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"*There is an honourable way of defending the worst of cases.*"

—LORD HANNEN, in *Smith v. Smith, Major, Child, and Rabett* (1882), 7 P.D. 84, 89.

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"Share-hawking" or "Share-pushing."

ALTHOUGH the question of "share-hawking" has been much discussed in legal periodicals since the passing of the Companies Act, 1929 (Eng.), and an inter-Departmental Committee has been investigating it in England, and reported recently, the decision of a Full Court of four Judges in *Calvert v. Mackenzie*, p. 303, *post.*, is apparently the first time any Court has interpreted the "share-pushing" section of any of the Companies Acts in which it appears.

The relevant statutory provision in New Zealand is contained in s. 343 of the Companies Act, 1933*, subs. (2) of which is as follows:—

> (2) It shall not be lawful for any person to go from house to house offering shares for subscription or purchase to the public or any member of the public. In this subsection the expression "house" shall not include an office used for business purposes, or any premises used by the occupier wholly or partly for the purpose of carrying on any trade, business, profession, or calling. Nothing in this subsection shall apply with respect to the offering for subscription of shares in any co-operative dairy company or other co-operative company.

Unless the context otherwise requires, the expression "shares" means the shares of a company, and includes debentures; and a person is not, in relation to a company, to be regarded as not being a member of the public by reason only that he is a holder of shares in the company or a purchaser of goods from the company: s. 343 (1).

The penalty for breach of the section attaches to any person who acts, or incites, causes, or procures, any person to act in contravention of its provisions (subs. (6)); and, upon conviction, the Court may order that any contract made as a result of the "share-hawking" shall be void, and may give such consequential directions as it thinks proper for the repayment of any money or the retransfer of any shares (subs. (8)).

* *Cf.* Companies Act, 1929 (Eng.) s. 356; Companies Act, 1936 (N.S.W.), s. 343; Companies Act, 1931 (Qld.), s. 368; Companies Act, 1934 (South Aust.), ss. 365, 369; Companies Act, 1927 (Tas.), ss. 1–6.

We propose to confine attention to the interpretation put upon the words in subs. (2) of the section. In order to constitute an offence, as the learned Chief Justice pointed out, three factors must co-exist:

> (*a*) There must be a going from house to house. (*b*) The purpose of such going from house to house must be the offering of shares for subscription or purchase. (*c*) Such offer must be an offer to the public or any member of the public.

Their Honours did not express a concluded judgment as to what constitutes "the public or any member of the public," within the meaning of those words as used in the section. His Honour the Chief Justice dealt with the words "offering of shares for subscription or purchase"; but, as his judgment on this point involves an examination of the facts of the case, which are not necessary for the understanding of the Court's interpretation of the phrase "to go from house to house," consideration of these aspects of the judgment may be left for another occasion. As their Honours were agreed that the facts, as found, were insufficient to justify a finding against the appellant in respect of the first ingredient of the offence, indicated by the learned Chief Justice, as quoted above, the Stipendiary Magistrate's conviction of the appellant was quashed.

On the interpretation of going "from house to house," two rival contentions were put forward at the Bar. On the one hand, it was contended that the visits, which the statute prohibits, whether to adjoining houses or not, are indiscriminate visits—that is, visits to a house as such and not to a particular person, or, as was said, "You must go to a house without knowing who is behind the door." On the other hand, it was argued that the words refer to a round of visits to houses, systematic and successive in time.

After referring to the more closely-woven net in s. 343 of the Companies Act, 1936 (N.S.W.), the learned Chief Justice said that he did not suggest that the words "house to house" in the corresponding New Zealand section were to be read literally. He continued:

> "It is not necessary to constitute the offence that the houses should be adjacent or even in proximity. It is a question of fact in each case whether there is such a series of visits to different houses systematic and successive as to time and locality as to constitute a going 'from house to house.'"

Turning to the facts of the appeal before the Court, His Honour held that the visits proved to have been made by the appellant were much too sporadic to constitute a going "from house to house" within a reasonable interpretation of that expression as used in the subsection.

In a joint judgment delivered by Mr. Justice Smith, Their Honours, Mr. Justice Ostler and Mr. Justice Smith, say on this point:

> "For the purposes of s. 343 of our Act, there may be a going from house to house not only when the going is indiscriminate, but when it occurs pursuant to a plan of discrimination, and that a plan may range from, say, a visit to houses of all the persons of a class selected for any reason over any area of the country."

Their Honours qualify this meaning which they attribute to the phrase "to go from house to house" in the subsection, which, they say, implies a systematic visitation:

> "It may still be systematic for the purpose of the subsection although the houses of the select class are separated by the actual distance between them. But the period elapsing between each visit must be short enough to enable the visits to be called a going 'from house to house.' The period elapsing must be such as would enable a reasonable person

to say that the successive calls upon the house constituted a going 'from house to house.' That involves the conclusion that a person making the successive calls must not unduly use the intervening time in making calls at buildings or places other than houses or in attending to other business when he might be calling at houses. In each case, the question is one of fact to be determined in the particular circumstances."

In his judgment, which contains the finding of facts upon which the other members of the Full Court relied, Mr. Justice Kennedy said that the words going "from house to house" do not connote continuous action in the sense of going from house to house with no intermediate house passed over. He said:

"I think that when the phrase is used in the statute, the reference is to repeated or successive action or movement, so that there may be a going from house to house although an adjacent house is passed over. In the statute, it cannot, I think, mean that the going must be from one house to the house actually adjacent."

His Honour added that the provision appears to be penal and remedial: penal in that it prohibits certain conduct, and remedial in that the Legislature gives power to declare certain contracts void and to order repayment of money and retransfer of shares, and this provision would seem designed for the protection of people in certain circumstances. After indicating the classes of persons at whose protection the statute aims, His Honour proceeded:

"What appears to be the purpose of the section would be so obviously defeated, and persons would be solicited with impunity in their homes if going from house to house involves visits on adjoining houses. All a canvasser would need to do to avoid the section would be to call upon every second house. Nor is there involved, so I think, in the phrase as used in the statute, apart from the extent to which that notion may be imported by the words 'the public or any member of the public,' the notion of indiscriminate calls at houses.

"There is in a popular and in a strict sense a going 'from house to house' even though the person called upon at each house is known, expected, or enquired for. There are, however, limits of time and space within which the going would be from house to house, but outside of which—having regard to intermediate activities—one could not properly regard the going as from house to house. There may be a matter of degree."

On a consideration of the facts, and applying their interpretation of the subsection to them, Their Honours were agreed that, there being insufficient proof to sustain the charge, the appeal should be allowed and the conviction quashed.

Consequently, the Court's interpretation of the phrase "to go from house to house" in s. 343 of the Companies Act, 1933, shows that it means a series of visits to houses, not necessarily adjacent or in proximity, but systematic and successive as to time and place; and there may be a going "from house to house" not only where the going is indiscriminate, but also when it occurs pursuant to a plan of discrimination.

Dominion Legal Conference, 1938.

WE draw attention to the announcement by the Conference Committee of the Canterbury District Law Society appearing on another page. Preliminary arrangements are now being made by the Committee, but the success of the Conference will depend not so much on the good work of those gentlemen, as upon the support given by members of the profession and on the practical interest they take in the Conference. We suggest that it is not too early for practitioners to consider their own preliminary arrangements for being in Christchurch during next Easter-week.

Summary of Recent Judgments.

SUPREME COURT. Wellington. 1937. September 7, 8, 30. *Reed, J.*

In re **GREEN (DECEASED), PUBLIC TRUSTEE v. ATTORNEY-GENERAL AND OTHERS.**

Will—Devises and Bequests—Codicil—Residuary Gifts—Construction—Ambiguous Description—"Public Hospitals"—Bed—Direct Gift contained in Direction to sell Estate—Charities sole Beneficiaries—Ascertainment of Date when such Gift Vested—Vesting *a morte testatoris*.

Where, in the absence of any contrary intention expressed by the testator, there is a direction to pay the income of a fund to life tenants and to divide the capital among certain other named and ascertained persons on the death of all life tenants, even though there are no direct words of gift of the life interests or of the capital, the rule is that vesting of the capital takes place *a morte testatoris* in the remaindermen; but, in the present case, the executrix having been given sole control of the testator's investments, and, it resting with her what portion of the testator's estate should ultimately be situated in Australasia, the testator had shown his intention that the estate for distribution determined by locality should be ascertained, and the shares of those entitled to the residuary estate become vested, at the date of the widow's death after which there was no authority granted to vary the investments.

Browne v. Moody, [1936] 2 All E.R. 1695, applied.

Selby v. Whittaker, (1877) 6 Ch.D. 239, considered.

By his will, testator appointed his wife his executrix, with power to vary or transpose investments, and gave her a life interest in his residuary estate. After making provision for the gift over of the whole estate to certain named persons, he devised and bequeathed all his real and personal estate to the Public Trustee, to sell and convert into money, and to divide the net proceeds arising from such sale among "the four public hospitals of the four chief cities" of New Zealand.

By a codicil, testator left the investment of his money "to the wise discretion" of his wife, and, varying the provision made for the named persons, directed that, on the death of his wife and of those persons (who predeceased his wife), that portion of his estate situated in Australasia should be sold and the money so obtained divided "among the whole of the public hospitals of New Zealand *pro rata* per bed."

On originating summons for the construction of the will and codicil, and in particular for interpretation of the words "public hospital" and "bed" where used therein,

Held, 1. That the testator having made his own dictionary, the meaning he had attached to the words "public hospital" in the will must be taken to have the same meaning in the codicil—*viz.*, "A public hospital means a hospital controlled by a Hospital Board and providing for the reception or relief of persons requiring medical or surgical treatment or suffering from any disease whether infectious or not. It does not include (*a*) a charitable institution for the reception or relief of children or aged, infirm, or destitute persons; (*b*) a maternity home; (*c*) a convalescent home; (*d*) a sanatorium, even though these may be controlled by a Hospital Board." 2. That the meaning of "bed" for the purposes of the trust is "an established bed permanently provided for the reception of patients."

Browne v. Moody, [1936] 2 All E.R. 1695, followed.

Selby v. Whittaker, (1877) 6 Ch.D. 239, distinguished.

Counsel: **Carrad,** for the Public Trustee; **Powles,** for the Wellington Hospital Board; **Prendeville,** for the Attorney-General; **J. F. B. Stevenson,** for the Alexandra Home; **Brash,** for the South Otago Hospital Board; **J. S. Hanna,** for the Palmerston North Hospital Board; and **J. F. Thompson,** with him, **Gooding,** for the Wairarapa Hospital Board.

Solicitors: **The Solicitor, Public Trust Office,** Wellington, for the Public Trustee; **Brandon, Ward, Hislop, and Powles,** Wellington, for the Wellington Hospital Board; **Crown Law Office,** Wellington, for the Attorney-General; **Izard, Weston, Stevenson, and Castle,** Wellington, for the Alexandra Home; **Brash and Thompson,** Dunedin, for the South Otago Hospital Board; **Duncan and Hanna,** for the Palmerston North Hospital Board; and **Major and Gooding,** Masterton, for the Wairarapa Hospital Board.

FULL COURT. Wellington. 1937. September 22, 23; October 13. *Myers, C.J. Ostler, J. Smith, J. Kennedy, J.*

CALVERT v. MACKENZIE.

