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"The more I see of the administration of justice in the country the more I am convinced that we owe a great deal to the fact that the law is not the preserve of one particular class. I believe the common man in this country trusts the law because the law does not hold itself aloof from him. It is not something which he cannot understand, administered by a small class of people who are supposed to be learned in what to him is an incomprehensible mystery."

—Mr. Justice du Parcq.

Vol. XIV. Tuesday, June 14, 1938. No. 11.

The Principle of Public Policy.

I.

IN the last number of the *Law Quarterly Review* (Vol. 54, p. 155), Professor Winfield says, "It is the ill fate of public policy that, like a football, everybody kicks it although it is essential to the game." He then cites some recent dicta which fell from the learned Law Lords in *Fender v. St. John-Mildmay*, [1937] 3 All E.R. 402, in their several statements of the doctrine of public policy, which had not received an airing in the higher Courts for some time past. Since the article was written, however, one of the most important propositions constituting the doctrine of public policy has been given final endorsement in the House of Lords in *Beresford v. Royal Insurance Co.*, [1938] 2 All E.R. 602. To both of these decisions we shall refer in detail later.

The principle of public policy arises in almost every branch of litigation, and with more frequency, probably, in cases of contract than in any others. Its basis has been described as "the opinions of men of the world, as distinguished from opinions based on legal learning, the Judges themselves representing the highest common factor of public intelligence."

The doctrine of public policy slowly evolved and developed itself through the centuries, until doubts of its soundness began to be expressed, and these reached culmination in the well-known case of *Egerton v. Earl Brownlow*, (1853) 4 H.L. Cas. 1, 10 E.R. 359, where it was the subject of a remarkable legal battle.

The facts in *Egerton v. Earl Brownlow* were as follows: The Earl of Bridgewater devised large real estates to trustees to make a settlement according to the limitation set out in his will. One of these was "to Lord Alford for and during the term of ninety-nine years, if he shall so long live," remainder to trustees during his life to preserve contingent remainders; "remainder to the use of the heirs male of his body, with remainder in default to the use of C.H.C. for ninety-nine years if he shall so long live"; and with other remainders. Then followed a proviso: "that if Lord Alford shall die without having acquired the title of Duke or Marquis of Bridgewater . . . then and in such case the use and estate hereinbefore directed to be limited to the heirs male of his body shall cease and be absolutely void." The testator added a similar proviso as to Lord Alford acquiring such title within five years after he should succeed to be Earl Brownlow—in which case also the estate so limited should be void.

Lord Alford entered into possession of the estates, but died without acquiring either of the titles, leaving an heir male. The House of Lords held that the estate thus created in favour of Lord Alford's heirs was not affected by the proviso, that being a condition precedent, and void as against public policy.

It is interesting to note that to this case the Judges were all summoned to answer questions of law. Most of them being on circuit, two attended for the purpose of reading answers embodying their own opinions and those of their brethren. But the House of Lords would not have this, and adjourned until the majority of the Judges were back from circuit, so that they could individually express their reasons for their opinions; and it was plainly intimated that those who did not then attend were permitted to absent themselves because they differed in their answers to questions put to them, and that this favour must not be drawn into a precedent.

The basis upon which the Courts will view this question of public policy was stated in general terms by Lord Lyndhurst, thus:

> "This is not a technical question, but must be considered on general principles with reference to the practical effect of the condition. . . . A condition against the public good or public policy, as it is usually called, is illegal and void. . . . "

Then he went on to quote Lord Coke and Lord Hardwicke—the latter of whom said

> "though there may be no *dolus malus* in contracts as to other persons, yet if the rest of mankind are concerned as well as the parties, it may properly be said that it regards the public utility."

And again:

> "These reasons of public benefit and utility weigh greatly with me, and are a principal ingredient in my present opinion."

Continuing, Lord Lyndhurst said:

> "What cases come within the rule must be decided as they successively occur. Each case must be determined according to its own circumstances. When the case of a trustee dealing with his *cestui que trust* was first considered, it must, in the absence of precedent, have been determined upon weighing the public mischief that would arise from giving a sanction to such dealing. So as to transactions between attorneys and their clients, also as to seamen insuring their wages, and other similar cases referred to in the course of the argument. The inquiry must, in each instance, where no former precedent had occurred, have been into the tendency of the act to interfere with the general interest. The rule, then, is clear. Whether the particular case comes within the rule, it is the province of the Court, in each instance, acting with due caution, to determine."

The broad result of *Egerton v. Earl Brownlow* was to vindicate generally the principle of public policy as a principle to be applied by the Courts, whose duty and right it is to refuse to enforce contracts or dispositions of property which are offensive to public policy; and it has continued to be applied with appropriate caution. Dr. Winfield's definition of it as "a principle of judicial legislation or interpretation founded on the good of

the community," seems to be fully borne out by the judgments, covering, as they do, something more than two hundred pages of the Reports. Long before that noteworthy decision, however, the principle had been applied as a matter of law to matters of insurance.

The principle of public policy, like all such principles, must be applied to cases to which it is appropriate without reference to the particular character of the right asserted or the form of its assertion. Its application to contracts was thus expressed by Lord Esher, M.R., in the Maybrick case, *Cleaver v. Mutual Reserve Fund Life Association*, [1892] 1 Q.B. 147, 151 :

> "No doubt there is a rule that, if a contract be made contrary to public policy, performance cannot be enforced at law or in equity; but when people vouch that rule to excuse themselves from the performance of a contract, in respect of which they have received the full consideration, and that when all that remains to be done under the contract is to pay money, the application of the rule ought to be narrowly watched, and ought not to be carried a step further than the protection of the public requires."

In other words, the Courts are reluctant to interfere unless it is plain that the enforcement of a contract is contrary to public policy.

The principle of public policy has often been invoked on a basis of accepted fact, and not really on legal principle, in a fashion which has always been made to depend on the particular circumstances of each case; and has rendered the question in reality one of fact for the Court, not the less that it was a fact of which the Court would take judicial notice on its own initiative if necessary. Such were the cases in the days when wagers were enforceable. Thus, a wager on the duration of the life of Napoleon was held unenforceable, and the sporting parties each got a charge of the public policy doctrine: because the wager might give the plaintiff an interest in keeping the King's enemy alive, and also because it might give the defendant an interest in encompassing it by means other than lawful warfare; for this decision was given in the good old days when belligerents played the game according to the rules: *Gilbert v. Sykes*, (1812) 16 East 150, 104 E.R. 1045. In this class of cases, as Lord Chief Baron Pollock (whose opinion was adopted by their Lordships) said in advising in *Egerton v. Earl Brownlow* (*supra*), at p. 151; 419 :

> "It may be that Judges are no better able to discern what is for the public good than other experienced and enlightened members of the community; but that is no reason for their refusing to entertain the question, and declining to decide upon it."

In *Roderiguez v. Speyer Brothers*, [1919] A.C. 59, Viscount Haldane expressed the opinion that a question to which the doctrine of public policy applied was not one of law as distinguished from ethics; and that it was certainly the opinions of men of the world, as distinguished from opinions based on legal learning, which guided the House of Lords in *Egerton v. Earl Brownlow*. His Lordship also said, at p. 79,

> "There are many things of which the Judges are bound to take judicial notice which lie outside the law properly so called, and among those things are what is called public policy and the changes which take place in it."

The question as to whether any particular circumstances are of a nature contrary to the public good is one such as to lend itself to prolonged discussion. In *Crown Milling Co., Ltd. v. The King*, [1927] A.C. 394, their Lordships considered that the question in the circumstances of that case was really one of fact, and could not be decided as a matter of law, thus reversing the majority of the Court of Appeal ([1925] N.Z.L.R. 753), as to what constituted public interest.

In *In re Mirams*, [1891] 1 Q.B. 594, 595, Cave, J., (as he then was) said that this branch of the law should certainly not be extended, as Judges are more to be trusted as interpreters of the law than as expounders of what is called public policy. And, after approving the wisdom of these remarks, Lord Bramwell in *Mogul Steamship Co., Ltd. v. McGregor, Gow, and Co.*, [1891] A.C. 25, said, at p. 45, that no evidence is given in these public policy cases: it is left to the tribunal to say, as a matter of law, that the thing is against public policy, and void; and the Judge has to do that without any evidence as to its effect and consequences.

In *Tinline v. White Cross Insurance Association, Ltd.*, [1921] 3 K.B. 327, Bailache, J., after referring to Lord Halsbury's remark in *Quinn v. Leatham*, [1901] A.C. 495, 506, that the law is not always logical, said that everyone concerned with the administration of the law knew that; and if the law is not logical, public policy is even less logical. How far that is so may be judged from the variety of cases in which the question has entered into the judgments of the Courts. In citing this opinion in his judgment in *James v. British General Insurance Co., Ltd.*, [1927] 2 K.B. 311, 323, Roche, J. (as he then was) preferred to say that the applications of public policy may be variable from time to time and from place to place; nevertheless, if it is found at any time that the Courts have adopted a settled rule for the application of public policy, then he thought it was the duty of the Judges loyally to follow that rule. He added the further observation that "the doctrine of public policy ought not to be carried a step further than is necessary." That is undoubtedly in full accord with precedent and practice.

Summary of Recent Judgments.

COURT OF APPEAL.
Wellington.
1938.
March 22;
April 29.
Myers, C.J.
Blair, J.
Kennedy, J.
Callan, J.

VICTORIA INSURANCE COMPANY, LIMITED v. HARRISON-WILKIE.

Insurance—Accident—Abrasion caused by Fall from Motor-car to Road—Infection of Tetanus occurring at Time of Fall and causing Death—Whether Death "due to a disease which is the direct or indirect result of the injuries received in the accident."

An insurance policy provided that if the insured was injured by an accident sustained in direct connection with any motor-vehicle or while riding in or dismounting from any motor-vehicle the company should pay compensation in accordance with a scale, which provided, *inter alia*, £1,000

> "If the insured shall . . . die solely as the direct result of the actual physical injuries received in the accident . . . Provided that . . . no compensation shall be payable . . . when death . . . is due to a disease which is the direct or indirect result of the injuries received in the accident."

The insured, falling out of a motor-vehicle on to a road, sustained an abrasion, and an infection of tetanus (from which she died) occurred when she was injured.

Cooke, K.C., and **Alpers**, for the appellant; **Sargent** and **McMenamin**, for the respondent.

Held by the Court of Appeal (*Myers*, C.J., and *Kennedy* and *Callan*, JJ., *Blair*, J., dissenting), That the insured's death was due to a disease which was the direct or indirect result of the injuries received in the accident.

On the grounds,

Per *Myers*, C.J., That, even though there were imported into the wound at the time of the accident dirt which contained germs or spores of tetanus, and such importation could be said to be part and parcel of the actual physical injury, insured's death was due to the disease of tetanus the direct result of and supervening on the injury.

Per *Kennedy* and *Callan*, JJ. (the latter assuming that the insured died solely as the direct or indirect result of the actual physical injuries received in the accident, and holding that in the proviso "disease" and "injury" denote mutually exclusive subjects), That at the time of the accident there was no "disease" but merely conditions which made the onset of the disease possible, and the disease was a result of the injury and not a portion of the very injury itself.

Per *Blair*, J., dissenting: 1. That death was the direct result of the accident, the injuries being the abrasions and deposit of spores, and death being the direct result of a combination of those injuries.

2. That, giving effect to the words "the injuries received in" in the proviso, that proviso exempted only secondary results by way of disease due to the accident. As tetanus was not the result of the injuries, but in itself the main injury, the proviso did not apply.

Smith v. Accident Insurance Co., (1870) L.R. 5 Ex. 302; **Mardorf v. Accident Insurance Co.,** [1903] 1 K.B. 584, and **In re Etherington and the Lancashire and Yorkshire Accident Insurance Co.,** [1909] 1 K.B. 591, distinguished.

Judgment of *Northcroft*, J., [1938] N.Z.L.R. 108, reversed.

Solicitors: C. S. Thomas, Christchurch, for the appellant; **Slater, Sargent, and Connal,** Christchurch, for the respondent.

Case Annotation: *Smith v. Accident Insurance Co.*, E. and E. Digest, Vol. 29, p. 41, para. 24; *Mardorf v. Accident Insurance Co., ibid.*, p. 400, para. 3173; *In re Etherington and the Lancashire and Yorkshire Accident Insurance Co., ibid.*, p. 41, para. 26.

COURT OF APPEAL.
Wellington.
1938.
March 29, 30.
Myers, C.J.
Blair, J.
Kennedy, J.
Callan, J.
Northcroft, J.

COLONIAL AMMUNITION COMPANY, LIMITED v. THE KING.

Currency—Contract—Construction—"Price equal to the current War Office cost" in England—"Equal."

Clause 3 of a contract for the manufacture and supply of ammunition by the appellant to the respondent, which contract is summarized in the judgment of *Kennedy*, J., provided that the Crown on purchasing ammunition from the suppliant, should pay a "price equal to the current War Office cost, meaning thereby the current price for the time being paid by His Majesty's War Office to contractors for similar ammunition in England," plus certain increases (expressed in pounds, shillings, and pence).

The agreement, after providing for an annual meeting of the representatives of both parties to the contract to ascertain the War Office cost, continued,

"the current War Office cost so ascertained (increased in the manner hereinbefore provided) shall be and be taken to be the price to be paid . . . ."

Richmond and **West,** for the appellant; **Solicitor-General (Cornish,** K.C.) and **V. R. S. Meredith,** for the respondent.

Held, by the Court of Appeal, That, upon the construction of the whole agreement, the current War Office cost, stated in pounds sterling, should be converted into New Zealand currency in order to serve as the basis for ascertaining the price payable by the Government.

On the grounds,

Per *Myers*, C.J., That cl. 3 meant that, subject to the variations specifically provided for what the Government had to pay, was the sum that would represent the full landed cost if the ammunition had been imported by the company plus the increases provided for by the clause.

Per *Kennedy* and *Northcroft*, JJ., *Blair*, J., concurring, That the current War Office cost is a cost expressed in sterling, therefore an exchange operation is involved if real equality is to be got between the price to be paid in one currency and the price to be paid in another currency; the provision for the addition to the current War Office cost of a sum to cover the expense of freight, &c., is some indication that the equality referred to in cl. 3 is a real equality of value and not a nominal equality.

Per *Callan*, J., That the sense in which the price payable by the New Zealand Government is to be equal to War Office cost and the named additions is that the basis on which the price payable by the New Zealand Government is to be calculated is what would have been payable by it if it were purchasing in England at War Office cost, and thereafter bearing the expense of having the purchased goods brought to New Zealand.

Judgment of *Reed*, J., [1937] N.Z.L.R. 946, reversed.

Solicitors: Jackson, Russell, Tunks, and West, Auckland, for the appellant; **V. R. S. Meredith,** Auckland, for the respondent.

