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"*Law must be the basis of all good government. But that law itself must be sure and certain; and the best means of guarding that law against the great public mischief, namely, uncertainty, is that the law must be administered not as a series of single instances, but as a system, large, liberal, scientific, and according to well-ascertained principles, and that it should be administered by men trained to expound and apply it.*"

—HENN-COLLINS, M.R. (afterwards Lord Collins).

Vol. XIII. Tuesday, October 19, 1937. No. 19

The Law Relating to Uncontrolled Pedestrian Crossings.*

THE recent appearance on our streets of the now well-recognized white-lined pedestrian crossings, has followed the gazetting of the Traffic Regulations, 1936, in order to make effectual, *inter alia*, Reg. 14 (7), which is as follows:

> "Every driver of a motor-vehicle shall yield the right of way to a pedestrian engaged in crossing the roadway within any authorized pedestrian-crossing upon the half of the roadway over which such vehicle is lawfully entitled to travel, and when approaching such crossing the driver shall reduce his speed so as to be able to stop before reaching the crossing if necessary."

This regulation gives rise to a consideration of the modification of common-law principles which it entails, with the result of imposing an absolute liability on motorists approaching an authorized pedestrian-crossing.

The corresponding regulations in England are the Pedestrian Crossing-Places (Traffic) Provisional Regulations, 1935, and these provide:

> "3. The driver of every vehicle approaching a crossing shall, unless he can see that there is no foot passenger thereon, proceed at such a speed as to be able if necessary to stop before reaching such crossing.
>
> "4. The driver of every vehicle at or approaching a crossing . . . shall allow free and uninterrupted passage to any foot passenger who is on the carriageway at such crossing, and every such passenger shall have precedence over all vehicular traffic at such crossing."

It will be observed that, in principle, both the New Zealand and the English regulations coincide; but the latter have a qualification which appears to allow the driver of a vehicle to relieve himself of the duty to drive at a speed which will permit him to stop before reaching an authorized crossing, if he can show that he saw that there was no pedestrian thereon. In this respect, the New Zealand regulation is more drastic in that the driver of a motor-vehicle is under the obligation to yield the right of way whenever a pedestrian is, in fact, crossing the roadway within any authorized pedestrian-crossing upon the half of the roadway over which such vehicle is lawfully entitled to travel.

If we bear in mind this distinction, the recent judgment of the Court of Appeal (Greer, Slesser, and Scott, L.JJ.), in *Bailey v. Geddes*, [1937] 3 All E.R. 671, is of direct application to our Traffic Regulations, and, in particular, to that which we have quoted. The judgment makes it clear that the motorist's duty at authorized pedestrian-crossings is something higher than his duty at common law to be able to stop and so avoid running down a pedestrian. It is well that we have this decision, in view of the fact that it is a matter of grave importance to the public that regulations made for the public's protection should be strictly adhered to, especially in regard to pedestrians who cross the road at these supposedly safe crossings.

The facts were simple. Two pedestrians came to an authorized crossing. Their view of approaching traffic was obscured, by reason of the fact that a tram was passing and a lorry was coming up in the opposite direction. They crossed over within the area of the marked crossing. One got across safely, but the other was run down by an approaching car. He would have crossed in safety if the driver of the motor-car had observed the regulations, since, before he got to the crossing, he should have awaited the opportunity of seeing the full extent of the crossing, in which event he would have had time and opportunity to adhere strictly to such regulations: in other words, the car had passed over the crossing before it stopped.

The injured pedestrian brought an action for damages for personal injuries against the driver of the motor-car. Greaves-Lord, J., in the Divisional Court, applying *Swadling v. Cooper*, [1931] A.C. 1, held that the plaintiff had been guilty of contributory negligence in that, while using the pedestrian-crossing, he had emerged from behind other traffic, and had continued to cross, without looking to see whether the road was clear or not. The Court of Appeal unanimously allowed the appeal from this judgment.

Had the action been the ordinary common-law running-down case, into which the question of the regulations did not enter, it seems, on the facts available, that the pedestrian would have had the last opportunity, and would have failed to recover damages.

Two principles emerge from their Lordships' judgments: (*a*) That, as a matter of law, a plea of contributory negligence will not avail a motorist against whom an action for damages is brought by a plaintiff who has been injured while he was within the area of an authorized pedestrian-crossing; and (*b*) That there is an absolute statutory duty to observe the Traffic Regulations, and any breach will found a civil action at the suit of the person injured by reason of that breach.

In his judgment, Greer, L.J., confined his attention to the facts, on which he concluded that the sole cause of the accident was the failure of the defendant driver to observe the regulations, and there was no evidence in which the learned trial Judge could hold there was any negligence on the part of those crossing the road at the marked crossing. With this judgment, both Slesser and Scott, L.JJ., agreed.

Referring to the Reg. 3, which we repeat,

> "The driver of every vehicle approaching a crossing shall, unless he can see that there is no foot passenger thereon, proceed at such a speed as to be able if necessary to stop before reaching such crossing,

* We are not concerned here with authorized pedestrian-crossings, where traffic is for the time being controlled by a police officer, a traffic officer, or traffic-control lights: to these different considerations apply: Reg. 14 (9).

Slesser, L.J., said :

" That regulation appears to me to be positive in its terms, not that there is any general right to proceed at a speed which may or may not make it possible to stop before reaching such crossing, but that, unless the driver can see that there is no foot passenger thereon, he is under an obligation to proceed at such speed as to be able, if necessary, to stop before reaching such crossing.

" In this case, it is obvious, on the evidence, that he was unable to see that there was no foot passenger thereon if he had used reasonable care and observation. There were, in fact, two foot passengers, at least, thereon, and thereupon it became his absolute statutory duty to proceed in such a manner as to be able, if necessary, to stop before reaching such crossing."

Referring to Reg. 4, which is as follows :—

" The driver of every vehicle at or approaching a crossing . . . shall allow free and uninterrupted passage to any foot passenger who is on the carriageway at such crossing, and every such passenger shall have precedence over all vehicular traffic at such crossing."

Slesser, L.J., said it meant that the foot passenger is to be allowed to cross before ever the driver of the vehicle attempts to proceed to a point where he might come into collision with a foot passenger, once the foot passenger is on the crossing.

In concurring, Scott, L.J., said :

" The regulations have the same statutory force as if they were in the statute itself, being made under a section of the statute. In my view, it is of the very essence of safety of our streets, on the one hand, that the foot-passenger public should cross the streets by the crossings, and not where there is no crossing, and, on the other hand, that at the crossing motor-traffic should really recognize the over-powering obligation, imposed by the passenger-crossing regulations, so to check its speed that it can, if necessary, stop, in order really to give to passengers on the crossings the safety which it is intended that they should have."

The defence of contributory negligence is not available to the driver of a motor-car who runs down a pedestrian on an authorized crossing. The reason why such a defence cannot be sustained is contained in the regulation itself.

In the course of his judgment, which deals principally with the defence of contributory negligence in cases of the breach of a statutory provision on the part of a plaintiff, Slesser, L.J., summarized the present state of the law in that regard, as follows :

" Where it can be shown, that, though there be a breach of a statutory regulation, the damage is actually caused by the failure of the plaintiff himself, and that that is the cause of the injury, that is a defence in the mouth of the defendant, who broke the statutory regulation."

While this doctrine, His Lordship thought, might stand in appropriate cases, the language of the Crossing-places Regulations under notice, once a breach of them is committed, makes it impossible to rely on contributory negligence. He proceeded :

" Once the vehicle is wrongly on that crossing, it does not lie in the mouth of the driver of that vehicle to say to the pedestrian, 'You have caused this accident by your negligence,' because, if he had obeyed the regulation, the driver never would have been on the crossing."

His Lordship gave his reasons for this conclusion. He said, at p. 675 :

" These regulations are so framed as to make it impossible, when they apply, for any such defence to be raised, and for this reason. Reg. 3 says that, unless the driver can see that there is no foot passenger thereon, he must proceed at such a speed as to be able, if necessary, to stop before reaching such crossing, and (Reg. 4) to give precedence to the passenger. Now, if his duty is to stop, it is physically impossible in such a case that the cause of the accident can be the negligence of the plaintiff, because, *ex hypothesi*, the defendant, if he has done his duty, has already stopped.

" Each of these cases must depend upon a consideration of the particular language of the particular regulation. The questions which may arise, and which have arisen, in cases of breach of statutory duty under the Factory Acts, as to whether the breach of statutory duty or the negligence of the injured workmen is the cause of the accident, cannot arise in the case of a geographical area, such as a crossing, where the duty is to stop before the vehicle reaches the crossing at all. It is impossible that what is done inside the crossing can be the fault or the negligence of the plaintiff himself, because, if the regulation had been obeyed, there would have been no car upon the crossing at all which could, on any view, have injured the plaintiff."

In agreeing with the judgment of both Greer and Slesser, L.JJ., Lord Justice Scott, after remarking that the case was one of great public importance, said at p. 676 :

" If a plea of contributory negligence were open, in the case of an accident to a foot passenger on a crossing, caused to him by a motor-car within the limits of the crossing, it would completely abolish the safety of the crossing which is intended by these regulations. . . .

" I entirely agree with what Slesser, L.J., has just said, that the idea of a plea of contributory negligence is fundamentally inconsistent with the very basis of the regulation, and that is the ground upon which this appeal must necessarily be allowed."

The question of what is the duty of approaching traffic to pedestrians waiting on the kerb in order to embark upon a crossing, and what are the duties of the pedestrian standing there in regard to courtesy to approaching traffic, did not arise in the case, though His Lordship thought those duties could be deduced from the regulations quite clearly.

In its application to its own particular facts, the judgment in *Bailey v. Geddes* (*supra*) seems complicated by the inclusion in the English regulation of the words " unless he [the driver of the vehicle] can see that there is no foot passenger " on the crossing ; and, when reading the judgment consideration must be given to those words. Consequently, it may well be that, in England, the liability of a motorist who can see the full extent of a crossing free of pedestrians when he is approaching it, and, nevertheless, an accident happens to a pedestrian on that crossing, is still open for decision. Such an accident is conceivable where a person precipitates himself across the protected area at a speed abnormal for a pedestrian ; or where he suddenly steps from the pavement. The judgment does not necessarily apply to such cases. We note, however, that one learned commentator says, in reviewing the judgment, that, as things stand, " it looks as if the motorist must, when he approaches a crossing, be prepared to give way to and take account not only of the ordinary transit of the man in the street, but also of the vagaries of careless infancy, of distracted youth, of pre-occupied middle age, or of senile oblivion " : 184 L.T. Jo. 84.

The words relating to the approaching motorist's vision do not appear in the New Zealand regulation concerning authorized pedestrian-crossings. Accordingly, the principles of absolute liability enunciated in the Court of Appeal impose a stricter duty on the motorist than the corresponding English regulations do.

Whatever the range or extent of the approaching motorist's vision may be in respect of our authorized pedestrian-crossings, the local regulation, read in the light of the dicta in *Bailey v. Geddes* (*supra*), impose an absolute duty on every motorist so to approach a marked crossing as to ensure his not colliding with any pedestrian who is within the parallel white lines on the roadway. The foot passenger, so long as he is within those limits,

is always right, as a matter of law : and, if he is knocked down and injured, it becomes merely a question of the quantum of damages that he is entitled to recover. For the common law is inoperative in aid of the motorist who collides with him, in fine, it comes down to the simple issue, " If you hit, you pay."