Company Law—Shares and Shareholders—"Share-pushing"—Going "from house to house" "Offering shares for subscription to . . . any member of the public"—Interpretation—Companies Act, 1933, s. 343 (2).

Subsection 2 of s. 343 of the Companies Act, 1933, makes it unlawful for "any person to go from house to house offering shares for subscription or purchase to the public or any member of the public."

The appellant was engaged by the M. Company to submit to the debenture-holders of the I. Company in Otago and Southland, a proposal for the exchange of shares in the former for debentures in the latter company. In the course of a month's trip he visited, at their houses, debenture-holders, including one in Invercargill, three in Riverton, and, later, four in Invercargill. In each case he had visited the debenture-holders called upon previously in connection with their debentures. Appellant was convicted by a Stipendiary Magistrate and fined for a breach of s. 343 (2), he having been charged with going from house to house offering shares for subscription to members of the public.

On appeal from this conviction, after evidence had been heard by *Kennedy*, J., the case was referred by him to the Full Court for determination.

Cooke, K.C. and **Murdoch**, for the appellant; **H. J. Macalister**, and **Mackenzie** for the respondent.

Held, *per totam Curiam*, allowing the appeal and quashing the conviction, That, going "from house to house" means a series of visits to houses, not necessarily adjacent or in proximity, but systemative and successive as to time and place, and that, in the evidence, there was not proved such a course of conduct as could properly be described as going "from house to house."

Per *Ostler*, *Smith*, and *Kennedy*, JJ., That there may be a going "from house to house" not only where the going is indiscriminate, but when it occurs pursuant to a plan of discrimination.

Semble per *Myers*, C.J., *Ostler*, and *Smith*, JJ. The persons called upon and named in the information were members of the public.

Semble, per *Myers*, C.J. The substance of the transaction between the appellant and the persons called upon was the purchase of debentures (in consideration of the allotment of shares) and not the offering of shares for subscription, within the meaning of s. 343 (2).

Direction to the jury in **Rex v. Bridgewater**, [1937] G.L.R. 152, considered.

Solicitors: **Barnett and Murdoch**, Dunedin, for the appellant; **Macalister Bros.**, Invercargill, for the respondent.

FULL COURT. Wellington. 1937. September 13; October 13. *Myers, C.J. Ostler, J. Smith, J. Johnston, J. Fair, J.*

TOBIN v. DORMAN AND ANOTHER.

Animals—Dogs—Person "deemed to be the owner of a dog"—Whether liable for Injury done by Dog, if Real Owner known—Dogs Registration Act, 1908, ss. 27, 28.

The person deemed by s. 28 of the Dogs Registration Act, 1908, for the purpose of the Act, to be the owner of a dog, and liable accordingly, is liable under s. 27 for injury done by the dog, whether the real owner is known or not.

Burchmore v. Rawson, [1932] G.L.R. 283, approved and applied.

Counsel: **Hadfield**, for the appellant; **Young**, for the respondents.

Solicitors: **Hadfield and Peacock**, Wellington, for the appellant; **Young, Courtney, Bennett, and Virtue**, Wellington, for the respondents.

SUPREME COURT. Wellington. 1937. September 15; October 7. *Smith, J.*

HUNTER v. HUNTER AND ANOTHER (No. 2).

Practice—Costs—Hostile-witness Action—Plaintiff succeeding on some and failing on other Grounds of Trustees' Misconduct—Solicitor-and-client Costs and Party-and-party Costs—Nature of Order.

So far as it secured the proper administration of the estate, the action, *Hunter v. Hunter*, reported [1937] N.Z.L.R. 794, partook of the nature of an administration action. The plaintiff having succeeded on thirteen grounds of misconduct and failed on eleven of such grounds, was awarded thirteen twenty-fourths of her solicitor-and-client costs out of the estate.

The rule being that where a trustee is removed for misconduct he does not receive his costs out of the estate but will be ordered to pay the costs of that part of the action which succeeded, the defendants were ordered to pay to the plaintiff thirteen twenty-fourths of her party-and-party costs, ascertained as on a claim for £1,000, the plaintiff to bring such amount into account for the benefit of the estate against the solicitor-and-client costs which she receives from the estate.

Pocock v. Reddington, (1801) 5 Ves. 794, 31 E.R. 862, and **Williams v. Jones**, (1886) 34 Ch.D. 120, applied.

Letterstedt v. Broers, (1884) 9 App. Cas. 371, distinguished.

Re Bridgman, (1860) 8 W.R. 598, and **Re Combs**, (1884) 51 L.T. 45, referred to.

Counsel: **Willis**, for the plaintiff; **Weston**, K.C., and **J. H. Dunn**, for the defendants.

Solicitors: **Nielsen and Willis**, Wellington, for the plaintiff; **Alexander Dunn**, Wellington, for the defendants.

Case Annotation: *Letterstedt v. Broers*, E. and E. Digest, Vol. 43, p. 755, para. 1981; *Pocock v. Reddington*, *ibid.*, p. 949, para. 3885; *Williams v. Jones*, *ibid.*, p. 835, para. 2812; *Re Bridgman*, *ibid.*, para. 2113.

SUPREME COURT. Wellington. 1937. September 9; October 19. *Myers, C.J.*

McDUFF v. REA.

Mortgage—Default—Mortgagor's subsequent tender of Arrears—Default not purged—Mortgagors and Tenants Relief—Jurisdiction—Interpretation of Mortgage as varied by Court of Review—Mortgagors and Lessees Rehabilitation Act, 1936, ss. 75, 82.

Where a mortgagor has made such default in payment of interest as entitles the mortgagee to exercise his remedies, subsequent tender of the arrears prior to the taking of any steps by the mortgagee does not purge the default.

Maclaine v. Gatty, [1921] 1 A.C. 376, applied.

Burne v. Stuart, [1884] N.Z.L.R. 3 S.C. 247; **Ewart v. General Finance Guarantee and Agency Society of Australasia**, (1889) 15 V.L.R. 625, **Ex parte Hassall**, (1871) 10 N.S.W. S.C. R.L. 292; and **Re Bevan and Wellington Trust and Loan Investment Co., Ltd.**, [1920] G.L.R. 79, distinguished.

There is nothing in the Mortgagors and Lessees Rehabilitation Act, 1936, which prevents the Supreme Court from interpreting a mortgage as varied by an order of the Court of Review and from making a declaration as to the rights of the mortgagor thereunder.

Counsel: **F. W. Ongley**, for the plaintiff; **Neal**, for the defendant.

Solicitors: **Ongley, O'Donovan, and Arndt**, Wellington, for the plaintiff; **Levi, Yaldwyn, and Neal**, Wellington, for the defendant.

Case Annotation: *Maclaine v. Gatty*, E. and E. Digest, Vol. 35, p. 298, para. 490.

The Off-side Rule.

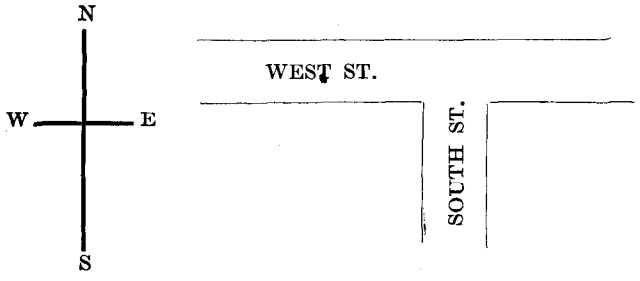
(*Continued from p. 294.*)

3.—The " Course " of the Vehicles.

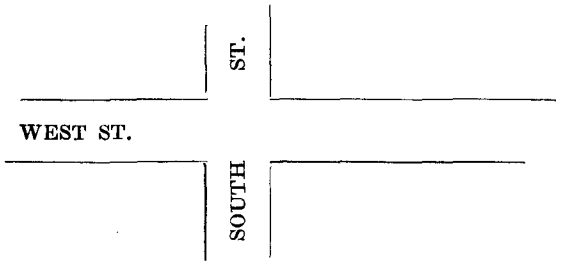
The words " so that if both continued on their course there would be a possibility of a collision " have given rise to conflicting magisterial decisions which have not yet been reconciled by a judgment of the Supreme Court.

There is no doubt about the rights and duties of drivers when their vehicles approach and pass straight over the intersection of two cross roads. The conflict of opinion has arisen in respect of a " T " intersection and also of an " X " intersection if one of the vehicles makes a turn to the right.

(Diagram 1.)



(Diagram 2.)



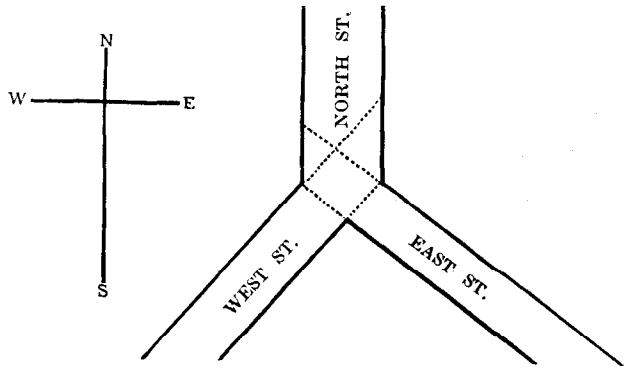
If a vehicle proceeds out of South Street (diagram 1) with the intention of turning to the right and proceeding along West Street, it must maintain its position to its left of the centre-line of South Street until it enters the intersection, and shall then turn into West Street as directly and quickly as it can with safety: Para. (5) of Reg. 14*. What duty is imposed by the off-side rule on the driver of a vehicle proceeding in an easterly direction in West Street on seeing the other vehicle approach the intersection? It has been held that the rule does not apply because the vehicle coming out of South Street will not " continue on its course," but will carry out a manoeuvre in order to join a line of traffic. From a practical standpoint there is much to be said in favour of this view; indeed that is the popularly accepted view. The driver of the vehicle in West Street does not know, when he first sees the other vehicle, whether it will turn to the right or the left on entering the intersection; the vehicle coming out of South Street will be travelling very slowly—or should be—so that its driver may give way to traffic proceeding westwards along West Street. The result has been that the driver of the South Street vehicle has been left to " feel " his way into the east-bound line of traffic in West Street as best he can.

It has also been held that the rule does apply in such a case, and it would seem that that view is justified by the wording of the regulation. An intersection is " that area embraced by the prolongation or connection of the lateral boundary-lines of that portion of the road used or reasonably usable for the time being for vehicular traffic in general." The vehicle coming out of South Street will be on the intersection until its turn to the right is complete—that is, it is crossing the intersection during that period of time.

The conflict of opinion has come about by assuming that a vehicle making a turn does not continue on its course; which postulates that a " course " cannot be continued except in a straight line. That is not so. Paragraph (5) of Reg. 14 specifically lays down the course a vehicle must take when it is about to turn to the right into another street, and it is suggested that this vehicle has the right of road against any vehicle travelling in the direction towards which it is turning. Conversely, a vehicle proceeding along West Street in an easterly direction and turning into South Street would have the right of road against a vehicle travelling along West Street in a westerly direction.

The application of the rule in respect of a vehicle turning to the right at an " X " intersection is exactly the same as at a " T " intersection, but is more generally observed by drivers who naturally assume that any vehicle approaching from the right intends to pass straight across the intersection.

(Diagram 3.)



The practical application of the rule at the intersection of three converging streets is complicated somewhat owing to the difficulty of determining the area of the intersection. The possible total area and the particular areas in respect of each of two intersecting streets are shown in diagram 3.