FULL COURT.
Wellington.
1938.
March 23, 24;
April 29.
Myers, C.J.
Blair, J.
Kennedy, J.
Callan, J.
Northcroft, J.

OTLEY v. ARMSTRONG.

Factories Acts—"Factory"—Building, office, or place—Whether "Place" *ejusdem generis* with preceding Words—Whether bare open Space *per se* "a factory"—Whether Operations of Factory carried on in "Adjacent buildings, enclosures, or places"—Factories Act, 1921–22, ss. 2 (*a*), 64.

Section 2 of the Factories Act, 1921–22, defines factory as meaning:

"Any building, office, or place in which two or more persons are employed, directly or indirectly, in any handicraft, or in preparing or manufacturing goods for trade or sale . . . ."

Section 64 provides that

"Where the operations of a factory are carried on in several adjacent buildings, enclosures, or places, all of them shall be included as one and the same factory, notwithstanding that they may in fact be separated or intersected by a road, street, or stream, or by any building, enclosure, place, or space not forming part of the factory."

The appellant carried on two branches of a timber business, one the selling of seasoned timber, the other the manufacture and marketing of joinery, doors, and sashes, and sawn and planed timber. The latter was carried on in a building hereinafter called the "joinery factory," which was within the statutory definition of "factory." On the appellants' land, there were also: (*a*) a timber-yard, with a space for loading and unloading of motor-trucks, and with racks for the storage and drying of timber; and (*b*) a steam kiln-drying plant for the artificial seasoning of timber, such plant consisting of a large shed through which trucks, on a gravity-fall line, loaded with timber, passed, the trucks of artificially-treated timber being conveyed after such seasoning to a roofed-in compartment for storage.

In the kiln no persons were employed and it therefore was not within the statutory definition. Three workers were employed by the appellant solely in the timber-yard. No one of them entered the kiln building. There was no evidence that there were carried on in the timber-yard part of the operations of the joinery factory. Each of the three workers was substantially engaged in work in connection with loading and unloading the timber on and off the trucks that passed through the steam kiln-drying plant; the worker, Warren, stacking the same horizontally in layers, or "stripping" the timber; the workers Fletcher and Murphy unstacking the seasoned timber that had passed through the drying-plant, or taking it "out of strip."

A Stipendiary Magistrate held that the timber-yard was a "factory" within the meaning of the Factories Act, 1921–22, and its amendment, and convicted the appellant on an information for failing to pay the said workers wages for Labour Day holiday as provided by s. 14 (1) of the Factories Amendment Act, 1936.

On appeal from such determination,

J. F. B. Stevenson, for the appellant; **C. H. Taylor,** for the respondent.

Held, allowing the appeal and quashing the conviction, 1. That a building or at least a structure of some kind is necessary in order to constitute an "office" in s. 2 (*a*) of the Factories Act, 1921–22.

2. That a bare open space does not *per se* come within the definition of "factory" in the said Act.

3. That the word "place" in the definition of "factory" in s. 2 of the said Act must be construed as *ejusdem generis* with the preceding words "building" and "office."

4. That the timber-yard could not be brought within the definition of "factory" by the joint operation of ss. 2 and 64 of the Act.

5. That the drying-kiln was not a "factory" and there was no evidence that there were carried on in the timber-yard part of the operations of the joinery factory.

Lowden v. Oroua County Council, [1927] G.L.R. 405; **Lightfoot v. Hugh and G. K. Neill, Ltd.,** [1929] N.Z.L.R. 848, G.L.R. 305; and **Keddie v. South Canterbury Dairy Co.,** (1907) 26 N.Z.L.R. 522, G.L.R. 315, approved and applied.

Astley v. Kent, (1869) L.R. 5 Q.B. 19, referred to.

Solicitors: R. A. Young, Christchurch, for the appellant; **Crown Law Office,** Wellington, for the respondent.

SUPREME COURT. Wellington. March 29. April 26. *Reed, J.*

SMITH AND SMITH, LIMITED v. WERRY.

Industrial Conciliation and Arbitration—Award—Construction—Employee working under Award and also in other Employment — Wholesale and Retail Business — "Substantially engaged."

Under an award applying to the wholesale but not to the retail business of the appellant, a "town traveller" was defined as "an employee who is wholly or substantially engaged in canvassing for orders for goods within the town and suburbs thereof in which the warehouse is situated."

Respondent was an employee of the appellant at its retail suburban shop, the employees at which shop were not under any award. Their wages and conditions were regulated by the Shops and Offices Act, 1921–22, and its amendments.

The respondent was not appointed as a "town traveller" but as a shop-assistant, whose duties were attendance in the shop, delivering goods, and obtaining orders for goods which, if in stock at such retail shop, were supplied from there; if not in stock, the order was sent to the wholesale shop in Wellington, from which it was delivered.

In a claim for the difference in wages between the rate prescribed for a town traveller and the wages paid respondent as a shop-assistant, the learned Magistrate found that the minor portion of the respondent's work was within the award, and the major portion outside it and not covered by an award to which the appellant was a party; but that, as the respondent was required to call on customers of the firm and to canvass for wholesale orders in the Hutt Valley, this constituted the respondent a "town traveller" for the wholesale business, and therefore entitled him to be paid the rate prescribed in the award for a town traveller, and gave judgment for the difference.

On appeal from the Magistrate's determination,

J. F. B. Stevenson, and **A. J. Mazengarb,** for the appellant; **Foot,** for the respondent.

Held, allowing the appeal, 1. That there is no distinction in principle between the interpretation to be placed upon an award when an employee is subject to two awards and when he is subject to the award the interpretation of which is in question and to a statutory regulation of his pay and conditions of employment. In either case the question of whether there was "substantial" employment under the award is to be determined by ascertaining to which work the employee directed the major portion of his time.

2. That, as the Magistrate's finding of fact was that the obtaining of wholesale orders was only a minor portion of respondent's work, it had not been proved that the respondent was a "town traveller."

In re Northern, &c., General Warehousemen's Award, [1937] G.L.R. 231; **Canterbury Traction and Stationary Engine Drivers', &c., Union v. Aulsebrook and Co.,** [1918] G.L.R. 49; and **Capitol Theatre, Ltd. v. Ludlow,** (1934) 34 Bk. of Awards, 776, applied.

Solicitors: Mazengarb, Hay, and Macalister, Wellington, for the appellant; **Findlay and Foot,** Wellington, for the respondent.

SUPREME COURT. Palmerston North. 1938. Feb. 23, 24; April 26. *Reed, J.*

CORNFORD AND ANOTHER v. GREENWOOD AND OTHERS.

Mortgagors and Tenants Relief Acts—Mortgagors and Lessees Rehabilitation Act, 1936—Jurisdiction of Adjustment Commission—Whether Jurisdiction to take away Rights existing under Judgment of Supreme Court or Court of Appeal—Jurisdiction not confined to Cases where the Mortgage is still in existence—"Guarantor"—Remedy for Error in Interpretation of the Statute—Appeal to Court of Review—Mortgagors and Lessees Rehabilitation Act, 1936, ss. 2, 4 (1) (2) (7), 6 (1) (3), 22, 28 (2), 49, 54 (1), 71—Mortgagors and Lessees Rehabilitation Amendment Act, 1937, s. 2.

If either an Adjustment Commission or the Court of Review exercises or attempts to exercise a jurisdiction not within the four corners of the Mortgagors and Lessees Rehabilitation Act, 1936, it may be restrained by the Supreme Court by the remedy appropriate to the circumstances.

Section 4 (7) of the Mortgagors and Lessees Rehabilitation Act, 1936, suspends the merger of liability under a mortgage in a judgment of the Court, leaving the liability still for the purposes of the statute a mortgage debt, an adjustable debt, with which the Adjustment Commission and the Court of Review are authorized to deal. Therefore, rights existing under a judgment of the Supreme Court or the Court of Appeal may be taken away by the said tribunals if the circumstances are such as to bring a case under the provisions of the statute.

Although the main purpose of the Mortgagors and Lessees Rehabilitation Act, 1936, is to secure the retention by the applicant of the mortgaged or leased property, the jurisdiction of the said tribunals is not confined to cases where the mortgage is still in existence.

Gillies sold land to Gower, the latter taking over the liability under a first mortgage and giving a second mortgage to Gillies. On Gower's death the administrators of his estate sold to F. the property subject to the mortgages. On F. making default under the first mortgage, the first mortgagees by leave of the Court sold through the Registrar for substantially less than the amount of the first mortgage. The plaintiffs as trustees in Gillies estate recovered judgment in the Supreme Court against the administrators of Gower's estate for the amount due under the second mortgage. An appeal against this judgment to the Court of Appeal failed. Between the delivery of the two judgments the administrators of Gower's estate filed with the Adjustment Commission an application for adjustment in respect of liability under the said second mortgage. About the same time the bondsmen under an administration bond in Gower's estate filed an application for adjustment in respect of their liability as sureties for the due performance by the said administrators of their duties under the letters of administration.

The Adjustment Commission held that Gower's estate and the estate of some of the deceased bondsmen and surviving bondsmen were guarantor applicants, and ordered that both estates be released from all liability in respect of the second mortgage and from the judgment, and, as far as the bondsmen were concerned, from the administration bond. Appeals to the Court of Review, without prejudice to the contention that neither tribunal had any jurisdiction to deal with the matter,

were lodged by the plaintiffs, the successors to the executors and trustees in Gillies's estate, who claimed writs of certiorari, prohibition, and injunction against the members of the Adjustment Commission and the Court of Review, the administrators of Gower's estate, and the bondsmen and representatives of deceased bondsmen.

Cooke, K.C., and **H. R. Cooper,** for the plaintiffs; **S.A. Wiren,** for the third defendants; **Hallett** and **E. T. Gifford,** for the fourth defendants.

Held, giving judgment for the defendants, 1. That the said second mortgage given by Gower was an adjustable security, that Gower's estate was a guarantor, and the amount owing in respect of the said mortgage was a liability under a guarantee in respect of an adjustable debt, and, therefore, an adjustable debt; and the Adjustment Commission had jurisdiction under ss. 49 and 71 of the statute to make the orders attacked.

2. That, even if the Adjustment Commission had been wrong in its interpretation of the statute, that was not a matter that went to the jurisdiction, the only remedy being an appeal to the Court of Review, the decisions of the Commission being protected by s. 28 (2) of the principal Act so long as it kept within its jurisdiction.

Semble, that, even if the matter before the Supreme Court were an appeal from the decision of the Commission, s. 2 of the Mortgagors and Lessees Rehabilitation Amendment Act, 1937, had met every reasonable objection to the declaration by the Commission as to the status of the defendants.

In re F. M. L., [1937] G.L.R. 530, 13 N.Z.L.J. 283, approved and applied.

New Zealand Waterside Workers' Federation, &c., of Workers v. Frazer, [1924] N.Z.L.R. 689, G.L.R. 139; **Clancy v. Butchers' Shop Employees' Union,** (1904) 1 C.L.R. 181; **Holloway v. Judge of Arbitration Court,** [1925] N.Z.L.R. 551, G.L.R. 245; **Doe d. Bywater v. Brandling,** (1828) 7 B. & C. 643, 108 E.R. 863, and **Colonial Bank of Australasia v. Willan,** (1874) L.R. 5 P.C. 417, applied.

In re Pike, Ex parte Richards, [1937] N.Z.L.R. 481, G.L.R. 302, and **In re Cuno, Mansfield v. Mansfield,** (1889) 43 Ch.D. 12, referred to.

Solicitors: Cooper, Rapley, and Rutherfurd, Palmerston North, for the plaintiff; **S. A. Wiren,** Wellington, for the third defendant; **Ebbett and Gifford,** Hastings, for the fourth defendant.

Case Annotation: *In re Cuno, Mansfield v. Mansfield,* E. and E. Digest, Vol. 27, p. 134, para. 1095; *Colonial Bank of Australasia v. Willan, ibid.,* Vol. 16, p. 440, para. 3060.

COURT OF APPEAL.
Wellington.
1938.
March 28, 29;
April 29.
Myers, C.J.
Callan, J.
Northcroft, J.

AUCKLAND CITY CORPORATION
v.
MAX PAYKEL BUILDING, LTD.

Rating—Whether Local Authority entitled to recover from Owner Rates in respect of Land from which Occupier exempt—"Due by an occupier"—Rating Act, 1925, s. 70—Municipal Corporations Act, 1933, s. 392 (1).

Except where the owner is expressly made liable for rates made by a local authority, and speaking generally, this is only where he is also the occupier or is deemed by the statute to be the occupier, that local authority's only right to recover from the owner arises under s. 70 of the Rating Act, 1925, and exists only where there are rates due by an occupier.

Therefore a municipal Corporation is not entitled to recover against the owner of a building rates in respect of that portion leased by him to and occupied by the Crown, from which the Crown as occupier is exempt.

The King and Harris v. Dunedin City Corporation, [1936] N.Z.L.R. 191, G.L.R. 75, approved.

Counsel: Stanton, for the plaintiff; **Solicitor-General (Cornish,** K.C.) and **V. R. S. Meredith,** for the defendant.

Solicitors: J. Stanton, Auckland, for the plaintiff; **V. R. S. Meredith,** Auckland, for the defendant.

COURT OF APPEAL.
Wellington.
1938.
March 16, 17.
Myers, C.J.
Blair, J.
Kennedy, J.
Callan, J.
Northcroft, J.

CARR v. SCOTT.

Practice—Trial—Nonsuit—Running-down Action—*Prima facie* Evidence of Defendant's Negligence—Plaintiff *prima facie* within Bywell Castle Rule—Inferences and Questions for Jury.

Where in a running-down action there is *prima facie* evidence on the part of the defendant which might not unreasonably be inferred to have been the cause of the accident, and on that evidence the plaintiff was *prima facie* within the *Bywell Castle* rule, the plaintiff should not be nonsuited.

In such circumstances it is for the jury to draw the inferences, and it is also for them to determine the questions whether the plaintiff acted reasonably, and whether he had the last opportunity of avoiding the accident.

The Bywell Castle, (1879) 4 P.D. 219, applied.

So held by the Court of Appeal (*Myers,* C.J., and *Blair, Kennedy,* and *Callan,* JJ., *Northcroft,* J., dissenting), reversing a judgment of nonsuit by *Reed,* J. (not reported).

Counsel: C. H. Croker, for the appellant; **Sheat,** for the respondent.

Solicitors: Croker and McCormick, New Plymouth, for the appellant; **Wilson and Sheat,** New Plymouth, for the respondent.

Case Annotation: The Bywell Castle, E. and E. Digest, Vol. 36, p. 118, para. 791.

COURT OF APPEAL.
Wellington.
1938.
March 21; April 3.
Myers, C.J.
Blair, J.
Kennedy, J.
Callan, J.
Northcroft, J.

THE KING v. BOWDEN.

