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

"*Very few offenders present a real psychological problem, and, for those who do, the Court has the benefit of the most exhaustive inquiry and examination. If any Judge or Magistrate finds himself unable to administer justice without a doctor at his elbow, he might well resign his office in favour of the mother of a family.*"

—Mr. Justice Humphreys, President of the Medico-Legal Society, London.

Vol. XIV. Tuesday, February 1, 1938. No. 2.

Contract: Obligation Distinguished from Performance.

THE most interesting feature of the judgment of the Judicial Committee of His Majesty's Privy Council, delivered by Lord Wright, in *Mount Albert Borough v. Australasian Temperance and General Mutual Life Assurance Society, Ltd.*, [1937] N.Z.L.R. 1124, is the emphasis laid on the distinction between the personal obligation to pay, secured by a mortgage, and the performance of that obligation. Although it might appear, at first sight, that obligation to pay extends to the payment itself, their Lordships were of opinion that a clear line of difference must be drawn between obligation and performance by payment.

The debentures and interest coupons issued by the Mount Albert Borough under the Local Bodies Loans Act, 1913, in the statutory form prescribed by that Act, and secured on a special rate on the rateable value of all rateable property in the Borough to secure a loan from the respondent Society, were payable on presentation at the Bank of New Zealand at Melbourne. The charge on the rates was a charge on land in New Zealand: *The King v. Mayor, &c., of Inglewood*, [1931] N.Z.L.R. 177, 202. It was contended for the Borough that the Financial Emergency Acts of Victoria entitled it to rely on those statutes in the New Zealand Courts in regard to the debentures and interest coupons, so that s. 19 (1)* of the Financial Emergency Act, 1931, (Vict.), applied to reduce the interest payable under the debentures as from October, 1931. The Court of Appeal (Myers, C.J., and Reed, Smith, Johnston, and Fair, JJ.) held unanimously that the Victorian statute did not so apply: [1936] N.Z.L.R. 54. With this judgment, their Lordships of the Judicial Committee agreed.

At the commencement of their judgment, their Lordships held that the debentures and interest coupons, in so far as they gave a security on real property (a portion of the local rate) were governed by New Zealand law; and the rights of enforcement of the security, in the Courts of New Zealand and in the manner provided by the Local Bodies Loans Act, were also governed by New Zealand Law. In their Lordships' opinion,

> "It is equally true that the personal obligation to pay is a New Zealand contract, governed by New Zealand law. It seems impossible to sever this personal covenant from the provisions which secure it. Indeed, the whole tenor of the transaction is only consistent with its being governed by New Zealand law."

It is true, they proceed, that the place of repayment of the loan and of payment of interest from time to time was to be Melbourne; but even that was fixed in accordance with s. 32 of the Local Bodies Loans Act, 1913 (now s. 37 of the Local Bodies Loans Act, 1926).

In what their Lordships were pleased to term "the able and exhaustive argument" placed before them by Mr. John O'Shea, the Wellington City Solicitor, it was contended (*a*) that payment of the loan and of the interest was governed by Victorian law, because Victoria was the place of performance, and that, for this purpose, Victorian law included s. 19 (1) of the Financial Emergency Act, 1931; and (*b*) that s. 19 (1) applied to the debt because it was a specialty debt, and the coupon, which was a document of title, must necessarily be presented at the place of payment in Melbourne. Thus, at the relevant moment, the *lex situs* applied so as to introduce the statutory reduction of interest.

Their Lordships were not prepared to accept either contention, for the following reasons:

> "While they think that the *lex situs* applies to the security in New Zealand, they do not think that the *lex situs* of the actual coupon can be applied to the instrument, whether or not the personal obligation to pay is properly regarded as a specialty debt. Nor can they accept the view that the obligation to pay is here governed by the place where it is stipulated that payment is to be made, in the sense that the amount of the debt as expressed in the instrument creating it can lawfully be varied by the Victorian Financial Emergency Act so as to bind a foreign jurisdiction or indeed at all. So to hold would be, in their Lordships' judgment, *to confuse two distinct conceptions—that is to confuse the obligation with the performance of the obligation.*"

Their Lordships considered that there were such circumstances as led to the inference that the proper law of the contract (which first had to be ascertained), was New Zealand law, which accordingly should *prima facie* govern the rights and obligations to be enforced under the contract by a Court before which the matter came, *a fortiori* a New Zealand Court. Lord Wright proceeded:

> "It is true that when stating this general rule, there are qualifications to be borne in mind, as for instance, that the law of the place of performance will *prima facie* govern the incidents or mode of performance—that is, *performance as contrasted with obligation.* Thus in the present case it is not contested that the word 'pound' in the debenture and coupon is to be construed with reference to the place of payment and as referring to the 'pound' in Victorian currency."

Mr. O'Shea relied on certain passages in the speeches of the House of Lords in *Adelaide Electric Supply Co., Ltd. v. Prudential Assurance Co., Ltd.*, [1934] A.C. 122, as indicating that their Lordships had there laid down

* 19 (1) Except as hereinafter provided every mortgage shall for a period of three years from the date of the coming into operation of this Division be construed and take effect as if it were a term of the mortgage that on and from the coming into operation of this Part or (in case of a bank or pastoral company overdraft or in the case of a mortgage given to a society registered under the Building Societies Act, 1928) on and from the appointed day or the prescribed day (as the case may be) the interest payable under the mortgage should be reduced at a rate equivalent to four shillings and sixpence for every pound of such interest.

the principle that the law of the place of performance applies for all purposes relating to performance, even to the extent of changing the substance of the obligation expressed or embodied in the contract. Applied to the *Mount Albert* case, this principle would have the result, he submitted, that the amount of interest payable in Victoria, the *locus solutionis*, would be reduced by the effect of the Financial Emergency Acts of that State.

Lord Wright, who delivered their Lordships' judgment, met this argument by explaining the *Adelaide* case, as follows:

> "The House of Lords was not concerned there with any such general question or with questions of the substance of the obligation which in general is fixed by the proper law of the contract under which the obligation is created. The House of Lords was concerned only with performance of that obligation, in regard to the particular matter of currency in which payment was to be made. There was no question such as a reduction in the amount of the debt or liability, or other change in the contractual obligation."

With respect, it should here be pointed out that the question whether the *lex loci contractus* or the *lex loci solutionis* applied did arise in the *Adelaide* case; and in the speech of Lord Wright, with which Lord Atkin agreed, it is said that where there is a difference between the *lex loci contractus* and the *lex loci solutionis* as to the measure of the amount payable, this question falls to be determined by the *lex loci solutionis*, and not by the *lex loci contractus*, even though the latter might be the proper law for the determination of the meaning of the contract. Lord Wright himself said, at p. 151:

> "It is established that *prima facie*, whatever is the proper law of a contract regarded as a whole, the law of the place of performance should be applied in respect of any particular obligation which is performable in a particular country other than the country of the proper law of the contract. To refer only to one authority, it was held in *Ralli Brothers* v. *Compania Naviera Sota y Aznar*, ([1920] 2 K.B. 287), that freight which under an English charterparty was payable at Barcelona was payable only to the extent of a proportion, being all that was permissible under the Spanish law, the law of the place of performance, since that law had forbidden payment of more than a maximum rate of freight, substantially less than the charterparty rate. Lord Warrington, at p. 295, quoted with approval from *Dicey on Conflict of Laws*, 2nd ed. 553: 'When the contract is made in one country, and is to be performed either wholly or partly in another, then the proper law of the contract, especially as to the mode of performance, may be presumed to be the law of the country where the performance is to take place.'"

In the more recent case, *British and French Trust Corporation v. New Brunswick Railway Co.*, [1937] 4 All E.R. 516, it was held by the Court of Appeal, (Greer, Slesser, and Scott, L.JJ.) that, although the contract under notice, was, as a whole, governed by Canadian law, questions as to the mode of payment were to be settled by the *lex loci solutionis*, which in this case was English law. As the *Mount Albert* case was referred to in their Lordships' judgments, an outline of the facts is interesting.

The defendants, a Canadian corporation, registered under the laws of New Brunswick, issued on August 1, 1884, 6,000 first mortgage gold bonds of like amount, tenor, and date. The bonds were secured by a mortgage trust deed, and all became due on August 1, 1934. The bonds stated that on that date the defendants for value received promised "to pay to bearer or registered holder thereof £100 sterling gold coin of Great Britain of the present standard of weight and fineness at its agency in London, England, with interest thereon" at 5 per cent. per annum, payable in London or, at the holder's option, at the defendant's office in New Brunswick. The interest coupon stated that the company would pay the bearer £2 10s. sterling at its agency in London, England, or at its office in New Brunswick, on August 1, 1934. The plaintiffs, holders of 992 such bonds, claimed in respect of each bond the sum in sterling calculated on August 1, 1934, then representing the gold value of £100 on August 1, 1884. The defendants contended that they were bound to pay only £100 sterling upon each bond, and interest upon the same basis.

Lord Justice Greer, after quoting the passage from Lord Wright's speech in the *Adelaide* case (*cit. supra*) said:

> "As the opinion of Lord Wright must be taken to represent the views of the majority of the Lords who heard the appeal in the *Adelaide* case, we are bound to hold that the measure of payment falls to be determined by the law of the place of performance, which in the present case is the law of England, as stated in the decision of the House of Lords in *Feist's* case ([1934] A.C. 161).

Greer, L.J., then adverted to the *Mount Albert* case, and said, at p. 526:

> "I am unable to reconcile the decision of the Privy Council [in the *Mount Albert* case] with the decision in the *Adelaide* case, though Lord Wright appears to have been able to do so."

Lord Justice Slesser, too, had something to say about the *Mount Albert* case. He explained and distinguished it, as follows:

> "The Judicial Committee of the Privy Council, in a judgment delivered by Lord Wright, decided that the contract as a whole imposed obligations which were to be governed by New Zealand law. Lord Wright distinguished *Adelaide Electric Supply Co., Ltd. v. Prudential Assurance Co., Ltd.*, pointing out that in the latter case the House of Lords was not concerned with the question of substance of the obligation, but only with performance of that obligation with regard to the particular matter of the currency in which payment was to be made, and, as I read his judgment, their Lordships confined their judgment in the *Mount Albert* case, so far as concerns this present case, to the finding that New Zealand law applied to the substance of the obligation, and that the Australian legislation, which sought to alter that substance by altering the rate of interest and in other ways, had no application to the contract. In those circumstances, I do not think that anything in the *Mount Albert* case prevents me from arriving at the conclusion in the present case that the law determining the matter of the currency in which the obligation is to be discharged is English, having regard to the place of payment agreed upon between the parties and the medium of payment, namely, English pounds."

Lord Justice Scott, at p. 540, said that the decision in regard to any particular contract, is whether *the law of the place of performance governs the contractual obligations which define the duty of performance.* (Here, His Lordship seems to consider "obligation" and "performance" as coextensive, and not—as Lord Wright in the *Mount Albert* case deemed them—distinctive.)