The following illustrations will demonstrate the application of the rule if three vehicles reach the intersection at the same moment.

Illustration No. 1.

West Street vehicle intends to proceed along North Street, East Street vehicle along West Street, and

* (5) Every driver of a motor-vehicle intending to turn at an intersection from any roadway into another roadway to his right shall, when approaching and turning, maintain his position to his left of the centre-line of the roadway out of which he is turning until he enters the area of the intersection, and shall then turn into the roadway into which he is entering as directly and quickly as he can with safety.

North Street vehicle along East Street. No danger will be present in this case if each vehicle keeps as near to the left or near side of the road as is practicable. The position of each vehicle on reaching the intersection and the known intention of each driver excludes the application of the rule.

Illustration No. 2.

West Street vehicle intends to turn into East Street and the other two to proceed as in illustration No. 1. A difficulty at once arises between North Street and West Street vehicles. At the moment they reach the intersection each is on the other's right; but, as West Street vehicle turns to the right, North Street vehicle is on the left of West Street vehicle which then acquires the right of road.

Illustration No. 3.

West Street vehicle intends to proceed along East Street, East Street vehicle along North Street, and North Street vehicle along East Street. If West Street vehicle proceeds on without stopping, it will pass over the intended course of East Street vehicle with every possibility of colliding with it. So West Street vehicle must give way to East Street vehicle, and North Street vehicle can disregard West Street vehicle because it cannot legally pass in front of East Street vehicle.

Illustration No. 4.

North Street vehicle intends to proceed along West Street and the other two as in illustration No. 3. A serious difficulty now arises. West Street vehicle is required to give way to East Street vehicle, East Street vehicle to North Street vehicle, and North Street vehicle to West Street vehicle. So a time arrives when none of the vehicles can legally move. Would any of the drivers who failed to stop be liable to conviction for a breach of the rule? The answer would be in the negative if the rule applies only when a vehicle is legally approaching from the right. But the situation in this illustration differs from that in *Algie's* case because there the tram-car had the exclusive right of the road against all other vehicles, whether approaching from the right or from the left. It is the observance of the rule in illustration No. 4 that causes or should cause each vehicle to stop, and the failure by any one of the drivers to do so would be a breach of the rule. The primary duty of each driver on reaching the intersection is to see that no vehicle is approaching from the right to which he is required to give way; each driver looks in that direction, and so is unable to see the vehicle which makes it obligatory for the vehicle on his right to stop.

In *Algie's* case the motor-cyclist must be deemed to have known with certainty that no vehicle legally could cross over the intersection in front of the tram-car if by so doing a collision was possible; but in illustration No. 4 none of the drivers can be deemed to have had any knowledge of the approach of the intervening third vehicle at the time their obligations to give way respectively arose.

In what order of precedence may the three vehicles proceed on their respective ways after they have been stopped in observance of the rule? The rule itself does not provide an answer to the question. Nor should it. It has saved the three vehicles or at least two of them from being involved in a collision, and the drivers may reasonably be left to settle their order of departure from the intersection.

The interesting question, "Does the breach of the rule, *per se*, give rise to an action for damages if a collision occurs on an intersection?" will be discussed in the next and concluding part of this article.

Dominion Legal Conference, 1938.

Preliminary Announcement.

The Canterbury District Law Society, which will be the host of the next Dominion Conference, has already commenced the task of making arrangements for next Easter's gathering. The Conference Committee is under the chairmanship of Mr. J. D. Hutchison, of the Canterbury Law Society, and its secretary is Mr. V. G. Spiller.

The following is taken from the circular issued by the Committee to all District Law Societies.

The Council of the Canterbury District Law Society invites all members of District Law Societies to the Dominion Legal Conference to be held in Christchurch on April 20, 21, and 22, being the Wednesday, Thursday, and Friday after Easter next. The Conference will follow the general lines of previous conferences, but, in order to facilitate the preparation of the time-table in detail, District Societies and members of the Profession wishing to submit remits for consideration, or make any suggestions as to papers to be read, should communicate as soon as possible with the secretaries of their local societies, who, in turn, are asked to forward to the Conference Secretary at an early date, all such remits and suggestions. It is requested that as far as possible all remits and suggestions for papers be in the hands of the Conference Secretary by December 1, 1937; the Conference Committee will then make the necessary selection.

It will also be of considerable assistance if those members of the Profession who will be attending the Conference will notify the Conference Secretary at an early date. His address is Box 189, Christchurch.

Twenty-five Years Ago.

Some Notable New King's Counsel.

The ceremony of swearing-in the new King's Counsel took place in the Supreme Court, Wellington, yesterday morning, when the building was crowded. The Chief Justice (Sir Robert Stout) and Mr. Justice Edwards were on the bench, and the barristers lately honoured sat in the K.C.'s bench with the Attorney-General (the Hon. A. L. Herdman). The order of precedence was: Solicitor-General (Mr. J. W. Salmond), Mr. A. Gray, and Mr. C. B. Morison. Auckland barristers who have been appointed K.C.'s are Mr. J. R. Reed and Mr. F. Earl.

(From *The Dominion*, November 8, 1912.)

New Zealand Law Revision Committee.

October Meeting.

A meeting of the New Zealand Law Revision Committee was held at Wellington on October 29. The Attorney-General (the Hon. H. G. R. Mason) was in the chair. The members present were the Solicitor-General (Mr. H. H. Cornish, K.C.), the Under-Secretary for Justice (Mr. B. L. Dallard), and Messrs. W. J. Sim, K. M. Gresson, and A. C. Stephens.

NEW BUSINESS: STATUTORY AMENDMENTS.

Crimes Act, 1908.—Sections 442 to 448 deal with appeals. It was suggested that the Act should be amended in order to confer on the Chief Justice and Justices of the Supreme Court the powers and authorities given in England to the Lord Chief Justice and the Judges of the King's Bench Division of the High Court of Justice by s. 1 of the Criminal Appeal Act, 1907: *4 Halsbury's Statutes of England*, 725.

Such an amendment would not disturb the present position in which criminal appeals are heard by one or other division of the Court of Appeal; but it would provide the increased authority given by the English statute, and adopt the practice therein set out. The effect would be that our statutory provisions for criminal appeals would conform with the present law and practice in England, and judgments of the English Court of Appeal would become relevant authority in criminal appeals in New Zealand.

The Solicitor-General and the Under-Secretary for Justice, in conjunction with Mr. H. F. O'Leary, K.C., were asked to consult the Rt. Hon. the Chief Justice and the Hon. Sir John Reed on this matter, and to report to the Committee thereon.

Destitute Persons Act, 1910.—Amendment of s. 43 was suggested to provide for the enforcement of attachment orders for maintenance against employees of the Crown, as at present the Crown is not bound by the statute.

This matter was referred to the Solicitor-General and the Under-Secretary for Justice to obtain the views of the Treasury and other necessary Government officers, and report to the Committee.

Divorce and Matrimonial Causes Act, 1928.—It was suggested to the Committee that provision should be made for the retention of legitimacy by children born to the parties to a marriage that is annulled subsequent to their birth. At present, a decree of nullity bastardizes the offspring of an annulled marriage, from the date of the annulment. The principle has been adopted in regard to the children of marriages annulled on certain, but not all, grounds of annulment by the Matrimonial Causes Act, 1937 (Eng.).

Mr. T. P. Cleary was asked to report.

It was suggested to the Committee that a declaratory provision should be enacted to declare void and unenforceable any contract or promise to marry made by a married person before a decree absolute is sealed: this would nullify the majority verdict of the House of Lords in *Fender v. Mildmay*, [1937] 3 All E.R. 402, and restore the position established in New Zealand in *Lambert v. Dillon*, [1933] N.Z.L.R. 1059.

Messrs. J. M. Paterson, J. B. Thompson, and J. C. Mouat were asked to report on this matter.

Land Transfer Act, 1915.—It had been suggested that provision be made to abrogate the decision of the majority of the Court of Appeal in *Boyd v. Mayor, &c., of Wellington*, [1924] N.Z.L.R. 1174, from which Stringer and Salmond, JJ., dissented. The action was subsequently settled, such settlement being validated by s. 113 of the Reserves and Other Lands Disposal and Public Bodies Empowering Act, 1924.

Mr. K. M. Gresson and Mr. E. P. Wills were asked to report.

Mining Act, 1926.—It had been suggested that the appeal procedure under this statute should be simplified and should, as far as practicable, be brought into line with the appeal procedure under the Magistrates' Courts Act, 1928. In particular, s. 368 (c) was indicated as requiring amendment to obviate the cumbersome requirements as to the documents to be lodged in the appellate Court, when giving notice of appeal and lodging security. It was suggested that the former procedure regarding appeals should be taken into consideration when the amendment of the present statute is under notice.

Mr. H. J. Dixon, S.M., and Mr. F. B. Adams were asked to supply a report to the Committee.

Property Law Act, 1908.—It was suggested that an amendment to this Act should be enacted to reproduce s. 101 (2) of the Law of Property Act, 1925 (Eng.): *15 Halsbury's Complete Statutes of England*, 285. This would obviate the transferring of the fee-simple to the purchaser, and obtaining from him a grant of easement in gross to the mortgagee, which is the cumbersome and expensive method resorted to in New Zealand: for the English practice since 1925, see *23 Halsbury's Laws of England*, 2nd ed. 439, para. 647.

This matter was referred to Messrs. C. H. Weston, K.C., E. F. Hadfield, and R. H. Webb, for a report.

Public Works Act, 1928.—(1) Section 45 of the Public Works Act, 1928, provides that no claim for compensation under the statute may be made in respect of damage done after a period of twelve months after the execution of the work out of which such claim has arisen. For the purposes of claims for injurious affection, the term "execution of the work" means the completion of any portion of a work where such portion of itself (and without reference to any other part of the work) causes the damage.

It was suggested that this section should be amended, for the allowance of claims to be made for injurious affection first arising after the expiry of twelve months: for an instance of this, see *Lyttle v. Hastings Borough*, [1917] N.Z.L.R. 910, and see also the remarks of Mr. Justice Edwards as to the need for amendment of this drastic limitation of claims: *Palmerston North Borough v. Fitt*, (1901) 20 N.Z.L.R. 396, 405, and of Sir Robert Stout, C.J., in *Farelly v. Pahiatua County Council*, (1903) 22 N.Z.L.R. 683, 684.

(2) Section 84 of the Public Works Act, 1928, provides that, if the compensation awarded does not exceed one-half of the amount claimed, the claimant is disentitled to recover any costs. This is different from the English practice and the Australian practice with either of which, it was suggested, the New Zealand practice should be made to conform, in the interests of justice to claimants. For a general review of the present position, see (*1934*) *10 N.Z.L.J.* 216.

A Committee, consisting of Messrs. John O'Shea, E. K. Kirkcaldie, and C. H. Taylor, was asked to report on both these matters.

NEW BUSINESS: COMMON-LAW MATTERS.

Contracts of Service: Work done on Agreement to make Testamentary Provision as Remuneration.—When work has been done on the understanding that it is to be remunerated by a legacy, a claim is not maintainable against the estate of the person for whom the services were rendered, if no testamentary provision has been made in fulfilment of the contract or promise: see *14 Halsbury's Laws of England*, 2nd ed. 407, para. 764.