Criminal Law—Motor-vehicles—"Accident arising directly or indirectly from the use of a motor-vehicle"—Whether phrase restricted to "Hit and run" Motorist or includes Passenger jumping from Motor-vehicle in Case of Necessity—Statutory Command to Motor-driver not dependent on his Negligence—"Accident"—Motor-vehicles Amendment Act, 1936, s. 5 (1).

Section 5 (1) of the Motor-vehicles Amendment Act, 1936, is not restricted to the case of the "hit and run" motorist, but is enacted to ensure the protection and safety of an injured person, a passenger in a motor-vehicle who by "accident" falls therefrom, as well as a pedestrian who is run into by such vehicle.

The word "accident" as used in the section includes an event untoward so far as the motorist is concerned which may possibly cause injury to the person to whom it happens, and the command to the motorist in the section in no way depends upon the negligence of the driver of the vehicle.

An "accident" arises "directly or indirectly from the use of a motor-vehicle" where a passenger jumps out of the vehicle intentionally by reason of perilous necessity in view of the driver's conduct.

Stewart v. Bridgens, [1935] N.Z.L.R. 948, G.L.R. 774, and **A.P.A. Union Assurance Society v. Ritchie and Barton Ginger and Co., Ltd.,** [1937] N.Z.L.R. 414, G.L.R. 206, distinguished.

Counsel: Solicitor-General (Cornish, K.C.), for the Crown; **Trimmer,** for the accused.

Solicitors: Crown Law Office, Wellington, for the Crown; **Connell, Trimmer, and Lamb,** Whangarei, for the accused.

COURT OF APPEAL.
Wellington.
1938.
March 17;
April 29.
Myers, C.J.
Blair, J.
Kennedy, J.
Callan, J.

COMMISSIONER OF STAMPS DUTIES
v.
PAGE.

Public Revenue—Death Duties—Settlement of Land by Deceased reserving Life Interest to Settlor—Settlor's Father covenanting to pay off Mortgage on Land—Whether Fee-simple or Equity of Redemption settled—Death Duties Act, 1921, s. 5 (1) (*j*).

Section 5 (1) (*j*) of the Death Duties Act, 1921, is directed to the bringing back into the assets of a deceased person for the purpose of computing the final balance of his dutiable estate property of his own which he has parted with in any manner referred to in the section, and not to the inclusion in his estate of property of some third person which never became the property of the deceased, and the dealing with which is caught within the meshes of other sections of the statute.

Therefore, where a son purported to settle his fee-simple estate subject to a registered mortgage, which his father covenanted to pay off and did pay off, the effect of the transaction was a gift by the father to the trustees of the amount of the mortgage subject to the trusts of settlement and the said capital sum was not "property comprised in the settlement made by the deceased" within the meaning of the said provision of the statute.

So held by the Court of Appeal affirming the judgment of *Northcroft*, J., [1938] N.Z.L.R. 95.

Counsel: **Broad,** for the appellant; **A. C. Perry,** for the respondent.

Solicitors: **Crown Law Office,** Wellington, for the appellant; **Wilding and Acland,** Christchurch, for the respondent.

SUPREME COURT.
Wellington.
1938.
April 28.
May 17.
Reed, J.

McLENNAN v. FRANCE.

Gaming—Football Competition—Circulars issued with List of Football Matches—Invitation to pick Winning Teams on Payment of Entry Fee—£20 offered as Prize-money to Pickers of All Winners of listed Matches—Whether an Invitation to make or take any Share in a "bet"—Gaming Act, 1908, ss. 63 (*b*), (*c*).

F. caused to be distributed through the post to householders some thousands of circulars announcing a Rugby football competition and inviting entries, accompanied by 1s., the entrants to pick the winners of thirteen local football matches to be played on a named Saturday. The prize-money offered was £20, to be paid to the competitor, or divided among competitors, who correctly picked *all* the winning teams in the list of matches; and, if more than one correct solution were received, the prize-money was to be equally divided among the successful competitors. No one succeeded in correctly forecasting the result of all the matches; several were correct as to eleven of them.

F. was prosecuted under s. 63 (*c*) of the Gaming Act, 1908, for causing to be sent to divers persons "circulars inviting such persons to make bets on the result of a certain sport"—*viz.*, the said Rugby football matches. A Stipendiary Magistrate dismissed the information.

On appeal from such determination,

Cunningham, for the appellant; **Leicester,** for the respondent.

Held, allowing the appeal, 1. That the circular was an invitation to make a bet or wager.

Reg. v. Stoddart, [1901] 1 Q.B. 177; **Suttle v. Cresswell,** [1926] 1 K.B. 264, and **Baker v. Sillitoe,** (1931) 29 Cox C.C. 356, applied.

Strang v. Brown, [1923] S.C. (J.) 74; and **Jameson v. Sinclair,** [1925] S.C. (J.) 1, referred to.

2. That the bet came within the words "such bet or wager" occurring in s. 63 (*c*) of the Gaming Act, 1908, which epitomizes the more lengthy statement in para. (*b*) of the same section.

Warren v. Hammond, [1928] N.Z.L.R. 808, [1929] G.L.R. 12, considered and applied.

Solicitors: **W. H. Cunningham,** Crown Solicitor, Wellington, for the appellant; **Leicester, Jowett, and Rainey,** Wellington, for the respondent.

COURT OF APPEAL.
Wellington.
1938.
March 15, 16;
April 29.
Blair, J.
Kennedy, J.
Northcroft, J.

WELLINGTON CITY CORPORATION
v.
GOVERNMENT INSURANCE COMMISSIONER.

Land Transfer — Mortgage — Mortgagee's Sale — Mortgagee's Estimate of Value—Whether same must be stated at the reasonable Value of the Land—Land Transfer Act, 1915, s. 110 (1).

The sum to be stated by a mortgagee in his application to the Registrar of the Supreme Court under s. 110 of the Land Transfer Act, 1915, as the value at which he estimates the land to be sold under his power of sale, is such sum as the mortgagee thinks fit; in other words, it is a matter for the discretion of the mortgagee.

So held by the Court of Appeal, affirming the order of *Myers*, C.J., [1938] N.Z.L.R. 309.

Loyal Marlborough Lodge v. Rogers, (1909) 29 N.Z.L.R. 141, 12 G.L.R. 271, and **Public Trustee v. Wallace,** [1932] N.Z.L.R. 423, 425, G.L.R. 325, considered.

Dicta of *Smith*, J., in **Cleave's Buildings, Ltd. v. Porter,** [1932] N.Z.L.R. 625, G.L.R. 254, considered and explained.

Counsel: **O'Shea** and **J. R. Marshall,** for the appellant; **Harding,** for the respondent.

Solicitors: **John O'Shea,** Wellington, for the appellant; **Meek, Kirk, Harding, and Phillips,** Wellington, for the respondent.

COURT OF ARBITRATION.
Napier.
1938.
Feb. 15; May 9.
O'Regan, J.

WOOD (INSPECTOR OF AWARDS)
v.
ANDERSON AND HANSEN, LTD.

Industrial Conciliation and Arbitration Acts—Award—"Proceedings with intention to defeat provisions of award"—Whether Tenants of Service-stations independent Contractors or Workers—Indications that Agreements with Tenants devices to defeat Award—Onus of Proof—Industrial Conciliation and Arbitration Act, 1925, s. 111.

The defendant, a party to the New Zealand (except Marlborough) Motor Mechanics' Award, made the following arrangements with tenants of its motor-service stations, whom defendant alleged to be "independent contractors" (each of whom is herein called "the contractor"), for the sale of benzine and oil thereat.

Each agreement with the contractor bound such contractor to occupy and reside continuously on the premises and the defendant to supply petrol to the contractor at the ruling retail price for the time being subject to specified deductions. The contractor was bound to keep the premises in reasonable repair and appearance, and the defendant to pay all rates, taxes, insurance premiums, and other outgoings, including charges for water as well as electric lighting, save that used entirely for domestic purposes. In each case the contract was for a tenancy at will. The tenant might buy materials only from the defendant, and the property in the goods sold did not pass until payment had been made.

In each case, the Inspector of Awards claimed to recover from the defendant a penalty, under s. 111 of the Industrial

Conciliation and Arbitration Act, 1925, for the following breach of the award, that during a specified period (during which as a fact each contractor had earned less than the minimum rate of wages prescribed by the award) the defendant had combined with the contractor to defeat the provisions of the award by entering into an agreement resulting in less wages per week than provided by the award being paid to the contractor.

A. E. Lawry, for the defendant.

Held, without inflicting a penalty, but recording a conviction, 1. That the facts proved were compatible only with an infraction of s. 111 of the Industrial Conciliation and Arbitration Act, 1925.

2. That the onus of proof that the arrangement expressed the true relationship between the parties to it was not merely a device to defeat the provisions of the award was upon the defendant and had not been discharged.

In re Manawatu Flaxmillers' Award, (1909) 12 G.L.R. 102, 10 Bk. of Awards, 591; **Auckland United Furniture Trades' Industrial Union of Workers v. Goode and Co.,** (1932) 32 Bk. of Awards, 366; and **Inspector of Awards v. Wilkinson,** (1915) 16 Bk. of Awards, 538, distinguished.

Solicitor: A. E. Lawry, Napier, for the defendant.

SUPREME COURT.
Wellington.
1938.
March 29, 30;
April 13.
Reed, J.

AYSON v. COMMISSIONER OF TAXES.
WALKER v. COMMISSIONER OF TAXES.
TAILBY v. COMMISSIONER OF TAXES.

Public Revenue—Income-tax—Officials in Cook Islands with Homes there—Whether "Resident in New Zealand"—Salaries paid out of Cook Islands Treasury—Whether Income "derived from New Zealand" or "derived from any contract made with the Government of New Zealand," or "derived from contracts made in New Zealand"—Whether "source of income not exclusively in New Zealand," so as to entitle Taxpayer to Apportionment of Income—Land and Income Tax Act, 1923, ss. 84, 86 (1), 87 (*f*), (*l*), 88—Cook Islands Act, ss. 2, 171, 622.

A. was appointed first as a Judge of the Native Land Court of the Cook Islands and later as Resident Commissioner of Rarotonga and to other offices in the Cook Islands. T., the Treasurer and Collector of Customs of those Islands, and W., headmaster of the Aorangi School at Rarotonga, each upon his application to the Secretary to the Cook Islands. All three held office during the Governor-General's pleasure, and contributed to the Superannuation Fund established under the Public Service Superannuation Act, 1927. The salaries of all three were paid in terms of s. 17 of the Cook Islands Act, 1915, out of the Cook Islands Treasury.

In case stated by each appellant, all being heard together,

Levi and **Bunny,** for the appellants; **Broad,** for the respondent.

Held, 1. That s. 86 of the Cook Islands Act, 1915, is exhaustive in its definition, and that New Zealand, in ss. 84 and 86 of the Land and Income Tax Act, 1923, means New Zealand proper and does not include the Cook Islands. Therefore, a resident in the Cook Islands who has not a home in New Zealand is not within the said s. 84.

2. That an appointment to an office by the Crown may be the subject of contract.

3. That the "contract" in the words "from any contract made with that Government" in s. 87 (*f*) of the Land and Income Tax Act, 1923, is not a contract *ejusdem generis* as would arise under a debenture or other security previously mentioned.

4. That the income of all three appellants was received from contracts with the New Zealand Government and also from contracts made in New Zealand under s. 87 (*z*).

5. That the fact that payment of appellant's income was made out of the Cook Islands Treasury did not prevent the source of their income being exclusively New Zealand, and that they were, therefore, not entitled to have their incomes apportioned for taxation purposes under s. 88 of the Land and Income Tax Act, 1923, which makes provision for each apportionment where the source of income is not exclusively New Zealand.

Quaere as to the position of a person who has an official residence in the Cook Islands and a family home in New Zealand.

Coker v. The Queen, (1896) 16 N.Z.L.R. 193; **Finn v. The King,** [1933] N.Z.L.R. 1018; **Reilly v. The King,** [1932] Ex.C.R. 14; aff. on app. [1932] S.C.R. 597, and [1934] A.C. 176; **Tillmanns and Co. v. S.S. "Knutsford," Ltd.,** [1908] 2 K.B. 385; and **Corporation of Glasgow v. Glasgow Tramway and Omnibus Co., Ltd.,** [1898] A.C. 631, referred to.

Cowan v. O'Connor, (1888) 20 Q.B.D. 640, applied.

Solicitors: Bunny and Barrett, Wellington, for the appellants; **Crown Law Office,** Wellington, for the respondent.

Case Annotation: *Reilly v. The King*, E. and E. Digest, Supplement to Vol. 11, p. 56, para. 83a; *Tillmanns and Co. v. S.S. "Knutsford" Ltd., ibid.*, Vol. 41, p. 522, para. 3504; *Cowan v. O'Connor, ibid.*, Vol. 12, p. 75, para. 436.

COURT OF ARBITRATION.
Auckland.
1937.
October 13;
1938.
April 13.
O'Regan, J.

GIRVIN
v.
BAY OF ISLANDS COUNTY.

Workers' Compensation—Delay in giving Notice of Accident—Whether "Reasonable cause" for such Delay—Workers' Compensation Act, 1922, s. 26 (1) (2).

While plaintiff, a labourer, on January 27 was employed by defendants cutting gorse with a slasher, portion of the brush came into contact with his left eye and caused injury. The eye felt as though there were a hair in it and was slightly bloodshot but it did not really worry plaintiff until about March 15 or 16 when it grew painful. On March 20 plaintiff consulted Dr. F. Plaintiff did not give notice of the accident until March 23 after he had paid a second visit to Dr. F., who advised him to see a specialist. He consulted Dr. P., who found the condition hopeless. Eventually plaintiff lost the sight of the eye; but, if the eye had been treated in time the sight would have been preserved. Hence the defendant contended that they were prejudiced in their defences by plaintiff's delay in giving notice.

Trimmer, for the plaintiff; **Hore,** for the defendant.

Held, on the facts, 1. That the initial injury and infection were mild, and that the severe pain about mid-March marked the development of the ulcer that caused the loss of the eye.

2. That, as there was honest belief that no claim for compensation would arise until the development of pain led the plaintiff to consult Dr. F., there was "reasonable cause" for the ommission to give notice until March 23.

Webster v. Cohen, (1913) 108 L.T. 197, 6 B.W.C.C. 92, and **Bedford v. Bell and Winney, Ltd.,** (1933) 26 B.W.C.C. 161, distinguished.

Wassall v. James Russell and Sons, Ltd., (1915) 84 L.J.K.B. 1606, 8 B.W.C.C. 230, referred to.

Ellis v. Fairfield Shipbuilding and Engineering Co., Ltd., [1913] S.C. (Ct. of Sess.) 217, 6 B.W.C.C. 308; **Zillwood v. Winch,** (1914) 7 B.W.C.C. 60; **Albison v. Newroyd Mill, Ltd.,** (1925) 95 L.J.K.B. 667, 18 B.W.C.C. 474; **Fenton v. S.S. "Kelvin" (Owners),** [1925] 2 K.B. 473, 18 B.W.C.C. 328; **Forrest v. Proprietors Taratu Coal-mines,** [1928] G.L.R. 155; and **Templeton v. E. J. Coupe and Sons, Ltd.,** (1932) 146 L.T. 518, 25 B.W.C.C. 56, applied.