Later on, Scott, L.J., referred to "the implied secondary intention of the parties to a contract in regard to the obligation of payment." He adds, of course, that this question depends on the language and circumstances of the particular contract. Applied to the facts of the contract before him, he said:

> "In the present case, I do not doubt that, leaving on one side that part of the contract which relates to performance, the proper law of the contract generally is the law of Canada. The bond is given by a Canadian corporation, executed in Canada, concerning a Canadian railway and secured by a trust deed upon Canadian land. In such circumstances, no conclusion is possible but that it was the intention of the parties

that the contract should be generally regulated by Canadian law. Although, for these reasons, we are bound to conclude that the *lex loci contractus* is the proper law of the contract for the general purpose of interpreting its obligations, I do not think that his conclusion affects the interpretation of the payment clause, and still less does it affect its judicial enforcement in London. To that part of the contract the *lex loci solutionis*, is, in my opinion, applicable."

After expressing certain doubts raised by the decision of the *Mount Albert* case, His Lordship came to the conclusion that there was no decision by the Judicial Committee directly on the points arising in the *British and French Trust Corporation* case; he went to some pains to show that there were certain definite distinctions between the two cases. In the former, he said, the law of the place of performance was invoked in order to change the obligations of the contract as defined by the proper law of the contract as a whole; while, in the latter case, the measure of the obligations to be enforced, so far as the contract was concerned, was supplied by the unaltered terms of the contract as correctly interpreted, and this made it the precise converse of the *Mount Albert* case, where the Victorian statute sought to alter the bargain the parties had made. He added:

"Here the contention that the English Court should ignore *the ordinary rule that the law of the place of performance governs the performance*, and apply a Canadian statute to alter the contract *ex post facto*. I cannot think that the phrase in the opinion of Lord Wright, 'that the personal obligation to pay is a New Zealand contract, governed by New Zealand law,' has any application to the facts of the present case. I do not understand the Board as intending to express their disagreement with *Dicey's* rules, or with the judicial passages in the Court of Appeal decisions which I have quoted in support of those rules [The judgments of Bowen, L.J., in *Jacobs v. Crédit Lyonnais*, (1884) 12 Q.B.D. 589, 600, and of Lord Esher in *Chatenay v. Brazilian Submarine Telegraph Co.*, (1891) 1 Q.B. 79, 82, 83, and by the Privy Council in *Benaim and Co. v. Debono*, [1924] A.C. 514, 520, to all of which Mr. O'Shea referred in his argument in the *Mount Albert* case.] These considerations, I humbly conceive, dispose of the doubt which was raised in my mind by some of the observations of Lord Wright."

His Lordship's statement as to the applicability of the *lex loci solutionis* to the interpretation of the payment clause, seems to indicate that Mr. O'Shea's argument in the *Mount Albert* case (namely, that the Victorian law applied to the payment clause in the debentures) had merit.

Now, returning to the judgment of the Judicial Committee in the *Mount Albert* case, it is interesting to observe that Lord Wright there said, rather sweepingly, perhaps, that it may be that in some cases difficulties have arisen in distinguishing "obligation" from "performance," and that "manner and mode of performance" may affect the value of the obligation. It is suggested that his Lordship in his several judgments, if read together, has rendered those difficulties less susceptible to solution; especially as he said in the *Mount Albert* case that the Victorian statute was in express terms directed to "obligation"—which he explained as "the construction and effect of the mortgage, and the reduction of the covenanted rate of interest," and which was, as he had already found, governed by the law of New Zealand. He added, at p. 1132:

"In the *Auckland City Corporation and Auckland Transport Board v. Alliance Assurance Co., Ltd.* ([1937] N.Z.L.R. 142, 153), this Board has recently adverted to the distinction between obligation and performance. This way of considering the present case has been fully elucidated in the very careful judgments of the Court of Appeal. Their Lordships do not desire to be thought to express any dissent from these judgments, in so far as they hold that the Financial Emergency Acts do not operate to reduce the amount of the interest in this case, or proceed on the ground that to recognize the application of the Acts, as the appellant contends should be done, would not be to apply the law of the place of performance to the performance of the contract, but to apply it so as to change the substance of the obligation, because according to the appellant's contention, the Acts would be applied to change the amount payable, *which is a matter of obligation and is not a mode or manner of performance.*"

Frankly, we prefer the comparative lucidity of the several judgments in our Court of Appeal. But Lord Wright went on to say that their Lordships did not think it necessary to pursue the distinction between "obligation" and "performance" at any greater length, or to give any final opinion on it. As the short point on which the actual decision of the Board rested was that the Financial Emergency Acts of Victoria did not apply to the debentures or the interest payable under them, for reasons which appear in the judgment, the lengthy observations on the topic of distinction between "obligation" and "performance" are *obiter*.

There was, therefore, no decision by the Judicial Committee on the most interesting of the points discussed in their judgment; and we await with interest any further discussion on the *Mount Albert* case that may emerge when the *British and French Trust Corporation* case comes before their Lordships' House, as leave to appeal therein has been given.

Summary of Recent Judgments.

SUPREME COURT. Wellington. 1937. December 7, 15. *Myers, C.J.*

THE KING v. UNITED INSURANCE COMPANY, LIMITED, AND OTHERS.

Land Agents—Bond—Failure to Account—Application to Rents and other Moneys payable under Leases and Tenancies—Sale of Land effected through Land Agent—Whether Moneys payable under Mortgage for Balance of Purchase-money collected in his Capacity as a Land Agent—Land Agents Act, 1921–22, s. 23 (1).

So far as a lease is concerned, s. 23 (1) of the Land Agents Act, 1921–22, applies not only to moneys paid in respect of the *actual grant* of a lease or tenancy by a land agent, but also to rent received by such agent in respect of a lease or tenancy arranged by him.

But, in the case of a sale through a land agent, where the purchaser takes a transfer and executes a mortgage in the vendor's favour, moneys payable under the mortgage and collected by the land agent are not received by him in his capacity as a land agent, but as an ordinary person collecting moneys and receiving for his services commission or other remuneration.

The King v. New Zealand Insurance Co., Ltd. (No. 1), [1916] N.Z.L.R. 463, G.L.R. 314, mentioned.

Counsel: E. S. Smith, for the plaintiff; **Goodwin,** for the first-named defendant; **Harding,** for defendant Cotton; **S. A. Wiren,** for defendants H. North and M. T. North; **Cullinane,** for defendant P. W. Tymons.

Solicitors: Crown Law Office, Wellington.

COURT OF APAEAL.
Wellington.
1937.
Sept. 15, 16; Nov. 12.
Ostler, J.
Smith, J.
Johnston, J.
Fair, J.

BETHUNE v. BYDDER.

Landlord and Tenant—Rent Restriction—Recovery of Possession—Jurisdiction—Refusal of Order by Magistrate—Subsequent Action for Ejectment in Supreme Court—Whether Plaintiff estopped from Recovery—Premises used for Maternity Hospital—Monthly Tenancy—Notice to Quit given by Purchaser—Whether Tenant protected—Fair Rents Act, 1936, ss. 2, 3, 20.

The question in an action for possession of a dwellinghouse, where it is sought to apply the provisions of the Fair Rents Act, 1936, whether the house was used as a dwellinghouse at any time since November 17, 1935, and before the passing of that Act (June 11, 1936), is a preliminary question that must be decided before an order can be made under that Act. Where the question arises in an inferior Court, it goes to the jurisdiction and is subject to inquiry in a superior Court, s. 20 of that Act not applying.

Where the Magistrate in any such proceedings, has either not decided such preliminary question or has decided it on an erroneous view of the law or without evidence or reasonable evidence, there is no estoppel; but the Supreme Court may admit evidence and inquire whether such preliminary question was properly decided.

Semble, per *Ostler* and *Johnston*, JJ. Section 20 of the Fair Rents Act, 1936, is confined to applications to a Magistrate originating under the Fair Rents Act itself.

Semble, per *Fair*, J., that the section is not so confined.

Per *Ostler*, *Smith*, and *Johnston*, JJ., (*Fair*, J., not expressing an opinion thereon), Where an order for possession is refused on the grounds that the provisions of the Fair Rents Act, 1936, apply, there is no appeal from the Magistrate's decision and the landlord's remedy is an action in the Supreme Court for ejectment.

Van de Water v. Bailey and Russell, [1921] N.Z.L.R. 122, G.L.R. 83, applied.

Aitken v. Smedley, [1921] N.Z.L.R. 236, G.L.R. 92, referred to.

Counsel: Evans-Scott, for the appellant; **W. V. Rout,** for the respondent.

Solicitors: Glasgow, Rout, and Cheek, Nelson, for the appellant; **Rout and Milner,** Nelson, for the respondent.

SUPREME COURT.
Auckland.
1937.
December 9, 13.
Ostler, J.

AUCKLAND HARBOUR BOARD v. AUCKLAND FARMERS' FREEZING COMPANY, LIMITED.

Local Authorities—Public Bodies' Leases—Powers of Leasing Authority, upon Surrender of a Lease, to Grant new Lease with Rights of Renewal—Public Bodies' Leases Act, 1908 ss. 5, 12.

A leasing authority under the Public Bodies' Leases Act, 1908, upon the surrender of a lease has power under s. 12 of that Act to grant a new lease of the premises to the same lessee for the remainder of the term, whether that remainder exceeds twenty-one years or not; and to include in the new lease any such right of renewal as it is authorized to grant by s. 5 of the same statute.

Sargood v. Wellington Harbour Board, (1905) 25 N.Z.L.R. 268, 7 G.L.R. 583, applied.

Counsel: Barrowclough, for the plaintiff; **North** for the defendant.

Solicitors: Russell, McVeagh, Macky, and Barrowclough, Auckland, for the plaintiff; **Earl, Kent, Massey, and North,** Auckland, for the defendant.

SUPREME COURT.
New Plymouth.
1937.
Nov. 17; Dec. 2.
Reed, J.

STEVENS AND ANOTHER v. COLLINSON.

Tortfeasors — Contribution — Action for Recovery — Equitable Remedy—Trial by Judge alone—Law Reform Act, 1936, s. 17.

An action for recovery of contribution by one tortfeasor from another, being an equitable remedy, should be tried before a Judge alone.

Ward v. National Bank of New Zealand, (1883) 8 App. Cas. 755, followed.

Counsel: R. H. Quilliam, for the plaintiffs; **Moss,** for the defendant.

Solicitors: Govett, Quilliam, Hutchen, and Macallan, New Plymouth, for the plaintiffs; **L. M. Moss,** New Plymouth, as agent for **T. N. Holmden,** Auckland, for the defendant.

Case Annotation: Ward v. National Bank of New Zealand, E. & E. Digest, Vol. 26, p. 203, para. 1582.

Dominion Legal Conference.

Current Information.

The question of accommodation for visiting practitioners is presenting a real difficulty to the Conference Committee. A number of Christchurch hotels are already fully booked for Easter week, and others anticipate being full at that time. The Committee is giving early notice of the situation to practitioners intending to be present at the Conference. The following circular on the subject has been sent by the Conference Secretary, Mr. V. G. Spiller, to the Secretaries of all District Law Societies:—

"I have been instructed by the Accommodation Sub-Committee to circularize all District Societies with reference to the accommodation for practitioners attending the Conference. The position this year is extremely difficult owing to the fact that the Easter race meeting is several days longer than usual and will not finish on the Tuesday after Easter, as in normal years. This year a larger meeting is being held at which overseas horses will be competing and which will attract visitors from all over New Zealand as well as from Australia. The effect of this is that hotel accommodation will be extremely difficult to procure and already a number of the hotels are fully booked. The Sub-Committee has made inquiries at the leading hotels and even in those cases where the accommodation is not already fully taken the proprietors have stated that they can take only a limited number and even then reservations will have to be made early.

