty-first day of March 19 amounted to .. .. £ .

(*b*) That X. of the City of valuer on behalf of the applicant estimated the property to be worth .. .. £ . (As appeared by the copy of report and valuation attached hereto and marked "A".)

(*c*) That Y. of the City of valuer on behalf of the second mortgagee estimated the property to be worth .. .. .. £ . (As appears by the copy of report and valuation hereunto annexed and marked "B".)

(*d*) That both the said valuers agreed that the said bungalow was in a state of disrepair inasmuch as it required painting and the roof repaired.

(*e*) That the fair valuation as fixed by the City Adjustment Commission amounts to .. .. £ .

4. That the order of the said City Adjustment Commission requires the applicant to pay the following amounts per week: [set out amounts].

5. That the said A. B. under a separate application for adjustment heard on the same date was ordered to pay the City Corporation the sum of 10s. per month in reduction of rates up to the sum of £10. This requires a further weekly payment of 2s. making in all a total weekly payment of £ .

6. That the said X. on behalf of the applicant estimated the fair rental value of the property at £1 15s. to £1 17s. 6d. per week.

7. That the amount ordered to be paid to the second mortgagee for the first year on account of interest (12s. per month) will not pay the interest in full for the said year at the rate of £5 per centum fixed by the said Commission.

8. That if all payments under both mortgages as ordered by the said Commission are paid during the next five years (being the term for which the second mortgage is extended) the applicant will still owe the first mortgagee approximately £ and the second mortgagee approximately £ at the due date of the second mortgage the day of March 1940.

9. That after paying a weekly sum in excess of the rental value of the property for a period of five years the applicant would still be unable to re-finance the property and repay the balance then owing to the second mortgagee.

10. That at the due date of the second mortgage the property will require painting and a new iron roof thereon.

Sworn &c.

ORDER REVIEWING ORDER OF COMMISSION.

(*Same heading.*)

day the day of 19 .

Before the Court of Review.

UPON READING the notice of motion on appeal and the affidavit of F.G. &c. filed herein (hereinafter called "the mortgagor") against the order of the City Adjustment Commission dated the day of March 1937 AND UPON HEARING Mr. of Counsel for the mortgagor and Mr. of counsel for C. D. &c. and having determined:—

(*a*) That the mortgagor is a home applicant.

(*b*) That the value of the property referred to in the Schedule hereto is £ .

(*c*) That the mortgagor is entitled to retain the said property.

(*d*) That the amount of principal and other moneys secured on the said property is £ .

IT IS ORDERED

1. That the penalty of on rates due to the said City Corporation be remitted.

2. That the mortgagor pays the arrears of rates due to the said City Corporation at the rate of 10s. per week by calendar monthly payments of £2 3s. 4d. the first of such payments to be made on the day of 1937.

3. That memorandum of mortgage number to the said C. D. be varied as follows:—

(*a*) That the principal and other moneys secured under the mortgage be reduced to £ as from the day of 1937.

(*b*) That the term of currency of the said mortgage be extended to the day of 1940.

(*c*) That the rate of interest payable under the said mortgage be £4 10s. per centum per annum as from the day of 1937.

(*d*) That the mortgagor pay to the said C. D. calendar monthly payments of 12s. on the first day of each of the months from April 1937 to March 1938 and thereafter for the balance of the extended term of the said mortgage the mortgagor shall pay calendar monthly payments of £2 10s. such sums to be applied by C. D., firstly in satisfaction of interest at the aforesaid rate of £4 10s. per centum per annum (calculated at half-yearly rests) and thereafter in reduction of the principal sum secured by the said mortgage.

4. That the adjustable debt owing to the said C. D. be discharged as from the day of March 1937.

5. That a copy of this order when sealed by the Court of Review be registered by the District Land Registrar at .

SCHEDULE.

Memorandum of mortgage number .

All that piece or parcel of land containing perches more or less being Lot on deposited plan No. Certificate of Title vol. fol. , Registry.