Solicitors: Connell, Trimmer, and Lamb, Whangarei, for the plaintiff; **Buddle, Richmond, and Buddle,** Auckland, for the defendant.

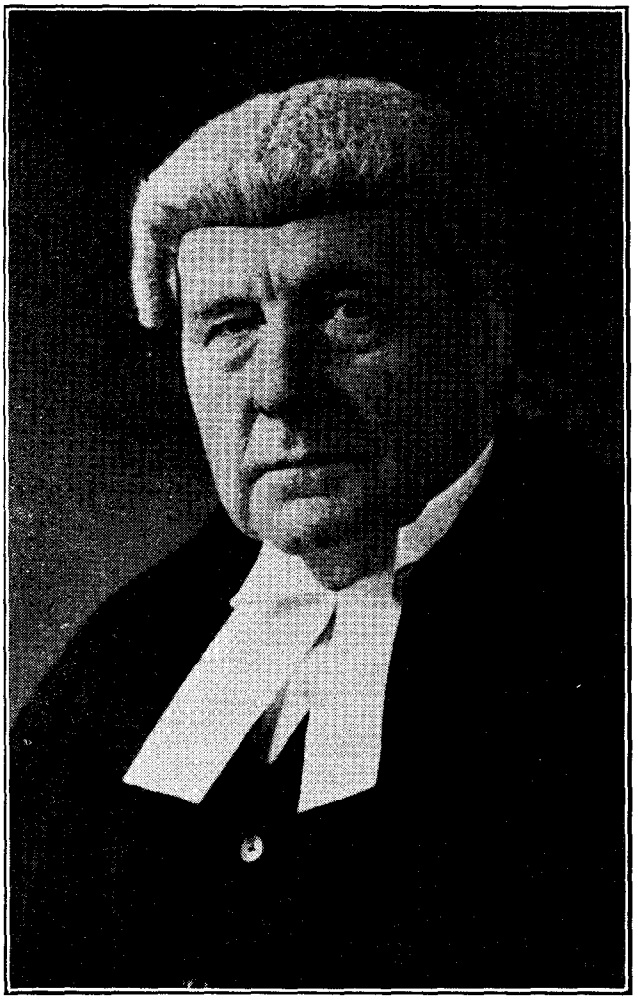
Case Annotation: *Webster v. Cohen*, E. & E. Digest, Vol. 34, p. 362, para. 2930; *Wassall v. James Russell and Sons, Ltd., ibid.*, p. 364, para. 2951; *Ellis v. Fairfield Shipbuilding and Engineering Co., Ltd., ibid.*, p. 372, para. 3021ii; *Zillwood v. Winch, ibid.*, p. 364, para. 2944; *Albison v. Newroyd Mill, Ltd., ibid.*, p. 354, para. 2857; *Fenton v. S.S. "Kelvin" (Owners), ibid.*, p. 363, para. 2939; *Templeton v. E. J. Coupe and Sons, Ltd., ibid.*, Supplement to Vol. 34, para. 3025c.

Mr. Justice Quilliam.

Appointment as Temporary Judge.

In his address at the opening of the Dominion Legal Conference at Christchurch, the President of the New Zealand Law Society, Mr. H. F. O'Leary, K.C., in drawing attention to the fact that the Judges were being overworked, suggested that the position might be met by the appointment of a temporary Judge from the practising Bar (*Ante*, p. 108). He went on to say that there appeared to be a reluctance in New Zealand to appoint a temporary Judge, though this was done in Australia and in England.

In New Zealand legal history there was precedent to support Mr. O'Leary's remarks. Mr. H. B. Gresson was appointed temporarily from December 8, 1857, to June 30, 1862, but on the following day he received permanent appointment. None of the others so appointed from the Bar was retained in office, except Sir John Salmond, who held temporary office from May 14, 1920, to the time of his permanent appointment on February 26, 1921. Mr. J. S. Moore held the appointment of a temporary Judge from May 15, 1866, to June 30, 1868; Mr. C. R. Dudley Ward was twice so appointed, holding office from October 1, 1868, to May 1, 1870, and again from October 1, 1886, to February 12, 1889. Mr. F. W. Pennefather held a temporary judicial appointment from April 25, 1898, to April 24, 1899; Mr. J. C. Martin from April 12, 1900, to December 31, 1900; and Mr. C. E. Button from March 12, 1907, to February 29, 1908.



S. P. Andrew & Sons, Photo.

Mr. Justice Quilliam.

These appointments were, of course, additional to the temporary appointments of Judges who had resigned on reaching the statutory age-limit, such as Mr. Justice Henry Samuel Chapman, who twice held temporary appointments, June 3, 1875, and September 7, 1875; he had resigned on March 31, 1875, after holding permanent office, on his second appointment, from March 23, 1864. His son, Sir Frederick Chapman, was appointed temporarily on four occasions after his resignation from the Bench after over eighteen years' service. Sir John Hosking had two temporary appointments; and Sir John Reed is still in temporary office, after over fifteen years on the Supreme Court Bench. The Judges of the Court of Arbitration who held temporary Supreme Court appointments were Sir William Sim, Mr. Justice (now Sir Francis) Fraser, and Mr. Justice O'Regan.

On May 15, soon after the conclusion of the Dominion Legal Conference, the Hon. H. G. R. Mason, Attorney-General, announced a temporary appointment to assist in the work of the Supreme Court Judges, whose duties had been increased by the much-regretted illness of Mr. Justice Ostler. He had appointed Mr. James Henry Quilliam, a greatly respected practitioner whose years of professional life had been spent in New Plymouth, but who had retired from active work at the beginning of last year.

Those who knew the new temporary Judge hailed his appointment with great satisfaction; and the Attorney-General is to be congratulated on his success in so capably fulfilling a duty that was a very difficult one: because a little reflection will show how many diverse factors must be taken into consideration in regard to such an appointment.

Mr. Justice Quilliam was born in Melbourne, Victoria, on July 6, 1867. As a small child he accompanied his parents to the Isle of Man, whence they had come to Australia, and there he received his education. While still in his teens, his parents came to New Plymouth, and the new Judge's life has been associated almost entirely with Taranaki. For a brief period he taught school. But, in the early 'eighties, he became articled to the late Mr. Clement William Govett, son of the Ven. Archdeacon Govett whose name is still held in reverence as an early Taranaki pioneer; and he qualified while a member of Mr. Govett's staff.

In 1897, Mr. Govett took his clerk into partnership, and this happy association continued until, in 1914, on Mr. Govett's death, Mr. Quilliam took over the practice. The common-law part of an extensive business was Mr. Quilliam's share. In this regard, he had a particularly busy life in local authorities' work, in the Courts and elsewhere, as he acted as solicitor for many years to the New Plymouth Borough Council, the Taranaki County Council, the New Plymouth Harbour Board, the Taranaki Hospital Board, and the Taranaki Education Board. This association prevented his

engaging in public life, so that he was precluded from holding municipal or other office.

In 1919, Mr. Quilliam was joined in partnership by his son, Mr. R. H. Quilliam, now Crown Prosecutor at New Plymouth, on the latter's return from War Service; later in that year, Mr. David Hutchen, the author of the well-known text-book on the Land Transfer Act, became a partner; while, in 1931, Mr. Guy Macallan was added to the firm. In 1937, the new Judge retired from practice, and went for a trip abroad. He had made a number of similar trips during his years at the Bar. He received his present appointment shortly after his return to New Zealand.

In his years of practice, Mr. Quilliam was very active in the Courts, particularly before those Judges who went the Taranaki circuit, his experience going back to Mr. Justice Gillies, and he frequently appeared before Mr. Justice Conolly.

For many years the new Judge was a member of the Council of the Taranaki District Law Society, in which he held all the offices, including those of Secretary and of President. He was the first President of the Rotary Club at New Plymouth, and he has also been President of the Taranaki Club. Altogether he has led a very full and busy life.

Mr. Justice Quilliam is averse from publicity; but, among his many private activities, it is known that he was at one time very interested in journalism. A man of wide reading, he has also occupied leisure hours in writing reviews of current literature for the Press; and his extensive interests, quickened by extensive travel, combine to make him a very entertaining writer and conversationalist.

Although fond of general reading, the new Judge in his years of practice and since his retirement made a hobby of a close study of the Law Reports as the parts appeared; and, consequently, he came to the Bench well-equipped with an up-to-date appreciation of current case-law.

The hospitality of the people of New Plymouth is well known. In this regard, Mr. Justice Quilliam in his many years of practice made it his particular pleasure to specialize in the entertainment of the Judges visiting Taranaki on circuit. His home was always open to them; and many of those who have now become his brethren on the Bench have happy recollections of the manner in which this genial host reduced the hours of loneliness which are inseparable from a judicial life, especially that part of it which is spent on circuit. These social foregatherings gave much pleasure, but in no way did they diminish the punctilious respect with which the practitioner always and everywhere showed towards the Judges who were his whilom guests.

The new Judge has sat at Wellington, and, at the time of writing, he is presiding over the Supreme Court Sessions at Palmerston North. His charm of manner and courtesy have already endeared him to those who have appeared before him, and his ready assistance and kindliness to counsel are matters of common knowledge and of general appreciation.

Mr. Justice Ostler.—As practitioners know, the ill-health of Mr. Justice Ostler caused great anxiety to his brethren on the Bench and to members of the profession earlier in the year. All will be glad to know that he is now showing increasing improvement in health. Accompanied by Mrs. Ostler, His Honour is at present in Queensland.

Testator's Family Maintenance.

New Zealand Principles Reaffirmed.

The recent judgment of the Judicial Committee of the Privy Council in *Bosch v. Perpetual Trustee Co., Ltd.*, [1938] 2 All E.R. 14, arising under the Family Protection Act, 1916, of New South Wales, or to give it its full Australian title "The Testator's Family Maintenance and Guardianship of Infants Act, 1916," was of very great interest not only for the matters discussed, but, for reason of the general acceptance and approbation by their Lordships of the Privy Council of the principles enunciated in the judgments of Sir Robert Stout, C.J., and Edwards, J., in *In re Allardice, Allardice v. Allardice*, (1910) 29 N.Z.L.R. 959. A further interest arose from the fact, as stated by the editor of the *All England Law Reports*, at p. 14 of the report, that a Bill is at present before the Imperial Parliament dealing with the subject of family maintenance, a reform long overdue in England. And, again, counsel referred their Lordships to a Dominion text-book, Mr. A. C. Stephens's *Testator's Family Maintenance in New Zealand.*

The appeal came, on February 1 and 3 last before a Board consisting of Lord Wright, Lord Romer, Sir Sidney Rowlatt, and Sir George Rankin, on appeal from a judgment of the Supreme Court of New South Wales (In Equity) Nicholas, J., in which that learned Judge refused an application for further provision for the maintenance, advancement, and education of the infant sons of a testator.

Testator's estate was of very considerable value—*i.e.*, just over £257,000. While he was still a bachelor he gave to the University of Sydney gifts to the value of £220,000, and by his will he left his wife approximately £10,000 together with a life annuity of £1,000, reducible on her marriage to £500. To each of his sons he left £15,000, and bequeathed the residue of his estate to the University of Sydney. The widow applied for an increase in her share in the estate and was successful, being awarded £33,800 free of all duties, and an annuity for life of £2,000, in substitution for the bequests in testator's will. A similar application was made on behalf of the infant sons, but the learned Judge refused the application.

Although the Act has been in force in New South Wales since 1916, out of the seven cases cited to the Privy Council five were New Zealand decisions. This is all the more remarkable as the statute has been adopted in all of the other Australian States and has been in operation for quite an appreciable time. For convenience it may be well to set out the material section of the New South Wales Act:

> "If any person (hereinafter called 'the testator') dying or having died since October 7th, 1915, disposes of or has disposed of his property either wholly or partly by will in such manner that the widow, husband, or children of such person, or any or all of them, are left without adequate provision for their proper maintenance, education, or advancement in life, as the case may be, the Court may, at its discretion and taking into consideration all the circumstances of the case, on application by or on behalf of such wife, husband, or children, or any of them, order that such provision for such maintenance, education and advancement, as the Court thinks fit, shall be made out of the estate of the testator for such wife, husband, or children, of any or all of them."

It will be observed that, in effect, the wording of the New Zealand statute and that of New South Wales

is practically identical, the chief difference being that our Act speaks of "maintenance and support" against the wider "maintenance, education, and support" of the Australian Act.

No useful purpose may be served by minutely canvassing the arguments advanced in support of the infants' claim. Summarized, it was argued that the income arising from the legacies left them would not be sufficient to allow them to be educated at Oxford or Cambridge and that the learned Judge was in error in holding, in effect, that in any circumstances £15,000 in cash was adequate provision for any young man. It should be mentioned that with the exception of the legacies of £15,000 each of the infants had no further estate.

The mother of the infants supported their application and stated it was her intention, should the infants fall in with it when they reached an appropriate age, to have them educated at either Oxford or Cambridge. She was reinforced in her effort by the testimony of a Mr. Murray, who deposed that after taking his degree in Sydney he proceeded to the University of Cambridge, where he spent one academic year, and that he estimated the total cost, including vacations, was £750. The evidence did not seem to unduly impress Nicholas, J., who in dismissing the application ordered the guardian to pay all the costs of the application.

Such, briefly, were the facts when the case came before their Lordships of the Privy Council. Judgment was delivered by Lord Romer, who relied largely for the grounds of his decision on *Allardice v. Allardice*, (*supra*), which eventually itself had come before the Privy Council, when the decision of the Court of Appeal in New Zealand was affirmed: [1910] A.C. 730; and, it is interesting to note in passing, the present Chief Justice of New Zealand appeared for the successful respondents before their Lordships' Board. Proceeding to discuss that decision, Lord Romer, at p. 21, summarized the principles there laid down by Sir Robert Stout, C.J., as follow:

"(i) That the Act is something more than a statute to extend the provisions of the Destitute Persons Act.

"(ii) That the Act is not a statute to empower the Court to make a new will for a testator.

"(iii) That the Act allows the Court to alter a testator's disposition of his property only in so far as it is necessary to provide for the proper maintenance or support of wife, husband, or children where adequate provision has not been made for this purpose.

"(iv) That in the case of a widow the Court will make more ample provision than in the case of children if the children are physically and mentally able to support themselves."

Lord Romer stated his colleagues were in agreement with these conclusions and the further statement:

> "The whole circumstances have to be considered. Even in many cases where the Court comes to a decision that the will is most unjust from a moral point of view, that is not enough to make the Court alter the testator's disposition of his property. The first inquiry in every case must be what is the need of maintenance and support, and the second what property has the testator left."