"In view of this difficult situation, it would be of assistance to the Sub-Committee if visiting practitioners arranged their own accommodation direct with the hotels. The Sub-Committee, however, will be glad to assist as far as possible any practitioners who wish their accommodation arranged for them; but it is absolutely essential that requests for accommodation be made almost immediately.

"Would you please ask practitioners in writing for accommodation to state exactly when they will arrive and when they will leave, as already several requests for accommodation have been received but no definite details have been given; and it has, therefore, not been possible to arrange the accommodation required."

* * * *

The Papers and Remits Sub-Committee wishes to finalize the remits for the Conference, but there is still room for several more remits on the programme.

Any practitioner, who wishes to suggest a subject for a remit or paper to be read at the Conference, should submit it to his own District Law Society as soon as possible.

The Ethics and Etiquette of the Legal Profession.

By A. R. PERRY, LL.M.

Should a person writing a paper on this subject desire to be exact, he would distinguish between the "ethics" and the "etiquette" of the profession. For according to the dictionary, and to nicety of expression, the former covers the rules of conduct of the profession towards all persons, while the latter refers to that unwritten code regulating the conduct of practitioners in what concerns the interest of their brethren or the dignity of their profession. But I imagine that the subject should be treated as a composite whole, and I intend so to treat it; therefore, the distinction between ethics and etiquette will not be stressed, although that section dealing with the practitioner's rights and duties to the profession will pertain peculiarly to the etiquette, while the balance of the paper will be concerned in the main with the ethics.

It is well to stress at the outset that the subject covers both rights and duties, which together make up the code which must regulate the conduct of the lawyer in all his dealings.

An American publication (*Archer*: *Ethical Obligations of the Lawyer*, at p. 37) contains the following statement:

> A lawyer should maintain a neat and well-groomed appearance. This does not mean that he should dress flashily in flamboyant waistcoats and rainbow-hued ties, but simply, with the care that betokens respect for himself and his profession. He should not appear in public in manifest need of the services of a barber, nor in soiled linen, nor in clothes that need to be brushed, or pressed free from wrinkles and bagginess.

I do not propose, however, to deal with this branch of the rules for the conduct of the profession, and write this paper on the basis that a profession exists which has passed the stage of requiring advice on elementary matters of personal conduct. I feel that in so doing I am not making any reckless assumption.

But it must be admitted that to some degree at least, the profession does not hold its rightful place in the community. "A lawyer in the singular is unnecessary, and in the plural repulsive"; to how many does this represent the true position of the legal profession. And this being so, we may legitimately, and we should, inquire the reason. Undoubtedly, the standard of the ethics and etiquette of the profession accounts largely for the lamentable truth.

In common with a large section of the junior profession, I take the liberty of criticizing the Law Schools and blaming them largely for the present position. In spite of the revision of the legal course which is about to be put into effect, there is still no adequate provision for training in the practice of the law. A large proportion of the students graduating each year have not had the benefit of any office training; many others again have had an inadequate guidance in some small office. And these men are launched upon a career in the public arena with nothing more than a doubtful knowledge of legal principles. Place many of them in the position of having to face the responsibility of one, two, and more years of adversity before becoming established, and I contend that we have one of the prime causes of the present position; and what is more, and this makes the fact scarcely creditable to the profession, it is a cause which could and should have been remedied many years ago.

This is a matter which calls for free discussion, and this opportunity is gladly welcomed. But I go further than this and say that the standing of the profession in the eyes of the community can be explained from another point of view. These are troublous and changing times, and men whose training and occupation offers them scope for leadership in the community are under a duty to their fellow-men to accept such leadership. I maintain that a vast number of people in the community look to the professions to provide men who will direct the thought, the culture, and the material advancement of this country. And in this sphere, the legal profession, which above all others should be to the forefront, is sadly lacking. It is not enough that an occasional personage should stand on the platform for the maintenance of conditions which have long since shown their futility, evidencing at the same time a lack of knowledge of the new sciences which are growing up. It is not enough that members of the profession should lead the thought and culture of exclusive groups of persons; this is admitted. Justice, in the administration of which the legal profession plays an all important part, is, we are taught, a system where all men are equal; and, with commendable zeal, the attempt is made to ensure that this is so before the law. But in this world "justice" rightly implies much more—it implies the right of all men to equality of opportunity, the right of all men willing to work, to the full enjoyment of the products of this earth. I feel justified therefore in maintaining that it is the duty of the legal profession to produce a body of leaders who will strive for the attainment of a higher plane of thought, a higher culture, and a higher stage of material advancement for all men.

In dealing with particular rules relating to the ethics and etiquette of the profession, I propose to classify my paper under four headings: (i.) The Client. (ii.) The Profession. (iii.) The Court. (iv.) The State.

I.—RELATING TO THE CLIENT.

(*a.*) *Silence.*—The prime duty of all practitioners is to maintain strict secrecy as to the client's affairs. The public must feel that it can trust the confidence of the profession.

(*b.*) *Interest.*—No practitioner should act if he has been interested previously in the case for another person, or if for any person there is a risk of his not being able to devote his full faculties to his client's case—*e.g.*, if the other party is a friend or a client.

(*c.*) *Maintenance.*—It is not proposed to examined the legal principles of the law of champerty and maintenance; but the cases rest on the same reasoning, the evil of the personal interest of counsel. This is very far from saying, however, that the lawyer should

This is the winning essay for the prize given by Mr. Claude H. Weston, K.C. The papers were adjudicated upon by His Honour the Chief Justice, the Rt. Hon. Sir Michael Myers, who, in reporting his decision, said: "If the four essays can be regarded as a reasonably fair sample of the views of the young men who are seeking to make the practice of the law their career, then it is clear that the honour of the profession is safe in the hands of the coming generation." The second essay, by Mr. B. Sinclair-Lockhart, LL.M., will appear in a later issue.

not act for an impecunious client, with the full knowledge that he will receive his fee only if he succeeds. The converse is the truth; the lawyer is under a duty to act in such circumstances providing he is satisfied of the merits of his client's cause.

(*d.*) *Freedom to act.*—The profession must maintain the right of the practitioner to refuse to act in any cause where he cannot see that the contentions of his client are well founded, and also the right of the practitioner, once launched into a case, to conduct it according to his own views of the best method of achieving success.

(*e.*) *Advising.*—The practitioner should exercise the greatest care in advising his client. He should do more than apply his knowledge of legal principles; he should inquire into the law, remembering that the casual question put to him by the man in the street is the death-trap for the lawyer. Under no circumstances should a client be told that a successful verdict is a certainty, for the pitfalls are many, and an unfavourable verdict in such circumstances brings discredit.

(*f.*) *Conduct of case.*—Quite apart from the skill required, it can be said that a client is entitled to every advantage which the law offers to him. This is not maintaining an abuse of legal procedure, for the law is a correlated system which has been built up through centuries; if a case is sound, it will build like the tiers of a pyramid; if weak, it will fall like the house built upon the sand. Further, the practitioner, and this applies particularly to the junior practitioner, should appreciate the limits of his own ability, and, if a case goes beyond that, he should see that his client obtains adequate service.

(*g.*) *Right of audition.*—Subject to the observance of certain rules of conduct and to maintaining the standard of respect rightly called for, every practitioner has the right to present his client's case in Court as he pleases, and, if he feels that his client's interest demands a certain submission being made, he should argue that submission to the best of his ability even though there are indications that it is futile.

(*h.*) *Settlements.*—In this, as in all matters, the practitioner must consider first the interests of his client, and he should remember that a reasonable settlement is preferable to giving his name to a leading case.

(*i.*) *Criminal law.*—The practitioner may be vested with the office of Crown Prosecutor, and, if so, it is his recognized duty to present the case against the prisoner fairly and without bias. All men are presumed to be innocent till they are proved guilty; this is fundamental in our system of justice, but it does not mean that a barrister must, or should, continue the defence of a prisoner who has without doubt misled him as to the true facts. The standing of the profession demands that deliberate falsehood by the accused be not countenanced by counsel.

(*j.*) *Costs.*—In my view, the question of costs must be dealt with from a negative angle. The lawyer is an officer concerned with the administration of justice, and there are certain factors to be taken into consideration when fixing fees: they must never exceed the actual value of the work done; they must not be disproportionate to the type of case and amount at stake; and they should be within the means of the client. An observance of these rules will probably be fruitful to the practitioner in producing future work as well as being in keeping with the ethics of the profession.

II.—Relating to the Profession.

(*a.*) *Not to disparage.*—The primary rule is that members of the profession must not disparage the profession as a whole nor individual members of it. A remark of this type to an outsider, said with no real ill-intent, will often cause a change of feeling on the part of the listener and his friends. This does not mean, however, that practitioners should not discuss among themselves, openly and fairly, all matters pertaining to the welfare of their profession; such discussion is needed. Nor does it mean that when consulted by an aggrieved client a lawyer should not advise him fairly and without bias, even though such advice may be adverse to the reputation of a fellow-lawyer; the duty of the lawyer consulted is clearly to act in any such *bona fide* case.

(*b.*) *Competition.*—Paradoxically, the profession is not a trade, and the ranking of its members should depend solely upon their ability. Therefore, it is a malpractice to attempt to obtain business by "price-cutting"; it is unprofessional to accept the retainer of a client who has been consulting another practitioner without being satisfied that the client is transferring his work of a free will.

(*c.*) *Advertising.*—This is the most important branch of the last heading and, on account of its importance, it is treated separately. Rules of the Law Society strictly forbid all advertising by practitioners, and rightly so. It is not proposed to deal with these in detail, for they are, or should be, well known, but it may be profitable to state those activities which can rightly be indulged in, quite apart from the rules referred to. Practices usually depend to some extent at least on social connections, on clubs and other organizations. There is certainly no harm in this, providing the practitioner does not make them an opportunity for touting for business. Similarly it is quite legitimate for a lawyer to give public address on non-legal subjects or to enter the political arena, provided the notification does not announce the speaker as "a prominent lawyer," or some similar slogan. The usual reports of cases in the newspapers and law reports are forms of permitted advertising, as is the forwarding to persons likely to be interested, of a card notifying the setting-up of a practice or the formation of a partnership.

(*d.*) *Conferences.*—A lawyer should never interview the opposing party for whom another practitioner is acting except in the presence of that practitioner, or with his free consent, and then only within the limits of such consent. When the opposing party has no legal adviser, the practitioner should make it clear to him that he cannot undertake the protection of the interests of two persons.

III.—Relating to the Court.

(*a.*) *Loyalty.*—Every practitioner is an officer of the Court, and owes a duty of loyalty to it. There is an even stronger veto on disparagement of the administration of justice and of the Judges vested with that duty as there is on the disparagement of the profession. It is this duty of loyalty which demands of all lawyers that they take an active interest in all suggested reforms of the system and discuss them in a constructive manner.

