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

"Is life worth living? I think life is very well worth while living. I have no cynical views about it; but I do not think so very many things are worth having. Especially does the desire to attain immortality by writing a book on English law seem to me a very doubtful passion. You write a history of the law, or a treatise about it, and then a puff of reform comes and alters it all, and makes your history or treatise useless."

—LORD BOWEN, in a letter to a friend.

Vol. XV. Tuesday, March 21, 1939. No. 5.

Copyright in Correspondence.

SOME interesting considerations arise from the law of copyright in so far as it attaches to private or business correspondence.* A letter is a "literary work" within the meaning of that term as used in s. 2 of the Copyright Act, 1913; and copyright in it is maintainable if it is an "original literary work": s. 3. The statute requires neither literary merit, intellectual labour, or originality in thought or in language: per the Earl of Halsbury, L.C., in *Walter v. Lane*, [1900] A.C. 539, 548.

In *University of London Press, Ltd. v. University Tutorial Press, Ltd.*, [1916] 2 Ch. 601, 608, Peterson, J., said:

> "It may be difficult to define 'literary work,' as used in this Act, but it seems to be plain that it is not confined to 'literary work' in the sense in which that phrase is applied, for instance, to Meredith's novels and the writings of Robert Louis Stevenson. In speaking of such writings as literary works, one thinks of the quality, the style, and the literary finish which they exhibit. Under the Act of 1842, which protected 'books,' many things which had no pretensions to literary style acquired copyright; for example, a list of registered bills of sale, a list of foxhounds and hunting days, and trade catalogues; and I see no ground for coming to the conclusion that the present Act was intended to curtail the rights of authors. In my view the words 'literary work' cover work which is expressed in print or writing, irrespective of the question whether the quality or style is high. The word 'literary' seems to be used in a sense somewhat similar to the use of the word 'literature' in political or electioneering literature and refers to written or printed matter."

With this statement, Romer, J., as he then was, agreed in *British Oxygen Co., Ltd. v. Liquid Air, Ltd.*, [1925] 1 Ch. 383, where a business letter from the plaintiffs to another firm had been copied photographically by the defendants, who were trade rivals. His Lordship said, at p. 390:

> "I am accordingly of opinion that the letter in the present case, being written matter, is a 'literary' work within the meaning of the present Act. If it be a literary work, I do not think that the defendants dispute that it is original, having regard to the meaning which Peterson, J., attached to that word."

His Lordship then referred to *Pope v. Curl*, (1741) 2 Atk. 342, 343, 26 E.R. 608 (selling a book of letters of Swift, Pope, and others), where Lord Hardwicke, L.C., said:

> "It has been insisted on by the defendant's counsel that this is a sort of work which does not come within the meaning of the Act of Parliament, because it contains only letters on familiar subjects, and inquiries after the health of friends, and cannot properly be called a learned work. It is certain that no works have done more service to mankind than those which have appeared in this shape, upon familiar subjects, and which, perhaps, were never intended to be published; and it is this makes them so valuable; for I must confess for my own part that letters which are very elaborately written, and originally intended for the press, are generally the most insignificant, and very little worth any person's reading."

He first considered *Gee v. Pritchard*, (1818) 2 Swans. 402, 426, 427, 36 E.R. 670, 678, in which Lord Eldon, L.C., in recognizing the principle upon which letters have been protected, expressed himself as follows:

> "I will not say that there may not be a case of exception, but if there is, the exception must be established on examination of the letters; and I think that it will be extremely difficult to say where that distinction is to be found between private letters of one nature and private letters of another nature."

Romer, J., at p. 391, proceeded to say the latter statement, coming as it did from Lord Eldon, must be regarded as an intimation of his opinion that no such distinction existed, and that one letter was as much entitled to protection as any other, even where there was not statutory copyright.