It was suggested to the Committee that this principle should be modified by statute, as being inequitable: see the observation of Mr. Justice Ostler in *Sutherland v. Towle*, [1937] G.L.R. 509, 511.

Mr. E. P. Hay was asked to report.

CONSIDERATION OF REPORTS.

The Committee then proceeded to consider the reports on the various matters it had referred to co-opted members: for details of the matters submitted, see p. 232, *ante*.

Magistrates' Courts Act, 1928.—A comprehensive report by Mr. H. Jenner Wily was considered. It was decided that the existing rights of appeal be not altered, but that rules be drafted to provide for procedure in accordance with rules under the County Courts (Amendment) Act, 1934 (Eng.), and the whole be submitted for the Committee's consideration.

It was resolved that rules be drafted in accordance with Mr. Wily's report concerning security for appeals, and for procedure in respect of appeals by poor persons, for submission to the Committee.

It was further resolved that the preparation of a Code for the Magistrates' Courts be undertaken.

Marriage Amendment Act, 1933.—Mr. T. P. Cleary's report was considered, and his recommendation for amendment of the statute was adopted, and referred to the Parliamentary Law Draftsman.

Landlord and Tenant Act, 1927 (Eng.).—A comprehensive report by Mr. S. I. Goodall was considered, and his recommendation as to the consolidation of the statute law relating to landlord and tenant in one statute, with the adapting of specified sections from the English statute, was adopted. It was decided to ask Mr. Goodall to prepare a memorandum of instructions to assist the Parliamentary Law Draftsman in the preparation of a Bill on the lines of the recommendations in the report. The draft Bill is to be submitted to the Committee for consideration.

Wages Protection and Contractors' Liens Act, 1908.—After consideration of a report on amendments to the statute supplied by Mr. C. H. Weston, K.C., it was decided to ask Mr. Weston to amplify his valuable report by suggesting a scheme for the recasting of the Act on the lines of his recommendations, so that a draft Bill could be put in hand.

Rule in Victorian Railway Commissioners v. Coultas.—After consideration of a comprehensive report by Dr. A. L. Haslam and Mr. L. J. Hensley, it was decided to instruct the Law Draftsman to prepare a declaratory provision to the effect that in any action for injury to the person, whether founded on contract or tort or otherwise, a party shall not be debarred from recovering damages merely because the injury complained of arose wholly or in part from mental or nervous shock.

Apportionment between Capital and Income on Sale of Stock, Bonds, &c.—A report by Mr. G. G. Rose was considered and adopted, and was referred to the Parliamentary Law Draftsman for preparation of legislation in terms suggested by Mr. Rose.

Protection of Purchasers of Land.—A report by Messrs. D. R. Hoggard and D. Perry, with draft provisions for overcoming the mischief complained of, was considered and adopted; and it was then referred to the Parliamentary Law Draftsman.

Gaming Act, 1908.—Consideration of a report by the Under-Secretary for Justice and Mr. W. H. Cunningham was deferred for detailed examination by members of the Committee.

Justices of the Peace Act, 1928.—A report by the Solicitor-General and the Under-Secretary for Justice was discussed, and deferred to allow further consideration by members of the Committee before the next meeting.

THANKS TO CO-OPTED MEMBERS.

The Committee then passed a formal resolution of thanks to all those members of the profession who had been good enough to forward reports for the Committee's assistance, these, it appeared to the Committee, provided a splendid manifestation of public service. It was decided that letters be sent thanking those gentlemen for the excellent work done by them, which the Committee greatly appreciated.

The date of the next meeting of the Committee was fixed for Friday, February 25, 1938.

Sir Holman Gregory's Successor.—An event of the vacation was the retirement of Sir Holman Gregory from the Recordership of London and the election in his stead of Mr. Gerald Dodson, who has been a Judge of the Mayor's and City of London Court, with County Court status. Mr. Dodson, who was called in 1907, is very young for so great a post—a judicial plum regarded by many well-informed persons as the most satisfactory in all England, with the exception of the Lord Chief Justiceship and the Mastership of the Rolls. In point of precedence it does not rank so high as a Judgeship of the High Court; but there are good points other than the barren joys of precedence.

Mr. Dodson's appointment is endorsed and approved by Bench, Bar and solicitors, for he is courteous, urbane, a personality strong and pleasant; and on his merits is a lawyer and a Judge greatly esteemed. His advancement was wholly merited, but it came more swiftly than was forseen. His reign as Recorder should be long and happy.

Sir Holman shows no sign of age or infirmity; and I have been credibly informed that he is stronger and in better health than he was ten years ago, when he was troubled by a complaint which was wholly cured before he reached the nominal age of 70. It may be, as was said of the L.C.J. not long ago, that his prevailing form and abounding youth is partly, if not wholly, due to matrimonial causes of the kind not promoted by Mr. Herbert's new Act. Sir Holman now presides as Chairman of the Basque Children Repatriation Commission, with Mr. Theobald Mathew and Mr. R. R. Ludlow to assist him. They have a ticklish task ahead of them; and many mistakes to rectify in this troubled field of international impulse.—APTERYX.

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. 91. Appeal from a decision of the Wellington City Adjustment Commission dismissing appellant's application for adjustment of liability, in respect of a lease of premises situated in the City of Wellington by it as tenant to the G. C. B. Company, on the ground that appellant's admitted ability to pay the rent in regard to which adjustment was sought rendered adjustment unnecessary.

Appellant's application was accompanied by a statement of assets and liabilities as at September 30, 1936. In that statement appellant showed a net surplus of assets over liabilities of over £160,000, and a holding of leasehold and freehold properties of a value of approximately £115,000, subject to mortgages amounting to approximately no more than £45,000.

Appellant was admittedly an important and wealthy corporation, carrying on a large business throughout New Zealand, in such a sound financial position that no question of its ability to meet its obligations in any direction could arise. Appellant said, however, that the lease in respect of which it claimed a reduction of rent was one to which the Mortgagors and Lessees Rehabilitation Act, 1936, applied; that, on application by it to a Commission, the Commission is bound by the terms of the statute to proceed to find the basic rent; and that, if the rent so found be less than that payable under the lease, the Commission is likewise bound to reduce the rent payable under the lease to the basic rent, unless other relevant considerations would make such reduction inequitable. Appellant further alleged that no such relevant circumstances rendering the reduction inequitable were present, and that the Commission was wrong, as a matter of law, in holding that admitted ability to pay the rent reserved under the lease estopped its right to the reduction claimed.

It was admitted that the lease in question was one to which the Act applied, and appellant's contention was that once that fact was established, applicant was entitled to demand that the Commission should proceed to adjust its liability under the lease. In support of this contention, s. 37 (1), which provides that "subject to the provision of this Act, the Adjustment Commission *shall* proceed at the hearing of the application to adjust the liabilities of the applicant as hereinafter provided . . . ," was relied on.

Held, dismissing the appeal, That, on the construction of the statute, the purpose of the Mortgagors and Lessees Rehabilitation Act, 1936, is to alleviate hardship caused by economic circumstances; and an application for adjustment is provided for those who want to retain their properties and, for that purpose, need adjustment of their liabilities.

Consequently, an applicant admittedly able to meet his obligations under a mortgage or a lease is estopped from applying for reduction thereof.

CASE No. 92. Appeal by a Commissioner of Crown Lands against the order of the Adjustment Commission. The facts surrounding the conduct of the proceedings relative to the application for adjustment were unusual, and for that reason it is necessary to set them out, in a summarized form, more fully than might otherwise have been the case.

One C.T.J., hereinafter called "the lessee," was the holder of certain Crown leasehold lands in Canterbury which were subject to three mortgages. The third mortgage, and also a security over his livestock, were held by a stock and station agency firm, hereinafter called "the stock mortgagee." The lease had an unexpired term of about ten years. The lessee had been for a long period in default in respect of the rent payable under his lease from the Crown and for a number of years the stock-mortgagee had been making periodical payments on account of the annual rent but at a lower rate than that prescribed by the lease.

On February 1, 1937, the Crown filed an application as lessor, pursuant to s. 30 of the Act, to have the liabilities of the lessee adjusted. The lessee had died shortly before this application was filed and in the application form the lessee was described as "the estate of C.T.J." The effect of filing the application was to prevent, except with the leave of the Court, any creditor, including the stock-mortgagee, realizing or taking steps to enforce realization of any of the assets of lessee whether under security to such creditor or not: see s. 55.

On April 19, 1937, the Crown filed an application to withdraw its application for an adjustment of the liabilities of the lessee, and on April 26, 1937, a notice was filed by the stock-mortgagee objecting to such application for withdrawal upon the grounds, *inter alia*, (*a*) that the withdrawal of the application for an adjustment would prevent the matter being dealt with by the Adjustment Commission and the Court of Review; (*b*) that the stock-mortgagee as a creditor, having received notice of the application for adjustment made by the Crown to have the liabilities of the estate adjusted, would be precluded from filing any application for adjustment as the time for making such application was past. The application for withdrawal was heard by this Court on May 18, 1937, and was dismissed. It was stated at the hearing that, had the Crown not filed an application for adjustment, the stock-mortgagee, which, as already stated, was also third mortgagee of the lease, would probably have done so and that, if the Crown were now allowed to withdraw, it would leave the stock-mortgagee without any remedy against the estate of the lessee owing to the expiration of the time within which adjustments could be applied for.

The application for adjustment was heard by the Adjustment Commission on June 24, 1937, when evidence was taken and the submissions of counsel for the Crown and for the stock-mortgagee were heard. No other parties were present or represented at the hearing. The Commission made an order, dated June 24, 1937, to the effect that provided the stock-

* *Continued from p. 297.*

mortgagee paid to the Crown the sum of £440 as rent from February 28, 1936, to February 28, 1937, and two further sums of £220 each on September 1, 1937, and February 28, 1938, respectively (or before removal of any live-stock from the land), as rent up to February 28, 1938, it should have the right to occupy and enjoy the said lands until February 28, 1938, to enable it to muster and take off the stock and implements and, if possible, to sell the goodwill of the lease and improvements at a rent to be mutually agreed upon between it and the Crown. The Commission remitted all arrears of rent. From this order the Crown appealed, the notice of appeal being dated July 20, 1937.

The above facts were all admitted, except that the stock-mortgagee did not accept the role of mortgagee in possession but merely acknowledged the fact that the live-stock under its security were depastured on the leasehold land and that it had interested itself, subject to agreement with the Crown, but so far without success, in the matter of endeavouring to procure a new lessee.

On the hearing of the appeal it was submitted by counsel for the Crown that the only parties concerned were (*a*) the Crown, as lessor, which filed the application for adjustment and did not now wish to proceed with it; (*b*) the lessee, who had died, and whose estate had no financial or active interest in the property and whose trustees had not even taken probate; and (*c*) the stock-mortgagee, which was the firm which had financed the lessee as regards this property and who was mortgagee in possession.

On behalf of the stock-mortgagee it was admitted that the lessee's trustees had no equity in the property and that the stock-mortgagees were tacitly, but not formally, mortgagees in possession. Counsel for the stock-mortgagees submitted that the filing of the application for adjustment in February, 1937, had precluded the stock-mortgagee from removing or realizing the stock subject to its security and that when the notice of withdrawal of the application was filed in April it was too late in the season to remove and dispose of the stock except at a large sacrifice in value; that the result the Crown was seeking under this appeal was exactly the same as it had sought under its notice of withdrawal and that the Court had already dealt with the matter when it dismissed the application for withdrawal. Counsel further submitted that the Act, though primarily for the relief of mortgagors and lessees, also considered the interests of creditors; ss. 36 (2), 37 (2), and 49 (3); and that, in view of the special circumstances of this case the order of the Commission was fair and equitable and should not be disturbed.