It is well, in the public interest, that this is so, for, as Scott, L.J., said in *Bailey v. Geddes* :

> " the management of traffic in our cities is really dependent upon the satisfactory enforcement of the provisions of the relative rights and duties of pedestrian and vehicular traffic under the rules."

In other words, unless authorized pedestrian-crossings are made safe for the pedestrian, serious consequences may arise. For law-abiding pedestrians have a right to feel secure in these areas marked out for their safety ; and they must not be allowed to suffer as a result of reliance on their knowledge of their own rights or of the strict duty imposed by the Traffic Regulations on motorists approaching these crossings.

Summary of Recent Judgments.

COURT OF ARBITRATION.
Auckland.
1937.
September 2, 7.
O'Regan, J.

GWYER v. AUCKLAND HARBOUR BOARD.

Workers' Compensation—Accident arising out of and in the Course of the Employment—Coronary Thrombosis—Angina of Effort—Distinguishing Characteristics—Workers' Compensation Act, 1922, s. 3.

Coronary thrombosis is a form of heart disease that is not induced by effort, but there is such a heart condition as angina of effort.

It is a question to be decided by medical evidence which of these conditions was suffered by a claimant for workers' compensation, if he was disabled by heart trouble in the course of his employment, before it can be established whether his disablement arose out of such employment.

Counsel : S. R. Mason, for the plaintiff ; **J. B. Elliott,** for the defendant.

Solicitors : Mason and Mason, Auckland, for the plaintiff ; **Russell, McVeagh, Macky, and Barrowclough,** Auckland, for the defendant.

SUPREME COURT.
Invercargill.
1937.
May 25, 26 ;
September 16.
Kennedy, J.

MADDAMS v. MILLER'S (INVERCARGILL) LIMITED AND OTHERS.

Company Law—Directors—Abuse of Majority Vote to take inordinate Director's fee—Oppression of Minority—Invalidity.

The rule in *Foss v. Harbottle,* (1843) 2 Hare 461, 67 E.R. 189, that the Court will not interfere with the internal management of a company acting within its powers, is qualified by the limitation that a majority of shareholders is not entitled to commit a fraud on the minority.

The Court, while reluctant to interfere with the judgment of shareholders, will do so where it is satisfied that the action of the majority is of a fraudulent character, in effect depriving the minority of their rights.

Held, on the facts set out in the judgment, That a defendant's voting and taking an inordinate amount of director's fees, in substance amounted to an appropriation of the company's funds, an abuse of his undoubted majority powers, and a deprivation of the minority of their rights, such an action was of a fraudulent character, and such fees must be repaid to the company.

Cook v. Deeks, [1916] 1 A.C. 554, applied.

Aspro Ltd. v. Commissioner of Taxes, [1930] N.Z.L.R. 935, referred to.

Counsel : H. J. Macalister, for the plaintiff ; **Hensley,** for the defendants.

Solicitors : Macalister Bros., Invercargill, for the plaintiff ; **Williams and White,** Christchurch, for the defendants.

Case Annotation : *Foss v. Harbottle,* E. and E. Digest, Vol. 9, p. 41, para. 42 ; *Cook v. Deeks, ibid.,* p. 468, para. 3055.

SUPREME COURT.
Dunedin.
1937.
August 6 ;
September 17.
Kennedy, J.

AUSTRAL MALAY TIN, LIMITED v. VINCENT COUNTY AND ANOTHER.

Rating—Rateable Property and Exemptions—Assessors—" May " —Whether permissive or obligatory—Whether Assessment Court properly constituted without Appointment of Assessors where Notice of Objection received—Rating Act, 1925, s. 27 (1).

Section 27 (1) of the Rating Act, 1925, which is as follows :—

> " The Governor-General *may* from time to time, on the application of any local authority, appoint two persons to be members of the Assessment Court [for the purpose of hearing and determining objections to the valuation list], in addition to the Judge thereof mentioned in section twenty-five hereof,"

imposes no duty upon a local authority, after it has received notice of objection to an entry in the valuation list, to apply to the Governor-General to appoint two assessors. An Assessment Court is properly constituted, although no such application is made for assessors and none is appointed.

Julius v. Bishop of Oxford, (1880) 5 App. Cas. 214, distinguished.

Counsel : Parcell, in support ; **A. N. Haggitt,** to oppose.

Solicitors : Brash and Thompson, Dunedin, as agents for **Brodrick and Parcell,** Cromwell, for the plaintiff ; **Ramsay and Haggit,** Dunedin, as agents for **W. A. Harlow,** Clyde, for the defendant County.

Case Annotation : *Julius v. Bishop of Oxford,* E. & E. Digest, Vol. 16, p. 277, para. 900.

SUPREME COURT.
Christchurch.
1937.
August 25 ;
September 10.
Northcroft, J.

WEST v. WILSON.

Factories Acts—Registration—Premises used for Testing, Grading, and Repacking Eggs—Whether a " Factory "—Factories Act, 1921-22, ss. 2, 9—Factories Amendment Act, 1936, s. 2.

The words " preparing goods for trade or sale " in the definition of " factory " in s. 2 of the Factories Act, 1921–22, as amended by the Amendment Act, 1936, s. 2, namely,—

> " Any building, office, or place in which one or more persons are employed, directly or indirectly, . . . in preparing or manufacturing goods for trade or sale "—

mean a treatment of the goods that alters their character or condition in some way so as to render them fitter for trade or sale.

Therefore, testing, grading, and repacking eggs is not preparing goods for sale ; and the premises in which that is done is not by reason thereof required to be registered as a factory under the Act.

Henry Bull and Co., Ltd. v. Holden, (1912) 13 C.L.R. 569, applied.

Fullers Ltd. v. Squire, [1901] 2 K.B. 209, and **Grove v. Lloyd's British Testing Co., Ltd.,** [1931] A.C. 450, referred to.

Counsel : D. W. Russell, for the appellant ; **A. W. Brown,** for the respondent.

Solicitors : D. W. Russell, Christchurch, for the appellant ; **Crown Law Office,** Christchurch, for the respondent.

Case Annotation : *Fullers Ltd. v. Squire,* E. & E. Digest, Vol. 24, p. 903, para. 38 ; *Grove v. Lloyd's British Testing Co., Ltd., ibid.,* Supplement No. 13 to Vol. 38, 226 (*v*).

The Life and Times of Sir Francis Bell.

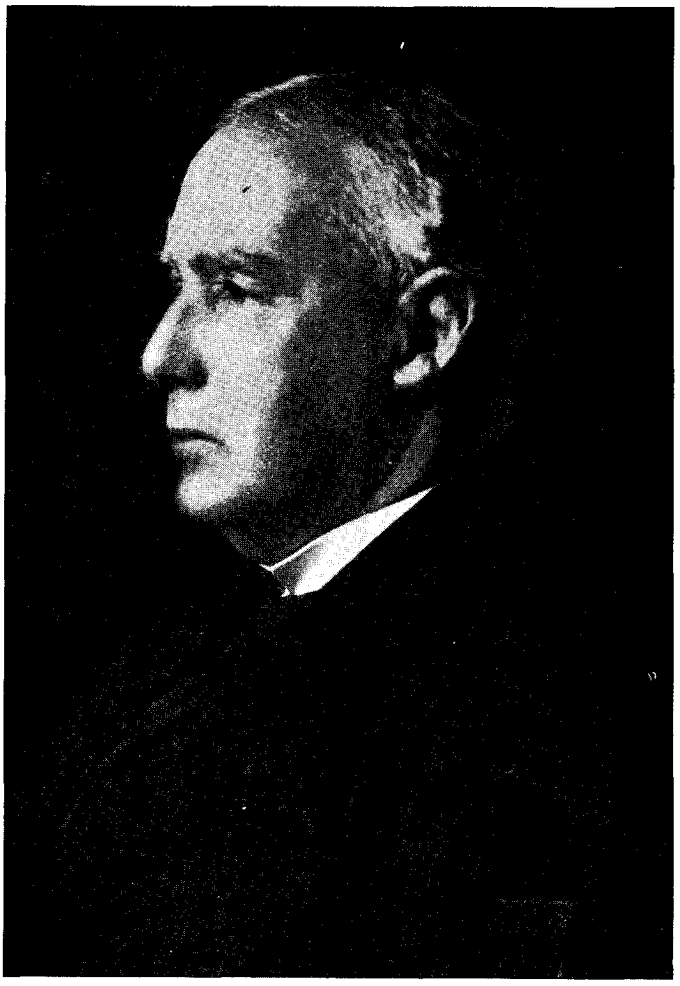
MR. DOWNIE STEWART'S WELCOME BIOGRAPHY.

By Alan Mulgan.*

Much have I seen and known; cities of men
And manners, climates, councils, governments,
Myself not least, but honoured of them all.
—Tennyson, *Ulysses.*

Two generations of mortal men had he already seen pass away, who with him of old had been born and bred in sacred Pylos, and among the third generation he held rule.
—Iliad.

For two main reasons Mr. Downie Stewart's "Life and Times" of Sir Francis Bell is welcome.† It is an admirable biography of one who was the ablest man in our political life during the last thirty years, and served his profession and his country long with unswerving honesty and to the limit of his strong and varied powers. And this record, presented here clearly, throws into relief that weakness in our native memoirs and biography which has been so often deplored.



Sir Francis Henry Dillon Bell, P.C., G.C.M.G., K.C.
1851 - 1936.

It is noteworthy that, as Mr. Downie Stewart points out, there is no biography of Sir Francis Bell's father, Sir Dillon Bell, who was one of the founders of New Zealand, and between 1843 and the 'nineties served as Magistrate, Commissioner of Lands, Minister, Speaker of the House, Leader of the Legislative Council, and Agent-General in London. New Zealanders should be grateful for the sketch of the father that Mr. Downie Stewart gives us, and one may hope that a biography of one of the makers of the nation will appear before long.

One result of our lack of memoirs and biographies is that we know much less than we need, for an accurate reading of the past, of what has gone on behind the scenes in our public life. We have access to *Hansard* and newspaper reports, but the saying that language was given to man to enable him to conceal his thoughts has some application to politics, and everybody must realize that when decisive actions are taken there are no reporters present.

Unfortunately, both Bells, father and son, adopted an attitude towards their own priceless records that is most unhelpful to the historian. Such things as communications from Governors they regarded as confidential, not only for the time, but for ever. Sir Francis was often asked to put on record the story of his life. I asked him myself a few years ago and received a firm but courteous refusal, written in a hand (he was then over eighty) that was at once my admiration and my despair. Where a friend and colleague such as Mr. Downie Stewart failed, an outsider could not hope to succeed. His attitude to both his own achievements and the letters in his possession merits deep respect. It was part of his personal pride, his hatred of the arts of publicity, his Roman independence, and his sense of trusteeship. "I am not able to write of my memories," he told Mr. Downie Stewart, "without offensive egotism." As to his papers, he would destroy them because it would be indiscreet to leave such documents. "My father burned all his papers and I intend to do the same with mine." He would not even consent to leave his papers under seal. And these two men spanned the whole history of our country and had been in the thick of public life! The historian may well groan.