He added:

> "But, however this may be, it appears to me that the letter in the present case being an original literary work within the meaning of the Act of 1911 [reproduced in the New Zealand statute of 1913], the plaintiffs are entitled to copyright therein. That being so, it would be an infringement of such copyright to distribute photographic copies of such letter, and an injunction ought to be granted to restrain such infringement unless the letter be of such a nature that the Court would refuse to interfere upon the principle recognized by Younger, J., in *Glyn v. Weston Feature Film Co.*, [1916] 1 Ch. 261, and by Warrington, J., in *Slingsby v. Bradford Patent Truck and Trolley Co.*, [1905] W.N. 122."

(In the former case, the plaintiff's novel, as it was of a highly immoral tendency, was disentitled to the protection of the Court; and, in the latter, a similar result followed in respect of a catalogue which, to the plaintiff's knowledge, contained false statements calculated to deceive the public.)

It follows, therefore, that a letter, whether it be of a private or of a business nature, so long as intrinsically it contains nothing which would disentitle it to the protection of the Court, is "copyright" within the meaning of the Copyright Act, 1913, and any publication of it by an unauthorized person is actionable at the suit of the owner of the copyright.

Having established that a letter, though it be merely a business one, is a literary work in which copyright subsists, the next question is the ownership of the

* Different considerations are applicable to letters sent to newspapers for inclusion in the correspondence columns; but these are outside the scope of the present inquiry.

copyright in it. There is statutory copyright in unpublished works, so that if, at the date of the writing of the letter, the writer was a British subject or resident in New Zealand, his copyright is protected by the statute: Copyright Act, 1913, s. 13 (1) (*a*).

In *British Oxygen Co., Ltd. v. Liquid Air, Ltd.* (*supra*), Romer, J., at pp. 392, 393, said:

> "The defendants further contended that the acts which they have done, and threatened to do, are acts that, having regard to the proviso in s. 2 (1) of the Copyright Act, 1911 [s. 5 (1) of the New Zealand statute], do not constitute an infringement of the plaintiffs' copyright. That proviso, so far as material for the present purpose, is in these terms: 'Provided that the following acts shall not constitute an infringement of copyright: (i) Any fair dealing with any work for the purposes of private study, research, criticism, review, or newspaper summary.' I am inclined to agree with Mr. Upjohn that, in this proviso, the word 'criticism' means a criticism of a work as such. But I need not consider this further, and for this reason: the Act no doubt extends to unpublished as well as published works, and, accordingly, this permission of criticism would seem at first sight to extend to unpublished literary works. The permission was no doubt necessary in the case of unpublished dramatic and musical works, inasmuch as performance in public of such works is not publication for the purposes of the Act. But it would be manifestly unfair that an unpublished literary work should, without the consent of the author, be the subject of public criticism, review, or newspaper summary. Any such dealing with an unpublished literary work would not, therefore, in my opinion, be a 'fair dealing' with the work. This being so, s. 2 (1) of the Act does not assist the defendants. In any case I cannot see that it was necessary for the defendants, for the purposes of criticism, to have photographic copies of the work prepared, and to send one of those copies to a broker on the London Stock Exchange for perusal by him and by the defendants' jobber friends."

It follows that the receiver of a letter has no license to publish it, as he has no property in the copyright for which the writer has statutory protection. In *Pope v. Curl* (*supra*), which was a common-law action, Lord Hardwicke said that the law does not recognize that the writer of a letter makes anything in the nature of a gift to the receiver. There is only a special property in the receiver, he said, as possibly the property in the paper on which the letter is written passes to him; but this does not give a license to any person whomsoever to publish the letter to the world. The receiver may destroy the letter if he wishes; and he may recover it by appropriate action if it is taken from him, or if it should otherwise pass out of his possession: *Oliver v. Oliver*, (1861) 11 C.B. (N.S.) 139, 142 E.R. 748. The receiver may not copy or publish the letter, because, as we have seen, the writer has the ordinary statutory rights of an owner of copyright. However, the receiver may communicate the information contained in the letter if the letter is not of a private and confidential character, as the seal of confidence can only be relaxed by the writer himself: *Palin v. Gathercole*, (1844) 1 Coll. 565, 63 E.R. 545; *Prince Albert v. Strange*, (1849) 1 Mac. & G. 25, 41 E.R. 1171.