Held, 1. That, owing to the peculiar circumstances of this case and in view of the various applications filed by the lessor, the stock-mortgagee was entitled to reasonable consideration so far as such consideration can be afforded consistently with the objects or purposes of the Act.

2. That the Crown was entitled to take possession of the land and determine the present lease immediately after February 28, 1938; and that the words "and if possible of selling the goodwill of the lease and improvements thereto at a rent to be mutually agreed upon between it and the Commissioner of Crown Lands" must also be deleted from para. 1 of the Commission's order.

In the course of its judgment, the Court said:

This application for adjustment was made in respect of a leasehold farming property and it is true, as submitted by the Crown, that in such cases the general purpose of the Act, as set out in s. 2 (1), is to retain farmers in the use and occupation of their farms as efficient producers. It is also true that the lessee in this case was dead and that his trustees were of the opinion that there was no possible benefit likely to accrue to his estate by retaining the leasehold property and they had no desire to retain, use, or occupy the property.

As already stated, the Crown, as lessor, filed the application for adjustment of the lessee's liabilities, and the effect of such application is to entitle all creditors, whether secured or unsecured, to appear at the hearing and make representation for consideration of and adjudication upon their respective claims. Once an application for adjustment had been filed by one creditor (the lessor) it became unnecessary for other creditors to file applications as their position could, or would, be dealt with on the application already filed. Had the Crown not filed its application the stock-mortgagee could have filed one and the effect of such filing would have entitled it to be heard and its position as a secured creditor given due consideration.

The stock-mortgagee filed an objection to the withdrawal of the application for adjustment and the Court considers it had reasonable grounds for so doing as it was then too late for it to file any application for adjustment and the season was by that time too far advanced for it to muster the sheep comprised in its security and to dispose of them except at a heavy loss compared with the prices which would have been obtainable on February 1, the date of filing lessor's application for adjustment. Further, as already stated, the stock-mortgagee was entitled to be heard on its own behalf as a creditor and it would have lost such right had it not objected to the withdrawal. Further, had the stock-mortgagee not objected to the withdrawal of the application, it would, nevertheless, hardly have felt itself free to muster and remove from the leasehold property—the rent of which was heavily in arrears—the live-stock under its security for the purposes of sale. The stock-mortgagee could not foretell what the decision of the Court would be as regards the application for withdrawal and, apart from that, the effect of filing an application is so far reaching and so many interests may become thereby involved that, notwithstanding the decision of the trustees to take no action, it cannot be said that the stock-mortgagee was not entitled to act as it did.

Though the primary object of the Act is to retain efficient farmers upon their farms it also provides that justice shall be done as between mortgagors and their creditors and as between the various classes of creditors. In the opinion of the Court the Adjustment Commission was fully justified in giving to the stock-mortgagee a reasonable opportunity of carrying over on the property, through the winter, the live-stock under its security to enable it to realize such stock at the proper season without undue loss.

The Commission prescribed the amount of rent to be paid by the stock-mortgagee for this accommodation and the Court has heard nothing to make it consider such rent to be inadequate. Commissions are given wide powers under ss. 37 (2) and 49 (3) to make such orders as they think fit with regard to the protection of creditors whether or not an applicant continues in the use and occupation of his property. It is true that in the present case the applicant is the lessor and not the lessee but it is obvious that it is immaterial as to who made the actual application and that the general purpose and trend of the Act is that once an application has been filed the benefits thereof enure for all persons interested. To hold otherwise would result in the creation of an unjust and absurd position. In fact, counsel for the Crown stated to the Commission that the application had been filed by the Crown for the benefit of the lessee.

So far, then, as the provisions of the right of occupation of the land by the stock-mortgagee until February 28, 1938, upon payment of the stipulated sums of money and the remission of the arrears of rent owing by the lessee are concerned the Court does not propose to interfere with the Commission's order. The Court does not consider, however, that the stock-mortgagee (which is also, as previously stated third mortgagee of the lease) has any claim to have the lease preserved for the unexpired term of ten years for its benefit. The farmer-lessee has died, his trustees disclaim all interest in the property and the owner of the land, the Crown desires to obtain possession. Under these circumstances any continuance of the lease would be for the mortgagee whose rights clearly must be subservient to those of the lessor.

London Letter

By Air Mail. Strand, London, W.C. 2,
October 24, 1937.

My dear EnZ-ers,

We had gloriously fine weather for the closing days of the Vacation, which is now as if it had never been: as is the way of all holidays. Without claiming any expert, or exhaustive, knowledge and relying (as one so often does) on hearsay, I can tell you this much, of all the eminent lawyers, Judges, barristers, and solicitors during the Long Vacation, that they, or some or all of them, travelled further and more luxuriously than their predecessors did in the closing days of the 19th century. Some of them were seen in Darkest Africa; others in the United States; one at least in South America; several in the West Indies; two not far from the pirate zone in the Eastern Mediterranean; three in Scandinavia; a fair number in Hungary; many in Rome itself; and not a few in the Highlands of Scotland.

Further: as, to quote the true words of Mr. Whiteside at the Law Society's meeting at Exeter, "there is and should be a time lag between changes in behaviour and changes in the law," so was there a time lag between laymen's and lawyers' adoption of the Holiday Ocean Cruise. The lag had elapsed this year, and you would have found (and welcomed) on almost any big cruising liner a legal representative.

Of the Courts and Judges.—On Tuesday, October 12 last past, the Michaelmas term opened, although, in accordance with precedent, no work worthy of the name was performed on that day. Bench and Bar assembled and met together for worship in Westminster Abbey and Westminster Cathedral. Thereafter they moved in carriages and taxi-cabs to the Royal Courts of Justice, and the Judges' procession through the echoing Hall took place without mishap.

At Westminster the weather, which, during the closing days of the Long Vacation, had been so good, was gloomy with threat of rain; and the rumour that the Lord Chancellor's Breakfast was that day to be restored was found to be almost wholly unfounded. It was ascertained, however, that a little wine was available to fortify any who might need or desire it for the better endurance of the weather, the ceremonial, and the emotional strain of meeting old friends and colleagues.

As a footnote, as I think you may be interested to know it (I didn't until the other day), the present Long Vacation came into being only thirty years ago, when August was wholly excluded from the term of Trinity. The date was changed by an Order in Council of March 1, 1907, which declared that His Majesty the King, having been advised by the Judges of the Supreme Court duly assembled that the Long Vacation should both commence and terminate twelve days earlier, had been pleased to order "that the Trinity sittings of the Court of Appeal and of the High Court of Justice shall for the future terminate on July 31, and that the Long Vacation in the several courts and offices of the Supreme Court shall for all purposes commence on August 1," and "that the Michaelmas sittings of the same courts respectively shall for the future commence on October 12, and that the Long Vacation in the several courts and offices of the Supreme Court shall for all purposes terminate on October 11."

A Business Manager for the Courts.—The legal year has commenced without any changes among the Judges, and the number of Judges in the King's Bench Division stands at the normal figure of eighteen, including the Lord Chief Justice. The number cannot be increased without a resolution of both Houses of Parliament, but, even allowing for the saving of time which it may be hoped will result from the taking of official shorthand notes of evidence, it is unlikely that the term will get far without the Courts becoming seriously congested. On the representations of the Lord Chancellor and the Attorney-General, the necessary Parliamentary authority for an increase of Judges can doubtless be obtained, and no harm will be done if the discussions on the resolutions raise the question whether the system of hearing causes is business-like and effective. The suggestion of the King's Bench Commission that there should be a business manager, to arrange the cause lists, and keep them from the occasional hiatus that we experience, has not been very enthusiastically received; and the existing powers in this respect should be sufficient to secure regularity and despatch. It is no easy task to reconcile the demands of the business in the Courts in the Strand with those of the country in the various Circuits. Some want the jurisdiction of the County Courts extended, so that arrears can be kept down in the City Courts in the cases which must, in any event, come before them. At the opening of the Courts there were 268 appeals set down (37 in equity, 97 common law, and 67 from County Courts, the remainder being a mixed bag of Admiralty, Revenue, and Workers' Compensation appeals). The number of cases awaiting the Courts of first instance are 3,398, an increase of 993 over last year. As the Circuits take a number of Judges from the Divisional Courts out of town for most of the term, Something must be Done.

More Judges.—The solution seems to lie in the direction of the appointment of "additional" Judges in the immediate future. (Usually at the end of the Long Vacation there are rumours of impending judicial resignations; but this year the crop has completely failed. A year ago, when the King's Bench arrears had to all intents and purposes been wiped out by the concentrated efforts and ability in combination of the L.C.J. and his colleagues, the fear was that eighteen Judges in that Division and three in the Probate, Divorce, and Admiralty Division might appear to be too many, and that there would be some difficulty in opposing a further reduction in the judicial strength.

The present position is healthier and better; and while the Judges have shown no signs of slackness or case-weariness, the arrears have, despite their desires and efforts, mounted to the present high level; showing that the confidence of the public and the old-time faith in litigation is being restored. (Dignified applause from the direction of the Temple.) The proposed increase in the Judiciary is not by any means due only to the growing confidence of divorce petitioners and to fears or hopes of what may betide when Mr. Herbert's Enabling Act comes into force on January 1. The present arrears have grown under existing conditions, and the growth is not by any means confined to any one Division of the High Court of Justice.

The professional outlook is very good indeed, thank you. Work has leapt upwards in rough relativity to the country's increasing prosperity. One may say, indeed, that the new legal year begins in a pre-War atmosphere of optimism, which the almost pre-War proportions of arrears in the Courts in no wise diminish.

The late Mr. Justice Swift.—News of the death of Swift, J., on Tuesday last, at the age of sixty-three, after seventeen years on the Bench, has filled the legal world with sorrow and dismay. A Judge of outstanding merit, a man of courage, common sense, good humour, and great character, he holds a unique place in the hearts of all who knew him or ever appeared before him. At the time of his death, he was the senior Judge of the King's Bench Division. The son of a member of the Northern Circuit, he was a Lancashire man, like the Lord Chief Justice and many other lawyers who have attained great reputation and position. Rigby Swift joined the Northern Circuit and took silk in 1912. Three years later he was appointed Recorder of Wigan, and held this office till he was raised to the Bench in 1920. Meanwhile he had been, from 1910 to 1918, Conservative member for his native town, St. Helens, and, from 1916, a Bencher of Lincoln's Inn. At the Bar he established a reputation as a sound lawyer and successful advocate, and on the Bench he proved himself an able and distinguished Judge. Judicial independence was in his nature, and he did not refrain from expressing strong opinions when the law which he had to administer seemed opposed to reason and justice. He conducted many important criminal trials; and, though he was firm in the repression of crime, he had the sympathy which makes a just and humane Judge: "I have been an associate of criminals all my life, and I know that there is a great deal of good in the very worst of them," he once said. In summing up to a jury he had the valuable accomplishment of clear statement and helpful arrangement. In 1923 he was chairman of one of numerous committees which have endeavoured to make the Circuit system answer modern requirements, but his recommendation that the Assizes should no longer be based on county divisions still awaits adoption. In his seventeen years on the Bench Mr. Justice Swift well maintained its high character; the country owes gratitude to him for able and faithful service; and he will not be forgotten in the roll of English Judges.