However, there is personal material on which Sir Francis could not lay his hand, and Mr. Downie Stewart has made excellent use of it. We are given some of

* Co-author of *Maori and Pakeha, A History of New Zealand*, and responsible for the period from 1853 onwards.

† "The Right Honourable Sir Francis H. D. Bell, P.C., G.C.M.G., K.C., His Life and Times," by the Hon. W. Downie Stewart. Butterworth and Co. (Aus.) Ltd., Wellington.

those glimpses of public men at work that are the salt of history. We see Ministers driven to distraction by the risk taken in sending transports away in the early days of the War without adequate escort. We see Sir Francis in Cabinet furious at the attitude of the Colonial Office, and begging and beseeching his colleagues not to agree. When the vote went against him, he wrote out his resignation and left the room. We see Mr. Massey later "sitting at the head of the Cabinet table, his head on his hands, and great beads of perspiration standing out on his large head" (the account is Mr. F. M. B. Fisher's). He had before him a message from Australia advising the recall of the ships. Mr. Fisher went to tell Sir Francis, and "tears of thankfulness and gratitude streamed down his face." When the Admiralty still refused to admit that an escort was necessary, the Ministry tended their resignations and the Admiralty gave way. Lord Liverpool has been unjustly blamed for the clash; he was only putting the Admiralty point of view.

And we find such important revelations as Mr. Massey's real attitude to the League of Nations. "Mr. Massey does not agree with me a little bit about it," writes Bell in 1922; "he still thinks that the League is utterly useless, and our expenditure in relation to it wasted." Mr. Massey, of course, never went so far as this in public. So much having been revealed here on this highly important matter, it is permissible to add that on his way back from the Peace Conference Mr. Massey remarked to another New Zealander: "One can leave the League of Nations to fools like Bob Cecil."

The Man Himself.

So much—and what I can quote here is little enough—for the fresh light that Mr. Downie Stewart throws on general history. What manner of man was Sir Francis Bell? Not a popular figure in the sense that Seddon and Massey were popular—not a man of the people. He was a man of wide and deep sympathies, whose private charities were bountiful; but humbug of any kind he detested, and he would have said that the leaders of democracy everywhere had decided that the system could not be worked without the use of flattery indistinguishable from humbug. In his short term in the House he made his mark; but the House was not his proper place. He found that in the Council, which he led so ably for so long.

When I read of Bell's frank handling of deputations I used to attribute it to his position of greater freedom and less responsibility; but it is clear from Mr. Downie Stewart's narrative that this arose from the character of the man. If he thought there was a bubble of insincerity or demagogy to be pricked, he pricked it, regardless of consequences.

The average New Zealander (if there is such a person) thinks of Sir Francis as a Tory, and a typical one at that. It is a serious mistake. There was Toryism in him, but in many respects he was a Liberal. Indeed he was something of a Socialist. "As one who sees without fear the accumulation of effort into the hands of the State as against those of the individual—as one who believes that towards that end all our legislation is tending—as one who desires to aid that end, and to safeguard the path we are taking, I protest." This was Bell in 1894. The truth is that he was aristocratic in intellect and temperament. Mr. Downie Stewart compares him to Asquith. Both were Roman in their integrity, independence, and reticence. Both found solace in the Roman classics. Bell was the last figure in our public life to use Latin quotations freely; the number given here is astonishing. He salted his speeches and letters with irony—an intellectual weapon that has almost gone out of use. Democracy seems to be considered so sacred that jokes must not be made in her presence. No man of his time paid less heed to criticism; his attitude to newspapers was contemptuous. He represented the Government at the reception to Northcliffe in Auckland, and there was an ironic edge to his words. His candid opinion of Northcliffe would have been a sensation.

Of Sir Francis's attitude towards the Press, Mr. Downie Stewart gives some amusing examples, and one I can parallel in my own experience. The *Auckland Star* criticized a financial statement issued under Sir Francis's authority, and an explanation was requested through an interviewer. The Minister read the editorial and pronounced it to be adjectival rot, whereupon the interviewer, who knew his man well, asked if this was to go forth as the considered opinion of the Acting Prime Minister. After some friendly sparring the request for an answer was repeated. "My compliments to the editor of the *Star*, was the reply, "and tell him I'm ——— well not going to add up figures for him." And that was that! His strong language is described by his biographer with just the right touch. Once when Bell was asked by Massey why he had sworn at so-and-so, he replied simply that he only swore at his friends! Like many other dominating men he respected people who stood up to him, and Mr. Downie Stewart says his brusque ways did not prevent Civil Servants from liking to serve him.

Bell's Public Career.

The lateness of the flowering period of Sir Francis Bell's public career is remarkable. When Massey took office in 1912, Sir Francis was sixty-one. He was known as a very able lawyer, who had had a term in Parliament and been a reforming Mayor of Wellington. He was destined to hold ministerial office for sixteen years, including the offices of Acting Prime Minister and Prime Minister, and to continue to be an Elder Statesman until his death eight years later. As leader of the New Zealand Bar he was entitled to the Attorney-Generalship when Massey formed his Ministry, and it is pretty plain to see why, reluctantly, one would say, Massey passed him over. Nothing, however, could keep Bell in a subordinate position. The partnership with Massey was a curious one. Massey was not intellectual, he was relatively narrow in his interests, unimaginative, but a master of the political game. Bell was intellectual, widely read, interested in many things—from cricket to literature—and imaginative. He had no liking for the party game, but in statecraft he was probably Massey's superior. As Leader of the Legislative Council he was in his element, and tributes that are paid to the strength and wisdom of his rule are striking. In 1921 a Labour member described him as "Uncrowned King of New Zealand," and one of the ablest men in the Southern Hemisphere. He had friends in all parties.

Massey's long reign was a succession of troubles and crises, and we shall never know more than a fraction of what Sir Francis's support meant to the Prime Minister and his colleagues. Mr. Downie Stewart's easy and well-proportioned narrative takes us through the War and

post-War years, during which Sir Francis had so much law drafting to do to meet unprecedented situations. To say nothing of the personal sorrow he suffered, those years must have tried him sorely. He was a man of strong principles, a shining light in a profession that builds upon order and respect for contracts. We all know how difficult it has been to maintain principles upright when the world has swayed under the blasts of unparalleled circumstance. As a crown to his career he was Prime Minister for a brief period and represented New Zealand abroad. We may be sure he held his own in any company.

I have room to mention only two or three of his activities. An elective Legislative Council was a big reform close to his heart, and his disappointment at the shelving of the Act that contained it is brought out here. His extension of the Land Transfer system was a highly useful piece of work. He was the father of scientific forestry as a State activity, and the pity is that his colleagues as a body had neither his love for the New Zealand bush, nor imagination enough to realize its vital value to the country. In the many controversies in which he was engaged his championing of the cause of the religious objectors during the War stands out for its special interest. Mr. Downie Stewart thinks Sir Francis's attitude owed something to his Quaker ancestry. The situation was certainly piquant. While men of avowed Christian adherence were clamouring for the heads of these objectors, Sir Francis, "who openly disclaimed any religious faith," championed their exemption with eloquence, overrode his colleagues, and imposed his will upon a hostile House of Representatives.

Bell's Service to the Law.

Lawyers must necessarily go elsewhere for the full details of Sir Francis's extraordinary legal career. Nor will they be unappreciative of Mr. Downie Stewart's decision to make this biography a book for the general reader—a clear narrative untroubled by a cloud of technicalities. Sir Francis was a member of the Bar for sixty years. A fellow-lawyer and old friend described his opinions as superb, and they were sought to the end of his life. He was a great law draftsman. The Chief Justice has said that Sir Francis advised more successful appeals to the Privy Council than most of his colleagues put together. His greatest service to the judicial system of his country was the example he set of integrity, industry, learning, dignity, and courtesy.

In a new land the law necessarily stands in peril of the bush lawyer. High standards are not easy to establish and maintain. Fortunately in the early days such standards were set by Judges and barristers from the Home-land, but it is not many years since a University Commission expressed the opinion that if legal education here was not improved the term "my learned friend" would have an ironic ring. Sir Francis was the embodiment of the virtues that make the law a stable and living thing and secure it respect. He realized fully that law and order are the first basis of civilization.

Such a career, long and rounded, so much of it dedicated to public service, rich in the employment of great abilities—Aristotle's "exercise of vital powers along the lines of excellence, in a life giving them full scope"—such a career testifies to the essential dignity of man, and is a standing reproach to cynicism, sloth, and surrender.

"Minor" Traffic Offences.

The Importance of Enforcing the Regulations.

By P. Keesing.

The suggestion put forward in a recent issue of the New Zealand Law Journal, that fines for minor traffic offences be payable to Traffic Officers when guilt is admitted, thus avoiding the necessity of such matters being dealt with by the Court, involves important considerations which do not appear to be given due weight in the article referred to. Such a system must necessarily include the exercise by Traffic Officers of a discretion as to what are and what are not minor offences, for there are few, if any, traffic offences which may not be either trivial or, on the other hand, highly dangerous, according to the circumstances of each case. Even improper parking may be the cause of death.

The proper exercise of this discretion, and the infliction of penalties properly commensurate with the degree of recklessness or danger involved in offences is, I believe, *the most important factor* in a national campaign to reduce road accidents. With the greatest deference to our Magistrates and Justices I ask whether such discretion is being properly exercised in the Courts to-day, whether the intention of the Legislature, even where clearly indicated by statute, is being carried out, and whether the Courts, far from doing their important part towards the reduction of road accidents, are not virtually educating the public to regard dangerous breaches of traffic laws as "minor offences." If the answers to these questions are at all in doubt, how can so important a discretion properly be placed in the hands of Traffic Officers?

The Real Cause of the Majority of Road Accidents.

Breaches of regulations and the apparently minor acts of negligence are the most prolific cause of road accidents. This was well established formerly by the statistics of accidents in England, and it has since been fully confirmed in New Zealand by the statistics compiled here over the past several months. Such breaches are doubtless occurring at the rate of hundreds—perhaps thousands—per day in New Zealand, most of them without causing accidents; and accidents caused by breaches of regulations cannot be reduced until such breaches are themselves reduced. It is frequently by mere chance that no accident or only a slight accident occurs from such breaches, but very many of them are none-the-less either actually or potentially highly dangerous. The degree of recklessness or danger involved cannot be gauged by the occurrence or otherwise of an accident.

Principal Cause of Accidents dealt with as "Minor Offences."

These breaches and common acts of negligence (intoxication charges are here excluded) are dealt with by the Courts as though they were offences of a minor nature, the punishment (unless death or serious personal injury is involved) ranging generally from fines of a few shillings to (seldom) £5 plus, in a few cases, a *short* suspension of license. Fines exceeding £3 appear to be rare and the majority are from 10s. to £2. Suspensions of license are usually less than six months, sometimes a few weeks. You will find fines of 10s. for failing

to signal the intention to turn to the right, or £1 10s. for failing to observe the right-hand rule, or £1 for cutting-in or cutting a blind corner and so on. These are the things that make you wonder how you and your wife and children come to be still alive or not maimed for life when you are driving. The inability to judge any particular case without full knowledge of the facts is appreciated, but the above punishments are typical, and are, I think, in keeping with a general basis of punishment at present adopted for these offences. A hair's breadth may be the distinguishing line between a "minor offence" punished by a fine of £1 and the culpable cause of an accident resulting in death or maiming. The fact that no other car happens to be approaching a blind intersection does not render the act of cutting the corner any less potentially dangerous, nor the offence less serious.