(*b.*) *Conduct.*—Members of the profession owe a duty of respect to the Court and to the individual Judges, both within and without the forum. In presenting cases, they should remember that it is their duty to assist the Court, so far as is within their power, in arriving at the correct decision and their arguments on case law and fact should be directed to that end. For the same reason, apart from the obligation to the client, it is the right and duty of counsel to make any submission which he considers worthy of consideration.

IV.—Relating to the State.

The taking of the oaths of demeanour and allegiance on admission to the profession should be more than a mere matter of form. The legal profession represents an integral part of the administration of justice and the administration of justice is a vital matter in the government of the State. And just as the State is the Supreme expression of the will of the people, so does the legal profession owe it a duty faithfully to perform its work in its own sphere. A rigid desire on the part of all practitioners to uphold justice, to maintain the equality of all persons before the law, and to adhere to the ethics and etiquette of the legal profession will go far to protect the rights and freedom of the citizen. I have already indicated my opinion that the profession is under an obligation to widen its sphere of interest, and I do not intend to repeat what has been said on that topic. Suffice it to record in concluding this section, that the supreme duty of the practitioner is to see justice done, whatever interpretation may be put upon the word "justice," and that in this he owes a duty to the State.

Conclusion.—The foregoing paper does not claim to be comprehensive either in the number of topics discussed or in the treatment of each heading. The subject-matter has been confined to a statement of general principles, a strict observance of which, it is felt, would do much to raise the standard of the profession.

Tasmania's New Chief Justice.—The Hon. Mr. Justice Harold Crisp, who succeeds Sir Herbert Nicholls in the Chief Justiceship of Tasmania, is the son of a barrister and solicitor, the late Mr. D. H. Crisp, of Hobart. He is Tasmanian born and bred, and he was educated at Christ's College in Hobart, and called to the Bar there in April, 1896. He practised for fifteen years until, three days before the outbreak of the Great War in 1914, he was appointed Judge of the Supreme Court of Tasmania and Member of the Executive Council. He had married, in 1899, the daughter of the late Hon. Alfred Page.

Sir Herbert Nicholls, the retiring Chief Justice, was born in Ballarat in 1868. His father, H. R. Nicholls, was editor of *The Mercury*, Hobart, from 1883 to 1912. Sir Herbert was a clerk in the Post Office for five years to 1887. He then read for the Bar and was called in 1892. From 1900 to 1909 he was M.L.A. (corresponding to our "M.P.") for Hobart, and during that time he was first Attorney-General and later Leader of the Opposition. In 1909 he was appointed Puisne of the Supreme Court and Chief Justice in 1914. He was also Lieutenant-Governor from 1924 to 1933 and Acting-Governor from 1930 to 1933. Knighthood was conferred on him in 1916 and he was made K.C.M.G. in 1927.

Death Duties Act, 1921.

The Latest Amendment.

By E. C. Adams, LL.M.

The revenue laws, by reason of their increasing complexity, are rapidly becoming the almost exclusive domain of the specialist. How many New Zealand solicitors, for instance, could explain off-hand the purpose and effect of s. 27 of the Finance Act, 1937, which reads as follows:—

> For the purpose of paragraph (*g*) of subsection one of section five of the Death Duties Act, 1921, where an annuity or other interest has been purchased or provided by the deceased, either by himself alone or in concert or by arrangement with any other person, the extent of any beneficial interest therein accruing or arising by survivorship or otherwise on the death of the deceased shall be ascertained and shall be deemed always to have been ascertainable without regard to any interest in expectancy that the beneficiary may have had therein before the death.

It is necessary first to turn to the Death Duties Act, 1921, to see what s. 5 (1) (*g*) has to say:

> In computing for the purposes of this Act the final balance of the estate of a deceased person his estate shall be deemed to include and consist of the following classes of property:—
>
> (*g*) Any annuity or other interest purchased or provided by the deceased, whether before or after the commencement of this Act, either by himself alone or in concert or by arrangement with any other person, to the extent of the beneficial interest accruing or arising by survivorship or otherwise on the death of the deceased, if that annuity or other interest is property situated in New Zealand at the death of the deceased.

Paragraph (*g*) drags within its net much property which would otherwise not be liable to death duty. Lord Loreburn in *Lethbridge v. Attorney-General*, [1907] A.C. 19, 23, said that the general purpose of the provision was to prevent a man from escaping estate duty by subtracting from his means, during life, money or money's worth, which, when he died, were to reappear in the form of a beneficial interest accuring or arising on his death. That is a very general statement and does not aid much in the interpretation of the provision. The following are examples which are caught by the operation of paragraph (g):—

1. *Insurance policies* which are not caught by any other provision. For example, A. assigns a policy of his life to trustees to stand possessed of the proceeds for his children in equal shares, and covenants with the trustees that he will keep the policies in full force. On A.'s death the moneys payable under the policy form portion of his estate for death-duty purposes; *Public Trustee v. Commissioner of Stamps*, (1912) 31, N.Z.L.R. 1116.

2. *Joint tenancies*, which cannot conveniently be brought in under any other heading. For example, A. and B. purchase property for £1,000 to be held as joint tenants, and contribute the purchase-moneys equally. In the interval between the date of purchase and the death of A., who is survived by B., the property greatly enhances in value. One-half of the value of the property, as at the date of A.'s death, must be brought to account for death-duty purposes in his estate, and B. is deemed a successor to that amount and liable to succession duty accordingly.

3. *Annuities, pensions, superannuation moneys*, contributed to by deceased.

4. *Instruments of nomination.*—Section 90 (*e*) of the Post and Telegraph Act, 1928, and s. 57 of the Friendly Societies Act, 1909, provide that a depositor or member may by an instrument nominate a person to receive at his death moneys standing to his credit. Moneys which so pass on a depositor's or member's death do not, as a general rule, devolve on his executor or administrator or become subject to the trusts of his will—*In re the Will of William Johnson (deceased)*, (1912), 32 N.Z.L.R. 166; *Bennett v. Slater*, [1899] 1 Q.B. 45—but they are caught for death-duty purposes by para. (*g*), the nominee being deemed the successor.

In interpreting para. (*g*) three matters must be borne in mind:

First, the words "other interest" are not limited by their antecedents—that is, the *ejusdem generis* construction is not permissible: *Little v. Commissioner of Stamps*, [1923] N.Z.L.R. 773.

Secondly, before para. (*g*) operates, it must be an interest purchased or provided by *deceased himself* either alone or in concert with any other person. Thus, in *Angus v. Commissioner of Stamp Duties, (N.S.W.)*, (1930) 44 C.L.R. 211, deceased had a life interest in property provided for by her father, and the Crown failed to bring the property within the paragraph.

Thirdly, as pointed out in *Hanson on Death Duties*, this is apparently the only case under the Act in which the interest of the successor is the measure of value. In all other cases it is the interest which has ceased that is valued. If we remember this third point, the judgment of the House of Lords in *Adamson v. Attorney-General*, [1933] A.C. 257, is easily understood. It is the extent of the beneficial interest accruing or arising by reason of the death of deceased which is taxed under para. (*g*).

The purpose and effect of s. 27 of the Finance Act, 1937, may be ascertained by an examination of the two cases previously cited:—*Little v. Commissioner of Stamps* and *Adamson v. Attorney-General*.

The first is a decision of the Supreme Court of New Zealand. Deceased *inter vivos* made a settlement of £500; at his death this was to be held in trust for Mrs. Reid absolutely *if she survived him*; if not, then for her children or child, if only one, and in the event of there being no children, for the testator absolutely. Mrs. Reid survived testator, and the Crown was successful in its claim that the full £500 was dutiable under the Death Duties Act, 1921. After pointing out that the beneficial interest of Mrs. Reid accrued on the death of deceased, up to which time she had only an interest contingent upon her surviving him, Adams, J., concluded thus:—

> The value of the beneficial interest which accrued or arose on the death of the deceased is the full sum of £500, and there is nothing in the Act to justify any reduction on an actuarial valuation of the interest of Mrs. Reid prior to vesting: *Public Trustee v. Commissioner of Stamps* (31 N.Z.L.R. 1116).

The House of Lords case, *Adamson v. Attorney-General (supra)*, shows that such an actuarial deduction should have been made in *Little v. Commissioner of Stamps*. The former case concerned a settlement *inter vivos*, and the *ratio decidendi* may be ascertained from the judgment of Lord Warrington of Cliffe, at p. 277:

> Before his death each child had a beneficial interest, but one that might be destroyed either by an exercise of the power of appointment or by the death of the child in the lifetime of the deceased; on his own death without exercising his power the beneficial interest of each child became absolute and indefeasible. The value of this beneficial interest, of course, exceeded the value, if any, of that interest to which the child was entitled previously to the death of the deceased, and to the extent of that excess such beneficial interest is, in my opinion, to be deemed to be property passing on the death and would, under s. 1, be charged with duty accordingly.

In *13 Halsbury's Laws of England*, 2nd Ed., the footnote (*m*), on p. 242, correctly summarises the effect of the case:—

> The extent of the beneficial interest which accrues or arises on the death, where the beneficiary had previously an expectant interest, is the extent to which the principal value of the beneficial interest exceeds the value, if any, of the expectant interest prior to the death.

Now, it is obvious that the effect of s. 27 of the Finance Act, 1937, is to restore *in toto* the principle of *Little v. Commissioner of Stamps* and *Public Trustee v. Commissioner of Stamps (supra)*. In valuing an interest which is taxable by para. (*g*) of subs. (1) of s. 5, no reduction is to be made based on an actuarial valuation of the prior expectant interest of the beneficiary; the *full* value must be brought to account. It is also to be noted that s. 27 appears to be retrospective in its effect.

Bench and Bar.

His Honour Mr. Justice Smith, accompanied by Mrs. Smith, has left for his year's vacation. He is proceeding to England by way of the Dutch East Indies, India, Egypt, and probably Palestine.

Mr. Joseph Dolph, district solicitor to the Public Trust Office, Christchurch, has been admitted as a barrister on the motion of Mr. H. D. Acland.

Mr. T. A. Leitch, who has been a member of the staff of Mr. A. H. Cavell, Christchurch, has been admitted into partnership. The firm will be known as "A. H. Cavell and Leitch."

Mr. Geoffrey C. Broughton, who has been managing clerk for some years for Messrs. Mitchel and Broughton, Invercargill, has been taken into partnership. The new partnership will continue the old firm name.

Mr. A. W. McLeod has been admitted to partnership by Messrs. Humphries and Humphries, Napier. The practice of the firm will be carried on at the same address under the same name.

Mr. C. T. Smith, and Messrs. Ward and Gascoigne (Mr. D. G. Ward and Mr. A. M. Gascoigne), of Blenheim, recently amalgamated their practices and have moved into newly acquired premises in Lower High Street. The new firm is carrying on practice under the name of "Smith, Ward, and Gascoigne."

Mr. J. A. Niblock, for some years in the Common Law department of Messrs. Duncan, Cotterill, and Co., and Mr. A. T. Bell, late of Mr. Roy Twyneham's office, have commenced practice, under the firm-name of "Niblock and Bell," at Epworth Chambers, Hereford Street, Christchurch.

London Letter

By Air Mail. Strand, London, W.C.2,
December 23, 1937.