Negligence.—The Lord Chief Justice delivered an appropriate and instructive address last week on the much-discussed subject of negligence and contributory negligence. Lord Hewart spoke just before the commencement of term when a host of plaintiffs claiming damages for negligence and a host of defendants alleging contributory negligence are about to enter the Courts. The address was also appropriate in that it was delivered at the Insurance Institute of London, and surely no people are more concerned in the matter than the great body of insurers who have in the end, especially in the case of motor-car insurance, to foot the bill. The learned Lord Chief Justice spoke, I think, with the decision of the House of Lords in *Swadling v. Cooper*, [1931] A.C. 1, prominently in his mind. That decision has met with some criticism on the ground that it paid too little respect to the earlier decision of the House of Lords in *Radley v. L.S.W. Rly.* (1876) App. Cas.754. On the whole it gave a practical rule. We have still some feeling that the final question should not be "Whose fault was it?" but "Who had the last clear chance to avoid the damage?" whatever it be. But that old question is now out of date in these parts, and Lord Hewart does not encourage its revival.

The Bank Clerk's Duty.—Last week Mr. Justice Goddard had a case of a careless bank clerk before him, and the learned Judge came to the conclusion that on the whole the clerk's action or inaction fell short of what was, in the circumstances, proper: *Motor Traders Guarantee Corporation v. Midland Bank*, [1937] 4 All E.R. 90. A dishonest person who was, it seems, in treaty with the plaintiffs, the drawers of a cheque, for financing a hire-purchase agreement, received the cheque from them. This cheque was made payable to the owners of the article to be hire-purchased—a motor-car. The dishonest person either forged or procured the forgery of the payees' endorsement and handed in the cheque to the defendants' clerk to be credited to his own account. The clerk saw, of course, that it was a "third party" cheque, and asked how the dishonest person came to be paying it in to himself. He received an explanation which he deemed satisfactory and did not take the course which his instructions direct—namely, refer the matter to the manager. Had the dishonest person had an impeccable "banking history," as Mr. Justice Goddard called it, this decision would not have sufficed to fix the bank with negligence. But his banking history was, to put it no higher, tempestuous, with a story of over thirty dishonoured cheques in less than two years. Bank clerks as a rule are scrupulously careful, and no absolute rule or standard can be laid down; but here was a case where something more should have been done.

Shorthand Notetaking in the Courts.—The introduction of a general system of shorthand notes is an interesting event marking the beginning of the legal year. The system is in operation already in the Probate Divorce and Admiralty Division, and its extension to actions in the Chancery and King's Bench Divisions was favoured by the King's Bench Commission, subject to it being found practicable to make the necessary arrangements. The system was strongly supported by the Lord Chief Justice in his evidence before the Commission, and he suggested that it would be as good as the addition of another Judge. In fact, there appears to have been no difficulty in making the necessary arrangements. Well-known firms have been largely employed by parties to an action, and their services will now be engaged for the extended work of taking shorthand notes in all actions. But it is only the notes which will be taken at the public expense—in fact, we presume they will be paid for out of the surplus of the judicature fees. The costs of transcripts, if required, will be costs in the cause. The taking of the official notes will not relieve the Judges altogether of taking notes. These they will require for their own use for reference as a case proceeds, and for summing-up to the jury in jury cases, or to themselves when the Judge is both judge and jury.

Saturday Morning Work.—Letters from your Dominion tell me that you are divided on the merits or demerits of Saturday morning closing. And you pride yourselves on leading the world in industrial matters! Well, you are well behind the times in this, for, over here Saturday morning work was once suggested, but received short shrift: the old idea of making the Judges (as well as counsel, solicitors, and others) work on Saturdays, for various good reasons, proved impracticable. So far as the Saturday abstention from work is concerned, various reasons have been given for it, but the true explanation has not hitherto been published. The truth is that the non-judicial staff of the Royal Courts of Justice would not have it, and the officers of the Court, to say nothing of the busy barristers, would not agree to it. And even the litigants themselves would not readily give up to litigation a day that was meant for football, golf, and duties "around the home."

Yours, as ever,

APTERYX.

New Zealand Conveyancing.

By S. I. Goodall, LL.M.

Memorandum of Lease of Part of a Public Domain for Grazing Purposes.

Under the Land Transfer Act, 1915, and under Part II of the Public Reserves, Domains, and National Parks Act, 1928.

Whereas His Majesty the King (who and whose successors and assigns are unless the context requires a different construction hereinafter referred to as and included in the term "the Lessor") is registered as proprietor of an estate in fee-simple subject however to such encumbrances liens and interests as are notified by memoranda underwritten or endorsed hereon in all that &c.

And whereas the said land is part of the Domain subject to the provisions of Part II of the Public Reserves Domains and National Parks Act 1928 and is under the control of the Domain Board (who and whose successors are hereinafter termed "the Board")

And whereas the Board has requested the Lessor to lease the said land to A. B. of &c. (who and whose executors or administrators and permitted assigns are unless the context requires a different construction hereinafter referred to as and included in the term "the Lessee") at the rent and upon the terms and conditions hereinafter contained

Now therefore in consideration of the rent hereby reserved and of the covenants on the part of the Lessee hereinafter contained the Lessor in exercise of the powers in him vested by the said Part II of the Public Reserves Domains and National Parks Act 1928 and with the written consent of the Board doth hereby lease to the Lessee all that the said land to be held by the Lessee as tenant for the space of [*ten* (10)] years as from and inclusive of the day of one thousand nine hundred and thirty- (193) at the yearly rental of pounds (£) during the first [*five*] years of the said term and the yearly rental of pounds (£) during the remaining [*five*] years thereof such rentals to be payable by half-yearly payments in advance on the first days of and in each year Subject to the following covenants conditions and restrictions:—

I. The Lessee doth hereby covenant with the Lessor as follows:—

1. The Lessee will duly and punctually pay the rent hereinbefore reserved on the days and in the manner herein mentioned without any deduction whatsoever.

2. The Lessee shall not nor will assign sub-let or part with possession or control of the said land or any part thereof during the said term save and except with the consent in writing of the Lessor and upon the terms hereinafter provided.

3. The Lessee will with all reasonable despatch and in any case within [*two*] years from the day of 19 clear of all native and other growth all such parts of the said land as are not already laid down in pasture of good English grasses and as shall be reasonably possible plough till and harrow the same and within the period aforesaid lay down and sow all such parts in English grasses at appropriate season with proper quantities of seed in suitable mixture and fertilizers Provided that the lessee shall leave undamaged for shelter and scenic purposes all trees and native bush growing upon the demised premises and shall at all times preserve all scrub bush trees and ferns growing alongside creeks and streams or in the lower parts of gullies on the demised premises.

4. That in burning off or lighting fires upon the demised premises the lessee shall use every care and precaution to prevent fires from spreading to adjoining properties either belonging to or occupied by the Lessor or belonging to or occupied by third persons and the Lessor shall be absolutely liable for all damage caused by any fire lit by the Lessee or his agents servants or workmen and so spreading as aforesaid.

5. The Lessee will from time to time throughout the said term regularly topdress all such parts of the said land as shall be laid down in English grasses (including those parts laid down by the Lessee pursuant to the last preceding covenant hereof) with proper quantities of fertilizers or manures and the Lessee will at the end of this lease yield up the said demised land in good pasture as to the whole area thereof.

6. The Lessee will generally use farm cultivate and manage the said land during the said term in good and husbandlike manner and will not impoverish or waste the soil thereof and will not graze (or permit to be grazed or allowed at large) upon the demised premises any bull or other dangerous animal of any kind.

7. The Lessee will afford to the general public from time to time throughout the said term full free and uninterrupted right liberty and license of ingress egress and regress on foot in over and upon the land provided that such public shall not interfere with or disturb the Lessee's stock grazing thereon nor encroach upon any part of the said land temporarily fenced off or closed for sowing or cropping purposes nor interfere with the use of the said land for grazing purposes.

8. The Lessee will at all times during the said term maintain and at the expiration thereof deliver up the said land and all buildings fences and other works and improvements now or at any time hereafter erected or made upon the said land in good tenantable and clean order and condition and will keep the same free from furze briars and noxious weeds Provided however that the Lessee if the terms of this lease have been fully complied with shall have the right at the end of the said term to remove any buildings which the Lessee may have erected with the consent of the Board on the said land and save that the Board shall have the right to purchase the same or any of them at a price to be fixed by agreement or arbitration.

9. The Lessee shall not nor will cause or suffer any damage or injury to any trees on the said land and the Lessee will at all times during the said term use all reasonable means to preserve and protect all trees shrubs and ferns thereon and the Lessee will not cut down any trees whatsoever upon the said land or any part thereof without the consent in writing of the Board first had and obtained Provided that the Board may at any time provide and plant any further trees for shelter or other purposes in any position that the Board thinks fit save and except that all such trees shall be planted upon or along a line of fencing or upon the banks of a stream as aforesaid and any fencing other than boundary fencing required for the protection of any such trees so planted shall be paid for by the Board and maintained by the Board.

(*To be concluded.*)

Correspondence.

The Springbok-Lawyers' Thanks.

The Editor,
NEW ZEALAND LAW JOURNAL.

SIR,—

We reach Perth in a couple of days, and that will be our last opportunity for posting letters of thanks to people who were so kind to us during our visit to New Zealand.

My thanks are primarily due to the many really fine fellows in the legal profession with whom we came in touch. They "*made*" the trip for me; I say that without hesitation.

Dendy Lawton joins me in requesting that you will allow us, through the columns of the NEW ZEALAND LAW JOURNAL, to tender our sincerest thanks to those members of the legal profession—including the Judges of the Supreme Court—who came forward so kindly to entertain us, and to show us something of the administration of law in New Zealand. The lead was taken by the Rt. Hon. Sir Michael Myers, your Chief Justice, and our special thanks are due to him for his kindness and graciousness to us.

We eagerly anticipate the day when we shall have an opportunity, in our respective home towns of Cape Town and Durban, of repaying some of the kindnesses shown to us by our friends in the legal profession in New Zealand.

With renewed thanks, and every good wish to all.

Sincerely yours,
PAT LYSTER.

T.S.S. *Nestor*,
At Sea,
October 11, 1937.

"Your Honour" or "Your Lordship"?

SIR,—

As an exiled (voluntarily) New Zealander, I always feel rather sorry that the Judges in the land of my birth are still addressed as only "Your Honour." This is the status given to a County Court Judge in England, corresponding in most respects to the Stipendiary Magistrate of New Zealand.

In this country, which after all has approximately the same European population as New Zealand, and in the other Dominions, the Judges of the Supreme Court are addressed as "My Lord" and "Your Lordship," thus giving them the status and dignity of the King's Bench Judges in England.

I suppose that when the Supreme Court first came into being, New Zealand was only a comparatively small Colony, and probably Downing Street thought that the status and dignity of a County Court Judge was good enough for the Judges in New Zealand. Since then, New Zealand has grown enormously, and has been raised to Dominion status. Everything else has correspondingly risen in dignity and status, except the position of the Supreme Court Judges. What is the legal profession thinking about? I have a strong view that the status of Judges in New Zealand should not be inferior to that of the other Dominions.

I have had to give evidence in the Supreme Courts in this country on quite a number of occasions, and I always feel a sort of pang when I have to address the presiding Judge as "My Lord," knowing that in similar circumstances in my own country I would have to use the lesser form of "Your Honour."