Education.

What is the effect of such treatment of traffic offenders upon the minds of motorists generally—and the more irresponsible of them in particular? Are the Courts not virtually broadcasting that these offences, potentially death-dealing though they are, and one of the principal causes of road fatalities, are minor breaches of public duty comparable with breaches of those many slight duties existing in an intensively governed community, for the breach of which no citizen thinks the worse of another and for which the penalty is similarly (but properly) a small fine? If drivers are to be made to understand the true position, and to act according to it, they must be educated to the *danger* of such breaches of regulations and to the necessity of *constant* care, and not to rely upon chance that there will be no-one round the corner. Through "getting away" with acts of this nature on a number of occasions, drivers come to lose the consciousness of danger in doing them. If they are prosecuted, their highly dangerous act is dealt with as a minor offence, and, far from being educated to its seriousness, they, and the public who read of the infliction of a small fine, are virtually told by the Court that it was nothing serious. It is submitted that breaches of regulations, and the apparently minor acts of negligence, must be recognized as the fundamental cause of accidents, and dealt with as such by the Courts by the infliction of heavier penalties before many motorists will recognize and become conscious of them as such.

Would not the adoption of the suggested system, under which the most important decision to be made in these matters—namely, whether the offence is trivial or serious—is to be left to Traffic Officers without the advantages of a properly conducted hearing, and whereby fines for certain offences (which may or may not be *potentially* dangerous) would be standardized, and whereby the offender would be relieved of the inconvenience accompanying ordinary summons procedure but would be allowed to pay a few shillings on the spot and obtain his absolution, would not this have the opposite effect from what is required—would it not render motorists less conscious of traffic laws and encourage contempt towards these death-avoiding regulations? I submit that no "class" of offence can be found to come within such a system which would not involve (*a*) a difficult and important exercise of discretion on occasions, and (*b*) a tendency to lower respect for traffic laws generally.

The article referred to suggests that the system would relieve overloaded Magistrates. If there be anything in this, though such is unlikely, it is a matter for the Justice Department. The problem is one of major national importance, and facilities are required for its proper handling. Even on a plea of guilty to an apparently minor offence there should be proper evidence placed before the Court by the prosecuting authority and a reasonably full inquiry into the circumstances with a view to ascertaining the degree of recklessness and danger involved, in order that the penalty may be fixed accordingly. There should be ample facility for this, if not already existing—perhaps the appointment of special Magistrates who are themselves motorists, and who would have time to give to such an inquiry, and also to inquire into the personal circumstances of each accused, with a view to inflicting the proper penalty. If the cost of such is regarded as a difficulty, it might be remembered that one death or maiming per annum avoided by the appointment of one additional Magistrate for the work would usually effect a reduction in insurance claims equal to the annual cost involved.

Penalties Indicated by Existing Statutes.

Apart from offences involving accidents causing death, and apart from intoxication charges, the maximum penalties provided by statute, in addition to dis-licensing, are: Reckless, dangerous, and negligent driving, three months' imprisonment or £100 fine; general offences (as increased by the 1936 Amendment), £50; breaches of regulations, £50. With deference, it is submitted that the basis of penalties adopted by the Courts is substantially lower than that so indicated. Once the potential danger of the common offences, and their true relationship to fatal accidents, is recognized, this, it is submitted, is incontrovertible.

The new offence created by s. 4 of the 1936 Amendment—namely, "driving without due care and attention or without reasonable consideration" for others—unfortunately tends to place lack of due care and attention, which is synonymous with negligence, on a lower plane; but negligence of this kind (if it is some special kind) may be, like any other kind, actually or potentially highly dangerous. I venture the suggestion that power should be given to Magistrates to increase any charge laid under s. 4, or for the breach of any regulation (and to reduce any charge laid) if the circumstances appear so to warrant, with provisions for adjournment to enable the accused to prepare his defence to a more serious charge.

Where death or bodily injury results from an accident, the maximum penalty is increased by statute from three months' imprisonment or £100 to five years or £500. The occurrence of death or personal injury is no gauge of the negligence or the degree of recklessness involved in causing it. An excusable error of judgment may cause an accident resulting in death, while a grossly negligent and dangerous act or omission may be perpetrated without causing injury at all. This illogical distinction by the statute again tends to minimize the seriousness (as viewed by the Legislature, and so by the Courts, and so by the public) of offences not actually resulting in serious accidents. Mere luck is placed at a tremendous premium by law.

Intoxicated Motorists Compared with Negligent Drivers.

Intoxicated motorists, who are wholly or partially irresponsible for their acts, are being dealt with fairly severely in some Courts. Where the circumstances warrant, this is no doubt necessary as a deterrent. Frequently, however, the offender has not, while sober,

formed an intention to offend. With other crimes, drunkenness, while not exculpating, is usually taken into account to some extent in mitigation. With offences relating to improper conduct as a motorist, however, the offender, who, in full possession of his faculties, consciously and wittingly *actually* commits a highly dangerous act, is usually penalized far less severely than if he merely rendered himself, through drink, more likely to commit such an act.

Then again, far fewer accidents are caused through intoxication than by breaches of regulations and common negligence.

First Offenders.

It is submitted that, while offenders with previous convictions for traffic offences might in some cases properly receive heavier punishment, this is not to say that light punishment is proper for first offenders in this class of offence.

According to the Press account of the Ministry of Transport's report on fatal road accidents in Britain in 1935, only "about 3 per cent. of drivers of motor-vehicles involved in fatal accidents had been previously convicted of dangerous or careless driving, or for being under the influence of drink or drugs." A partial explanation of this is perhaps that punishment on a first offence has been instrumental in deterring the same offender from further negligent driving. It is submitted, however, that the more substantial reason for this high percentage of first offenders in fatal accidents is that drivers who have never been involved in any accident are probably a greater potential menace than those who have. Over-confidence in driving, often the result of sheer good luck in not having experienced an accident, is the source of much negligence; and it is submitted that many such drivers must be placed in conscious jeopardy of severe punishment on their first conviction, not only in the event of their causing death or injury, the likelihood of such not being a conscious fear to many, but also in the event of their being prosecuted for what they *are* conscious of, and what is the real potential danger on the road—namely, the commission of a breach of regulation or common negligence.

The "Toll of the Road."

The natural reluctance of Magistrates and Justices to inflict heavy penalties upon members of the public who are not criminals in the usual sense is appreciated, but the time has come when every motorist knows, or ought to know, and be conscious of, the risk of causing death or maiming by *any* negligent or improper use of the roads. Further, severe punishment is likely so to reduce dangerous and negligent driving (including breaches of regulations) that very soon comparatively few offenders would require to be dealt with. It is hoped that no breach of traffic laws will be licensed at a small fee in the manner contemplated by the system suggested in the previous issue of this Journal.

If this article would appear to some to suggest too drastic a treatment of the erring motorist, I would give the following reminders: First, that the suggestions involve heavier penalties only in accordance with the degree of recklessness proved; and, secondly, that the "toll of the road," and the full knowledge thereof by each and every user of the roads, places full responsibility upon each motorist for the performance of his or her part in increasing the safety of the roads.

New Zealand Conveyancing.

By S. I. Goodall, LL.M.

Memorandum of Lease of Part of a Public Domain for the Purposes of a Golf-links.

(*Concluded from p.* 266.)

12. The Lessee "will insure" within the meaning ascribed to those words in the Sixth Schedule to the Land and Transfer Act 1914 and all moneys received pursuant to any such insurance shall be expended in or towards repair reinstatement and re-erection of buildings on the said land.

II. Provided always and it is hereby agreed and declared as follows:—

13. Any person not being a member of the Lessee or authorized by it to use the said golf-links without fee desiring to use the said golf-links shall apply to the caretaker for permission to play upon the said golf-links and any such person (not disqualified by this lease or any rules made hereunder) shall on payment of the prescribed fee be entitled to receive from the caretaker a ticket entitling the applicant to play a game or games of golf upon the said golf-links at such time or in such order of play as is mentioned in such ticket. In allotting the order of times of playing the caretaker shall observe the rules laid down in respect thereof made under the provisions of this lease and no preference or privilege shall be given or exercised by any person or persons in respect of such time or order of playing by reason only that such person or persons is or are a member of the Lessee or any other club or association but all persons who are duly qualified shall have equal facilities and opportunities for playing on the said golf-links as aforesaid.

14. Before receiving a ticket entitling him or her to play on the said golf-links as herein mentioned each person not being a member of the Lessee or authorized by it to play without fee shall pay to the caretaker such fees as are prescribed by the Lessee for visiting members or in case of such person wishing to play for one season the same fees as are payable by members of the Lessee but in no case shall any of the fees payable by such person exceed those payable to other golf-clubs playing on a first-class course in New Zealand and in no case shall the fee exceed an amount to be agreed upon by the Lessee and the Board from time to time and approved by the Lessor. All fees so paid shall be the property of the Lessee.

15. The caretaker may refuse to admit to the said golf-links or may remove from the golf-links any person (*a*) who is a disorderly or disreputable person (*b*) who by reason or intoxication or other reason is not in a proper condition to use the said golf-links (*c*) who is not properly and decently attired and clean in person (*d*) who behaves in an indecent or disorderly manner or annoys or is offensive to any other person using the said golf-links (*e*) who acts contrary to any of the rules for the conduct of persons using the said golf-links and who being unlicensed by the Lessee or not being a *bona fide* golf player on the said golf-links takes possession of golf-balls lying or being on the said land provided that any omission or failure to observe any rule of the Lessee if made in good faith

and if the person offending complies with such rules upon his attention being drawn to the same shall not be deemed a reason for his expulsion (*f*) who fails or refuses to comply with any lawful request of the caretaker given for the purpose of enforcing the rules or of preserving the proper management and preservation of the said golf-links and the comfort and convenience of the persons using the same.

16. The Lessee may make such rules for the management and control of the said golf-links and the conduct of persons using the same as may be proper and necessary provided that all rules so made shall be consistent with these presents and before coming into force shall be submitted to and approved by the Board but if any dispute shall arise between the Lessee and the Board as to the propriety of any rules such dispute shall be referred to the Minister of Lands whose decision shall be final and binding on all parties. All such rules when approved and adopted shall be printed and posted up in some conspicuous place on the said golf-links for the information and guidance of all persons using the golf-links.

17. Throughout this lease the term "caretaker" shall be deemed to mean and include any person for the time being appointed by the Lessee to supervise and control the use of the said golf-links by persons playing upon or using the same.

18. This lease shall be deemed to constitute a personal contract between the Lessor and the Lessee and the Lessee will not assign transfer sublet or part with the possession of the said land or any part thereof without the consent in writing of the Lessor first had and obtained And it is hereby declared that the Lessor shall not be required to consent to any transfer or giving of possession of the said land to any other person unless in the opinion of the Board and the Lessor such transfer subletting or transfer of possession is in the interest of all persons desiring to use the said golf-links as golf-links.