He then proceeded to discuss the judgment of Edwards, J., in the same case, and inevitably came to the most outstanding and best remembered portion of that judgment, which is in its entirety a memorable decision, as were indeed all the judgments. This well-known passage at p. 970, is:

> "It is the duty of the Court so far as is possible to place itself in all respects in the position of the testator and to consider whether or not having regard to all existing facts and circumstances the testator has been guilty of a manifest breach of his moral duty which a just, but not a loving husband or father owes towards his wife or towards his children as the case may be. If the Court finds that the testator has been plainly guilty of a breach of such moral duty, then it is the duty of the Court to make such an order as appears to be sufficient, but not more than sufficient, to repair it."

Analysing this, Lord Romer says:

> "Their Lordships agreed that in every case the Court must place itself in the position of the testator and consider what he ought to have done in all the circumstances of the case treating the testator for that purpose as a wise and a just rather than as a fond and foolish husband or father. This no doubt is what the Judge meant by a just but not a loving husband or father."

The Board next proceeded to examine the judgment of Salmond, J., in *Re Allen, Allen v. Manchester*, [1922] N.Z.L.R. 218, in which an extract from the judgment, at p. 220, is as follows:

> "The Act is designed to enforce the moral obligation of a testator to use his testamentary powers for the purpose of making proper and adequate provision after his death for the support of his wife and children having regard to his means, to the means and deserts of the several claimants, and to the relative urgency of the various moral claims upon his bounty. The provision which the Court may properly make in default of testamentary provision is that which a just and wise father would have thought it his moral duty to make in the interests of his widow and children had he been fully aware of all the relevant circumstances."

This statement is endorsed by Lord Romer as being "truly said."

The remainder of the judgment concerns the facts at issue in the case, and, although intensely interesting as a discussion by very high authority on the cost of the education and general requirements of the ordinary young man possessed of £15,000, does not call for recapitulation. Their Lordships do not enunciate any new legal principles in their judgment, but rest content by adopting *in toto* the judgment of the New Zealand Judges in the New Zealand cases cited before them. In the final result, the legacies of the two children of the testator were respectively increased by additional sums of £10,000.

Should the Imperial Parliament adopt the provisions of our New Zealand statute, which is pointed to by Lord Romer as being the pioneer of this legislation, and opinion is hardening of recent years in England that it should be adopted (an appreciable like trend is now apparent in Ireland), then *Allardice v. Allardice* in the New Zealand Court of Appeal will assume the importance of an Imperial *locus classicus* and the revered names of Stout, C.J., and Edwards and Salmond, JJ., heard in the land. On its becoming law, before testators become fully aware of the dangers of unjust or fanciful wills, it follows there will be a very considerable volume of litigation in which the decisions referred to will be widely canvassed and dissected. The greater particularity with which Lord Romer, in delivering the opinion of the Board in *Bosch's* case, referred to the judgments in *Allardice v. Allardice* in the Dominion's Court of Appeal, in distinction from the manner in which the judgment was affirmed without any detailed references, will send inquiring English counsel to the New Zealand reports of the judgment now doubly endorsed by their Lordships, in 1911 and in the present year.

S.H.M.

Christchurch's First Lady Barrister.

Miss Isobel Wright.

An interesting feature of the ceremony of the laying of the foundation-stone of the new Courts of Justice at Christchurch, during the Dominion Legal Conference, was the presence of a lady in robed ranks of the members of the Bar attending that function. This was Miss Isobel Wright, LL.B., who had but recently been admitted as a barrister by His Honour Mr. Justice Johnston, on the motion of her father, Mr. A. F. Wright, who is well known as a member of the firm of Messrs. Duncan, Cotterill, and Co., Christchurch.

Steffano Webb, Photo.

Miss Isobel Wright.

Miss Wright, who is the first lady barrister to be admitted in Canterbury, has had a very successful academic career at Canterbury University College, where she obtained her final LL.B. last year. Her marks in all her subjects were uniformly high; but she was successful in obtaining first place for the Dominion in Jurisprudence and in Contracts, equal first in Constitutional History, and second in Criminal Law.

In addition to aptitude for legal studies, Miss Wright secured her New Zealand University Blue for tennis in 1937, and she is on the ranking list of lady players of the Canterbury Lawn Tennis Association.

At the conclusion of the Dominion Legal Conference, Miss Wright left Christchurch to pursue her legal studies at Oxford University, where she will be entered as a student at the Lady Margaret Hall. The good wishes of the profession go with her.

Bench and Bar.

Mr. H. W. Thompson has returned to Christchurch from Reefton, and has commenced practice at 116 Hereford Street.

Mr. J. R. Mills was admitted as a barrister and solicitor by Mr. Justice Northcroft, on the motion of Mr. C. S. Thomas, of whose staff he is a member.

Mr. D. J. Hewitt, LL.M., Christchurch, has moved to 116 Hereford Street, where he has taken over the legal practice of Mr. R. C. Abernethy, S.M.

Mr. H. D. C. Adams has been appointed the Law Draftsman; and Messrs. D. J. Dalgleish and J. S. Reid have each been appointed an Assistant Law Draftsman.

Mr. James Christie has retired from the office of Law Draftsman, but he retains the position of Compiler of Statutes in terms of the Statutes Drafting and Compilation Act, 1920.

Mr. J. N. Matson, the New Zealand Rhodes Scholar for 1938, was recently admitted as a barrister by Mr. Justice Northcroft on the motion of Mr. J. H. Upham. He will proceed to Oriel College in October next.

Mr. H. M. S. Dawson has been admitted into partnership by Messrs. H. D. Andrews and A. C. Cottrell, of whose staff he has been a member for some years. The practice of the new firm will be carried on at 160 Hereford Street, Christchurch, under the firm-name of "Joynt, Andrews, Cottrell, and Dawson."

Mr. G. C. Weston, a former pupil of the New Plymouth Boys' High School, was recently admitted at Christchurch as a barrister and solicitor by Mr. Justice Northcroft on the motion of Mr. G. T. Weston. Mr. G. C. Weston, who is a member of the staff of Messrs. Weston, Ward, and Lascelles, has been awarded the Butterworth Prize for 1937 for excellence in International Law.

Messrs. J. N. Matson and G. C. Weston, recently admitted, both received the Canterbury District Law Society's Gold Medal for the best student graduating LL.B. during 1937. The Dean of the Faculty of Law (Mr. K. M. Gresson) stated at the Capping Ceremony that the standard of these two students was so high it had been found impossible to separate them and the Law Society had accordingly made available two gold medals.

The partnership between Mr. H. E. Burden and Mr. W. T. Churchward, practising as "Burden and Churchward" at Blenheim, was dissolved as from February 1, last. Mr. W. T. Churchward has taken into partnership Mr. Frank Wilmot Horton, who has been associated with the old firm for some years past; and the practice will be carried on under the firm-name of "Burden, Churchward, and Horton" at the same address. Mr. Burden will assist the new firm for a period of six months, and will then retire from practice.

The following practitioners have been elected to the mayoralty of their respective cities or towns: Messrs. T. C. A. Hislop (Wellington), T. Jordan (Masterton), J. W. Card (Featherston), E. Gibbard (Dannevirke), S. K. Siddells (Pahiatua), C. F. Atmore (Otaki) T. L. Seddon (Feilding), B. S. Barry (Whakatane), H. T. Morton (Te Kuiti), B. Keys (Te Puke), H. S. Anderson (Mt. Albert), I. J. Goldstine (One-tree Hill), F. A. Kitchingham (Greymouth), C. T. Smith (Blenheim), and W. G. Tweedy (Timaru).

Among the elected councillors are Messrs. W. R. Fee, J. J. Sullivan, Dr. R. G. McElroy, A. St. C. Brown, and J. W. Kealy, and Miss Ellen Melville (Auckland City Council); Messrs. M. Luckie and R. L. Macalister (Wellington City Council), J. Ottley (Whakatane), N. C. Snedden (Mt. Eden), W. R. Garrard (Cambridge), G. Tremaine (Palmerston North City Council), C. N. Armstrong (Wanganui City Council), E. P. Hay (Lower Hutt), A. H. Macandrew (Eastbourne), G. D. Wilson (Masterton), and P. S. Page (Eketahuna).

Other members of the profession elected to local bodies are Messrs. W. L. Fitzherbert (Wellington Harbour Board), T. C. Webster (Auckland Harbour Board), A. L. Spence and A. J. Moody (Auckland Hospital Board), A. L. Mason (Putaruru Town Board), L. Peace (Kaitaia Town Board), J. B. Yaldwyn and R. W. Bothamley (Hutt County Council), and W. E. Bate (Hawke's Bay Hospital Board).

Australian Letter.

By JUSTICIAR.

Some time has passed since the last letter appeared in these columns, but this has been due to two facts—namely, an ambulatory journey of the writer to Darwin, and the paucity of legal news on his return.

The Darwin adventure in some of its aspects may be of interest to New Zealand readers. During 1937 the Commonwealth enacted an Ordinance which has effect only in the Northern Territory (which is a Territory, and not a State, of the Commonwealth). The ordinance provides that any person who enters in a vessel the territorial waters adjacent to a large part of the Northern Territory, and who has not the permission of a police office or a protector of aborigines commits an offence. A police officer may arrest any such vessel, and if the subsequent representations of its owner to the Administrator of the Northern Territory do not result in the release of the vessel the owner may enter an action against the Administrator for its return.

During 1937 three Japanese pearling luggers were arrested, it is alleged, within the territorial waters referred to in the Ordinance, and an action has in each case been entered against the Administrator and others for the return of the vessels and for damages. It was anticipated that the case would be heard in Darwin in April, but it has since been fixed for a date towards the end of June.

As the facts have still to be found by the Court, it would be presumptuous to state them. The point of general interest, however, which does arise is as to the meaning of the expression "territorial waters." The Legislature did not see fit to define the expression in the Ordinance, though in other Acts and Ordinances it has either done so by a reference to the three-mile limit or has avoided the question by stating a distance of three miles. This is the first time in this country that the matter has arisen squarely for a decision; and it will be a matter of interest to see what this Court, and possibly higher Courts, may have to say on the question. At the same time it may have some bearing on the attempts by New Zealand to prevent Australian fishermen trawling within twenty miles of New Zealand.

Costs against Co-respondent.—Another matter which may interest you is a decision of Roper, J., in *Jones v. Jones* on an aspect of costs in the Divorce Jurisdiction. This was a case of a successful petition by a husband on the grounds of adultery. The petitioner was ordered to pay his wife's costs of the suit, and the co-respondent was ordered to pay the husband's costs of the suit, including the wife's costs paid by the husband. It had been argued that even if adultery were found against the co-respondent he should not be ordered to pay costs, because it was contended he did not know at the time of the adultery that the respondent was a married woman. The question of costs is made discretionary by the statute, and a number of rules have in practice become firmly established to guide the Court in the exercise of that discretion.

The rule relied on in the present case was that the co-respondent should not be ordered to pay costs unless it was established that he knew, or ought reasonably to have known, that the respondent was a married woman. This rule had been criticized frequently; but its justice or injustice was immaterial if it extended to this case. The first reported case of its application, after the introduction of the statutory discretion, was in *Teagle v. Teagle and Nottingham*, (1858) 1 Sw. & Tr. 188; 164 E.R. 686, though probably that decision only perpetuated a practice existing in the Ecclesiastical Courts. It was early followed in *Priske v. Priske and Goldby*, (1860) 4 Sw. & Tr. 238; 164 E.R. 1507, and has since been applied in a large number of cases. In the authorities quoted, the cases appeared to be undefended. The rule, said his Honour, was discussed in detail by Mr. Justice McCardie in *Butterworth v. Butterworth and Englefield*, [1920] P. 126, and the cases with which he was dealing were all undefended.

His Honour said that if the co-respondent did not enter an appearance or defended the suit, or if he admitted adultery, but successfully contested the question of knowledge, it was clear that the rule was applicable if the co-respondent filed an answer denying adultery, but confined his case to requiring proof of his guilt.

In these cases, the adultery of the respondent and co-respondent must be established to the satisfaction of the Court, and the co-respondent's failure to contest the charge did not conclude the question. If, however, the co-respondent made an active issue of the charge by denying the adultery, and contesting the case with his own and supporting testimony, and the issue was then found against him, his Honour could see no reason for departing from the normal order made in exercise of a discretion—namely, that they should follow the event.

New Zealand Conveyancing.

By S. I. GOODALL, LL.M.

Escheat, Reverter, and Bona Vacantia.

(*Continued from p. 161.*)

One has only to consider for a moment the wide difference in the respective natures of the ecclesiastical or the eleemosynary corporations of early times and trading companies of the present day, and the similarly wide distinction between the grant of land to an ecclesiastical corporation in, say, frankalmoign tenure and a sale or lease to a trading company who requires land for commercial purposes, to doubt whether the doctrine of reverter (whatever application it may have had in, say, the fifteenth or sixteenth centuries) has any application at all to modern corporations and present day tenures. What reception would any law practitioner expect to receive from a District Land Registrar when on behalf of a client he lodged an application for transmission on the ground that the last registered proprietor had been a company now dissolved, and the applicant had transferred the land to the company? And what reception would he similarly expect to receive at the hands of the Court when seeking to review the rejection of the transmission? Yet the *Basingstoke Canal* case is the last reported one on this question in respect of freehold land, although the doctrine seems to have been shaken to its foundations by a later case respecting leasehold: *In re Wells, Swinburne-Hanham v. Howard*, [1933] Ch. 29, C.A. Of this case more later.

4.—BONA VACANTIA.

The property in *bona vacantia*, including the personal property of a dissolved corporation, is vested in the Crown to prevent the strife and contention to which title by occupancy might otherwise give rise: *6 Halsbury's Laws of England*, 2nd Ed. 828. "The King is the owner of everything which has no other owner": *Middleton v. Spicer* (1783), 1 Bro. C. C. 201, 202, 28 E.R. 1082, 1084, per Attorney-General, *arguendo*.

But the doctrine of *bona vacantia* has not always been held to apply—and, it is submitted, does not now apply—to every otherwise ownerless thing both movable and immovable. The principles of feudal tenure left no room for an occupant of the kind at which the *bona vacantia* rules were aimed. As the name implies, the doctrine must always have applied since the foundation of the Monarchy and still apply to *bona*, or goods proper; of that there can be no dispute; further it applied and applies generally to personal property although until as recently as 1933 the weight of opinion was in favour of excluding leaseholds even from the operation of the doctrine.

Thus in *Hastings Corporation v. Letton*, [1908] 1 K.B. 378, the plaintiff Corporation leased land to the South Coast Fruit and Potato Co., Ltd., for seven years at the rental of £200 per annum payable calendar monthly. The defendants who were parties to the lease guaranteed the rent. The lessee company went into liquidation and the liquidator and receiver for debenture-holders with the license of the plaintiff Corporation and the concurrence of the defendants as mortgagees of the leasehold assigned the term to the Southern Produce Co., Ltd. The latter company also went into voluntary liquidation and both companies were dissolved. Thereafter, but before the expiration of the above period of seven years, the plaintiff Corporation sought to recover rent from the defendant sureties.