NEW ZEALANDER.

Kimberley, Cape Province,
Union of South Africa,
September 16, 1937.

Practice Precedents.

Confirmation of Alteration of Objects of Memorandum of a Company.

The jurisdiction to alter the objects of a company is limited exclusively by s. 17 of the Companies Act, 1933, which provides that, on petition to the Court, a company may alter the provisions of its memorandum with respect to the objects of that company to the extent and in the manner set out in that section. By special resolution a company may alter the provisions of its memorandum with respect to the objects of the company, provided, however, that the alterations cannot take effect until and except in so far as it is confirmed, on such petition, by the Supreme Court. (A company, having for its objects, or one of its objects, the manufacture of butter or of cheese, is exempted by s. 18 from compliance with the statutory provisions in respect of the alteration of its memorandum or articles.)

The Court may make an order confirming the whole or part of a special resolution altering the company's memorandum, and upon such terms and conditions as the Court thinks fit. Before the Court confirms the alteration, it must be satisfied as to the notice given to debenture-holders and other interested parties, with special conditions as to creditors: as to special resolutions, see s. 125 of the Companies Act, 1933.

The Court has to decide whether the alteration is fair and reasonable as between the members of the company; but it is not concerned with the wisdom or desirability of the alterations: *In re New Zealand Insurance Co., Ltd.*, (1911) 30 N.Z.L.R. 825, 829; and *In re Jewish Colonial Trust* (*Jeudische Colonial Bank*), *Ltd.*, [1908] 2 Ch. 287; and see the observations of the Court of Appeal in *In re Levin and Co., Ltd.*, [1936] N.Z.L.R. 558, generally as to petitions under s. 17.

An office copy of the order confirming the alteration, together with a printed or typewritten copy of the memorandum as altered, must be delivered by the company to the Registrar within fifteen days from the date of the order, and he is to register the copy so delivered and certify the registration under his hand and seal. This certificate shall be conclusive evidence that all the requirements of the Companies Act, 1933, with respect to the alteration and the confirmation thereof have been complied with; and thenceforth the memorandum as so altered is to be the memorandum of the company. By order, at any time, the Court may extend the time for the delivery of the above-mentioned documents to the Registrar for such period as the Court may think proper.

If a company makes default in delivering to the Registrar any documents required to be delivered to him, as above stated, the company is liable to a fine

not exceeding £10 for every day during which the default continues.

No exhibits, other than the form of notice, are set out hereunder, and the requisite exhibit-notes are omitted. These should be prepared in accordance with the circumstances of each petition.

PETITION CONFIRMING ALTERATION.

IN THE SUPREME COURT OF NEW ZEALAND.

.....District.
.....Registry.

IN THE MATTER of the Companies Act 1933

AND

IN THE MATTER of A. B. and Company, Limited, a private company duly incorporated in New Zealand and having its registered office at No. , Street in the City of .

To The Honourable the Supreme Court of New Zealand.

THE HUMBLE PETITION of A. B. and Company Limited showeth as follows :—

1. YOUR PETITIONER the above-named company (hereinafter called " the company ") was duly incorporated in New Zealand under the terms of the Companies Act 1933 as a private company under the name or title of A. B. and Company, Limited.

2. That the registered office of the company is situate at No. , Street in the City of .

3. That the capital of the company is £40,000 divided into shares of £1 each which shares have all been issued and are fully paid up.

4. That the objects for which the company was established are set forth in clause 2 of its memorandum of association a copy of which is attached hereto and marked " A."

5. That shortly after its incorporation the company commenced and has continued ever since to carry on business and has carried on the same successfully.

6. That by an entry in the minute-book of its members holding in the aggregate at least three-fourths in nominal value of the shares of the company it was resolved that the objects of the company should be altered. A copy of such minute is attached hereto and marked with the letter " B."

7. That as importers and distributors of English and foreign stock it would be a great advantage to the company and a benefit for the exporters or consignors that the insurance work proposed to be undertaken under the authority of the proposed amending objects of the company be negotiated by the petitioning company and such business could be carried on under existing circumstances conveniently and advantageously in combination with the present business of the company.

8. That the financial position of the company is sound. At the date of the last balance-sheet of the company issued by the directors that is to say on the thirty-first day of March 1937 the financial position of the company was shown to be as follows :

Assets :

Debts and liabilities :

The financial position of the company since the date of the said balance-sheet has not materially altered.

9. That apart from periodical overdrafts with its bankers the Bank of Limited the company owes no debts save on current account and they are more than covered by deposits on current account in the bank. A list of such creditors as at the thirty-first day of 1937 is attached hereto and marked " C."

10. The Bank of Limited has been notified of the company's intention to petition this Honourable Court in the manner herein appearing and its approval of the proposed alteration is attached hereto and marked " D " and in view of the assets of the company and the fact that the other creditors are paid each month and also on account of the small amount owing to such other creditors your petitioning company is advised that it is not necessary to obtain the consent of these other creditors.

11. That the company has two banking accounts with the Bank of Limited one at and the other with the said bank at London.

12. That save as above recited the company has no creditors and is under no obligation to any person or persons corporation or corporations whose interest might be calculated to be prejudiced or jeopardized by the proposed alteration of the company's memorandum of association the subject of this petition.

13. No person or persons corporation or corporations will be prejudiced or their interest jeopardized by the proposed extension of the company's objects and alteration of its memorandum of association inasmuch as the business which by the said proposed extension and alteration the company will be empowered to carry on may under such circumstances be conveniently or advantageously combined with the present business of the company and it is just and equitable that the proposed extension of such objects and alteration of the company's memorandum of association should be confirmed.

YOUR PETITIONER therefore humbly prays as follows :—

(*a*) That the extension of the company's objects and alteration of its memorandum of association proposed to be effected by the said entry in the minute-book referred to in para. 6 of this petition may be confirmed by this Honourable Court pursuant to s. 17 of the Companies Act 1933.

(*b*) OR that such further or other order may be made in the premises as to this Honourable Court may seem just.

AND YOUR PETITIONER as in duty bound will ever pray &c.

The common seal of A. B. and Company Limited was hereunto annexed by &c. Directors.

Secretary.

(Exhibit-notes.)

MOTION IN SUPPORT OF PETITION FOR CONFIRMATION ETC.

(*Same heading.*)

Mr. X. of Counsel for the petitioning company TO MOVE in Chambers before The Right Honourable Sir Chief Justice of New Zealand at the Supreme Court House at on the day of 19 at the hour of 10 o'clock in the forenoon or so soon after as Counsel can be heard FOR AN ORDER in terms of the prayer of the petition by A. B. and Company Limited confirming the resolution of the company extending its objects and alteration of its memorandum of association pursuant to an entry in its minute-book dated the day of 19 particulars of which are set forth in the petition filed herein UPON THE GROUNDS set forth in the said petition AND UPON THE FURTHER GROUNDS set forth in the affidavit of filed herein.

Dated at this day of 19 .

Solicitor for the petitioner.

Certified pursuant to the rules of the Court to be correct.

Solicitor for the petitioner.

MEMORANDUM FOR HIS HONOUR.

(1) The petition of the above-named company prays for confirmation of the resolution passed by the shareholders by the entry in the minute-book for an alteration of the memorandum of association to enable the company to act as insurance brokers' agents and also to carry on the insurance business generally.

(2) The creditors save the Bank of Limited are monthly creditors and have no practical interest in this application : *vide* para. 7 of the Affidavit of and paras. 8 and 9 of the petition.

(3) All the shareholders of the company concur in this application and were present at a meeting when the relative entry was made in the minute-book : *vide* para. 7 of the same affidavit.

Reference is respectfully drawn to *In re Parent Tyre Co., Ltd.*, [1923] 2 Ch. 222, which shows the wide powers the Court has to confirm alterations even of a major degree in a memorandum of association.

Counsel for petitioning company.

AFFIDAVIT IN SUPPORT OF PETITION.

(*Same heading.*)

I of the City of in New Zealand managing director make oath and say as follows :—

1. THAT I am managing director of the above-named company (hereinafter referred to as the company) and as such am intimately connected with the affairs of the company and am thus able to depose to the several acts matters and things set forth in this my affidavit.

2. THAT I have read the petition in this matter now produced to me and marked " A " and I believe that all the statements contained in the said petition are true and that belief is grounded on the knowledge I have obtained as such managing director of the company.

3. THAT the document now produced and shown to me and marked with the letter " B " is the certificate of the incorporation of the company.

4. THAT the document now produced and shown to me and marked with the letter " C " is a typewritten copy of the original memorandum of association of the company and save in so far as the same is affected by the entry in the minute-book of the company dated the day of 19 and referred to in the said petition no alterations have been made in the said memorandum of association and no alterations have been made in the articles of association.

5. THAT the entry of the day of 19 in the minute-book of the company was signed by at least three-fourths of its members holding in the aggregate at least three-fourths in nominal value of the shares of the company.

6. THAT the document now produced and shown to me and marked with the letter " D " is an extract from the share register of the company and sets forth the names and occupations of the shareholders of the company and the number of shares held respectively by each shareholder all of whom were present at a meeting when the said entry of the day of 19 was made in the minute-book of the company.

7. THAT the document now produced and shown to me and marked with the letter " E " is a list of the creditors of the company referred to and exhibited in cl. of the petition showing the names addresses and amounts respectively owing to them by the company as at the day of 19 .

8. THAT in accordance with the provisions of s. 17 (3) (*a*) of the Companies Act 1933 notice in terms of the document now produced and shown to me and marked with the letter " F " to the effect that a petition will be presented to this Honourable Court and that this Honourable Court will be moved for an order confirming the extension of the objects of the company and the alteration of the company's memorandum of association in terms of the said entry of the day of 19 in the minute-book of the company has been duly given to the manager at of the Bank of Limited and that his approval has been received to such proposed alteration. It has not been deemed necessary, unless specially ordered by this Honourable Court to do so to advise the other creditors of the proposed alteration of the objects of the company. These creditors are paid monthly and will not be affected or prejudiced by the said proposed alteration.

9. THAT from the intimate acquaintance I have of the company I verily believe and am able to depose that the reasons leading the company and its shareholders to resolve to extend its objects and alter its memorandum of association in the manner set forth in the petition are sound and well-founded and in the best interests of the company and its shareholders and the clients of the company and that the business enabled by such extension and alteration of the company's memorandum of association can conveniently and advantageously be combined with the business of the company as at present carried on by it. The company's organization is at present able to cope with the proposed new business and can meet any business expansion not only without prejudicing the present business but with advantage to it.

Sworn &c.

ORDER CONFIRMING ALTERATION, ETC.

(*Same heading.*)

day the day of 19 .

Before the Honourable Mr. Justice .

UPON READING THE PETITION filed herein and the motion and affidavit filed in support thereof for confirmation of the alteration of the objects of the memorandum of association of A. B. and Company Limited AND UPON HEARING Mr. of Counsel for the petitioning company IT IS ORDERED that the resolution of the company passed on the day of 19 that is to say in the words following:

" IT WAS RESOLVED that the memorandum of association of the company be altered by adding to the objects of the company the following—

" (1) To carry on the business of insurance brokers' agents in all branches of insurance except life insurance.

" (2) To carry on either as principal or agent the business of insurance brokers in all branches of insurance except life insurance.