19. In case the rent hereby reserved or any part thereof (whether legally demanded or not) shall be in arrear and unpaid for the space of thirty days after any of the days hereby appointed for payment of the same or in case the Lessee shall at any time fail to perform or observe any of the covenants on the part of the Lessee herein contained or implied then and in any such case it shall be lawful for the Lessor by notice in writing delivered to the Lessee or posted to the Lessee's address at to determine this lease and thereupon or at any time thereafter to re-enter upon the said golf-links and the Lessee and all other tenants and occupiers thereof therefrom to expel and remove and such notice determination and re-entry shall not release the Lessee from liability in respect of any antecedent breach or non-observance of any covenant or condition herein contained or implied.

20. All powers rights and authorities vested in the Lessor by this lease may be exercised and enforced for and on behalf of the Lessor by the Board. All rents and other moneys payable by the Lessee to the Lessor under this lease shall be paid to the Board or to such person as the Board shall from time to time appoint to receive the same. Any notice demand or consent to be given by the Lessor under this lease may be given for and on behalf of the Lessor by the Board in writing signed by the chairman or secretary of such Board. Any notice required to be given to the Lessee under this lease may be served on the Lessee by delivering the same to the president chairman or secretary of the Lessee or by posting the same to the Lessee at . Any notice required to be given by the Lessee to the Lessor under this lease may be served by delivering the same to the chairman or secretary of the Board addressed to the Board.

21. Neither the Lessor nor the Board warrants that this lease is or will be registrable and if the Lessee shall desire to effect registration under the Land Transfer Act 1915 it shall do so at its own sole cost and expense in all things inclusive of cost of survey if necessary.

22. All costs of and incidental to this lease and the counterpart thereof shall be paid by the Lessee.

THE above named and described Lessee DOTH HEREBY ACCEPT this lease of the above described land TO BE HELD by it as tenant subject to the conditions restrictions and covenants above set forth.

IN WITNESS WHEREOF these presents have been executed (under the Public Seal of the Dominion of New Zealand) this day of One thousand nine hundred and thirty- (193).

Minister of Lands.

I Clerk of the Executive Council hereby in pursuance of the Official Appointments and Documents Act 1919 certify that this instrument has been executed by the Minister of Lands acting by the direction of the Governor-General of the Dominion of New Zealand in pursuance of the said Act.

DATED this day of 193 .

Clerk of the Executive Council.

THE COMMON SEAL of THE GOLF CLUB (INCORPORATED) was hereunto affixed by direction of the Committee in the presence of:

President.

Member of Committee.

I HEREBY CERTIFY that the within-written lease has been approved and consented to by a resolution of the Domain Board.

DATED this day of 193 .

Chairman of the Domain Board.

THE [*County*] COUNCIL being the local authority within whose jurisdiction the within-described land is situate HEREBY CONSENTS to the within-written lease and acknowledges that during the term of the said lease the Lessee within named in consideration of the expenditure by the Lessee of moneys in laying out and maintaining the demised land as golf-links and upon other improvements shall not be required to pay to the [*County*] Council any rates in respect of the demised land so long as the Lessee shall regularly and punctually pay to the Lessor or the Board the rent reserved by the said lease.

GIVEN under the Common Seal of the Body Corporate called the Chairman Councillors and Inhabitants of the [*County*] of this day of 193 .

THE COMMON SEAL of the CHAIRMAN COUNCILLORS AND INHABITANTS OF THE [*County*] OF was hereunto affixed (pursuant to a resolution of the [*County*] Council passed on the above day) in the presence of:

Chairman.

Member.

Clerk.

New Zealand Law Society.

Council Meeting.

A meeting of the Council of the New Zealand Law Society was held at the Supreme Court Library, Wellington, on Friday, September 24, 1937. The President, Mr. H. F. O'Leary, K.C., occupied the chair.

Societies represented.—The following Societies were represented: Auckland, by Messrs. J. B. Johnston, L. K. Munro, and H. M. Rogerson (proxy); Canterbury, Messrs. K. M. Gresson and A. S. Talyor; Gisborne, Mr. A. T. Coleman; Hamilton, Mr. C. L. Macdiarmid; Hawke's Bay, Mr. H. B. Lusk; Marlborough, Mr. W. T. Churchward; Nelson, Mr. J. Glasgow; Otago, Mr. E. J. Smith; Southland, Mr. E. H. J. Preston; Taranaki, Mr. R. Quilliam; Wanganui, Mr. A. D. Brodie; and Wellington, Messrs. H. F. O'Leary, K.C., D. R. Richmond, and G. G. G. Watson.

Apologies for absence were received from Mr. F A. Kitchingham (Westland) and Mr. P. Levi (Treasurer).

Recent Deaths.—The President referred to the deaths of Mr. Justice Adams and of Mr. Justice Page, and mentioned that in each instance appropriate functions had been held in the Supreme Court and messages of condolence had been sent to the families of the deceased Judges.

The Council decided to place on record its deep regret at the passing of Their Honours and its sympathy with their families, members standing in silence as the resolution was carried.

Advertising by Solicitors: Broadcasting.—The following report was received:

The President and Mr. G. G. G. Watson desire to report that pursuant to instructions given by the Council at its last meeting, they have settled the Rules as follows:—

Advertising by Solicitors.

The Council desires to bring to the notice of members various matters which may be considered to constitute advertising by practitioners. It is obviously impossible to lay down strict rules to cover all possible breaches of the fundamental principle that practitioners should not either directly or indirectly seek to advertise themselves in their professional capacity, but the Council's views on particular matters to which its attention has been drawn are as follows:—

(A) **Press Reports and Allied Matters.**

The Council expresses its disapproval of any of the following courses of conduct:—

1. Voluntarily supplying to the Press reports of or concerning cases in which the practitioner has been engaged.
2. Supplying to the Press before trial information as to writs having been issued, and in particular supplying the name of the practitioner concerned.
3. Voluntarily supplying to the Press reports or information concerning the settlement of cases which have not been called in open Court in the presence of Press representatives.
4. Voluntarily supplying to the Press reports of or extracts from legal or quasi-legal addresses or lectures delivered by practitioners.
5. Causing such last-mentioned addresses or lectures to be reprinted and circulated among any section of the public.
6. Causing articles published in legal periodicals to be reprinted and circulated among any section of the public.
7. Voluntarily supplying to the Press any information concerning practitioners' own professional movements or activities.

(B) **Broadcasting.**

8. A barrister or a solicitor employed or engaged in the practice of law may, on the invitation of any Broadcasting body, broadcast lectures on law, but must not allow the publication of his name or photograph.
9. A barrister or a solicitor not employed or engaged in the practice of law may allow the publication of his name, and, if he thinks fit, of his photograph.
10. There is no objection to the announcement of the name of a barrister or a solicitor (without mention or indication of his being a member of the legal profession) before short talks on matters of current interest of a non-legal nature.

(C) **Answers to Legal Questions.**

11. It is contrary to professional etiquette for a barrister or a solicitor to answer legal questions by broadcasting or in newspapers or periodicals where his name is directly or indirectly disclosed or liable to be disclosed.

H. F. O'Leary,
G. G. G. Watson.

Scale of Costs for Company Formation.—The following report was received:—

As requested by your Society at its last meeting we have given further careful consideration to the above in the light of the comments of the District Law Societies.

It will be observed that the scale submitted by us has the approval of the Otago, Canterbury, Southland, Hawke's Bay, and Auckland Societies and subject to slight comment of the Nelson Society also. We are not aware of the view of the Taranaki Society as no reply from it appears on our copy of the file. The Wanganui Society is divided in opinion. The Wellington Society suggests certain amendments to the proposed scale and expresses the opinion that it is absolutely necessary to obtain the approval by the Registrars of the Supreme Court to any scale before it is finally approved. It also suggests the express inclusion of certain cases where the scale should be varied.

The scale suggested by Wellington differs in effect very little from that proposed by us. It suggests a minimum fee of £10 10s. for a company with a nominal capital up to £200, and it is slightly higher than ours for a company with a nominal capital of more than £500. We think the minimum should remain at £15 15s. as the work involved in the formation of any company, however small its capital, is well worth this amount. We have no particular objection to the increases suggested by Wellington, but as these are not very material and as most of the District Societies have approved our proposed scale it would be advisable, we think, for this to stand.

To the suggestion that the approval of the Registrars should be obtained we are very definitely opposed. Were the scale intended to be a rigid one and not merely a guide, there might be much to commend the suggestion. But it is generally accepted that the scale can be nothing more than a guide and must be subject to many exceptions. It is merely put forward and can only be put forward for the assistance of practitioners with a view to indicating a fair charge in ordinary cases and to bringing the charges for this class of work within reasonable degree of uniformity. Such a scale we respectfully suggest is not one for the Registrar's approval. Further, from a practical point of view such approval is unnecessary. Cases must be very few indeed where taxation has to be resorted to. In our view the reason for the scale is the same reason that prompted the introduction of the scale in the case of deceased estates. That scale was merely put forward and we believe is regarded as a guide and help to the profession. The scale under consideration should be regarded in the same way. If this is done and if it is published to practitioners as indicating what is a reasonable charge in ordinary circumstances it will, we feel, serve a very useful purpose (as undoubtedly the scale in deceased estates has done) and the door will be left open for reduction or increase in proper cases. In the result we feel compelled to recommend the adoption of our original report.

Yours faithfully,
L. J. Munro,
J. B. Johnston,
H. M. Rogerson.

(To be continued).

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 No. 85. Appeal against the decision of an Adjustment Commission which, purporting to follow the decision of MacGregor, J., in *In re A Mortgage, S. to M.*, [1932] N.Z.L.R. 1228, dismissed applicant's application on the ground that applicant was not "an applicant" within the meaning of the Mortgagors and Lessees Rehabilitation Act, 1936.

In May, 1919, applicant purchased land from one H.C.W., taking over an existing first mortgage and giving a second mortgage for the balance of purchase-money. The mortgages were rearranged in 1920, but, owing to default by applicant under the mortgages, applicant, in 1921, in satisfaction and discharge of his obligations under the mortgage, transferred to H.C.W. the land he had purchased from him. At the time of this re-transfer, applicant was liable for the land-tax on the land in question, but no demand had been made therefor, and applicant said that no mention was made of his liability in this respect, his understanding being that he was released from all obligations under the covenants of the mortgages. In 1923, applicant was informed by the said H.C.W. that he (H.C.W.) had paid the sum of £189 14s. 2d. for land-tax for the year ended March 31, 1921. In 1927, H.C.W. sued applicant for this sum in the Supreme Court of New Zealand; and, in January, 1928, judgment by default was entered against applicant for £255 8s. 6d. and costs £13 4s. This judgment still remained unsatisfied and it was in respect of this indebtedness, which applicant said arose out of his mortgage to H.C.W., that applicant claimed relief.

Held, That the Adjustment Commission was wrong to dismiss the application in this case as not being one to which the Act applied. The order of the Commission was, therefore, reversed and the application referred back for hearing by the Commission to be determined on its merits.