The County Court Judge, on the analogy of the death of an illegitimate lessee without issue and intestate, held that the residue of the term vested in the Crown and was still subsisting, with the result that the defendants as sureties were liable for the rent "during the term"; and he gave judgment for the plaintiff Corporation accordingly.

An appeal from this decision came before a Divisional Court consisting of Darling and Phillimore, JJ. The former Judge held that the County Court Judge's reasoning "though specious" was false. Both Judges on appeal applied the law as laid down by *Blackstone* (*1 Comm.* p. 484), and held that the leasehold which was vested in the second company immediately prior to its dissolution did not pass to the Crown as *bona vacantia*, but reverted to the plaintiff Corporation as grantor of the lease, with the result that the defendant sureties were exculpated from future liability. The former Judge in appeal said in effect that dissolution of a company was not death such as comes upon a human being still clothed with his property and his liabilities; and that a company before being dissolved should be first divested of everything, and was not permitted to dissolve until so divested of everything. His Lordship went on to liken the case of dissolution of a Corporation to death of a life tenant where the land reverts to the lessor. Leave to appeal was granted; but the appeal, though at first intended, was not pursued.

There opinion on the matter of leaseholds rested until the case of *In re Sir Thomas Spencer Wells, Swinburne-Hanham v. Howard*, [1933] Ch. 29, C.A. (hereinafter to be referred to briefly as "*In re Wells.*") Legislation had however intervened, but being in the ordinary way prospective, and not retrospective, the statutes did not solve a case arising on liquidation of a company under a former Companies Act making no express provision on the subject. It will be best perhaps next to consider *In re Wells* at moderate length.

(*To be continued.*)

The Cabinet Counsel.—You may remember an ancient doggerel in which it was alleged to be "amongst the ways of Good Queen Bess, who ruled as well as ever mortal can, Sir; when she was stogged and the country in a mess, she was wont to send for a Devon man, Sir." In trying times, it would appear that lawyers are sent for now.

For example, it was recently announced, at a time when momentous doings were afoot, that "a Cabinet Council was held at 10 Downing Street," on a conservative estimate, not less than nine of them were lawyers, both branches of the profession being well represented. Sir John Simon, Lords Hailsham and Maugham, and Sir Thomas Inskip are lawyers known to all; Mr. Morrison is a K.C.; Lord Swinton and Mr. Hore-Belisha are members of the Bar, while, as the best people know, Sir Kingsley Wood and Mr. Leslie Burgin are solicitors of high repute. The Cabinet Council seems to have been at least 45 per cent. legal.

—APTERYX.

Court of Review.

Summary of Decisions.*

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

CASE No. 112. Appeal by two local bodies from such part of an order of a Commission as decreed that the balance of arrears of rates owing to the local bodies ranking after a mortgage to the State Advances Corporation be treated as an adjustable debt and discharged as at February 22, 1938. The amount so discharged was £62 9s. 11d.

Held, dismissing the appeal, That the order was within the Commission's jurisdiction.

The facts sufficiently appear from the judgment, which is as follows :—

" Previous decisions of the Court have laid it down that when a mortgage to the State absorbs the whole of the Commission's value of the security, all rates save those which by law take priority to the security can be treated as adjustable debts. So declared, orders for their payment or discharge will be made as in the opinion of the Commission is justified by the financial position of the applicant for adjustment.

Counsel for the local body does not dispute that he he is bound by those decisions and, consequently, in this case, limited his appeal to that portion of the rates so discharged which were made and became a charge upon the land subsequent to applicant's application for adjustment being filed. The application for adjustment was filed on February 1, 1937. Rates then owing amounted to £52 9s. 6d. That these could properly be discharged is not disputed. Rates for the year ending March, 1938, imposed in July, 1937, amounted in the case of one local body to £9 8s. 9d. and to 10s. 8d. in the case of the other. These the Commission also discharged.

" Counsel further says that while they were due and a charge on the land at the date of hearing—namely, February 22, 1938; they were not subject to the jurisdiction of the Commission as they were not in existence at the date of application. He takes the wide ground that Commissions have no power to deal with debts unless they are shown in the original statement of assets and liabilities, which every applicant is required to make, or are shown in an amended statement which he is authorized to make. In short, he says, that unless there is express provision in the statute dealing with particular debts, only debts owing at the time of the making of the application come within the jurisdiction of the Commission, not excluding, however, liabilities incurred at the time of the application, not presently payable but payable *in futuro*.

" It cannot be denied that there is considerable merit and, indeed, advantage if he is correct in this contention. There is, however, so far as we can find, no express provision in the statute in support of counsel's contention. On the other hand, while the statute provides that differing classes of debts are adjustable according to whether the applicant is a farm applicant or a home applicant, there are certain obligations which, in either case, *per se* form part of an adjustable security. Such obligations can become adjustable debts after the filing of the application by virtue of a determination by the Commission. After the value of the property has been determined, so much of the amounts secured as exceed the value of the security become, by virtue of s. 42 (7), adjustable debts, or in the words of the subsection ' are to be deemed ' adjustable debts. Even if it is admitted, as counsel contends, that such amounts do not come within the definition of adjustable debts given in the statute, the section can only mean that such amounts are to be treated by the Commission as adjustable debts for the purpose of the adjustment it has to make of applicant's liabilities, and that orders for their payment or discharge can be made in respect of them. Counsel, however, contends that while that proposition may hold in regard to balances secured at the date of the application it does not hold in regard to an amount that has arisen by charge lawfully made after the application.

" There is nothing in the statute that suggests such a distinction, and to limit the scope of s. 42 (7) as suggested would necessitate a limitation, also, on the power to reduce liabilities to value. This fundamental power cannot be limited without clear provision to that effect. The inequality that would, unless some such limit is imposed, arise according to the date at which an application was heard—that is to say, early or late—is relied upon in support of the view that the balances of securities that were charged on the property at the date of the application alone can be deemed adjustable debts. Section 49 (1), however, answers the proposition. It provides that all adjustable debts to which an applicant is subject at the date of the application and such of the adjustable debts to which he subsequently becomes subject, as the Adjustment Commission determines for the purposes of the section, shall be deemed to be discharged on a date to be fixed in that behalf by an order of the Adjustment Commission. We take this as express authority to deal with all adjustable debts—*that is, those existing at the date of application and within* the definition of adjustable debt and those properly declared to be adjustable debts.

" Section 42 provides that secured debts are to be reduced to the value of the property. If this has to be done, it can only be done at the time the Commission determines the value of the security—that is to say, the date of hearing. If, at that time, there is an amount charged for rates, whether the charge was made prior or subsequent to the filing of the application, and a first mortgage which has priority to the rates exceeds the value of the property and has, in consequence, to be reduced, securities subsequent to it must be discharged if s. 42, enjoining the reduction of securities to the value of the property, is to be carried out.

" This again, counsel concedes, as we understand his argument, but he says that while rates made after the application for adjustment can be held not to be a charge on the property, they remain a debt, but not an adjustable debt, *because they do not come within the definition* of ' adjustable debt '; but, in our opinion, under s. 42 (7), they are to be deemed an adjustable debt and s. 49 (1), which deals with debts arising subsequent to the date of the application, makes an interpretation limiting debts to those due at the time of filing the application impossible.

" *It is true that under s. 38 express provision is made* whereby the Adjustment Commission may remit the whole or any part of any interest accrued before the date of the order so that interest which has accrued since the date of the application may be remitted. Rates are, admittedly, in a different position to interest, but are, nevertheless, an annual charge. While absence of provision for rates similar to that cited in reference to interest reasonably raises an inference against similar treatment, that inference must give way to other operative sections, and, in particular, to the provisions of ss. 42 and 49 already referred to.

" Although rates are an annual charge, they are constituted by statute a charge on the land; and, if the Commission at the date of its order has to reduce all charges to the amount of the security, then, in those cases where a State mortgage having priority to rates absorbs the whole value, rates cannot remain a charge on the land in excess of the amount of the mortgage as at the date of the order, they, therefore, become an adjustable debt and, as such, are within the jurisdiction of the Commission which can order payment or discharge as it deems fit.

" In the case in question it cannot be said that the applicant has necessarily benefited by the delay that has taken place in the hearing of his application. He has throughout the whole of that period been liable to interest on a mortgage in excess of the value of his property, and, while it turns out not to be the case here, if the value of the property were equal to the amount secured on mortgage plus accrued interest, he would have had to pay that amount.

" While, in our view, the Commission should in all cases be chary of discharging rates imposed after the application for adjustment is filed, and should draw a sharp distinction between such rates and those due at the date of the filing of the application, they have, nevertheless, in our opinion,

* Continued from p. 164.

jurisdiction to discharge them in cases where they think it necessary so to do if applicant is to be put in a position to meet his adjusted liabilities. In view of the relation between rates and service to land, the jurisdiction given by s. 49 to give priority among adjustable debts and impose terms of payment should, in our opinion, be exercised where the position of the applicant justified some payment.

"In the present case the appeal has been advanced almost solely on a question of law, and nothing has been said which justifies us, since we find the order was within the Commission's jurisdiction, in setting it aside."

Practice Precedents.

Probate and Administration: Resealing in New Zealand.

By s. 43 of the Administration Act, 1908, where any probate or letters of administration granted by any competent Court in any part of His Majesty's dominions out of New Zealand are produced to and a copy deposited with the Registrar of the Supreme Court of New Zealand, such probate or letters of administration shall be sealed with the seal of the last-mentioned Court, and *shall thereupon have the like force and effect* and have the *same operation in New Zealand*, and every executor and administrator thereunder shall perform the same duties and be subject to the same liabilities, as if such probate or letters of administration had been originally granted by the Supreme Court of New Zealand.

Section 44 provides that the seal shall not be affixed until all fees have been paid. In actual practice, the seal is affixed by the Registrar, and the document, duly sealed, is forwarded to the Stamp Office; and, when the value of the estate has been ascertained by the Commissioner of Stamp Duties, he notifies the solicitor, and the latter produces the memorandum to the Registrar. The Registrar then collects fees in accordance with the scale of fees relating to estates, and notifies the Commissioner accordingly; and he then releases the resealed document. If Letters of Administration are to be resealed, an affidavit, showing the value of the estate, must be furnished to the Registrar: this is done primarily to fix the amount that is to be inserted in the administration bond, which must be lodged at the time the letters of administration are deposited for sealing. A bond must be furnished by all persons sealing letters of administration, except the Public Trustee or other like public official: Administration Amendment Act, 1935, s. 4.

When the Registrar has resealed the administration it seems there is no power to set it aside: *In re Willcox*, [1925] N.Z.L.R. 525.

Where *probate* is resealed an additional copy of the will is furnished to the Registrar, but no affidavit is required. The Registrar retains a complete copy of the probate (including the will) and sends the resealed probate and extra copy of the will to the Commissioner of Stamp Duties.

As to dispensing with sureties in general, the position was reviewed by Reed, J., in *In re Morrison*, (1931) 7 N.Z.L.J. 115, where the learned Judge said that the general practice in New Zealand is not to dispense with sureties to the bond unless (1) all the next-of-kin are *sui juris* and join in consenting to sureties being dispensed with; and (2) where there are no debts in the estate unless sufficiently secured. As a general rule, these conditions should co-exist to warrant sureties being dispensed with: *In the Estate of Sixtus*, (1912) 14 G.L.R. 440. Where there are infant beneficiaries, sureties are never dispensed with.

A bond must always be furnished in New Zealand, even though sureties are dispensed with: s. 21 of the Administration Act, 1908; but apparently the rules in England only permit the dispensing with one surety where the value of the estate does not exceed £50: *Tristam and Coote's Probate Practice*, 16th Ed, 153. Where the bond of the administrator alone is not sufficient, there appears to be no recognized common practice in New Zealand regarding dispensing with one surety.

Administration with will annexed will not be issued to the attorney of executors residing outside the jurisdiction until he had lodged the usual bond: *In the Will of James Roberts*, (1889) 7 N.Z.L.R. 142.

The power of attorney is lodged with the Registrar as required. A copy of the power of attorney is sometimes exhibited to the affidavit in support of the resealing, so that after the letters are resealed the power of attorney may be uplifted. Otherwise a copy must be lodged before the power of attorney is uplifted. Forms of the necessary documents for resealing letters of administration are set out hereunder: for forms of inventory, see (1937) 13 N.Z.L.J. 334, 347.

The bond adopted for general use in resealing letters of administration is taken from *In the Estate of G. J. G. Tancred*, (1913) 32 N.Z.L.R. 991.

FORM OF LETTERS OF ADMINISTRATION GRANTED IN VICTORIA AND RESEALED IN NEW ZEALAND.

IN THE SUPREME COURT OF VICTORIA.

IN THE PROBATE JURISDICTION.
IN THE ESTATE of A. B. late of in the State of Victoria farmer deceased.

BE IT KNOWN that on the day of one thousand nine hundred and thirty-seven letters of administration of the estate of A. B. late of in the State of Victoria farmer deceased intestate who died on the day of one thousand nine hundred and thirty-seven and who had at the time of his death no real estate within the jurisdiction and personal estate within the jurisdiction sworn not to exceed in value nine hundred pounds (£900) were granted to C. B. of widow of the said deceased she having been first sworn that she would well and truly collect and administer according to law the estate of the said A. B. and would exhibit and deposit in the office of the Master in Equity a true and perfect inventory of the said estate within three months of the order granting administration and a true and just account of her administration of the said estate within fifteen months of the said order.

By the Court.

[L. S.] Registrar of Probates.

Issued at Melbourne this day of in the year of Our Lord one thousand nine hundred and thirty-seven.

Resealed under the provisions of the Administration Act, 1908, at Wellington, this day of 1938.

[L. S.] Registrar.

AFFIDAVIT BY ATTORNEY.

IN THE ESTATE OF A. B. late of Victoria farmer deceased.

I G. H. of the City of solicitor make oath and say as follows:—

1. That under and by virtue of a power of attorney dated the day of 19 I am attorney in New Zealand for C. B. of widow the administrator of the estate of the above-named A. B. deceased under letters of administration granted by the Supreme Court of the State of Victoria in the Commonwealth of Australia at on the day of 19 .

2. That I desire to reseal in the Dominion of New Zealand letters of administration bearing date the day of 19 .

3. That according to the best of my knowledge and belief the estate effects and credits of the said deceased situate in New Zealand in respect of which the said letters of administration are sought to be resealed are under the value of £900 and consist solely of policy-moneys due by [*insurance company*] amounting to the sum of £900.

4. That I will exhibit unto this Court a true full and perfect inventory of all the estate effects and credits of the said deceased situate in New Zealand within three calendar months after the resealing of the said letters of administration and I will file a true account of my administration within twelve calendar months of the resealing of such letters of administration.