So far as authority goes, it is in favour of any use of letters except publication: *Philip v. Pennell*, [1907] 2 Ch. 577. As Lord Eldon said in *Gee v. Pritchard* (*supra*), although the Court will restrain the publication of letters by the receiver of them, it will not restrict him from reading them or showing them to his friends, or reciting them in public company, so long as the purpose is lawful: *Hopkinson v. Lord Burghley*, (1867) L.R. 2 Ch. 447, 448. He may make any lawful use of them, except that, "the profit of multiplying it in print": *Duke of Queensbury v. Shebbeare*, (1758) 2 Eden 329, 28 E.R. 924.

In *Millar v. Taylor*, (1769) 4 Burr. 2303, 2330, 98 E.R. 201, 216, Willes, J., in referring to *Pope v. Curl* (*supra*), said:

> "Lord Hardwicke thought 'sending a letter transferred the *paper* upon which it was wrote, and *every use* of the contents *except* the *liberty* and *profit* of *publishing*.' When *express consent* is not proved, the *negative is implied* as a tacit condition."

The italics are those of Romer, L.J., as we then find him, in *In re Dickens, Dickens v. Hawksley*, [1935] 1 Ch. 267, 292.

In the result, it is clear that the writer of any letter—except its nature be such that would disentitle its author to the Court's protection—has the statutory right of multiplying copies of that letter until it has been printed and published by his authority. No disposition or transfer of the paper upon which such a letter, be it of a private or of a business nature, is written or impressed, can be construed to be a conveyance of the copyright in it unless the author expressly consents to its being printed and published. The matter must be decided on general considerations, and not on any grounds which are personal to the writer or the receiver of the letter. It is concluded in the words of Lord Halsbury, L.C., in *Caird v. Sime*, (1887) 3 App. Cas. 326, 337, where he said: "It is not denied, and it cannot be denied, that an author has a proprietary right in his unpublished literary productions. It is further incapable of denial that that proprietary right may still continue notwithstanding some kind of communication to others," as in the way of correspondence, in which the writer has the fullest rights not only of exclusion, but also of actual enjoyment so far as they are compatible with non-publication.

Summary of Recent Judgments.

SUPREME COURT. New Plymouth. 1939. February 27, 28. *Reed, J.*

LINCOLN v. SOLE.

Statute—Sale of Food and Drugs—Proviso in s. 5 (1) of the Sale of Food and Drugs Amendment Act, 1924—Whether Compliance with ss. 5 and 7 of the Principal Act necessary in all Prosecutions under s. 12 thereof—Effect of Proviso—Sale of Food and Drugs Act, 1908, ss. 5, 7, 12—Sale of Food and Drugs Amendment Act, 1924, s. 5.

The purpose of s. 5 (1) of the Sale of Food and Drugs Amendment Act, 1924, is to grant additional powers to "officers" to take samples for examination or analysis.

The proviso is solely applicable to the case of an "officer" proceeding under the special section dealing with the powers of officers, and does not affect the decision in *Middleton v. Incledon*, (1914) 34 N.Z.L.R. 182, 17 G.L.R. 307, that in a prosecution for a breach of s. 12 of the Sale of Food and Drugs Act, 1908, it is immaterial whether the provisions of ss. 5 and 7 of that Act are complied with or not.

Middleton v. Incledon, (1914) 34 N.Z.L.R. 182, 17 G.L.R. 307, followed.

West Derby Union v. Metropolitan Life Assurance Society, [1897] A.C. 647; **R. v. Dibdin,** [1910] P. 57, 125; and **Ex parte Partington,** (1844) 6 Q.B. 649, 115 E.R. 244, applied.