By the Court,

Registrar.

Rules and Regulations.

Animals Protection and Game Act, 1921-22. Opossum Regulations, 1934. Amendment No. 2. May 11, 1937. No. 173/1937.

Native Trustee Act, 1930. Native Trustee Regulations, 1922. Amendment No. 4. May 7, 1937. No. 174/1937.

Prisons Act, 1908.—Crimes Amendment Act, 1910. Prisons Regulations, 1937. May 18, 1937. No. 175/1937.

Stock Act, 1908. Stock (Agricultural Seeds) Amending Regulations, 1937. May 18, 1937. No. 176/1937.

Seeds Importation Act, 1927. Seeds Importation Regulations, 1929. Amendment No. 2. May 18, 1937. No. 177/1937.

Post and Telegraph Act, 1928. Telephone Amending Regulation, 1937. May 18, 1937. No. 178/1937.

Native Purposes Act, 1931. Taranaki Maori Trust Board Regulations, 1931. Amendment No. 4. May 18, 1937. No. 179/1937.

Fireblight Act, 1922. Fireblight Regulations, 1937. May 21, 1937. No. 180/1937.

Customs Act, 1913. Customs Export Prohibition Order, 1937, No. 2. May 29, 1937. No. 181/1937.

Recent English Cases.

Noter-up Service.

FOR

Halsbury's "Laws of England."

AND

The English and Empire Digest.

COMPANIES.

Meetings—Proxies—Proxy-holder—Extent of Rights of voting.

A proxy given to act at a meeting and to vote upon a resolution does not restrict the holder of the proxy to voting either for or against the resolution, but enables him to vote upon any incidental matter which may arise at the meeting.

Re WAXED PAPERS, LTD., **[1937] 2 All E.R. 481. C.A.**

As to proxies: see HALSBURY, Hailsham edn., 5, par. 592; DIGEST 9, pp. 575-577.

Directors—Governing Director—Contract of Service—Articles of Association—Termination of Employment.

Where a director holds office on the terms of a company's articles of association, it is an implied term of his contract of service that his employment is conditional upon the continued existence of the company.

Re T. N. FARRER, LTD., **[1937] 2 All E.R. 505. Ch.D.**

As to dismissal by winding-up: see HALSBURY, Hailsham edn., 5, par. 569; DIGEST 9, pp. 536, 537.

CONTRACT.

Assignment of Lease—"Subject to Purchaser's Solicitor Approving the Lease."

A contract for the assignment of a lease, which is stated to be subject to the purchaser's solicitor approving the lease, cannot be enforced, in the absence of mala fides *or unreasonable conduct on the part of the solicitor, unless and until the solicitor's approval is obtained.*

CANEY *v.* LEITH, **[1937] 2 All E.R. 532. Ch.D.**

As to conditional acceptance of contract: see HALSBURY 1st edn., 25, par. 49; DIGEST 40, pp. 14, 15.

Payment of Solicitor's Costs—Action Against Local Government Officer—Corporation Undertaking to Assist in Paying or Contributing to Costs of Action.

A letter from a town clerk stating that his town council have confirmed a recommendation to assist one of its officers in paying or contributing to his costs in defending an action may amount to a contract enforceable against the council.

ARMSTRONG, TAYLOR, AND WHITTAKER *v.* OLDHAM CORPORATION, **[1937] 2 All E.R. 577. K.B.D.**

As to uncertainty: see HALSBURY, Hailsham edn., 10, pars. 349-351; DIGEST 17, pp. 359-362, and 42, pp. 129, 130.

CRIMINAL LAW.

Manslaughter—Reckless Driving of Motor Car.

The statutory offence of dangerous driving may be committed though the negligence is not of such a degree as would support a charge of manslaughter if death ensued.

ANDREWS *v.* DIRECTOR OF PUBLIC PROSECUTIONS, **[1937] 2 All E.R. 552. H.L.**

As to reckless or dangerous driving: see HALSBURY Supp. Street and Aerial Traffic, par. 683; DIGEST, Supp. Street and Aerial Traffic, Nos. 222*a*-222*j*.