Sworn &c.

BOND.

(*Same heading.*)

KNOW ALL MEN BY THE PRESENTS that we G. H. of the City of accountant and the Insurance Company Limited a duly incorporated company whose head office for New Zealand is situated at No. : Street in the City of (hereinafter called "the company") are held and firmly bound unto X, Registrar of the Supreme Court of New Zealand for the said District of at in the sum of nine hundred pounds (£900) for which payment well and truly to be made to the said X or to such Registrar at for the time being the said G. H. and the company do bind themselves and each of them and the executors and administrators of the said G. H. and the successors and assigns of the company jointly and severally firmly by these presents.

WHEREAS letters of administration in the estate of the above-named A. B. were granted by the Supreme Court of Victoria in the Commonwealth of Australia at on the day of 19 to C. B. of widow of the said deceased AND WHEREAS the said G. H. as attorney for the said C. B. under and by virtue of power of attorney bearing date the day of 19 desires to reseal in New Zealand letters of administration bearing date the day of 19 AND WHEREAS the said G. H. has sworn that to the best of his knowledge and belief the estate effects and credits of the said A. B. situate in New Zealand are under the value of nine hundred pounds (£900)

NOW THE CONDITION OF THE ABOVE-WRITTEN BOND is that if the above-bounden G. H. exhibits unto this Court a true full and perfect inventory of all the estate effects and credits of the said deceased which shall come into his possession or the possession of any other person by his order or for his use on or before the day of 19 and well and truly administers the same according to law or duly conveys transfers assigns pays over or accounts for the same to the said C. B. or to any person or persons appointed administrator or administrators of the estate of the said C. B. after the appointment of the said C. B. and renders unto this Court a true and just account of his said administratorship on or before the day of 19 then this bond shall be void and of none effect but otherwise shall remain in full force.

Dated at this day of 19 .

Signed by the said in the presence of [*Signature*].

Name :

Address :

Occupation :

Signed sealed and delivered by the above-named The Company Limited by its attorney of the City of acting under and by virtue of a power of attorney bearing date the day of 19 in the presence of— } [*Company*] by its attorney [*Signature of attorney*].

[L. S.]

I of the City of company secretary do solemnly and sincerely declare as follows :—

1. That I am the attorney in New Zealand for the Company Limited under and by virtue of the power of attorney mentioned in the attestation clause above and that I have executed the within written bond under and by virtue of the powers thereby conferred.

2. That I have received no notice or information of the revocation of the said power of attorney either by the dissolution or winding-up of the said company or otherwise and I believe the said power of attorney to be still in full force and effect.

AND I MAKE THIS SOLEMN DECLARATION conscientiously believing the same to be true and under and by virtue of the provisions of an Act of the General Assembly of New Zealand intituled the Justices of the Peace Act, 1927.

Declared by the said at this day of 19 . [*Signature*] before me—

A Justice of the Peace in and for the Dominion of New Zealand.

POWER OF ATTORNEY.

TO ALL TO WHOM THESE PRESENTS SHALL COME: GREETING :—

WHEREAS A. B. late of in the State of Victoria farmer died on or about the day of 19 at in the said State intestate possessed of or entitled to certain moveable property in the Dominion of New Zealand.

AND WHEREAS I C. B. of am the lawful widow of the said A. B. and by law applicable to him and his estate I am entitled to administer his said property.

AND WHEREAS letters of administration of his estate effects and credits were on the day of 19 granted to me by the Supreme Court of the State of Victoria in the Commonwealth of Australia at .

AND WHEREAS being myself unable to proceed to the said Dominion of New Zealand I desire to appoint an attorney to apply for the resealing of the said letters of administration or for letters of administration to such property for me and for my benefit.

NOW THESE PRESENTS WITNESSETH that I do hereby appoint G. H. of the firm of Messrs. of the City of in the Dominion of New Zealand barrister and solicitor (hereinafter called "my attorney") for me and in my name or in his own name or otherwise as the law may require to do all the following acts deeds matters and things or any of them that is to say :—

1. To apply for and obtain from the proper Court or other authority having jurisdiction in the premises the resealing of the grant of letters of administration of the said A. B. deceased or for a grant of letters of administration limited to the moveable property belonging to the said A. B. deceased at his death situated and recoverable in New Zealand aforesaid.

2. To enter into such obligations undertake such liabilities and execute such deeds as may be legally required for that purpose.

3. Generally to do all acts which my attorney may find it necessary or desirable to do with a view to obtaining such resealing or grant and being constituted the legal representative of the said A. B. deceased and administrator of the said estate.

4. To receive collect and get in the estate of the said A. B. deceased and to give good and effectual receipts for any moneys which he may receive or collect.

5. To deduct from any moneys so received collected or got in as aforesaid all costs or expenses properly incurred by my attorney in making such application for resealing.

6. To procure the registration of these presents wherever and whenever such registration may be legally required necessary or convenient for the said purpose and to execute and if legally required cause to be registered all documents and do all other acts which may be necessary to give effect to these presents according to the law applicable to the premises.

AND I HEREBY AGREE to ratify and confirm whatever my said attorney shall lawfully do or cause to be done in the premises by virtue of these presents.

In witness whereof I have hereunto set my hand and seal at this day of 19 .

Signed sealed and delivered by the said C. B. in the presence of— } [*Signature.*]

[L. S.]

[*Two witnesses here set their names with their addresses and occupations.*]

TO ALL TO WHOM THESE PRESENTS SHALL COME: I J. K. notary public duly authorized admitted and sworn residing and practising at in the State of Victoria in the Commonwealth of Australia hereby certify that I was present and saw C. B. the person named in the within-written power of attorney on the day of 19 duly sign seal and deliver the same and that the name C. B. subscribed thereto is in the proper handwriting of the said C. B. and that the names and subscribed hereto as attesting witnesses are in the proper handwriting of and both of aforesaid respectively.

In testimony whereof I have hereunto set my hand and seal of office this day of 19 .

[*Signature.*]

[L. S.[Notary Public.

[*Town.*]

Annual Bar Dinner.

Hawke's Bay District Law Society.

The Annual Bar Dinner of the Hawke's Bay Law Society, at Napier, on May 28, was attended by forty-five members of the Society from all parts of the district, even from as far away as Dannevirke and Wairoa. The guests of the evening were His Honour Mr. Justice Reed, the Hon. W. E. Barnard, M.P., the Speaker of the House of Representatives, who had practised in Napier for some years; and Mr. H. J. Thompson, Secretary of the New Zealand Law Society.

After proposing the loyal toast, the chairman, Mr. H. B. Lusk, President of the Hawke's Bay Law Society, said that apologies had been received from the Attorney-General, the Hon. H. G. R. Mason; the President of the New Zealand Law Society, Mr. H. F. O'Leary, K.C.; the President of the Wellington District Law Society, Mr. P. B. Cooke, K.C., and from Mr. Miller, S.M.

Mr. Lusk then proposed the toast of the visitors. He offered them a very warm welcome, and expressed the pleasure of the members of the Society that they were able to be present.

Mr. Justice Reed.

Mr. Justice Reed replied to the toast of the visitors. He referred to his early association with the President, Mr. H. B. Lusk, and how they had both been members, in their younger days, of a bachelor establishment in Auckland. He said he was beginning to feel old when he recollected that it was fifty years ago since he was admitted to the Bar by the late Mr. Justice Gillies on the motion of Mr. Theo. Cooper, later Mr. Justice Cooper, and he recalled that every present member of the Bench had at one time or the other appeared before him as counsel. His Honour claimed that with thirty-three years at the Bar and seventeen on the Bench he was in a position to appreciate the different point of view on many matters according to whether one looked at it from the Bar or from the Bench. He related some amusing anecdotes of his experiences with juries in both positions, and concluded by thanking the Society for its hospitality.

The New Zealand Law Society.

The toast of the New Zealand Law Society was proposed by Mr. E. J. W. Hallett, who said that this toast received the approbation of everyone, because it was a toast to themselves.

"The New Zealand Law Society might be called the particular trade-union to which we all belong," he continued. "But although, as a result of recent legislation, we have been brought in close touch with trade-unions, I am sure you will agree that the New Zealand Law Society cannot be compared with a trade-union. But speaking seriously, I am sure you will all agree that we all owe a great debt of honour to the New Zealand Law Society, which performs duties not only to the members of the profession, but also to the public, the Government, and the country at large.

"The Council of the Society is one of the most representative bodies of its type in the country. Until a few years ago the Council was almost entirely comprised of members of the Bar in Wellington—it was possible for local branches to be represented by proxy. The constitution has now been changed. It is not possible for any District Law Society to be represented by any person not a member of that Society. Consequently the body of opinion at the Council is the direct opinion of the various Societies; and, when they reach a decision after due discussion, their opinion reflects that of the whole of the profession. It is really a very efficient body.

"We should also recognize our great duty to those men who are prepared to sacrifice so much of their time travelling from the Far North and from the Bluff to Wellington to represent us. Often the meetings in Wellington are not just an hour or so, but are all-day meetings; and I feel bound to mention our great obligation to our delegate, Mr. Lusk, for the trouble he takes on our behalf. It is a very valuable work that is carried on, and it is in the interests of the profession and also of the general public.

"Then, we have a Disciplinary Committee with power of striking off the rolls. That places great power and responsibility in their hands, and we appreciate the attitude of the Government in vesting in us that disciplinary authority. The Committee has the confidence of the public. Its decisions are subject only to jurisdiction of the Court of Appeal. And so we should feel great gratitude for the work of the New Zealand Law Society.

"We should feel very grateful that we have a very capable secretary in Mr. Thompson. Mr. Lusk has already referred to him, and I need only say that during the time he has occupied the position he has shown the utmost courtesy and attention."

The Spirit of Hawke's Bay.

After the toast had been honoured, Mr. H. J. Thompson, Secretary of the New Zealand Law Society, in reply, said that, on behalf of the New Zealand Law Society, he had the utmost pleasure in extending their good wishes for the coming year, and in conveying their congratulations on the way in which the people of the Hawke's Bay District had faced the great misfortunes with which they have been visited in past years. What with earthquake and fire, droughts and floods, they had had more than a fair share. The fact that the Hawke's Bay Law Society had held their annual dinner each year in spite of all these tribulations, spoke well for the spirit of the profession in Hawke's Bay.

"I thank you for your remarks about myself—although a lot of them are not, perhaps, entirely merited," Mr. Thompson continued. "As Secretary of the Law Society, I have to be all sorts of things besides a secretary: barrister and solicitor, accountant and auditor, and private detective. On one or two occasions I have had to visit people in prison, and have gone in and been duly barred in. Once I 'did a stretch,' as they call it, of three weeks in Auckland, in the course of my duties. As the doors clang to behind you, one after another, it cures you of any feeling you might have had that it might not be so bad to spend a few months at His Majesty's expense.

"I have three messages to give you. The first is an apology from two Presidents. Unfortunately, the New Zealand President, Mr. O'Leary, was not able to be here, and he expresses his regrets that it has not been possible. The Wellington President, Mr. Cooke, is also very sorry he has not been able to come.

"The second message is that, as you know, 1940 is the year of the Centennial Celebrations, and the Legal Conference is to be held that year in Wellington. The

Wellington Society is very desirous that everybody should be there, and extends a cordial invitation, to all Hawke's Bay practitioners to be present.

"The third message is from our President to our old friend Mr. Lusk—that there is no more esteemed delegate to the Council of the New Zealand Law Society than Mr. Lusk. He comes to every meeting, although it entails his being away from his practice for three days each time. He also belongs to the Disciplinary Committee. Last year it had a three-days' sitting, and the matter before it was only finally disposed of the other day."

The toast of The Legislature was proposed by Mr. L. W. Willis, on whose slender shoulders, he said, had fallen the heavy responsibility of proposing the toast, if not the health of that august assemblage, coupled with the name of Mr. Speaker, the Hon. Mr. W. E. Barnard, M.P.

"My sole qualification for this office is that I am supposed to represent what, for want of a better name, is colloquially called the Younger Set," Mr. Willis proceeded: "I feel sure I was not chosen as representative of the Junior Bar, at least not in a legal sense. I had hoped to achieve some small measure of success by displaying that greatest of all gifts—brevity. In fact I have pictured myself sitting down mid the plaudits of the multitude after contenting myself with the remark that the less said about the Legislature the better. On reflection, this appeared rather a cowardly way out of it, and I am sure that Mr. Barnard will not feel at home unless I wander on until someone applies the closure or moves that the honourable member's time be extended."

The Advantages of Recent Legislation.

Mr. Willis went on to say that he had often wondered what the Legislature does or is supposed to do; and, after much consideration, he had come to the conclusion that the job of the Legislature is to legislate, and it must be acknowledged that of late they had legislated with a will. The legal profession should be, and doubtless is, extremely grateful for that.

"All this new law enables us of the Younger Set to make up some of the leeway from the revered older members of the profession who were suckled on the *Institutes of Justinian* and weaned on *Blackstone's Commentaries*," the speaker proceeded. "Furthermore, we hope that these new laws have puzzled the public even more than they have puzzled us, and that we will get a little more grist to our mill advising clients how to observe, or to evade, these laws.

"Consider for a moment some of the excellent laws recently placed on the statute-book. Take, for example, the inestimable blessing of the forty-hour week. Whatever the scoffers may say, we can now work at least two extra hours per week without being accused of scabbing on the union. Take, again, the Reserve Bank—if you can get it—now conducted, as I understand from the newspapers, by the Government Printer. Never again shall we suffer from the lack of that very necessary commodity, money. Even the cynics who doubt whether this money will be much good must realize that they can pay the Government back in it for taxes, when meeting their income-tax; and after that there is not enough to worry about, anyhow.

"Then, again, consider the preference to unionists. No longer can it be legal for the local clergyman to draw up the public's wills. In fact, I gravely doubt the propriety of their drawing up marriage contracts. For an adequate fee I am prepared to give my considered opinion on this very subtle point. Further, consider the Industrial Conciliation and Arbitration Act and the awards thereunder. In the past, if a client complained of the amount of a scale fee you told him, with what dignity or indignation you could muster, that it would be unfair to your professional brethren to cut this scale. That sounded all right for us, but not so good to the client. Now we can tell him—because he won't know any better—that it is criminal to charge less than the award rates. Yet again, with the plenitude of money, proceedings *in forma pauperis*, except for a person applying for admission as a solicitor, are fast falling into obsolescence and desuitude.

"Then we are also provided with some nice mental gymnastics in the Law Reform Act and the survival of causes of action. Take the case of a man who is negligently killed, who sues, as if he were alive, for the loss of expectation of life because he is dead. Our Legislators have repealed this provision, presumably because it is considered that the expectation of life is not worth anything.