Counsel: R. H. Quilliam, for the appellant; **Grayling,** for the respondent.

Solicitors: Crown Solicitor, New Plymouth, for the appellant; **Weston, Ball, and Grayling,** New Plymouth, for the respondent.

Case Annotation: *West Derby Union v. Metropolitan Life Assurance Society*, E. & E. Digest, Vol. 42, p. 659, para. 680; *R. v. Dibdin, ibid.*, p. 660, para. 689; *Ex parte Partington, ibid.*, para. 685.

The Rule Against Perpetuities.

Recent Cases.

By E. C. Adams, LL.M.

Two cases decided in England last year (*In re Vaux, Nicholson v. Vaux*, and in *Re Curryer's Will Trusts, Wyly v. Curryer*) deal with two of the points discussed by me in my recent articles in the New Zealand Law Journal on the rule against perpetuities.

1.—Discretionary Trusts.

In (1937) *13 New Zealand Law Journal*, 37, after referring to *In re Coleman, Public Trustee v. Coleman*, [1936] Ch. 528, and *In re Canning's Will Trusts, Skues v. Lyon*, [1936] Ch. 309, I said:

> "These two latest cases show that *discretionary* trusts of income demand the greatest care and vigilance by draftsmen."

In *Re Vaux, Nicholson v. Vaux*, [1938] 4 All E.R. 297, is an interesting case on this point, for it contains an example of both a bad and a good discretionary trust of income and capital.

Clauses 11 and 12 of testator's will were as follows:—

> "11. And as to the rest residue and remainder of my residuary trust fund I declare that my trustees shall hold the same upon trust to pay and apply both the income and capital thereof in such shares and proportions as they may in their absolute and uncontrolled discretion think fit to or for the benefit of all or any one or more of my children or the issue of any deceased child of mine and I declare that my trustees may from time to time within the period of twenty-one years from my decease accumulate the surplus of any income of my residuary trust fund not paid or applied under the preceding clause of this my will by investing the same and the resulting income thereof to the intent that the accumulations shall be added to the residuary trust fund and follow the destination thereof with liberty nevertheless for the trustees at any time or times to resort to the accumulations of any preceding year or years and apply the same as part of my residuary trust fund.
>
> "12. Having the fullest confidence in my trustees I hereby authorize and empower them to deal with the capital and income of my residuary trust fund and pay away and deal with the same in all respects for the benefit and provision of my children or grandchildren as they may think best or most expedient and to act in all respects as I could have done if living save only that all such dealings with the residuary trust fund and the income and accumulations thereof shall be within the limitations prescribed by law."

Both clauses create *discretionary* trusts, but observe closely the difference in wording. The class of beneficiaries mentioned in cl. 12—children and grandchildren—is a different class to that mentioned in cl. 11—children or the issue of any deceased child. This difference caused the English Court of Appeal to construe cls. 11 and 12 as independent clauses. (The Judge of first instance had held that cl. 12 was bad, because it was not an independent effective provision, but depended on cl. 11, which was obviously bad: [1938] 2 All E.R. 177.) But the most important difference is the saving words at the end of cl. 12:

> "*save only that all such dealings with the residuary trust fund and the income and accumulations thereof shall be within the limitations prescribed by law.*"

These saving words saved cl. 12, the Court rejecting the argument that they were too vague and uncertain. The effect of the saving words was to restrict the exercise of the power to a period which would fall within the limits of the rule against perpetuities. Minus these saving words, cl. 12 would have been bad, because, as the Court of Appeal pointed out,

> "The possible beneficiaries [children and grandchildren of testator] must necessarily be in existence within the period of lives in being at the testator's death, but it is true that, apart from the saving words, the power, according to its terms, is exercisable within the lifetime of any grandchild, and so is exercisable during the whole of the life of a grandchild born just before the death of the testator's last surviving child, and, accordingly, if such a grandchild lives more than twenty-one years, during a period which may conceivably extend beyond any life or lives in being at the testator's death and twenty-one years thereafter."