The Court, in the course of its judgment, said:

> H.C.W. took it upon himself to pay the amount [of the unpaid land-tax] and his right to recover it against applicant, that is, his cause of action, could only be based on the obligation applicant entered into with H.C.W. under the said mortgage or by virtue of the relationship of mortgagor and mortgagee then existing.
>
> Section 4 (7) provides that for the purposes of the Act every liability under a judgment obtained in any court in respect of any cause of action arising directly or indirectly out of a mortgage, lease, or guarantee shall be deemed to be a liability under the mortgage, lease, or guarantee. The plain meaning of this section is that even in those cases where a mortgagee has obtained the status of judgment-creditor the amount for which he has obtained judgment is for the purpose of the Mortgagors and Lessees Rehabilitation Act, 1936, to be deemed a liability under a mortgage so long as the cause of action arose out of the mortgage.
>
> The Act prolongs the status of mortgagor and mortgagee to enable the Adjustment Commission or Court of Review to adjust the liabilities of mortgagors and guarantors not normally cleared of liability after exercise of the power of sale. For this purpose s. 6 (3) provides that the Act shall apply to mortgages notwithstanding that "whether before or after the passing of the Act, any power of sale, rescission, or entry into possession conferred by the mortgage may have been exercised," and s. 4 (2) in the same way extends or prolongs the status of farmer and home mortgagors when they have abandoned their land or premises.
>
> Section 4 (7) makes it clear that this prolongation applies even where judgment has been obtained against a mortgagor, lessee, or guarantor. Consequently, the position in this case, where this Act applies, is not the same as it was in *In re A Mortgage, S. to M.*, [1932] N.Z.L.R. 1228. In that case MacGregor, J., said: "In the present case the applicant has already ceased to be liable as a mortgagor and has instead become liable as a judgment-debtor." Here, by virtue of s. 4 (7), for the purposes of obtaining adjustment under the Mortgagors and Lessees Rehabilitation Act the mortgagor can still claim that his debt is due under the mortgage which, by s. 6 (3), has not been closed by exercise of the power of sale or by abandonment.
>
> *In re A Mortgage, S. to M.*, was followed by Reed, J., in *In re A Mortgage, H. to L.*, [1932] N.Z.L.R. 1231, where it was pointed out that the power of sale in those cases had been exercised and that it was impossible "now to postpone a legal right which had already been exercised. The amount that fell due under the mortgage has become transformed into a judgment-debt." In this case the mortgagor's status has not been extinguished by the exercise of the power of sale. Consequently, the cases cited have no application to cases determined under the present Act since no provisions similar to those contained in s. 4 (7) and s. 6 (3) appeared in the statutes under consideration in those cases.
>
> Mr. Haggitt relies on s. 29 (1) as defining those who can make application, but all who are liable under the mortgages to which the Act applies can make application and the mortgage in question is one to which the Act applies and has been by virtue of s. 6 (3) kept alive for the purpose of applications in respect of liabilities arising directly or indirectly out of such mortgages even though the property upon which the mortgages were secured has ceased to be owned by the applicant. Section 29 must be read with other relevant sections. The relevant sections quoted are clearly intended to enable all liabilities held over after the property has been disposed of to be adjusted.

CASE 86. Motion by a mortgagee for an order granting leave to exercise powers under a mortgage in respect of a mortgagor's home in the city. The mortgagor, who was a slaughterman employed at a city abattoir, had applied for adjustment of his liabilities as a "farmer-applicant" in conjunction with his co-owner of a farm worked exclusively by the co-owner. The arrangement under which the farm was carried on was not disclosed to the Court, but some kind of partnership appeared to exist. The mortgagee contended that the mortgagor was not an applicant in respect of his home, and that the only matters which could be adjusted on the application filed were those relating exclusively to the partnership assets.

The Court, in adjourning the motion until the farm application had been heard, considered that the questions submitted should be decided at the same time, as it appeared that, if the mortgagor were in fact a farmer, he was entitled to have all his liabilities adjusted.

CASE 87. Motion for an order extending the time for filing an appeal: s. 27 (1). The intending appellant sought to have the motion dealt with *ex parte*.

Ordered that all parties who might be affected by the appeal should be served before the Court would deal with the motion.

* *Continued from p. 267.*

Australian Letter.

By JUSTICIAR.

The Petrol War.—An interesting judgment was given recently by the Full Court of New South Wales in *Independent Oil Industries, Ltd. v. The Shell Company of Australia, Ltd., and The Vacuum Oil Company Proprietary, Ltd.* These were appeals by the defendants (the Shell Co. and the Vacuum Co.) against an interlocutory injunction granted on May 7, 1937, by which the defendants were restrained from inducing or procuring, or attempting to induce or procure, retailers of the motor-spirits of the plaintiff (which had been called the Purr Pull Co.) to commit a breach, or breaches, of their agreements with the plaintiff by stating that they would refuse to supply the retailers of motor-spirit with whom the plaintiff had agreements of a certain specified type, with Shell motor-spirit in the case of the first-named defendant and Plume motor-spirit in the case of the second-named defendant, either at all or except at wholesale rates which were higher than their usual net wholesale rates to retailers, unless the said retailers agreed to sell Purr Pull motor-spirit at retail rates above those fixed by the plaintiff and in breach of their said agreements with the plaintiff.

The Chief Justice, after dealing at length with the case, said that after the suit began the defendant companies issued a circular letter to their representatives and drivers on March 25, instructing them that, when occasion arose, they were simply to inform resellers of the price at which supplies were being made, and to refrain from discussing or even referring to the reasons for asking the higher price. If the reseller pressed for an answer, he was to be referred to the conditions of sale and no discussion must ensue.

It was in the circumstances above outlined that on March 22, 1937, the plaintiff company commenced its suit for an injunction to restrain the defendants from combining to injure the plaintiff in its trade as a wholesaler by inducing and procuring retailers to break their agreements with the plaintiff. By its notice of motion for an interlocutory injunction, the plaintiff company asked for what would have been, in effect, a mandatory injunction compelling the defendants to sell their spirit to retailers at a price which would enable retailers to make a profit. It was soon recognized that it would be impossible to obtain such an injunction, and the plaintiff company then contented itself with asking for the injunction which it eventually obtained. The learned Judge came to the conclusion that the evidence showed that the defendant companies were urging the resellers to do something which amounted to a breach of their contract with the plaintiff company, to the knowledge of the defendants, and that they were therefore procuring, or endeavouring to procure, a breach of that contract. His Honour, the Chief Justice, proceeded, thought that no justification for their so doing was supplied by the conditions of the contract under which the defendants sold their petrol, apparently because he thought that the plaintiff's disc agreements were prior in point of time to those contracts. The learned Judge also expressed the view that the evidence did not establish a conspiracy between the defendant companies, and before that Court no attempt was made by the respondent to support the injunction on the footing of conspiracy.

Adverting to the general principles of law applicable in such a case as the present, the Chief Justice said the lawfulness or unlawfulness of an act depended upon the manner and circumstances in which the act was done. When the act of an individual was in question, the test of its lawfulness or unlawfulness was whether it was done in such a manner, or in such circumstances, as to violate a legal right of some other person, or a legal duty owed by the doer of the act. If an act of an individual did not violate a legal right, or legal duty, the fact that it was intended to cause damage to some other person, and did, in fact, cause him damage, did not make the act unlawful. But, as a general rule, the doing of an act which violated a legal right was unlawful.

The Chief Justice went on to say that the act of a combination was always unlawful if it was done in such a manner, or in such circumstances, that it would be unlawful if done by an individual—*i.e.*, if it violated a legal right or duty. But when persons acted in combination they became exposed to the law of conspiracy; and for damages caused by conspiracy they might become liable in tort by reason of having done acts which would attract no liability if done by an individual.

The Chief Justice proceeded to say that, having considered the evidence as a whole, he was of opinion that it did not establish an attempt on the part of the defendants to procure breaches by the retailers of their contracts with the plaintiff. The position was that the defendants were perfectly entitled to sell or not to sell their goods to the resellers as they chose. It was part of a policy of considerable standing to refuse to sell their goods, except upon terms which were practically prohibitive, to retailers who sold similar goods at lower prices than they sold to the defendants. When the defendants, in the first instance, intimated that they required the retailers to sell at a higher retail selling price any further spirit which they might buy from the defendants as a term of being allowed to buy on other than prohibitive terms, they were, in effect intimating that they required them to sell corresponding spirits, including those of the plaintiff, at the same price as a term of being allowed to buy profitably.

But he was of opinion that it was not proper to draw the inference from the statements made subsequently to retailers about the sale of the plaintiff's spirit, that the defendants were in effect saying: "We request you to sell the plaintiff company's spirit at a price which will, in fact, involve a breach of your contract with it, and we will sell you, or withdraw from you, our goods on profitable terms according as you comply or do not comply with our request." He was of opinion that that was not the proper inference, for two reasons. In the first place, he did not think that the evidence, taken as a whole, properly supported the conclusion that the defendants were attempting to induce the retailers to sell at the higher price even such Purr Pull spirit as they had in their tanks for the time being, although no doubt some of the remarks made by the defendants' drivers, standing by themselves, would support such a conclusion. In the second place, it needed to be remembered that the Purr Pull disc contracts were terminable at any time, except as to any Purr Pull in the tanks, by the simple expedient of returning the discs.

So far as the spirit in the retailers' tanks at any given moment was concerned, he was of opinion that no

injunction would be warranted with respect to that upon any view of the facts. It was obviously not with respect to such remnants that the suit had been instituted and the injunction motion fought. Apart from that, assuming that he was wrong in the view which he took as to the legal effect of the defendants' selling agreements, and that those agreements ought to be regarded as containing a positive promise by the retailers to sell corresponding grades at the same prices if they sold them at all, he was nevertheless of opinion that no ground had been shown which would warrant the granting of an injunction.

The Chief Justice said, in conclusion, that to attempt to frame an injunction which would define with precision the ambit of the appropriate prohibition, would be a baffling problem. If it were sought to evade the difficulty by an injunction expressed in general terms, the difficulty would be merely postponed to the stage of sequestration motions for alleged contempt, when the Court would, no doubt, be invited to consider the application of the rule in *Clayton's case*, to petrol-pumps. But this was not a contest as to the remnants of petrol which happened to be in retailers' tanks at any given moment.

It was, he proceeded, a trade war for standardization of prices, and he could not help thinking that the present suit was an attempt on the part of the plaintiff to extend the arena for the manoeuvres of trade competition from the market-place to the Law Court.

For the reasons that he had stated, he was of opinion that the appeal should be allowed with costs; and that the interlocutory injunction granted on May 7, 1937, should be discharged.

Loveday v. Sun Newspapers, Ltd.—The Full Court unanimously dismissed with costs an appeal by Frederick Loveday from a decision of Mr. Justice Maxwell in non-suiting him in his action against Sun Newspapers, Ltd., and Edgar Jay, Town Clerk of Canterbury, to recover damages for an alleged defamation said to have been published in the "Sun" (see *ante*, p. 188).

Mr. Justice Halse Rogers who gave the judgment of the Court said it had been contended by appellant that the trial Judge was in error in holding that the occasion was privileged, or, alternatively, that he was not in a position so to hold until a certain preliminary question of fact had been determined by the jury. For instance, it was said that the jury should have been asked to determine whether the answering of a charge against the Council was within the scope of the authority of a town clerk. In His Honour's opinion a Judge was entitled to take into account his knowledge of the every-day affairs of the community in which he lived and to act on it in determining a question such as that which was before the trial Judge in this case. On the evidence His Honour did not think that a finding by the jury that Jay was "not interested" in an attack upon the Council could stand, and consequently he believed that the view of the trial Judge on this matter was correct. His Honour said it had been submitted that there was no duty on the newspaper to publish the original complaint, and consequently there could be no privilege attaching to or covering the reply. He did not think it lay in the mouth of the plaintiff, who knew that the original communication was being sent and on whose behalf it was sent, to raise such an argument, and His Honour believed he stood in exactly the same position as if the complaint communicated to the newspaper had been made by him directly.