"The Legislature, however, is not a matter for levity," Mr. Willis continued. "The Legislature, constituted by His Excellency the Governor-General representing the King, the Legislative Council and the House of Representatives, is the living proof and instrument of our democracy. In a world largely now given over to dictatorships of the Right or Left, our Empire is the principal remaining stronghold of democracy. In our day, people are apt to forget the centuries of sacrifice that were required to win them this freedom which is valued all too lightly. The dictatorship countries possess driving force, due to the sacrifice and enthusiasm of their inhabitants. The democracies are in peril through sheer inertia. The dictatorship countries are prepared to fight for their ideology, and unless the democratic countries are prepared to fight to defend their liberties, they will assuredly lose them. There are even in this country those who would like to see the establishment of the totalitarian State; but they should remember that, in the long run, the majority must rule, whether through the peaceful means of the ballot-box or by the arbitrament of the sword.

"In this country and throughout the Empire we have reason to be proud of the men who serve on our Legislature," the speaker said in conclusion. "Whatever their party affiliations, they are imbued with the highest ideals; and public life in this country is notably free from graft or corruption. We should be grateful to those men who are prepared to dedicate themselves to the service of their countrymen in a legislative capacity. It is to me a cause for regret that comparatively few of our profession, trained in the law, take any active part in the making of it. It will be a sorry day for democracy when it becomes anything but an honour and a duty for those best qualified to do so to serve on our legislative bodies."

The toast, coupled with the name of the Hon. Mr. Barnard, was drunk with enthusiasm.

The Speaker of the House of Representatives, the Hon. W. E. Barnard, said, in reply, that he felt very diffident in replying to the toast of the Legislature; but he was pleased and proud to have this opportunity of doing so. "I feel there is a very close link between the Legislature and the Legal Profession, and you may be pleased to hear that though the number of lawyers in the House is small, when any question of the rights of the profession arises it is surprising how the lawyers

club together. And this is very necessary, as there is a very profound distrust of lawyers in the general portion of the members," he continued. "All the legal members of Parliament watch with the keenest concern any legislation that affects the legal profession. We may have abandoned practice some years ago, but we remember our allegiance to the profession."

Mr. Barnard said that he agreed with Mr. Willis as to the importance of the maintenance of the prestige of Parliament. In these days, when ideologies of another sort are abroad, we should appreciate more than we did the institution of parliamentary government.

Mr. Speaker's Reminiscences.

"During the last two years during which I have been Speaker, I have come to view the whole proceedings from an entirely different angle," the speaker said. "My job has to be regarded in contradistinction to that of a lawyer: if a client comes in to you with a particularly knotty problem you can reach for a ponderous tome or tell him to come to-morrow; but in Parliament you do not have that opportunity. You may be feeling sleepy and out of sorts when suddenly you have a decision thrust at you, and you have to make up your mind immediately and give some sort of an answer and hope it is a sound decision. But generally speaking, the members support the Chair in a very loyal way.

"We have had some very eminent Speakers in the New Zealand Parliament in the past. The only one I have sat under was Sir Charles Statham. He was a very fine speaker, and very fair and impartial in his conduct of the affairs of the House. In my endeavours to maintain the high standards set by my predecessors, I have often delved into the records of past Speakers, and I think that Parliament had a very great Speaker in Sir Maurice O'Rorke. He was in Parliament from 1861 to 1890, and again in 1893 till 1902, after which he was transplanted to 'another place' till 1916, when he died. He was for nineteen years the Speaker of the House, the longest period the office has been held in the history of our Parliament, and he was probably the greatest Speaker New Zealand has ever had. His decisions were very sound. Occasionally he was stumped; but he carried it off very well. Once some one asked for the grounds of a ruling he had made, and he rose in all his dignity and said that he ruled by the authority vested in him by this Honourable House. The standard maintained in the Parliament of New Zealand is very high, nevertheless there is a funny side even in the Speaker's position. In my early days as Speaker I was trying to keep up the high standard of the past and I was often worried by the way in which some of the younger members were inclined to wander. On one occasion a member was speaking when somebody made some quite irrelevant interjection. The member said that he was able to answer the interjection, but the Speaker would not allow it for its irrelevancy. I could not restrain myself from saying, 'Hear, hear.' Unfortunately, sitting quite near me was a member of the Australian Federal Parliament, and I hastened to tell him after the adjournment that what I had done was not the usual practice.

"As you know, the time any member may speak in the House is limited, but it is open to anyone to move that his time be extended. However, there is one member who is very averse from extensions. Once in the early hours of the morning it had been moved that some member's time be extended, and when I asked if there were any members opposed to the motion I heard a voice near me say, 'No,' which I accepted as ruling out the motion. I found out later that it was the voice of a bored reporter, and I had accepted it as from the floor of the House.

"I would like to express my very great pleasure at being here to-night. Mr. Justice Reed makes some of us feel old in saying it is fifty years since he was admitted. In my case it is not as long as that, but it is now thirty years ago. I am sure Mr. Willis and others of the younger set must be glad of the spate of legislation being put through: at least it gives them a chance of catching up on the older members of the profession, to whom it is equally unfamiliar. But Sir John may feel differently about it—he has to try to find out what Parliament meant by it, and this must often be difficult, because I am sure Parliament itself is not clear what it means at times."

The President.

The toast of the President was proposed by Mr. W. S. Averill, who said: "I think you will agree with me that we are very fortunate in our President, Mr. Lusk, who has the confidence of us all. He is old enough to have wide experience, but not too old to understand younger men."

In reply, Mr. H. B. Lusk said that he had been President for so many years that he was not sure just how many it was. "But I can say that during the whole of that time I have found the members most helpful and they have shown great sympathy," he added. "In Hawke's Bay it has always been our proud boast that we have men of such standing, that we have never found it necessary to take a written undertaking."

The remainder of a very successful evening was spent in various social enjoyments.

Recent English Cases.

Noter-up Service

For

Halsbury's "Laws of England"

And

The English and Empire Digest.

BANKRUPTCY.

Assignment of Debt to Guarantor of Bankrupt's Banking Account—Money when Received to be Paid to Guarantor—Right of Trustee to Recover—Receiving Order—Priority over Non-Judicial Acts on Same Day—Bankruptcy Act, 1914 (c. 59), s. 45.

When two judicial acts are done on the same day, the earlier act takes priority; but where a judicial act and a non-judicial act are done on the same day, the judicial act is referred back to the earliest moment of the day, and takes priority over the non-judicial act.

Re Warren; Wheeler *v.* Mills, **[1938] 2 All E.R. 331. Ch.D.**

As to acts on the same day: see HALSBURY, 1st edn., vol. 27, Time, pp. 455, 456, pars. 900–902; and for cases: see DIGEST, vol. 42, p. 964, Nos. 384–392.

As to effect of receiving order on assignments: see HALSBURY, Hailsham edn., vol. 2, pp. 92–94, pars. 107–109; and for cases: see DIGEST, vol. 4, pp. 166–168, Nos. 1554–1571.

Petitioning Creditor's Debt—Judgment Debt—Part of Debt Unenforceable in Bankruptcy—Debt of Married Woman Incurred before Aug. 2, 1935—Law Reform (Married Women and Tortfeasors) Act, 1935 (c. 30), s. 4 (1) (c).

Although part of a debt may not be enforceable by bankruptcy proceedings, a notice may be issued in respect of the remainder if that is enforceable.

Re A Debtor; The Petitioning Creditor *v.* The Debtor, **[1938] 2 All E.R. 356. Ch.D.**

As to amount of petitioning creditor's debt: see HALSBURY, Hailsham end., vol. 2, pp. 56–58, pars. 69, 70; and for cases: see DIGEST, vol. 4, pp. 113–126, Nos. 1025–1148.

BILLS OF EXCHANGE.

Bills Payable to Order of Payee Only—Crossed "Not Negotiable"—Negotiability—Bills of Exchange Act, 1882 (c. 61), s. 8 (1), 81.

A bill drawn to the order of the payee may be made not negotiable.

Hibernian Bank, Ltd. *v.* Gysin and Hanson, **[1938] 2 All E.R. 575. K.B.D.**

As to "not negotiable": see HALSBURY, Hailsham edn., vol. 2, p. 660, par. 911: and for cases: see DIGEST, vol. 6, pp. 442, 443, Nos. 2843–2845.

DEATH DUTIES.

Estate and other Death Duties—Legacy Duty—Legacies Expressly Given "Free of Duty"—Direction to pay "Death Duties (Payable in Consequence of my Death)"—Incidence of Legacy Duty in Respect of Legacies not Expressed to be Free of Duty.

A direction to pay "all death duties (payable in consequence of my death)" does not cover the duty on legacies not expressly given free of duty.

Re Borough; Public Trustee *v.* Roberts-Gawen, **[1938] 1 All E.R. 375. Ch.D.**

As to legacies free of duty: see HALSBURY, Hailsham edn., vol. 13, pp. 337–340, par. 370; and for cases: see DIGEST, vol. 21, pp. 77–82, Nos. 522–581.

ESTOPPEL.

By Record—Two Actions Depending on the Same Facts—Actions for Damages to Property and for Personal Injuries Due to One Collision—Different Causes of Action—Plaintiff in Second Action Third Party in First—Plaintiff in Second Action Suing in Representative Capacity.

A person who has been made a third party in a previous action can bring another action on the same facts if he did not in the first action seek to recover what he subsequently claims.

Marginson *v.* Blackburn Borough Council, **[1938] 2 All E.R. 539. K.B.D.**

As to estoppel by record: see HALSBURY, Hailsham end., vol. 13, pp. 418, 419, par. 472; and for cases: see DIGEST, vol. 21, pp. 164–179, Nos. 230–302.

EXECUTORS.

Bequest *cum onere*—Shares—Paramount Lien for Debts Due to Company—Equitable Charge—Administration of Estates Act, 1925 (c. 23), s. 35 (1).

When a testator bequeaths part of a holding of shares which were subject to a paramount lien for all debts owed by the testator to the company, the bequest bears in the hands of the legatee a proportion of the debts due by the testator to the company, under s. 35 of the Administration of Estates Act, 1925.

Re Turner; Tenant *v.* Turner, **[1938] 2 All E.R. 560. Ch.D.**

As to charges on property given by will: see HALSBURY, Hailsham edn., vol. 14, pp. 381, 382, pars. 710, 711; and for cases: see DIGEST, vol. 23, pp. 488, 489, Nos. 5557–5573.

INSURANCE.

Action by Workman Against Employers—Liquidation of Employers—Fresh Action Against Employers' Underwriters—No Arbitration Award in Existence—Whether Action Should be Stayed—Third Parties (Rights Against Insurers) Act, 1930 (c. 25)—Arbitration Act, 1934 (c. 14), s. 3 (4).

The staying of an action owing to the presence in the contract of an arbitration clause in the Scott *v.* Avery *form is a matter of liability, and not merely one of procedure.*

Dennehy *v.* Bellamy, **[1938] 2 All E.R. 262. Ch.D.**

As to award as condition precedent: see HALSBURY, Hailsham edn., vol. 1, pp. 628–630, par. 1076; and for cases: see DIGEST, vol. 2, pp. 355–361, Nos. 290–310.

Motor Insurance—Absolute Conduct and Control of Proceedings—Duty of Insurance Company and Its Legal Advisers—Libel—Litigation—Letter Passing Between Solicitors for Plaintiff and Defendant—Admission of Negligence in Motor Accident—Malice—Damage—Solicitors—Negligence—Action on Motor Insurance Policy—Solicitor Giving Effect to Pooling Arrangement Among Insurance Companies.

Where an insurance company has under the terms of a policy control of proceedings against the insured, the solicitors retained by the company for such proceedings must act bona fide *in the interest of the insured as well as the insurer.*

Groom *v.* Crocker and Others, **[1938] 2 All E.R. 394. C.A.**

As to duty of solicitors: see HALSBURY, 1st edn., vol. 26, Solicitors, pp. 755, 756, par. 1253; and for cases: see DIGEST, vol. 42, pp. 91–100, Nos. 826–939.

As to malice: see HALSBURY, Hailsham end., vol. 20, pp. 499–503, pars. 613, 614; and for cases: see DIGEST, vol. 32, pp. 156–161, Nos. 1878–1940.

NEGLIGENCE.

Building in Course of Construction—Incomplete Staircase—Liability of Contractors and Sub-contractors.

A general contractor cannot invite workmen to use a staircase which is under construction by sub-contractors.

Howard *v.* S. W. Farmer and Son, Ltd., **[1938] 2 All E.R. 296. C.A.**

As to the duty of invitees: see HALSBURY, Hailsham edn., vol. 23, pp. 604, 605, par. 853; and for cases: see DIGEST, vol. 36, pp. 41–45, Nos. 247–281.

Highway—Light-controlled Crossing—Fire Engine—Disobedience to Traffic Lights—Traffic Signs (Size, Colour and Type) Provisional Regulations, 1933, reg. 28.

The driver of a fire engine is subject to the same obligation to obey traffic light signals as the drivers of other vehicles.

Ward *v.* London County Council, **[1938] 2 All E.R. 341. K.B.D.**

As to negligence on the highway: see HALSBURY, Hailsham edn., vol. 23, pp. 637–644, pars. 894–904; and for cases: see DIGEST, vol. 36, pp. 59–62, Nos. 366–389.

STREET TRAFFIC.

Motor Car—Negligent Driver a Bailee and of Substantial Means—Driver Uninsured—Claim Against Owner on Breach of Statutory Duty not to Permit an Uninsured Person to Drive—Road Traffic Act, 1930 (c. 43), s. 35 (1).

An injured person seeking to recover for a breach of the statutory duty to insure under the principle of Monk *v.* Warbey, [1935] 1 K.B. 75, *must show that the damages flowed from the breach and not from some other cause.*

Daniels *v.* Vaux, **[1938] 2 All E.R. 271. K.B.D.**

As to the duty to insure against third-party risks: see HALSBURY, Hailsham edn., vol. 18, p. 561, par. 908; and for cases: see DIGEST, Supp., Insurance, Nos. 3217Q–3217ff.

Rules and Regulations.

Air Force Act, 1937. Air Force Regulations, 1938. May 3, 1938. No. 1938/62.

Remounts Encouragement Act, 1914. Remounts Subsidy Regulations, 1938. May 11, 1938. No. 1938/63.

Industrial Efficiency Act, 1936. Industry Licensing (Storage-battery Manufacture) Notice, 1938. May 12, 1938. No. 1938/64.

Education Act, 1914. Teachers' Leave of Absence Regulations, 1924. Amendment No. 5. May 20, 1938. No. 1938/65.

Education Act, 1914. Training College Regulations, 1926, Amendment No. 17. May 20, 1938. No. 1938/66.

Education Act, 1914. Public Schools Salaries, &c., Regulations, 1938. May 20, 1938. No. 1938/67.

Fruit Control Act, 1924. Fruit-export Control Board Election Regulations, 1938. May 20, 1938. No. 1938/68.

Constitution Act. Shipping and Seamen Amendment Act, 1936: Assent and Commencement. February 4, 1938. No. 1938/69.