Clause 11 would have been good had it contained the saving words above cited from cl. 12. It also would have been good, if on its true construction the discretionary trusts were intended by the testator to be exercised only by the original trustees. If a discretion is vested in named persons and in them alone, the power cannot be bad, for it must be exercised within the period of existing lives. Unfortunately, at the beginning of this will there was a definition clause, defining the trustees thereof as the trustees or trustee *for the time being of the will, whether original or substituted.* Accordingly, there was no limitation of the period within which the discretion was to be exercised. Applying the decision *In re Hargreaves*, (1889) 43 Ch.D. 401, the Court of Appeal stated the relevant rule as follows:—

> "It is well settled that the fact that within the terms of the power an appointment can be made which would be too remote does not render the power void, if it is one which cannot be exercised beyond the limits of the rule against perpetuities, but it is equally well settled that a power cannot be held to be valid if, according to its terms, it can be exercised by persons not necessarily ascertainable within the limits of the rule against perpetuities."

2.—Alternative Contingencies.

In (1937) *13 New Zealand Law Journal*, 341, in discussing the Australian case of *Harris v. King*, (1936) 56 C.L.R. 177, I mentioned the rule discussed in *Garrow's Real Property in New Zealand*, 3rd Ed., 400, 401, under the heading of "Alternative Contingencies":

> "If a testator has expressed separately two contingencies on the happening of either of which the gift is to take effect, then the gift will take effect or fail, *according to the event.*"

In *Harris v. King* (*supra*), the gift failed. The more recent English case in *Re Curryer's Will Trusts, Wyly v. Curryer*, [1938] 3 All E.R. 574, is an example of where the benefit of this rule was successfully claimed by those seeking to uphold the gift.

The gift in question was as follows:—

> "And on the decease of my last surviving child or on the death of the last widow or widower of my children as the case may be whichever shall last happen I direct my trustees to stand possessed of the trust fund . . . in trust for my grandchild or grandchildren living at the period of distribution," &c.

As Morton, J., at p. 575, said:

> "It is plain that a gift for a class to be ascertained on the basis of the testator's last surviving child does not infringe the rule against perpetuities. It is equally plain that a gift of a class to be ascertained on the death of the last surviving widow or widower of the testator's children would infringe the rule against perpetuities, since a child might marry a person who was not a life in being at the testator's death."

The real difficulty was the insertion of the words: "As the case may be whichever shall last happen." Notwithstanding these words, it was held that the testator had expressed two distinct events separately.

The learned Judge therefore upheld the gift, and concluded his judgment thus:—

> "The fact that he [the testator] goes on to add the words 'as the case may be whichever shall last happen' is not sufficient, to my mind, to make this gift infringe the rule against perpetuities."

The result is that the ultimate gift of capital will be valid if the death of the testator's last surviving child happens after the death of the last surviving widow or widower of a child of the testator.

As Garrow says, "The gift will take effect or fail, according to the event." It is possible, therefore, that the bequest will ultimately fail as infringing the rule against perpetuities.

The examples given from Sir George Jessel's judgment in the leading case of *Miles v. Harford*, (1879) 12 Ch.D. 691, are instructive: (*a*) A gift to "A." for life, with a gift over in case he shall have no son who shall attain the age of twenty-five years, the gift over is void for remoteness. (*b*) A gift to "A." for life, with a gift over if he shall have no son who shall take priest's orders in the Church of England, the gift over is bad. (*c*) But if you add to example (*a*) or (*b*) the words, "or if he shall have no son," the gift over is valid and takes effect, if he has no son. The testator in (*c*) has expressed the alternative.

Sir George Jessel, M.R., at p. 703, sums the position up thus:

> "It is really a question of words and not an ascertainment of a general intent, because there is no doubt that the man who says that the estate is to go over if A. has no son who attains twenty-five, means it to go over if he has no son at all: it is, as I said before, because he has not expressed the events separately, and for no other reason."