My dear EnZ-ers,—

I think it better, in your interests, to begin the brief (but usually foggy) respite that Christmas brings but which cannot be dignified by the blessed word "vacation," by getting my monthly report off my chest, and so make way for what the next day or two will bring. You already will have received my New Year greetings. But, once again, "Here's hoping!"

In submitting my annual report (to which, I append no balance-sheet), I would say that the year now ending has been one of promise, rather than of fulfilment, in the legal world. No epoch-marking causes have given the opportunity for display and demonstration in the highest Courts, though merit has not been lacking; and so no new reputations have been enchanced. We have seen no sensible falling-off in matrimonial and traffic casualties and cases; but forensic novelty has been lacking in both. Mr. Justice Blair's visit has given us hopes of a reliable method of obtaining from an honest witness the admission that he was walking at 100 miles an hour, in terms of f.p.s. and *not* in m.p.h.

In the result the Bar found itself, in the autumn, in an ignominious and unprecedented situation; for the L.C., anxiously scanning its ranks from Olympus, seemed to say that the supply of judges was not equal to the demand. Had the L.C. taken the precaution of consulting me (if consultation with higher authorities were deemed inexpedient), I could have saved him all anxiety and named a dozen men well qualified in every respect to fill any vacancies which might occur; for their merits, though invisible from the Woolsack, are not hid from me. All one may say at the moment is that this helpful consultation is unlikely to take place.

Outside the Courts, the lawyers have done well in districts when visibility has been good. Look at Parliament. A. P. Herbert, a Templar, produced the "Marriage Act," which will emancipate fresh multitudes from the bonds of matrimony and will bring much new work and reward to Mr. Herbert's learned and deserving friends who practise in the legal calling. After the beacons of Mr. Hore-Belisha, Dr. Leslie Burgin, solicitor, has lit new lights in Piccadilly and elsewhere, and freed our wonderful policemen from point duty. Mr. Kingsley Griffith has brilliantly, if unsuccessfully, opposed many Bills, and held up a Population Bill which might otherwise have slipped by unnoticed to the great detriment of our liberties, and the increase of the inquisitorial powers of the bureaucracy.

Two New Divorce Judges.—The Royal Assent to the Supreme Court of Judicature (Amendment) Act has been immediately followed by the appointment of the Hon. S. O. Henn Collins, K.C., and Mr. F. L. C. Hodson, K.C., to be additional Judges of the Probate, Divorce, and Admiralty Division. The appointments are made in view of the present state of the lists in the Divorce part of the Division, and of the increase of work which is likely to result from the Matrimonial Causes Act of the present year, and it is to the Divorce part of the Division that the new Judges will be attached. You will probably be more familiar with the name of Henn Collins, J., who was on the winning side in *Lysnar* v. *National Bank of New Zealand*, *Trickett v. Queensland Insurance Co., Ltd.*, and *Vincent v. Tauranga Power Board*, to name some of his more recent successes before the Judicial Committee of the Privy Council. He is the younger son of Lord Collins of Kensington, who, at the Bar, and in his successive positions of King's Bench Judge, Master of the Rolls, and Law Lord, was one of the great masters of the Common Law, and he illustrates, as in not a few other recent cases, the hereditary judicial talent. Like so many others in the Judiciary, he wears the old school tie of Winchester. Called to the Bar by the Middle Temple in 1899, he became a Bencher in 1924. He was Junior Common Law Counsel to the Admiralty in 1927, and took silk in 1932. He is twenty years older than his judicial brother, but his appointment is not less popular. This son of Lord Collins has won a high reputation at the Bar, and his practice has extended to every branch of the law. His profound knowledge of the law of Copyright as well as of the Common Law is evidence of his adaptability and capacity for specialization; and it will not take him long to master the principles upon which the decree *nisi* and the order for custody are granted.

Hodson, J., who took silk not long ago, brings to the Bench experience gained by a large practice in divorce, and is not open to the criticism in Parliament during the progress of the new Act that divorce judges are appointed for their ignorance of divorce law. He was born in 1895, and was educated at Cheltenham and Wadham College, Oxford. Called to the Bar by the Inner Temple in 1921, he took silk so recently as last October. He had already acquired a large practice in the Court to which he has been appointed, and so he is the only Judge whose training and practice at the Bar entitle him to be regarded from the outset of his judicial career as a specialist in Divorce. He served with great distinction in the War, and wears the M.C. in evidence thereof, and, still a stalwart and promising lad or stripling of forty-two, he is in many respects unique. In him are centred the hopes and good wishes not only of lawyers but of a multitude of impatient petitioners. If spared, it will be his lot to reign as President of the Division for many years and to grant decrees *nisi* and absolute to an untold number of petitioners, who are now not only unwed but unborn.

Yodel and Copyright.—Du Parcq, J., had to listen with a discriminating if suffering ear to the yodelling not only of a witness but of Mr. R. F. Levy, K.C., in the strange Copyright Case, *Harrington v. Macari and Others*. The plaintiff was claiming damages for the alleged infringement of his copyright in certain songs, and it speaks well for the Judge that he was able to discern, in the various renderings of song and yodel, with and without what were described as "twiddly bits," where the copyright lay; and not only so but the spots where it had been injuriously affected. In the result he gave judgment for the plaintiff for five guineas in respect of the song "Mountain Refrain"; judgment for the defendants in respect of the others, and no costs to either party. On the defendants' undertaking not to repeat the infringement aforesaid, he made no order for any injunction. For the parties the result of the contest was, in the circumstances, not a cause for congratulation and thanksgiving, but British Justice was once again vindicated and the yodel takes its proper place in our law as one of the subjects of copyright.

"**Paranoid Psychopaths**"—What is a paranoid pyschopath? You don't know! Neither did I until I had read Mr. Justice Langton's admirable decision in *Cæsar* v. *Bohrmann*, (*Times*, December 22, 1937). According to the contention of those who challenged a will, a paranoid psychopath is, roughly speaking, a person who is not mad enough to be called "delusionally insane" but is not sane enough to make a will. The learned Judge reiterated the rule laid down by Chief Justice Cockburn in *Banks* v. *Goodfellow*, (1870) L.R. 5 Q.B., 549, 565. A man is either delusionally insane or else sane; and the learned Judge refused to hold that there was a third category into which persons of mental instability fall. At the same time he took what seems to be a new step in finding that within the area of the testator's generally sane intellect there was one insane spot. That was the area in which he thought about the London County Council. Accordingly, by an interesting and novel decision, he struck one clause out of the last of several codicils and found the rest of the will good. We respectfully agree. Are not all of us insane about something or other?

A Bachelor's Estate.—This case, *Cæsar v. Bohrmann* had flowed on and on in the P. D. & A. Division, and while its end for some time was not in sight, yesterday it was found to wind somewhere, safe to sea. But not before the expression "Bachelor's £180,000 Estate" had lost all its meaning. Meanwhile in the D. section of the P. D. & A. the new Judges "got down to it" and a vast number of decrees *nisi* have been made, while the bachelor's testamentary capacity yet remained the subject of careful scrutiny, examination, and cross-examination.

It is perhaps a good thing that good "stayers" appear from time to time in the Division, even when the counsel chiefly engaged are good men imported from outside. The counsel in the case were Mr. D. N. Pritt, K.C., Mr. H. W. Barnard, and Mr. R. T. Barnard for the plaintiffs; Mr. Roland Oliver, K.C., Mr. Clifford Mortimer, and Mr. F. S. H. Bryant for the defendant. Fresh every morning they appeared; and Langton, J., showing no sign of undue strain, sat patiently from day to day. There was a change in one of the teams "lang syne," when Roland Oliver came into the case on Mr. Hodson's promotion to the Bench of the Division.

Deaths and Deodands.—It is curious to observe how deeply the public conscience is stirred by the war casualties of Spain, and how meekly they accept without mutiny the road casualties of Great Britain. It was Lord Mottistone who alleged not long ago, in the Lords, without the fear or the fact of contradiction, that it was safer to be in Spain at war than in our homeland in time of peace. "It is true to say," he averred, "that as the means of causing casualties, the bullet, shell, and bomb are more humane than motor-cars and lorries." Lord Newton made a vain but praiseworthy attempt to check the evil by reviving in his Motor Vechicles (Forfeiture) Bill, the ancient law of Deodands. Simply, he said, let the instrument of death, if that instrument be an automobile, be forfeit to the State. Lord Atkin killed that Bill; and he had no difficulty in showing that the kill was justifiable. Motor-cars like motor drivers differ so greatly in quality and value; and in any case, forfeiture could be covered by insurance, and old cars would give place to new and more effective instruments of death. Now we are looking to another lawyer, Dr. Leslie Burgin, for the bright and practical proposals. First, of course, he will have to ascertain the relevant facts as in the case of population statistics, and he will first of all have to decide the kind of facts which might be helpful. By far the best idea was one which received little encouragement in the House of Commons, namely, that the ages of the drivers responsible for killings and injuries should be ascertained. To this might be added statistics relating to the sex of the offenders. Reliable figures concerning these two categories would, I am informed and believe, be full of light. The pedestrians have already been sufficiently classified as the Quick and the Dead.

For the Prevention of Cruelty to Judges.—Cruel and unjust to the Judges are the ways of the legislators. They draft a Bill embodying what they believe to be a Good Idea. In the process of law-making they find it expedient, but impossible, to say exactly what they mean, if anything; and in their extremity they use some ambiguous phrase or clause; they use words capable of different meanings and they define the said words inadequately or not at all. They pass the Act and leave it to the Judges.

Greaves-Lord, J., is the most recent sufferer. Manfully, skilfully, and with no better assistance than some inadequate sayings of the Law Lords and the L.J.s, he addressed himself to the task of assessing, in sterling, the normal expectation of life of a healthy girl child of eight years, killed in a running-down accident as a result of the negligent driving of a vehicle by the defendants' servant or agent. This obligation was put upon him by certain statutes, including the Law Reform (Miscellaneous Provisions) Act, 1934. The Lords had given some slight indication as to the kind of things which were not for consideration in making his estimate; but otherwise, and with the whole world (as it were) before him, he had to do his best without the incalculable assistance of a jury. That was in *Trubyfield and Another v. Great Western Railway Co.*

Normal Expectation.—Small wonder that the Judge, in arriving at the estimate of £1,500 had to consider whether the sorrows of childhood and adolescence outweighed its joys, and whether the age of immaturity might be assessed at nothing in terms of sterling. He himself took the view that there was a credit balance in respect of the years between eight and twenty-three, the latter being the age of a young man whose normal expectation was held to be worth £1,000. In the end, having considered the moral and psychological spects, the Judge found his two main heads of assessment in a verse of poetry: (You remember the ending of *Trilby*?): "A little work, a little play, to keep us going. And so good-day. A little warmth, a little light, of love's bestowing. And so good-night."

Why should not the legislators have done their own dirty work, by schedule or otherwise, and set out in sliding or other scale the value of the normal expectation? Healthy person aged one, so much; aged two, so much; and so on (male and female; with definite variations for health percentages as ascertained by the panel (or other) doctor. In addition to other advantages, the driver of the vehicle would know that if he must run a pedestrian down it were better to run into someone old and decrepit, and therefore cheap; and during the Last Opportunity, he might be able to form a rough estimate of his, or his employer's, liability.