Probation in England.

New Zealand Principles Emphasized.

Probation is now given an important place in the penal system in England. No individual contributed more to this end than did the late Sir William Clarke Hall, a London Metropolitan Magistrate who died a few years ago. His memory is perpetuated in a Fellowship devoted to the furtherance of the probation system throughout England.

The first Clarke Hall Fellowship Lecture was delivered by His Grace the Archbishop of Canterbury, an introductory address being given by the Rt. Hon. Viscount Sankey. The second lecture was delivered by the Lord Chief Justice of England, the Rt. Hon. Lord Hewat of Bury. The third lecture, an advance copy of which has just come to hand, was delivered by Mr. S. W. Harris, C.B., C.V.O., Assistant Under-Secretary of State. With the copy of the address is enclosed a leaflet from the Home Office stating that the Home Secretary, the Rt. Hon. Sir Samuel Hoare, was so impressed with the address that he has made arrangements for copies to be circulated to all Justices and Probation Officers in England.

The Chairman, on the occasion of the last address, was the Rt. Hon. Sir Herbert Samuel, who was, as Parliamentary Under-Secretary for State at the time, responsible for the introduction of the First Offenders Probation Act, 1909, and he stated, *inter alia*, in his Chairman's remarks, that there could be no more suitable nor more informed lecturer on probation than Mr. Harris.

It is interesting to observe that Mr. Harris, in the course of his address, when referring to certain popular misconceptions regarding probation, quotes from the last Annual Report of the Chief Probation Officer for New Zealand (Mr. B. L. Dallard). He states, *inter alia*:—

> "I was interested to see the other day that New Zealand has apparently had a similar experience. I want to read a passage from the last Annual Report of the Chief Probation Officer for New Zealand not only because it refers to these mistaken opinions, but also because it seems to me to give a clear statement of the real meaning and object of probation.
>
> "'Probation may be defined,' says this report, 'as the suspension of final judgment in a case, but involving a judicial warning and the giving of the offender an opportunity of readjusting himself and making amends whilst living as a member of the community, subject to conditions which may be imposed by the Court, and under the supervision and friendly guidance of a Probation Officer. Probation has the mercenary virtue that it is cheap. There is no expense for institutional maintenance, and, as indicated above, the Courts can impose a condition requiring restitution to be made. It has, however, a more important social virtue, in that it prevents a severance of domestic and family ties, and avoids the stigma invariably associated with imprisonment, which prejudices an offender in his ultimate rehabilitation.
>
> "'Although by comparison probation must be admitted to be a lenient form of treatment, it is quite wrong to assume that it is equivalent to being "let-off." This deep-rooted misconception, no doubt arising from the genesis of the scheme, which originally applied to first offenders only, for offences more or less of a venial character, has been to some extent responsible for probation not being utilized as extensively as it might be. There is definitely a disciplinary purpose in probation, and usually strict compliance with the terms of the recognizance make exacting demands upon the probationer. It is, in effect, conditional liberty, but the positive feature of it is that, although in some cases the restrictions on liberty may be irksome, they are imposed not so much as punishment as with the object of assisting the probationer in habituating himself to a more ordered and disciplined mode of living. Right living is largely a matter of acquiring good habits.'"

The Dominion's Chief Probation Officer, Mr. Dallard, is to be congratulated on the adoption and approval of the principles of probation enunciated in his report; and, indeed, a compliment has been paid to the Dominion itself in the approval so given to the administration of its probation system by Mr. S. W. Harris, the Home Office authority on the subject.

Practice Precedents.

Private Estates Bills.

The Legislature Act, 1908, prescribes the procedure preliminary to the introduction into Parliament of a Bill dealing with a deceased person's estate.

Every petition for, and preamble to, a Private Bill must contain an allegation that the objects of the proposed Bill are not attainable otherwise than by legislation: s. 276. A copy of the petition, &c., may be filed in the Supreme Court: s. 277.

These must be published in the *New Zealand Gazette*, and in a newspaper published in the provincial district in which the estate which is the subject of or to be affected by an intended application to the General Assembly for a Private Estate Act, is situated, of a notice signed by one or more of the intending petitioners for such Private Estate Act of his or their intention to apply by petition to the General Assembly for the passing of such Private Estate Bill. At any time within one month after such notice has been so published, the person or persons signing such notice may file in the office of any Registrar of the Supreme Court of the Supreme Court District in which the hereditaments to be affected by such Private Estate Act are situated, a copy of the petition and of the proposed Bill. Such person or persons may then apply to a Judge of the Supreme Court in such district for an order that an inquiry be held as provided by the Act: s. 277.

An application for directions as to the inquiry is made to a Judge, who, after the order for directions has been given effect to, holds an inquiry: s. 278. The Judge must certify as to the facts found and the necessity for and suitability of the proposed Act: ss. 281, 282.

Fees and costs payable in respect of the petition, &c., are regulated by ss. 272 and 273.

The Certificate is prepared and approved, usually by counsel, and is submitted to His Honour, the presiding Judge; and, after it is signed, he sends it to the Clerk of Parliament. Some Private Estate Bills that have become Acts of Parliament are the McLean Institute Act, 1909, the Thomas George Macarthy Trust Acts, 1912 and 1936; Rhodes Memorial Convalescent Home Act, 1924; the Thomas Cawthron Trust Act, 1924, and the William George David Brown Trust Act, 1936.

The forms hereunder provide for an application to the Supreme Court for directions and inquiry, and a finding thereon.

MOTION PAPER.

IN THE SUPREME COURT OF NEW ZEALAND.

.....District.

.....Registry.

IN THE MATTER of the Legislature Act 1908

AND

IN THE MATTER of a Private Estate Bill intituled "An Act to Constitute and Incorporate the Board of Trustees of the A. B. Trust."

Mr. of Counsel for C. D. of the City of electrician the petitioner for the above-mentioned Private Estate Bill TO MOVE before the Right Honourable Sir Chief Justice of New Zealand at his Chambers Supreme Court House on day the day of 19 at the hour of 10 o'clock in the forenoon or so soon thereafter as Counsel can be heard FOR AN ORDER that an inquiry be held pursuant to the provisions of the Legislature Act 1908 and its amendments into the evidence in support of and in opposition to the allegations contained in a petition to be presented to the General Assembly for leave to introduce a Private Estate Bill intituled "The A. B. Trust Act 1937" AND FOR AN ORDER directing the mode and manner of the inquiry and the persons to be served with notices AND FOR SUCH FURTHER ORDER as in the premises may be just UPON THE GROUNDS that publication of the intention to introduce such Bill has been duly advertised in the *New Zealand Gazette* and UPON THE FURTHER GROUNDS that the petition for the said Private Estate Bill cannot be proceeded with unless and until there is furnished a Certificate by a Judge of this Honourable Court in pursuance of ss. 281 to 282 of the said Act.

Dated at this day of 19 .

Solicitor for petitioner.

Certified pursuant to the Rules of Court to be correct.

Counsel for petitioner.

MEMORANDUM FOR HIS HONOUR.—His Honour is respectfully referred to the Legislature Act, 1908, ss. 277 to 284 (inclusive).

(Then comment on the trust clauses in the will and the paragraph in the affidavits referring to same; and set out briefly the purpose of the Bill; then point out all persons who have any interest in the trust; and suggest finally that the inquiry be directed to be held at on day the day of 19 or such other date as may be fixed by a Judge and (if desired) that evidence be taken on affidavit.)

Suggest that the parties to the inquiry be C. D. and and . Then suggest who should be served with notice.

Counsel moving.

"A."

IN THE MATTER of the Standing Orders of the General Assembly relative to Private Bills

AND

IN THE MATTER of a Private Estate Bill intituled "The A. B. Trust Act 1937."

To the General Assembly of New Zealand in Parliament assembled.

day the day of 19 .

THE HUMBLE PETITION of C. D. of the City of electrician showeth:—

1. That A. B. of the City of : deceased (hereinafter referred to as "the testator") died at on or about the day of 19 .

2. That the testator left a last will dated the day of 19 probate whereof was granted by this Honourable Court at to your petitioner the executor therein named on the day of 19 .

3. That by the said last will the testator after providing for certain life interests to his family and relatives created a perpetual trust of the income of his residuary estate for charitable purposes. The trust was created by para. of his will which is in the words following: [*set out para.*].

4. That by para. of his will the testator provided for the constitution of the Board of Trustees referred to in para. of the will.

5. That para. of the will is in the words following: [*set out the words*] (persons composing the Board, and as to procedure when any named person declines to act, provision as to appointment of chairman, mode of passing resolutions, rules, and regulations, quorum, staff, salaries, etc.).

6. That E. F. who was at the death of the testator and is now the Mayor of the City of &c. G. H. Chairman of the Hospital and Charitable Aid Board and your petitioner who is now and has at all material times been the trustee of the testator's will have agreed to act as members of the Board of Trustees constituted by para. of the testator's will.

7. That your petitioner desires to promote the introduction during the present session of Parliament of the above-mentioned Bill (a printed copy whereof is annexed hereto signed by your petitioner) under the Short title of "The A. B. Trust Act 1937"

8. That the objects of the Bill are as follows: [*set out objects*].

9. That the objects of the proposed Bill are not attainable otherwise than by legislation.

WHEREFORE your petitioner humbly prays that leave be given to bring in the said Bill during the present session of Parliament AND your petitioner as in duty bound will ever pray etc.

Petitioner.

Witness:

[*Exhibit note to be set out.*]

AFFIDAVIT OF PETITIONER.

(*Same heading.*)

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

1. That I am the petitioner for the above-mentioned Private Estate Bill.

2. That the said A. B. deceased died at on or about the day of 19 .

3. That the said A. B. deceased left a last will dated the day of 19 probate whereof was granted by this Honourable Court at on the day of 19 to me this deponent.

4. That E. F. of who was at the time of the death of the said A. B. and is now the Mayor of the City of and G. H. of the City of who was at the time of the death of the said A. B. and is now the Chairman of the Hospital Board at , and I this deponent who am now and have at all material times been the trustee of the testator's will have agreed to act as members of the Board of Trustees constituted by para. of the testator's will.

5. That I desire to introduce and promote during the coming session of Parliament the Bill referred to in my petition filed herein.

6. That it is desired the said proposed Board of Trustees be incorporated as provided in clause 2 (*b*) of the said proposed Bill.

7. That clause of the said proposed Bill is designed to meet the direction that the charitable institution [*set out name*] must be within a radius of miles from the General Post Office of the City of and to provide for finality and conclusiveness of *bona fide* decisions of the Board and thus protect the trustee and the members of the Board.

Sworn, &c.

FURTHER AFFIDAVIT IN SUPPORT OF MOTION, ETC.

(*Same heading.*)

I O. K. of the City of solicitor make oath and say as follows:—

1. That I am the solicitor for C. D. &c. the petitioner for the above-named Private Estate Bill and as such solicitor know of my own knowledge the facts hereinafter recited.