An "Ancient Clerk."—An announcement in the obituary column of the *Times* for last Tuesday will have recalled to many lawyers the debt they owe to their clerks:

> BRUNSDON.—On Feb. 20, 1939, JOHN THOMAS BRUNSDON, faithful clerk and friend for 58 years to Messrs. Burton and Son, Solicitors, Bank Chambers, Blackfriars Road, S.E. 1.

For length of service that is, perhaps, a record, and, though the circumstances behind the announcement are of private interest, we need not apologise for reproducing it. In the law, fortunately, there is no question of "too old at forty." Capacity and mutual confidence are the mainstay of a solicitor's office, and in favouring circumstances they increase as the years go on. "An ancient clerk," said Bacon in his well-known essay on *Judicature*, "skilful in precedents, wary in proceeding, and understanding in the business of the Court, is an excellent finger of a Court; and doth many times point the way to the Judge himself." That no doubt was written of a different kind of clerk, but it readily adapts itself to the managing clerk who knows all the work of the office and the idiosyncracies of all the clients, and is the right hand of his principal. The length of service may be unique, and, if we may say so, it is a fitting appreciation that it should be recorded in the *Times*. But such service is not uncommon, and the offices are not few where there is a managing clerk held in great respect and implicitly trusted.

—APTERYX.

Mercantile Agents.

Hire-purchase Contracts between Finance Corporations and Dealers.

By H. A. ANDERSON.

In the February issue of the LAW JOURNAL, (1937) 13 N.Z.L.J. 20, will be found a very interesting review by Mr. J. A. Johnston, of the effect of *Staffs Motor Guarantee, Ltd. v. British Wagon Co., Ltd.*, [1934] 2 K.B. 305, and its application in New Zealand. Mr. Johnston suggests that this case does not apply in this country owing to the provisions of s. 57 (5) of the Chattels Transfer Act, 1924, and s. 6 (2) of the Amendment Act, 1931, as regards customary chattels.

It is not proposed in this article to deal with the question as to whether a motor-car dealer who finances his sales of motor-cars through a finance corporation is a mercantile agent or not. The writer submits that he is not a "mercantile agent" under the definition of those words as defined in s. 2 of the Mercantile Law Act, 1908; but the matter is clearly open for further judicial pronouncement.

As the object of this article is to discuss *Staffs Motor Guarantee, Ltd. v. British Wagon Co., Ltd.*, [1934] 2 K.B. 305, and to submit, contrary to Mr. Johnston's viewpoint, that this case does to some extent apply in New Zealand, it is well to give full particulars of the facts of the case, which follow.

Albert S. Heap carried on business as a dealer in motor-cars of certain makes, including a make known as the Commer car, and as a garage proprietor. Heap was the legal owner of a Commer six-ton lorry, and he applied to the British Wagon Co., the defendants, who were a finance company, to enter into a transaction of the usual type, to buy the lorry from him and let it on hire to a company called the Thorley Transport Co., but the British Wagon Co. did not accede to that proposal. Ultimately, Heap and the defendants agreed that Heap should sell the lorry to the defendants, and that they should let it to Heap on hire, giving him liberty to sublet it to the Thorley Transport Co. on hire purchase.

Pursuant to the arrangement, Heap agreed to sell the lorry to the defendants for £900, signed the usual hire-purchase contract, and the other various documents, and returned the documents duly completed. Under the hire-purchase contract, Heap agreed to pay for hire of the lorry and initial rent of £300 and seventeen monthly rents, each of £37 6s. 8d., and the document contained the usual clauses found in hire-purchase contracts of the type known as conditional sales—that is, there was no right vested in Heap by the document to at any time return the vehicle to the defendants. The defendants sent Heap a cheque for £900, and Heap sent the defendants his cheque for £300, and eventually Heap, with the permission of the defendants, sublet the lorry to a Mr. Pettitt. Pettitt knew nothing of the transaction that had taken place between Heap and the