Yours, as ever,
APTERYX.

Negligence at Common Law.

Liability to Persons Entering on Property.

By H. A. Palmer, M.A. (Oxon), of the Inner Temple.

The law with respect to the liability of occupiers of property for accidents happening to persons who have entered on their property has been the subject for discussion in no less than three recent cases in the Court of Appeal in England.

In the first of these cases, *Ellis v. Fulham Corporation*, the occupier was a local authority and the property concerned was a public park, containing a shallow pool which had been designed and intended for children to paddle in. The local authority had rendered the pool additionally attractive by placing beside it a quantity of sand brought from the sea-shore, some of which found its way into the pool itself. One day a small boy was paddling in the pool when his foot came into contact with a piece of glass, which had become embedded in the sand at the bottom of the pool, and was severely cut. That the local authority realized the danger appeared from the fact that they had posted a notice near the pool stating that owing to the risk of cut feet persons must not take into the pool any bottles, tins, or other sharp materials, and also from the fact that by their instructions the sand and the pool were raked over every day by an attendant. Unfortunately, the rake used was of such a pattern that it did not go into the sand, but only raked the surface of it. In an action by the boy and his father against the local authority, the Court held that the boy was an invitee and that the local authority had been negligent and were liable in damages. The Court of Appeal, however, held, by a majority, that the boy was not an invitee, but a licensee, but that nevertheless the local authority were liable for negligence.

In the second case, *Coates v. Rawtenstall Corporation*, the occupier was also a local authority, but the property concerned in this case was a recreation ground containing various contrivances for the amusement of children, including a chute or slide. One day a small boy, aged three, went to this ground with his cousin, a boy of fourteen, and slid down the chute sitting on his cousin's knee. Unfortunately, another boy had, unknown to them, placed a chain across the end of the chute, with the result that they crashed into this chain and the smaller boy was severely injured. The chain was one which an attendant at the recreation ground was in the habit of placing across the chute to prevent it from being used on Sundays and which was at other times usually padlocked to a pole, but on this occasion had been left lying about. In this case it was argued that the small boy was a trespasser, since the chute was never intended for use by a child of his age, but the Judge held that he was a licensee and that the local authority had been negligent and were liable to pay him damages, and his decision was upheld by the Court of appeal.

In the third case, *Proctor v. British Northrop Loom Co., Ltd.*, the defendants were the occupiers of a vacant piece of land in which there was a hole. The land was surrounded by a wall, though there was a gap in it, and there was a notice forbidding persons to go on the land. A child got through the gap in the wall and fell down the hole and was injured. In this case the Court held that she was a trespasser and could not recover.

Viscount Hailsham, L.C., in *Robert Addie and Sons (Collieries), Ltd. v. Dumbreck*, [1929] A.C. 358, laid down that those who suffer injury on the premises of other people are divisible into three classes—namely, invitees, licensees, and trespassers. It had previously been suggested by Maugham, L.J., (as he then was), that there was a fourth class, a sort of intermediate category between licensee and trespasser, but Lord Hailsham expressly held that this was not so. The duty of an occupier of premises to these three classes has been discussed in many cases, and, in principle, it is tolerably plain. In the case of invitee the duty is to take reasonable care that the premises are safe (per Lord Hailsham in the case just cited) and not to allow a concealed danger to exist which is not apparent to the invitee but is known or ought to be known to the occupier: *Indermaur v. Dames*, (1866) L.R. 1 C.P. 274. To licensees, the duty is not to subject them to any danger which is known to the occupier and not to the licensee (per Greer, L.J., in *Purkis v. Walthamstow Borough Council*, (1934) 151 L.T. 30, 33. To trespassers, the duty is merely not to do them any wilful harm (per Lord Hailsham in the *Dumbreck* case). So much seems clear, and the statement of Lord Hailsham in *Robert Addie and Sons (Collieries), Ltd. v. Dumbreck, (supra)*, that in the case of a licensee the occupier is bound not to allow a concealed danger to exist which is not apparent to the visitor, but which is known or ought to be known to the occupier, must have been, as was pointed out by Greer, L.J., in *Ellis v. Fulham Corporation*, a slip.

Difficulties in this type of case have more often arisen where it has to be decided into which class the plaintiff falls. In *Ellis v. Fulham Corporation* MacKinnon, L.J., pointed out the rather unfortunate nomenclature of these three classes, or at least one of them. The most obvious use of the word invitation in ordinary language is, as he said, that of a request by a host to another person to attend a social function; but a person who accepts that request and goes to his host's house is, nevertheless, in law not an invitee but a licensee. The distinction between a licensee and an invitee is put clearly in Sir John Salmond's famous book on Torts. A licensee, he says, may be defined as a person who enters on the premises by the permission of the occupier granted gratuitously in a matter in which the occupier has no interest. An invitee, on the other hand, is a person who enters on the premises by the permission of the occupier granted in a matter in which the occupier has himself some pecuniary or material interest. In other words, the invitor says "I ask you to enter on my business." The licensor says "I permit you to enter on your own business." It was argued in *Ellis v. Fulham Corporation* that the boy was an invitee because it was the interest of the local authority to keep children off the streets and to promote their health by providing them with an opportunity for healthy recreation, but the Court of Appeal held that this was not a material interest within the rule.

Ordinarily, a trespasser is a person who enters on another person's premises unlawfully; but there will in law be included in this class a child who is the young to understand danger so that a license cannot be held to extend to him. If, however, as Farwell, L.J.,

said in *Latham v. R. Johnson and Nephew, Ltd.*, [1913] 1 K.B. 398, such a child is accompanied by a competent guardian, the rule does not apply. So it was argued in *Coates v. Rawtenstall Corporation* that the child in that case was a trespasser with respect to the chute within that rule; but the Court of Appeal held that there was no evidence that the boy of fourteen who accompanied him was not a competent guardian.

One point is to be noticed with respect to the recent decisions in *Ellis v. Fulham Corporation* and *Coates v. Rawtenstall Corporation* and that is that in each of those cases the defendants were not aware of the presence of the actual object which caused the accident, but were shown only to have known of the risk of that object being there. Thus in *Ellis's* case the Corporation did not know that the broken glass was in the pool. They only knew that there was a risk of broken glass getting into the pool. Again in *Coates's* case the local authority did not know of the presence of the chain on the chute; they only knew that if left lying about boys might play with it and place it on the chute. Now, as we have seen, the duty to a licensee is not to expose him to any danger which is known to the licensor and not known to the licensee, in contrast to the duty to an invitee, which is not to expose him to any danger which is not known to him but is known *or ought to be known* to the invitor. The dividing line is thin and the recent decisions seem to make it even thinner; for what is the difference between saying that a local authority knew of the danger that a piece of glass might get into their paddling-pond and saying that they ought to have known that the piece of glass was there? One is left with the feeling that the law on this point is not yet settled, but, in the meantime, the burden on the occupier of land is a heavy one.

An Advisory Council of Natives.—The Native Representatives Council, which first met at Pretoria on December 6, is not a legislative body, but an advisory one, which may and ought to influence all legislation affecting native interests in the Union. It consists of twelve elected native members, four nominated native members, and six Europeans. All Parliamentary Bills and estimates of expenditure affecting natives are matters for submission to and consideration by the Native Representatives Council, which may make such recommendations therein as it may deem to be expedient.

The first meeting of the Council was opened by General Smuts, in the unavoidable absence of the Prime Minister of the Union, General Hertzog.

General Smuts, in the course of his speech, said that the Council was the logical outcome and culmination of the movement to call upon natives to give their advice and to assist constitutionally in their own government. The proved success attending the natives' participation in their own government hitherto was recognised by the State. He had no doubt that this co-operation and loyalty would be no less in the Council. "I look forward to your deliberations to justify the highest expectations of the new departure, to set a new standard in the system of native administration, and to contribute materially towards the solution of those problems of racial relations which is South Africa's greatest task, and in which I trust our common labours will not be in vain," he concluded.

New Zealand Conveyancing.

By S. I. Goodall, LL.M.

(*Continued from p.* 12.)

2. Deed of Assignment of Hire-purchase Securities from the Company to the Corporation adapted to a General Form with Schedules of Securities, Advances and Interest, and Table of Periodical Repayments.

This deed made the day of 193 between A.B. Limited a Company duly incorporated under the Companies Act 1933 and having its registered office at and carrying on business there and elsewhere as (*inter alia*) a dealer in customary and other chattels (hereinafter together with its successors and assigns called "the Company") of the one part and C.D. Limited a Company duly incorporated under the Companies Act 1933 and having its registered office at and carrying on business there and elsewhere as (*inter alia*) a finance corporation (hereinafter together with its successors and assigns called "the Corporation") of the other part

Whereas the Mortgagor is the owner and bailor named and described in the hire-purchase agreements more particularly enumerated in the First Schedule hereto and as such owner and bailor entitled to the property in the chattels comprised in and described by the said hire-purchase agreements and also entitled to the rental or hire and other moneys (if any) accrued accruing and/or to accrue due under the said hire-purchase agreements

And whereas there is now outstanding and unpaid under the said hire-purchase agreements the respective sums set opposite thereto in the said First Schedule hereto making the total set forth in the Second Schedule hereto opposite the item "outstanding hire"

And whereas the Mortgagor has applied to the Corporation to discount the securities represented by the said hire-purchase agreements and to make advances to the Mortgagor thereon which the Corporation has agreed to do upon having security for repayment of the present advances discounting charges and interest as hereinafter set forth
Now this deed witnesseth as follows:—

1. In these presents unless inconsistent with the context:

(1) "present advances" means the sum or sums advanced upon the execution hereof or previously advanced or hereafter to be advanced by way of loan from the Corporation to the Mortgagor and more particularly set forth and defined in amount in the Second Schedule hereto opposite the item "present advances."

(2) "Discount charges" means the charges or premiums demanded by and payable to the Corporation of and by the Mortgagor in respect of the present advances and more particularly set forth and defined in amount (subject always to any abatement thereof as hereinafter provided) in the Second Schedule hereto opposite the item "discount charges."

(3) "Interest" means interest or recurring payments to be paid by the Mortgagor to the Corporation

calculated upon the present advances and more particularly set forth and defined in amount in the Second Schedule hereto opposite the item "interest."

2. IN CONSIDERATION of the present advances lent or to be lent to the Mortgagor by the Corporation the Mortgagor DOTH HEREBY COVENANT with the Corporation that it will repay the present advances and pay the discount charges and interest to the Corporation and any other moneys (if any) owing by the Mortgagor to the Corporation hereunder by payment of every all and singular the several sums of money on the respective days set opposite thereto in the Third Schedule hereto or as hereafter may be otherwise agreed upon between the parties hereto by the drawing giving or endorsement of bills notes or otherwise.

3. FOR the consideration aforesaid the Mortgagor DOTH HEREBY ASSIGN TRANSFER AND SET OVER unto the Corporation First all and singular those the chattels comprised in and described by the said hire-purchase agreements And Secondly all and singular those the moneys for rent hire interest damages or otherwise howsoever accrued accruing and/or henceforth to accrue due under or in respect of the said hire-purchase agreements and each of them TO HOLD the same respectively unto the Corporation by way of mortgage for securing payment to the Corporation of the present advances discount charges interest and insurance charges in accordance with the covenant in that behalf herein contained.