EXECUTION.

Wrongful and Irregular Execution—Writ of Possession—Judgment in Respect of Whole Premises—Portion Alleged Protected by Rent Acts—Failure of Landlord to Warn Sheriff's Officer of Protection.

A failure by a landlord to warn a sheriff's officer not to do an act not covered by a judgment for possession does not amount to a tacit instruction to do the act, thereby making the sheriff the landlord's agent.

WILLIAMS *v.* WILLIAMS AND NATHAN, **[1937] 2 All E.R. 559. C.A.**

As to wrongful and irregular execution: see HALSBURY, Hailsham edn., 14, pars. 63-66; DIGEST 21, pp. 456-462.

HUSBAND AND WIFE.

Insurance Policy—For Benefit of Wife and Children—Adopted Child—No Legal Adoption.

The Married Women's Property Act, 1882, sec. 11, does not apply to adopted children.

Re CLAY'S POLICY OF INSURANCE; CLAY *v.* EARNSHAW, **[1937] 2 All E.R. 548. Ch.D.**

As to policies effected under Married Women's Property Act, 1882: see HALSBURY, Hailsham edn., 16, pars. 1069-1071; DIGEST 27, pp. 149-152.

INCOME-TAX.

Surtax—Deduction—Purchase Price of Deceased Partner's Share in Partnership.

A provision in a partnership deed that the purchase price of a deceased partner's share is to be a sum equal to one-half of the share of profits for three years commencing from the first day of the month immediately following the death of such partner which would have been payable to such deceased partner had he continued to be a partner during the said period of three years, is a provision for a capital payment and not for an annual payment.

INLAND REVENUE COMMISSIONERS *v.* LEDGARD, **[1937] 2 All E.R. 492. K.B.D.**

As to income and capital payments: see HALSBURY, Hailsham edn., 17, par. 378; DIGEST 28, pp. 65-67.

MASTER AND SERVANT.

Loan of Servant—What Amounts to Loan—No Request for Services—Liability of Master.

When a servant is lent to a third person the latter is responsible for his negligence, but in order to establish his liability some request for or acceptance of the servant by the third party must be proved.

CLELLAND *v.* EDWARD LLOYD, LTD., **[1937] 2 All E.R. 605. K.B.D.**

As to loan of servant: see HALSBURY, Hailsham edn., 22, par. 422; DIGEST 34, pp. 22-27.

New Books and Publications.

Contracts. By R. Sutton K.C. and N. P. Shannon. Second Edition. (Butterworth & Co. (Pub.) Ltd.). 17/6d.

The Roots of Evil. (Eighteenth Century Prison Life). By the Hon. Edward Cadogan, C.B. (John Murray). 13/-.

An Irishman & His Family; Lord Morris and Killanin. By M. Wynne. (John Murray). 15/-.

The Craft of Forgery. By Henry T. F. Rhodes. (John Murray). 7/-.

Elements of Conveyancing with Precedents. By J. F. R. Burnett. Sixth Edition of Dean & Burnett's Conveyancing. (Sweet & Maxwell). 28/-.

The Public Health Act, 1936. By Harold B. Williams, LL.D. (Butterworth & Co. (Pub.) Ltd.). 50/-.

The King and the Imperial Crown. The Powers and Duties of His Majesty. By A. Berriedale Keith. (Longmans, Green, and Co.). Price 28/-.

Income Tax. Seventh Edition. By E. M. Konstam. (Stevens & Sons). Price 55/-.

The Law. By Sir Henry Slesser. (Longmans, Green, and Co.). Price 5/-.

The Ratepayers' Money. By Arthur Collins. (Allen & Unwin). Price 7/-.

Motor-Trade Law Simplified. By A. C. Crane. (Institute of Motor Trade). Price 7/-.

Complete Practical Income Tax. By A. G. McBain. (Gee & Co.). Price 10/6.