defendants. Pettitt did not have sufficient money to pay for the lorry, so Heap and Pettitt went to Staffs Motor Guarantee, Ltd., the plaintiffs, Heap representing to Pettitt and the plaintiff that the lorry was still his as it was before the arrangement between him and the defendants, and suggesting that he should sell the lorry to the plaintiffs and that the plaintiffs should let it on hire purchase to Pettitt. The plaintiffs, in entire ignorance of Heap's previous dealing with the defendants in regard to the lorry, sent to Heap and Pettitt their ordinary forms for completion and return. Pettitt signed a proposal form offering to enter into a hire-purchase agreement with the plaintiffs for the lorry. Heap signed an attached reference form giving particulars regarding Pettitt as the proposing hire purchaser, and stating that the lorry was the property of Heap or that he had authority to sell it, and that he thereby offered to sell it to the plaintiffs for £967, of which £300 was to be paid as a deposit and the balance by instalments.

The plaintiffs acceded to these proposals, and it was further arranged that Pettitt, as hire purchaser from the plaintiffs, should pay to the plaintiffs the initial rent of £300, which should be paid not in cash but by his giving to them a Saurer lorry belonging to him, and that the £300 deposit should be paid by the plaintiffs to Heap by their giving that Saurer lorry to him. All documents were completed, and Heap took possession of the Saurer lorry and Pettitt of the Commer lorry, and the plaintiffs paid £600 net to Heap which was accepted by him in discharge of the plaintiffs' liability to him for the sale to the plaintiffs of the Commer lorry. Pettitt took the Commer lorry under hire-purchase from the plaintiffs and started paying his instalments, so that at this time there were two hirers of the same lorry, Heap and Pettitt—Heap holding under hire purchase from the defendants, and Pettitt under hire purchase from the plaintiffs. Heap ultimately defaulted in the payment of the instalments to the defendants. The defendants, believing that Heap had sublet the lorry to Pettitt under his arrangement with themselves, went to Pettitt's premises, found the lorry, claimed possession of it, and took it away. The plaintiffs afterwards demanded the lorry from the defendants, but the defendants refused to deliver it to them, and the contest for the lorry was between the plaintiffs who were the owners by virtue of a sale to them from Heap after he had already sold to the defendants and at the time of sale to the plaintiffs was merely a hire purchaser from the defendants.

It has been necessary to detail the facts because many financing transactions are carried out in New Zealand in exactly the same way as the transaction between Heaps, Pettitt, and Staffs Motor Guarantee Corporation. Upon the plaintiffs suing the defendants, it was held that Heaps held the vehicle from the defendants as a bailee and not as a mercantile agent, and therefore that the sale of the lorry by him to the plaintiffs was not rendered valid as against the defendants by the provisions of s. 2 (1) of the Factory Act, 1889, which is the same as our s. 3 (1) of the Mercantile Law Act, 1908.

It now comes to a question as to how far *Staffs's* case is applicable to New Zealand in view of the difficult provisions of the Chattels Transfer Act and its amendments in respect to customary chattels, of which motor-cars are one. Mr. Johnston suggests that the case does not apply to customary chattels, but I submit it does apply to customary chattels when those chattels are subject to dealings between a manufacturer, wholesaler, or finance corporation and a dealer, but does not when the dealings are between a dealer in motor-cars and a hirer when that dealer holds as a purchaser or bailee of chattels subject to a customary hire-purchase contract and does not hold under that hire-purchase contract from a manufacturer, wholesale dealer, or finance corporation.

Section 57 (5) of the Chattels Transfer Act, 1924, is as follows :—

> "The purchaser or bailee of chattels the subject of a customary hire-purchase agreement shall not have any right to sell, deal with, or dispose of such chattels otherwise than as may be specially provided in the agreement; and no sale, dealing, or other disposition purported to be made by such purchaser or bailee shall be effectual to confer title upon any person as against the vendor or bailor named in the customary hire-purchase agreement, or against the assigns of such vendor or bailor."