4. FOR the consideration aforesaid the Mortgagor DOTH HEREBY FURTHER CO VENANT with the Corporation as follows :—

(1) The Mortgagor will duly endorse and deliver to the Corporation all bills of exchange promissory notes or other instruments held or to be held by the Mortgagor as ancillary or collateral security from the respective hirers under the said hire-purchase agreements the same to be held by the Corporation as security collateral hereto and not in any way to prejudice or impair this security and the liability of the Mortgagor hereunder.

(2) The said hire-purchase agreements are each of them genuine and valid and subsisting securities and are each of them true customary hire-purchase agreements within the meaning of s. 57 of the Chattels Transfer Act 1924 and the respective amounts set opposite thereto in the First Schedule hereto are due or accruing due and are outstanding and unpaid for hire rent interest or otherwise by the said respective hirers thereunder and the Mortgagor will on being so required by the Corporation establish and confirm the identity and whereabouts of the said respective hirers and the amounts of hire rent interest or other sums outstanding by the said respective hirers from time to time under the said hire-purchase agreements and each of them and will also on being similarly required establish the identity and whereabouts of the chattels therein comprised or supposed to be therein comprised.

5. AND it is hereby agreed and declared by and between the parties hereto as follows :—

(1) The Mortgagor will at all times and from time to time at the direction of the Corporation and while any moneys remain owing on this security require and compel the said respective hirers to keep and maintain all and singular the said chattels in the like good order and condition in which they were at the date of the respective hire-purchase agreements and if the same or any of them shall be damaged or destroyed (inclusive of damage or destruction by fire) or cease to exist to repair such damage or replace the chattels so destroyed or ceasing to exist with other chattels of a like nature and further will if required so to do by the Corporation execute and obtain the execution of any instrument that may be necessary to give to the Corporation security over the chattels replacing those which have been destroyed or have ceased to exist and in the case of default in the premises by any such hirer under his respective hire-purchase agreement the Mortgagor shall and will make good such default and will nevertheless and notwithstanding any redemption of chattels as hereinafter provided continue and maintain payment of all sums of money secured hereby or pursuant hereto without deduction abatement or set-off on the respective due dates thereof.

(To be continued.)

Correspondence.

"An Alsatian Rule."

The Editor,
NEW ZEALAND LAW JOURNAL.
SIR,—

I was surprised to read Mr. Broad's letter suggesting that an error appears in the reported judgment of Rigby, L.J., in *Davies v. Thomas*. The epithet "Alsatian" is in frequent use, especially by those who are familiar with Scott's *The Fortunes of Nigel*. Nigel was in fear of arrest for duelling in the precincts of the Court, and accordingly sought sanctuary in Whitefriars; Scott describes the place thus :—

> "Whitefriars, adjacent to the Temple, then well-known by the cant name of *Alsatia*, had at this time and for nearly a century afterwards the privilege of a sanctuary, unless against the writ of the Lord Chief Justice or of the Lords of the Privy Council. Indeed, as the place abounded with desperadoes of every description—bankrupt citizens, ruined gamesters, irreclaimable prodigals, desperate duellists, bravoes, homicides and debanded profligates of every description, all leagued together to maintain the immunities of their asylum, it was both difficult and unsafe for the officers of the law to execute warrants, emanating even from the highest authority, amongst men whose safety was inconsistent with warrants of authority of any kind." (See Melrose Edition, pp. 165, 166.)

Hence the epithet "Alsatian" to describe any place where the King's writ does not run, or any thing which affords protection from execution of a legal process, or defeats a legal right.

Rigby, L.J., aptly used the epithet to make clear that an order in Lunacy under s. 116 of the Lunacy Act, 1890, did not protect the lunatic's property from the just claims of third persons.

The other members of the Court of Appeal were in agreement with this view, and allowed a vendor to enforce a lien for unpaid purchase-money acquired prior to the making of the order in lunacy.

I am, etc.,
J. H. LUXFORD.

Magistrates' Court,
Wellington.

Legal Literature.

Liquor Laws of New Zealand, by J. H. LUXFORD, S.M., formerly Chief Judge of the High Court of Western Samoa, and sometime Chairman of Licensing Committees in New Zealand. With a Foreword by the HON. MR. JUSTICE OSTLER. Pp. xxx + 412 (including Index). Wellington: Butterworth and Co. (Aus.) Ltd.

It would be superfluous to undertake an extended review of this comprehensive and useful work in view of the Foreword by the Hon. Mr. Justice Ostler, which is here reproduced:

FOREWORD BY THE HON. MR. JUSTICE OSTLER.

In the last few years members of the legal profession in New Zealand have been publishing an increasing number of text-books on various branches of the law, and a good beginning has been made towards filling the gaps in the legal literature which is necessary for the education and assistance of lawyers. Many of these books are of high merit, and, having had the privilege of looking through an advance copy, I have no hesitation in saying that this book on the "Liquor Laws of New Zealand," by my friend and colleague in the administration of justice, Mr. J. H. Luxford, S.M., will be especially useful to the legal profession.

Our law with regard to the manufacture and sale of intoxicating liquor has departed radically from the English law, and the English cases are now seldom of assistance in the interpretation of our statutes dealing with the subject. Many of the earlier decisions in New Zealand are also now out of date, owing to changes in the law. These changes were brought about by the struggle which has taken place in this country for the total abolition of the liquor traffic, a fight which began towards the end of last century, and in which the Prohibitionists steadily gained ground until at the end of the War they nearly succeeded in carrying a referendum for the total abolition of the sale of liquor. From that time the voting-strength of the Prohibitionists has steadily declined, owing principally, I think, to the failure of the experiment in the United States of America, until it would appear from the increased values of brewery shares and licenses that "the Trade" has no immediate fear of prohibition, and it looks as though the present system of control of the traffic will continue for a long time.

The political struggle is of such long standing and has engendered so much heat that all Governments in recent years have been chary of interfering with the existing legislation or of attempting any reform. Consequently, the law is in a somewhat chaotic state, and on many points it is difficult from a perusal of the Licensing Acts to say with certainty what it is. These difficulties are pointed out and dealt with in this book in such a way as to make its perusal a necessary preliminary to any attempt at a reform of the law.

The liquor traffic is an important and powerful monopoly, with a capital of many millions, and a huge income; the drink bill of this country last year, with a population of only one and a half millions, amounted to no less than £7,500,000. Accordingly, the law relating to it is of great importance and occupies the time and energy of a large number of lawyers. It is therefore important to have as clear an exposition of it in text-book form as possible. With his large experience as a lawyer, first in private practice, then as Chief Judge of the High Court of Samoa, and then as a Stipendiary Magistrate in New Zealand, I know of few men better qualified than Mr. Luxford to write an exposition of the liquor laws, for the administration of those laws is principally confined to the Magistrates' Court, and he has had much practical experience of its operation.

The author has not adopted the easier way of dealing with statutory laws by setting out the sections in rotation and then commenting on them with a note of the decided cases (if any) interpreting the section. He has begun with the law as to the manufacture of intoxicating liquor, and has then worked through it logically, dealing fully with each subject in turn. This has made his task harder, but with an excellent summary of contents, a list of all cases referred to, and a careful index, such a method is to my mind much more useful.

The whole of the ground has been fully covered. As far as I can see every case in the Superior Courts has been digested, down to the latest decision of the Full Court in 1937, and its bearing on the law fully explained. The author has not hesitated to bring a ripe power of criticism to bear on some of those cases, and such criticism is always worthy of careful consideration. The book will be found indispensable to every practising lawyer who is concerned in any way with "the Trade," and the law is set out and explained in such straightforward language that it is quite capable of being understood by intelligent laymen. This book will amply fill a distinct gap in our legal literature, and I feel sure that it will be duly appreciated both by the legal profession and laymen who are interested in the liquor traffic.

The Supreme Court and the National Will, by DEAN ALFANGE, member of the New York Bar. Pp. xiii + 297. London: Hodder and Stoughton, Ltd.

This book is non-political, and seeks to explain the history of the Supreme Court of the United States. In tracing the Court's development, it gives in review the whole history of country in order to show what traditions and precedents were behind the New Deal decisions. It was awarded the first Theodore Roosevelt Memorial Award, established to further the ideals of public knowledge and public service for which the late Theodore Roosevelt was an aggressive champion. The prize (2,500 dollars) is awarded annually for a book dealing with a political, economic, or social phase of American life or of America's foreign relations, by a citizen of the United States whose non-fiction work has not previously been published in book form.

This scholarly analysis, (which the author terms "a modest essay in interpretation") is completely dispassionate. It is a fine piece of expository work that must surely become a standard classic on the subject.

Practice Precedents.

Sale of Land in Lieu of Partition.

(*Continued from p.* 14.)

Particulars and Conditions of Sale.

In the prior issue of this JOURNAL a precedent for a Decree for Sale of Land pursuant to s. 105 of the Property Law Act, 1908, was set out. Hereunder are a set of particulars and conditions of sale appropriate to such a decree.

In *Wachsmann v. Burrowes*, (1912) 31 N.Z.L.R. 833, it was held, *inter alia*, that the sale should take place immediately and that a reserve price should be fixed.

In New Zealand the reserve price and the auctioneer's remuneration are fixed by the Judge when making the Decree. *Cf.* the English procedure, *1937 Yearly Practice*, 948 *et seq.* No bond or security is required by the auctioneers in New Zealand; but see *Daniell's Chancery Forms*, 7th Ed. 540, for the English requirements.

In *Pitt v. White*, (1887), 57 L.T. 709, it was said, *inter alia*, that the money must be paid into Court; but see s. 106 of the Property Law Act, 1908. In the foregoing precedent the moneys were paid into Court.

PARTICULARS AND CONDITIONS OF SALE.

IN THE SUPREME COURT OF NEW ZEALAND.

.....District.

.....Registry.

No.

BETWEEN A. B. of &c. Plaintiff

AND

C. D. of &c. Defendant.

Particulars and conditions of sale of dwellinghouse and premises situate at Street in the City of to be offered for sale by public auction by Limited auctioneers with the approval of the Honourable Mr. Justice the Judge before whom this action is assigned pursuant to the judgment therein dated the day of 19 at the auctioneers' auction-rooms Street in the City of on day the day of 19 at 2.30 o'clock in the afternoon.

Particulars.

All that piece of land situate at Street in the City of containing one rood more or less being part of section : District and being Lot on deposited plan No. and being all the land described in Certificate of Title Register-book Volume folio : Registry: Together with &c. Subject to &c.

(Plan.)

Conditions.

1. The property is offered for sale subject to a reserve price and subject thereto the highest bidder for the property shall be the purchaser and if any dispute shall arise respecting any bidding the property shall be put up again for sale at the last previous undisputed bidding. The right to bid is reserved to the vendors or either of them.

2. The property may be withdrawn from sale without the reserve price being disclosed.

3. No person shall advance at any bidding less than such a sum as shall from time to time be named by the auctioneers and no bidding shall be retracted.

4. The vendor is A. B. &c. and the property is being sold under an order of the Supreme Court of New Zealand at dated the day of 19 in an action *A. B. &c.* v. *C. D. &c.* (No. : Registry) and the same is under the conduct of the plaintiff in that action namely A. B.