" (3) To act as agents attorneys brokers or trustees for any insurance broker or brokers person or persons or firms carrying on fire accident marine or any other class of insurance broking except life insurance."

BE AND THE SAME IS HEREBY CONFIRMED.

By the Court.

Registrar.

NOTICE TO CREDITORS.

TAKE NOTICE that at a meeting of shareholders of A. B. and Company Limited duly convened and held on the day of 19 the following entry in the minute-book of the said company was made and signed by at least three-fourths of its members holding in the aggregate at least three-fourths in nominal value of the shares of the company, in the words and figures following:

" Meeting of shareholders of A. B. and Company Limited held at Street [*City*] on day the day of 19 at a.m.

" Present:

" It was resolved [*set out resolution*].

" It was further resolved the company's solicitors be instructed to take the steps necessary to obtain the confirmation of the Supreme Court of the proposed alteration in the provisions of the company's memorandum of association with respect to the objects of the company hereinbefore resolved.

" AND FURTHER TAKE NOTICE that the Supreme Court at will be moved by petition as soon as conveniently may be after the expiry of fourteen days from the date hereof for an order that the objects of the company be extended and the memorandum of association of the company be altered to give effect to the resolution expressed in the said entry in the minute-book of the company.

" AND FURTHER TAKE NOTICE that if you desire to oppose the making of an order as prayed for in the said petition you are required to send notice in writing of such desire with the grounds for your objection to the secretary of the company at the registered office of the company at No. , Street in the City of and a copy of the said petition will be furnished to you if required.

Dated at this day of 19 .

For and on behalf of A. B. and Company, Limited.

[*Manager.*]
[*Secretary.*] "

Recent English Cases.

Noter-up Service

FOR

Halsbury's " Laws of England "

AND

The English and Empire Digest.

BANKERS.

Cheques—Fictitious Payee—Forged Indorsement—Accounts of Company and Employee at Same Bank.

A bank can act negligently and yet be acting in the ordinary course of business.

CARPENTERS' CO. *v.* BRITISH MUTUAL BANKING CO. LTD., **[1937] 3 All E.R. 811. C.A.**

As to protection of a banker paying crossed cheques: see HALSBURY, Hailsham edn., 1, pars, 1352, 1353; DIGEST 3 pp. 189, 190.

BANKRUPTCY.

Deed of Arrangement—Assignment of Lease to Debtor—Covenant of Indemnity—Contingent Liability to Indemnify Assignor—" Creditor."

A creditor is not entitled to prove under a deed of arrangement not incorporating bankruptcy rules of administration in respect of a contingent liability.

Re CASSE; ROBINSON *v.* GRIGG, **[1937] 2 All E.R. 710. Ch.D.**

As to interpretation of deeds of arrangement: see HALSBURY, Hailsham edn., 2, par. 610; DIGEST, 5, pp. 1082–1087.

DIVORCE.

Collusion—Constraint of Petitioner—Money Payment to Secure Signing of Petition—Unreality of Proceedings.

When it appears that the petitioner has been induced to file the petition in consideration of a money payment or discharge of debts, there is a prima facie *case of collusion.*

WOODS *v.* WOODS, **[1937] 4 All E.R. 9. P.D.A.**

As to collusion: see HALSBURY, Hailsham edn., vol. 10, pp. 677, 678, pars. 1000–1003; DIGEST, vol. 27, pp. 333–336.

HIGHWAYS.

Privy Council—India—Highways—Vesting in Local Authority—Extent of Vesting—United Provinces Municipalities Act (India), 1916.

It would put too narrow a meaning on the words "shall vest in and belong to the board" to hold that the erection of a portico, not beyond the range of the ordinary user of a street, was not within the powers of the board.

HIS HIGHNESS MAHARAJA MAN SINGH OF SEWAI JAIPUR *v* ARJUN LAL AND OTHERS, **[1937] 4 All E.R. 5. J.C.**

As to the effect of statutory vesting: see HALSBURY, Hailsham edn., vol. 16, pp. 249-251, pars. 300-301; DIGEST, vol. 26, pp. 329-331.

LUNATICS.

Care of—Institution—Absence on Leave—Negligence.

An officer of an institution should not be found negligent merely because of an error of judgment, but only if he fails to exercise reasonable care in view of the past history of the patient.

HOLGATE AND ANOTHER *v.* LANCASHIRE MENTAL HOSPITALS BOARD, GILL AND ANOTHER, **[1937] 4 All E.R. 19. K.B.D.**

As to absence on leave: see HALSBURY, Hailsham edn., vol. 21, pp. 423, 434, par. 754; DIGEST, vol. 33, pp. 269, 270.

Bills Before Parliament.

Coal-mines Amendment.—Clause 2: Penalty for breach of conditions of lease. Cl. 3: Amending provisions as to surrender of coal-mining rights. Cl. 4: Qualifications as to age of mine-managers and other officials. Cl. 5: Section 60 of principal Act amended. Cl. 6: Certificates of competency as underviewers or firemen deputies to be periodically endorsed by Inspector. Cl. 7: Modification of restrictions on employment of women and boys in coal-mines. Cl. 8: Youths under sixteen not to be employed underground. Cl. 9: Extension of restrictions as to Sunday employment in mine. Cl. 10: Except with consent of Minister, wages of workmen engaged in mining coal to be computed by reference to weight of coal got. Consequential amendment of section 76 of principal Act. Cl. 11: Extending operation of section 79 of principal Act (as to plans of coal-mines). Cl. 12: Particulars as to wages to be supplied to local coal-miners' union. Repeal. Cls. 13-20 amend ss. 93, 94, 95, 104, 107, 117, 123, and 126 of the principal Act. Cl. 21: Prohibiting the underground use of certain appliances, with a view to prevention of coal-dust. Cl. 22: Sections 128 and 129 of principal Act affected. Cl. 23: Qualifications of workmen's inspectors. Cl. 24: Section 130 of principal Act amended. Cl. 25: Provision for appointment of workmen's inspector by organization known as the United Mine Workers of New Zealand. Cl. 26: Section 131 of principal Act amended. Cl. 27: Particulars to be supplied to Inspector with respect to accidents resulting in absence from work. Cl. 28: Section 150 of principal Act amended. Cl. 29: Minister may require owners to contribute towards cost of transport of workmen to and from mines. Cl. 30: Increase of borrowing-powers in respect of State coal-mines. Cl. 31: Extending power to make regulations to ensure the safety of workmen.

Electoral Amendment.—Clause 2: Duration of House of Representatives. Cl. 3: Alteration of mode of conducting elections for Maori electoral districts. Cl. 4: Miscellaneous amendments with respect to polls for election of Maori members. Cl. 5: Application to Maori elections of certain provisions relating to European elections. Cl. 6: Amending provisions as to deposits by candidates.

New Zealand Federation of Funeral Directors.—Clause 3: Establishment and purposes of New Zealand Federation of Funeral Directors. Cl. 4: How business of Federation to be carried on temporarily. Cl. 5: Members of Federation. Cl. 6: Resignation and expulsion of members. Cl. 7: Constitution and meetings of Council. Cl. 8: Who entitled to be registered as registered funeral directors. Cl. 9: Registration of all funeral directors. Cl. 10: Application for registration. Cl. 11: Penalty for wrongfully procuring registration. Cl. 12: Council to consider applications. Cl. 13: Method of effecting registration. Cl. 14: Acts of Council not invalidated for informality. Cl. 15: Election of Council. Cl. 16: Election and appointment of officers of Federation. Cl. 17: Quorum at meetings of Council and Federation. Cl. 18: Regulations of Federation. Cl. 19: Powers of Council. Cl. 20: Copy under seal to be proof of regulations. Cl. 21: Conduct of examinations. Cl. 22: Cancellation of registration. Cl. 23: Unqualified person practising as a funeral director. Cl. 24: Offences to be dealt with summarily. Cl. 25: Fees and levies.

Companies (Special Liquidations) Extensions.—Clause 2: Application of Companies (Special Liquidations) Act, 1934–35 extended to the First Mortgage Freehold Security Company of New Zealand, Ltd.

Local Government (Amalgamation Schemes).—Clause 3: Matters to be provided for in amalgamation schemes. Cl. 4: "Adjoining districts" defined. Cl. 5: Local authorities may prepare amalgamation schemes for their own districts. Cl. 6: Amalgamation schemes affecting other districts. Cl. 7: Minister may require submission of amalgamation scheme. Cl. 8: Minister may prepare amalgamation scheme if local authorities concerned make default. Cl. 9: Functions of "principal local authorities." Cl. 10: Notices to be given of amalgamation schemes. Cl. 11: Minister may refer amalgamation scheme to Commission for report. Cl. 12: Appointment of Commission. Cl. 13: Constitution of Commission. Cl. 14: Sittings of Commission. Cl. 15: Acting members of Commission. Cl. 16: General powers of Commission. Cl. 17: Functions of Commission. Cl. 18: Objections to amalgamation scheme. Cl. 19: Notification of report of Commission. Cl. 20: Commission may make a revised or supplementary report. Cl. 21: Minister may dispose of objections without reference to Commission. Cl. 22. Notice of Commission's final report. Cl. 23: Mode of giving effect to amalgamation scheme. Cl. 24: Supplementary provisions for giving effect to amalgamation scheme. Cl. 25: Exercise of powers conferred by this Act not affected by provisions of other Act. Cl. 26: Powers of local authority on which jurisdiction conferred for purposes of amalgamation scheme. Cl. 27: Apportionment of costs incurred by principal local authority in relation to amalgamation scheme. Cl. 28: Special provisions as to merger of separate districts in county. Cl. 29: Power to appoint a special Commission of Inquiry. Cl. 30: Regulations.

PUBLIC ACTS PASSED.

No. 6. Air Force Act, 1937.
No. 7. Air Department Act, 1937.
No. 8. Imprest Supply Act (No. 2), 1937.
No. 9. Army Board Act, 1937.
No. 10. Industrial Conciliation and Arbitration Amendment (No. 2), 1937.

LOCAL ACTS PASSED.

No. 1. New Plymouth Borough Council Empowering Act, 1937.
No. 2. Auckland Harbour Board Loan and Empowering Act, 1937.
No. 3. Motueka Borough Council Empowering Act, 1937.
No. 4. Ngaruawahia Borough Council Empowering Act, 1937.

Rules and Regulations.

Fisheries Act, 1908. Trout-fishing (Waimatino) Regulations, 1937. October 20, 1937. No. 266/1937.
Primary Products Marketing Act, 1936. Butter Internal Prices Order, 1937. October 27, 1937. No. 267/1937.
Apiaries Act, 1927. Apiary Registration Regulations, 1937. October 27, 1937. No. 268/1937.
Stamp Duties Act, 1923. Stamp Duties Office Regulations, 1937. No. 2. October 27, 1937. No. 269/1937.
Motor-vehicles Act, 1934. Motor-vehicles (Special Types) Regulations (No. 2) 1937. November 3, 1937. No. 270/1937.
Shipping and Seamen Act, 1908. Ballast Regulations, 1937. November 3, 1937. No. 271/1937.
Fisheries Act, 1908. Trout-fishing (Otago) Regulations, 1937. November 3, 1937. No. 272/1937.
Agricultural Workers Act, 1936. Agricultural Workers' Wage Fixation Order, 1937. November 10, 1937. No. 273/1937.
Education Act, 1914. Primary Schools Classification and Certificate Regulations, 1937. November 10, 1937. No. 274/1937.