2. That annexed hereto and marked "A" and now produced and shown to me is a true copy of a Petition for a Private Estate Bill executed by the said C. D. to be presented to the General Assembly of New Zealand at the next ensuing session of Parliament.

3. That annexed hereto marked "B" now produced and shown to me is a true copy of the Private Estate Bill which the said petition of C. D. seeks to introduce.

4. That annexed hereto marked "C" now produced and shown to me is a true copy of the will of A. B. above-mentioned which will is the will referred to in the said Petition and in the said Private Estate Bill.

5. That E. F. of the City of : and the said G. H. and the said C. D. who is now and has at all material times been the trustee of the will of the said A. B. deceased have agreed to act as members of the said Board of Trustees constituted by para. of the said will.

6. That the only persons affected by the said proposed Bill are the said E. F. the said G. H. the said C. D. and such charitable and educational purposes or institutions as satisfy the requirements of para. of the will of the said A.B. deceased.

7. That the said E. F. the said G. H. the said C. D. and His Majesty's Solicitor-General acting for and on behalf of His Majesty's Attorney-General have approved a draft of the said Bill.

8. That notice of intention to apply by petition to the General Assembly of New Zealand and for the passing of the said proposed Bill was published in the *New Zealand Gazette* and in the newspaper published in the Cities of and respectively were published on the day of 19 . Copies of the said advertisement are attached hereto and marked "A" "B" and "C" respectively.

9. That the estate of the said A. B. deceased is situate partly within the District of and partly within the District of in New Zealand.

Sworn &c.

Note.—Although a copy of the Petition and of the proposed Private Estate Bill is exhibited to this affidavit, they are separately filed, with the respective exhibit notes thereon: see s. 277.

ORDER DIRECTING INQUIRY.

(*Same heading.*)

day the day of 19 .

UPON READING the motion filed herein for an order directing an inquiry pursuant to the Legislature Act 1908 regarding a petition for a Private Estate Bill the affidavits filed in support thereof and the copy of petition for a Private Estate Bill and the copy of the proposed Private Bill filed herein AND UPON HEARING Mr. of Counsel for the petitioner I DO ORDER that an inquiry be held pursuant to the provisions of the Legislature Act 1908 into the evidence in support of and in opposition to the allegations contained in the petition to be presented to the General Assembly of New Zealand in Parliament assembled by C. D. of the City of : for leave to introduce a Private Estate Bill intituled the A. B. Trust Act 1937 and the allegations contained in the Preamble of the said Bill (other than the allegations contained that the objects of the proposed Bill are not attainable otherwise than by Legislation) copies of which said petition and proposed Bill respectively have been filed in this Honourable Court AND I DO FURTHER ORDER AND DIRECT regarding such inquiry as follows:—

1. That the said inquiry be held before a Judge of the Supreme Court at the Supreme Court House at on day the day of 19 at 10 o'clock in the forenoon and that the evidence be taken on affidavit.

2. That the parties to the said inquiry be—

(*a*) C. D. the petitioner herein.

(*b*) The Mayor Councillors and Citizens of the City of .

(*c*) The Hospital and Charitable Aid Board at .

(*d*) The Attorney-General on behalf of the Charitable or educational purposes or institutions satisfying the requirements of para. of the will of the said A. B. deceased.

3. That notice of the said inquiry be given by the service on the Solicitor-General the Mayor Councillors and Citizens of the City of and Hospital and Charitable Aid Board at of a copy of this order and a copy of the petition and a copy of the proposed Bill.

Judge.

AFFIDAVIT SHOWING RESOLUTION APPROVING PROVISIONS OF PRIVATE ESTATE ACT, ETC.

(*Same heading.*)

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

1. That I am the Secretary of the Hospital and Charitable Aid Board at .

2. That on the day of 19 there were served on the said Board the following documents:—

(*a*) An order made by this Court dated the day of 19 directing an inquiry pursuant to the Legislature Act 1908 regarding a petition for a Private Estate Bill.

(*b*) A copy of the petition herein.

(*c*) A copy of the proposed Bill the subject of the said petition.

3. That the said documents were considered by the said Hospital and Charitable Aid Board at a meeting held on day the day of 19 when the following resolution was carried:—

"That the Hospital and Charitable Aid Board approves the provisions of the proposed Act intituled 'The A. B. Trust Act 1937'."

Sworn &c.

NOTE.—A like affidavit may be furnished by the proper officer of the City Corporation. No affidavit of service is required in respect of any party who appears.

CERTIFICATE AS TO FACTS FOUND ETC.

(*Same heading.*)

To the Honourable The Speaker of the Legislative Council.

I The Right Honourable Sir , G.C.M.G. Chief Justice of New Zealand DO HEREBY CERTIFY that in pursuance of an order made by the Honourable Mr. Justice on the day of 19 an inquiry was held before me on day the day of 19 in the Supreme Court House at pursuant to the provisions of the Legislature Act 1908 into the evidence in support of the allegations contained in the petition to be presented to the General Assembly of New Zealand in Parliament assembled by E. F. &c. for leave to introduce a Private Estate Bill intituled "The A. B. Trust Act 1937" and the allegations contained in the Preamble of the said proposed Bill other than the allegations that the objects of the proposed Bill are not attainable otherwise than by legislation. AND I FURTHER CERTIFY that at the said inquiry Mr. of Counsel appeared for the said C. D. and Mr. of Counsel appeared for the Attorney-General there being no appearance for or on behalf of the Mayor Councillors and Citizens of the City of nor of the Hospital and Charitable Aid Board but it was proved to my satisfaction that due notice had been given to them of the said inquiry as required by the said order of the day of 19 and evidence was given by affidavit that both the Mayor Councillors and Citizens of the City of and the Hospital and Charitable Aid Board had approved of the provisions of the said proposed Bill. At the said inquiry evidence was given before me by affidavit in support of the allegations contained in the preamble of the said proposed Bill other than the allegation that the objects of the proposed Bill are not obtainable otherwise than by legislation AND having taken such evidence I DO HEREBY CERTIFY that the said allegations contained in the petition and the said allegations contained in the preamble of the proposed Bill other than the allegation that the objects of the proposed Bill are not attainable otherwise than by legislation have been proved AND I FURTHER CERTIFY that the objects of the proposed Bill are such as may not in my opinion be attained by proceedings in the Supreme Court or otherwise than by a special act AND I FURTHER CERTIFY that the provisions of the proposed Bill are such as will if the same be passed into law effect the proposed objects of such Bill.

AS WITNESS my hand and the Seal of the Supreme Court at this day of 19 .

Chief Justice *or*
Judge
[*as the case may be.*]

Recent English Cases.

Noter-up Service.

FOR

Halsbury's "Laws of England."

AND

The English and Empire Digest.

COPYRIGHT.

Canada—Pictures Painted Before 1924—Not Produced or Reproduced in Canada Before 1924—Copyright not Registered in Canada Before 1924.

The giving of a certificate by the Secretary of State under the Copyright Act, 1911, s. 25 (2), does not give an author in England any rights in the Dominion referred to in the certificate.

MANSELL *v.* STAR PRINTING & PUBLISHING CO. OF TORONTO, LTD., **[1937] 3 All E.R. 912. P.C.**

As to copyright in the Dominions: see HALSBURY, Hailsham edn., 7, pars. 832, 833; DIGEST 13, pp. 162, 163.

CRIMINAL LAW.

Murder—Constructive Murder—No Intention to Kill—Intention to Commit Rape—Death Resulting.

If a man, intending to commit rape upon a woman, but without wishing to kill her, does in fact kill her, he is guilty of murder.

R. v. STONE, **[1937] 3 All E.R. 920. C.C.A.**

As to constructive murder: see HALSBURY, Hailsham edn., 9, par. 749; DIGEST 15, pp. 787–789.

INFANTS.

Adoption—Husband and Wife—Illegitimate Daughter of Wife—No Blood Relationship with Husband—Husband and Wife Each Less than 21 Years Older than Infant.

The phrase "within the prohibited degrees of consanguinity" in the Adoption of Children Act, 1926, s. 2 (1) (b), defines the particular degrees of blood relationship between the proposed adopter and the infant proposed to be adopted which must exist in order to confer on the court the power of relaxing the probihition contained in the sub-section, and is not limited to the cases where the parties are of opposite sex.

Re C., AN INFANT, **[1937] 3 All E.R. 783. C.D.**

As to restrictions on making adoption orders: see HALSBURY, Hailsham edn., 17, par. 1409.

Bills Before Parliament

Land and Income Tax (Annual).—Sections 2 and 3: For the year commencing on April 1, 1937, land-tax and income-tax respectively are to be assessed, levied, and paid, at the rates specified in the Schedule to the Bill.

LOCAL BILLS.

Auckland Metropolitan Milk Empowering.
Christchurch Tramway Board Empowering.
Thames Valley Drainage Board.

ACT PASSED.

Trade Agreement (New Zealand and Germany) Ratification.—Section 1: Act to be read together with and to be deemed part of the Customs Act, 1913. Section 2 ratifies the trade agreement set out in the Appendix to the Act, and notwithstanding s. 10 of the Customs Amendment Act, 1921, any agreement modifying the said trade agreement may be given effect to by Order in Council under that Act; and, notwithstanding s. 5 of the Customs Amendment Act, 1930, or any other amendment, surtax shall not be payable on goods produced or manufactured in Germany and enumerated in the Schedule to the Act. Section 3: By Order in Council, the duties provided for by the said trade agreement may be applied to similar goods produced or manufactured in any other foreign country. Section 4: The date upon which the ratified trade agreement is brought into force shall be notified by the Governor-General by Proclamation.

Rules and Regulations.

Customs Amendment Act, 1921. Extending the duration of the Trade Agreement between the Dominion of Canada and the Dominion of New Zealand. September 29, 1937. No. 239/1937.

Health Act, 1920. Camping-ground Regulations Extension Order, 1937, No. 4. September 21, 1937. No. 240/1937.

Maori Purposes Fund Act, 1934-35. Maori Purposes Fund Regulations, 1937. September 29, 1937. No. 241/1937.

Law Practitioners Act, 1931. Law Practitioners (Victoria Reciprocity) Order, 1937. September 29, 1937. No. 242/1937.

Customs Act, 1913. Customs Export Prohibition Order, 1937, No. 6. October 5, 1937. No. 243/1937.

Weights and Measures Act, 1925. Weights and Measures Regulations, 1926, Amendment No. 5. September 29, 1937, No. 244/1937.

Fisheries Act, 1908. Trout-fishing (Waitaki) Regulations, 1937. September 29, 1937. No. 245/1937.

Fisheries Act, 1908. Trout-fishing (Auckland) Regulations, 1937. September 29, 1937. No. 246/1937.

Fisheries Act, 1908. Trout-fishing (Waimate) Regulations, 1937. September 29, 1937. No. 247/1937.

Fisheries Act, 1908. Trout-fishing (Ashburton) Regulations, 1937. September 29, 1937. No. 248/1937.

Customs Acts Amendment Act, 1931. Customs Primage Order 1937, No. 1. October 11, 1937. No. 249/1937.

Customs Amendment Act, 1921, and Trade Agreement (New Zealand and Germany) Ratification Act, 1937. Customs Agreement Application Order, 1937. October 11, 1937. No. 250/1937.