5. The title to the property is under the Land Transfer Act and the vendors are the registered proprietors thereof and no requisitions on or objections to such title will be received or entertained.

6. The property is subject to a first mortgage No. to E. F. &c. securing the principal sum of £ repayable with interest by half-yearly instalments of £ .

7. The property is believed to be and shall be taken to be correctly described in the foregoing particulars and no error, misstatement or misdescription therein shall annul the sale nor shall any compensation be allowed in respect thereof.

8. The property is sold subject to all rights of way and other easements (if any) affecting the same and to all liabilities on the part of the purchaser to repair or contribute to the cost of repair of fences and other like matters.

9. The purchaser shall be deemed to have knowledge of the means of access to the property and of the state and condition of the improvements thereon and shall make no requisition or objections on such subjects.

10. No compensation shall be claimed by or allowance made to the purchaser by reason of any of the boundary fences not being upon the true boundary-lines of the property or by reason of any fence encroaching on or crossing any road or adjacent land.

11. (*a*) The purchaser shall, immediately on the fall of the hammer pay to the auctioneers (who are authorized to receive the same) a deposit of £ and shall complete and sign the Memorandum of contract in the form annexed hereto and in addition to the said deposit shall pay to the auctioneers the stamp duty payable upon the memorandum of contract.

(*b*) The sum of approximately £ shall be satisfied by the purchaser taking over liability under the existing first mortgage to E. F. &c. over the said property on which there is now outstanding that sum for principal. The purchaser shall, if required by the mortgagee execute the usual deed of covenant by a personal covenant in the said mortgage.

(*c*) The balance of the purchase-money shall be paid by the purchaser within one month from the day on which the property is knocked down to the purchaser. If not so paid it shall bear interest at £ per centum per annum.

12. The purchaser is to pay the purchase-money (other than the deposit which is to be paid to the auctioneers) into the Supreme Court of New Zealand at to the credit of the action *A. B. &c.* v. *C. D. &c.* (No. : Registry).

13. Upon payment of the whole balance of purchase-money as hereinbefore provided the vendors shall and will upon request of the purchaser execute in favour of the purchaser a good and valid memorandum of transfer of the property purchased subject to the said first mortgage to E. F. &c. Such transfer shall be prepared by and at the expense of the purchaser in all things and the draft shall be submitted to Messrs. solicitors in the City of for perusal of the vendors not later than ten days prior to the date fixed for completion.

14. Possession of the property purchased shall be given by the vendors and taken by the purchaser on payment of the balance of purchase-money due within one month from the day on which the property is knocked down to the purchaser as hereinbefore provided when all rates interest insurance premiums and other outgoings shall be apportioned between the vendors and purchaser.

15. If the purchaser shall not pay his purchase-money at the time above specified and in all other respects perform these conditions his deposit shall be forfeited to the vendors and an order may be made by the Judge upon application in Chambers for the resale of the property and for payment by the purchaser of the deficiency (if any) in the price which may be obtained upon such resale and of all costs and expenses occasioned by such default.

MEMORANDUM OF CONTRACT.

I of &c. hereby acknowledge that at the sale by auction held this day of 19 I was the highest bidder for and was declared the purchaser of the dwellinghouse and premises described in the within particulars of sale subject to the within conditions of sale at the price of pounds (£) and that I have paid the sum of £50 by way of deposit and in part payment of the said purchase-money to Limited auctioneers at this present sale and hereby agree to pay the remainder thereof and complete the said purchase according to the aforesaid conditions of sale.

As witness my hand this day of 19 .

.....

As agents for the vendors, we hereby confirm this sale under and subject to the within particulars and conditions of sale and acknowledge receipt of the deposit above mentioned and also of the sum of £ being stamp duty payable on this contract.

Dated at this day of 19 .

Auctioneers.

Recent English Cases.

Noter-up Service
FOR
Halsbury's "Laws of England"
AND
The English and Empire Digest.

GAMING.

Recovery of Winnings—Forbearance to Report Defaulter to Tattersalls—Larceny Act, 1916 (c. 50), s. 31.

That a default in the payment of a bet will be reported to Tattersalls is not illegal as being blackmail.

BURDEN *v.* HARRIS, **[1937] 4 All E.R. 559. K.B.D.**

As to fresh promise made for new consideration: see HALSBURY, Hailsham edn., vol. 15, pp. 476, 477, par. 873; DIGEST, vol. 25, pp. 400–403.

HUSBAND AND WIFE.

Contract—Illegal Contract—Future Separation of Husband and Wife—Averment that Wife at All Times Ready to Rejoin Husband—Public Policy.

No question of illegality arises in the case of a contract for a temporary separation between husband and wife if, on the facts, there appears no intention of breaking the consortium.

DAVIES *v.* ELMSLIE, **[1937] 4 All E.R. 471. C.A.**

As to contracts providing for future separation of spouses: see HALSBURY, Hailsham edn., vol. 7, pp. 157, 158, par. 22; DIGEST, vol. 12, pp. 264, 265.

INCOME TAX.

Maintenance to be Paid Free of Tax—Certificate Given for Deduction of Tax—Right of Divorced Woman to Repayment.

When an order is made for the payment of maintenance free of tax, the payments having in fact been allowed as deductions against the income of the divorced husband, the payee is entitled to repayment of the tax which the payments free of tax must have suffered by deduction.

SPILSBURY (INSPECTOR OF TAXES) *v.* SPOFFORTH, **[1937] 4 All E.R. 487. K.B.D.**

As to alimony and maintenance payments: see HALSBURY, Hailsham edn., vol. 17, p. 264, par. 530; DIGEST, vol. 28, pp. 67–69.

LANDLORD AND TENANT.

Rent Restriction—Decontrol—Occupation by a Trespasser—Rent and Mortgage Interest Restrictions Act, 1923 (c. 32), s. 2 (1).

For the decontrol of premises it is necessary for the landlord to have actual possession himself, and it is not enough that a trespasser be in possession.

HOLDEN *v.* HOWARD, **[1937] 4 All E.R. 483. C.A.**

As to decontrol: see HALSBURY, Hailsham edn., vol. 20, pp. 319, 320, par. 379; DIGEST, vol. 31, pp. 585, 586.

SOLICITORS.

Application to Disciplinary Committee of the Law Society—Applicant Not Present Before Committee—Appeal to the Divisional Court—Solicitors Act, 1932 (c. 37), s. 8.

Where an application is made to a disciplinary tribunal for the correction of a person responsible to it, it is necessary before such an application is dismissed as frivolous, to hear the appellant.

Re TWO SOLICITORS, **[1937] 4 All E.R. 451. C.A.**

As to application to the DISCIPLINARY COMMITTEE: see HALSBURY, Supp. Solicitors, pars, 1380–1388; DIGEST, vol. 42, pp. 406–408.

BANKRUPTCY.

Bankrupt Married Woman—Income Under Settlement Provided by Husband Subject to Restraint upon Anticipation—Alimony *pendente lite*—Means of Subsistence—Bankruptcy Act, 1914 (c. 59), s. 52.

Creditors have no equity that the wife should be supported by the husband, and thus make the whole income available for the payment of debts, where the property settled has been provided wholly by the husband.

Re LADY BOWDEN, TRUSTEE IN BANKRUPTCY *v.* THE BANKRUPT AND ANOTHER, **[1937] 4 All E.R. 635. C.A.**

As to restraint on anticipation and bankruptcy: see HALSBURY, Hailsham edn., vol. 2, pp. 199, 200, par. 270; DIGEST, vol. 5, p. 689.

INSURANCE.

Motor-car Insurance—Policy Handed to Purchaser—Whether Assignment of Policy.

The handing on of a policy of insurance on the sale of a car is not an assignment of that policy.

PETERS *v.* GENERAL ACCIDENT AND LIFE ASSURANCE CORPORATION, LTD., **[1937] 4 All E.R. 628. K.B.D.**

As to duty of insurers to satisfy judgments: see HALSBURY, Hailsham edn., vol. 18, pp. 563–565, pars. 913, 914; DIGEST, Supp. Insurance, Nos. 3217ee, 3217ff.

NEGLIGENCE.

Personal Injuries—Damages—Shortened Expectation of Life—Death of Girl Eight Years of Age.

In the case of a very young child reduction in damages should take place because of dangers of infancy, but not if the child has outgrown these; also, the question of the child's inability to appreciate the loss of expectation of life is immaterial.

TRUBYFIELD *v.* GREAT WESTERN RAILWAY CO., **[1937] 4 All E.R. 614. K.B.D.**

As to damages for personal injuries: see HALSBURY, Hailsham edn., vol. 23, pp. 724, 725, par. 1016; DIGEST, vol. 36, pp. 125, 126.

SALE OF GOODS.

Contract Required to be made in Writing—Variation—Whether Variation to be in Writing—Mere Forbearance to Insist on Actual Terms—Sale of Goods Act, 1893 (c. 71), s. 4.

A mere forbearance to insist on the terms of a contract for the sale of goods need not, unlike a variation, be in writing.

BESSLER, WAECHTER, GLOVER AND CO. *v.* SOUTH DERWENT COAL CO., LTD., **[1937] 4 All E.R. 552. K.B.D.**

As to variation of contracts required to be in writing: see HALSBURY, Hailsham edn., vol. 7, pp. 202–205, pars. 281–285; DIGEST, vol. 12, pp. 353–359.

HIRE PURCHASE.

Implied Condition—Title of Owners—Date of delivery.

When an agreement is made between the hire purchase and the finance company it is immaterial that the finance company should not be the owners of the article in question at the time of the agreement.

GALE *v.* NEW, **[1937] 4 All E.R. 645. C.A.**

As to implied conditions of ownerships: see HALSBURY, Hailsham edn., vol. 16, p. 515, par. 758.

SHIPPING AND NAVIGATION.

Foreign-owned Vessel—Requisition by Foreign Government—Vessel Outside Territorial Jurisdiction—Motion to Set Aside Writ—Impleading a Foreign Government.

When a foreign State says that it is impleaded, the matter in discussion becomes one for diplomatic action and not judicial decision.

COMPANIA NAVIERA VASCONGADA *v.* STEAMSHIP CRISTINA, **[1937] 4 All E.R. 313. C.A.**

As to vessels under requisition to a foreign government: see HALSBURY, Hailsham edn., vol. 1, p. 95, par. 121; DIGEST, vol. 1, pp. 109–111.

Rules and Regulations.

Fruit Control Act, 1924. Fruit Control Act Reapplication Order, 1938. January 10, 1938. No. 1938/6.

Trade Arrangement (New Zealand and Belgium) Ratification Act, 1933, and **Trade Arrangement (New Zealand and Germany) Ratification Act, 1937.** Trade Arrangement (New Zealand and Netherlands) Order, 1938. January 13, 1938. No. 1938/7.

Samoa Act, 1921. Samoa Aviation Regulations, 1938. January 11, 1938. No. 1938/8.

Air Navigation Act, 1931. Air Navigation Regulations, 1933, Amendment No. 6. January 11, 1938. No. 1938/9.

Education Act, 1914. Primary Teachers Grading Regulations 1926, Amendment No. 2. January 20, 1938. No. 1938/10.