Subsequently, that section was amended by s. 2 (6) of the Chattels Transfer Amendment Act, 1931, and the relevant part of the subsection is as follows :—

> "Subsection five of section fifty-seven of the principal Act shall be read subject to the provisions of section three of the Mercantile Law Act, 1908."

I therefore agree with Mr. Johnston that, in view of the express terms of this subsection, it would appear that in New Zealand although a mercantile agent holds under a customary hire-purchase agreement he may still hold as a mercantile agent and that he would not be holding as a bailee unable to give title under circumstances similar to those in *Staffs's* case; but I submit the matter must be taken one step further, and that the sections of the Act as quoted apply only in cases where the purchaser or bailee of chattels the subject of the customary hire-purchase contract is not a dealer purchasing or hiring from a manufacturer, wholesaler, or a finance corporation, for s. 2 (5) of the Chattels Transfer Amendment Act, 1931, is as follows :—

> "An agreement in relation to customary chattels, made between the manufacturer of or a wholesale dealer in such chattels or a finance corporation and a retail dealer in such chattels, by which possession of the chattels is given to such dealer, shall not be deemed to be a customary hire-purchase agreement."

The contract between a finance corporation and a dealer is therefore not a customary hire-purchase contract, and is therefore not subject to s. 57 (5) of the 1924 Act and s. 2 (6) of the 1931 Act, and is merely a bailment freed from all the advantages and the disadvantages of customary hire-purchase contracts given by s. 57 of the Chattels Transfer Act, 1924, and its amendments.

It is, therefore, submitted that *Staffs's* case does apply to contracts made between manufacturers, wholesalers, or finance corporations and retail dealers, because such are not customary hire-purchase agreements within the provisions of the Chattels Transfer Act, 1924, and the amendments above mentioned, and consequently a retail dealer, who is a mercantile agent, having a car in his possession under hire purchase from a finance corporation holds as decided in *Staffs's* case as a bailee only, and if he sells in fraud of the finance corporation to an innocent purchaser that innocent purchaser is not protected by the Mercantile Law Act.

London Letter.

By Air Mail.

Strand, London, W.C. 2,
February 26, 1939.

My dear EnZ-ers,

It was announced in a message from the *Times* correspondent at New York, in a message of the 14th inst., that Mr. Justice Louis P. Brandeis, a Justice of the United States Supreme Court, has sent his resignation to President Roosevelt. Judge Brandeis is over eighty, and recently, the message says, was seriously ill. For many years he ranked with the late Mr. Justice Holmes as the leading representative of the Liberal school of thought in the Supreme Court, and in 1932 a series of essays commemorating his career was published (*Mr. Justice Brandeis*, Yale University Press). It was edited by Mr. Felix Frankfurter, who contributed an essay on "Mr. Justice Brandeis and the Constitution"; there was an Introduction by Mr. Justice Holmes and an appreciation by Chief Justice Charles E. Hughes. There has been, for those who remember, a judicial brotherhood here—Bowen and Fry, L.J.J., in the Court of Appeal. The brotherhood of Holmes and Brandeis in the Supreme Court of the United States was perhaps closer and it had a wider sphere of influence. His parents emigrated from Bohemia after the unsuccessful revolution of 1849, and enjoyed in Kentucky the freedom and individualism which had been denied them in their own country. Recent events have shown how difficult it is for freedom to be permanently established in Europe. But the family tradition has inspired the judicial career of one whom Mr. Justice Holmes called "a great Judge." To him the American Constitution has been not a dead formula but a living organism destined to grow with and to guide the changing conditions of social life in the vast federation of States which it binds together. Personal liberty and freedom from economic tyranny have been the objects at which he has aimed. "It is," wrote Mr. Felix Frankfurter in the essay I have referred to, "in the light of his prejudice for liberty that Mr. Justice Brandeis construes the Constitution." There could be no greater praise for a judicial career.

Bigamy.—It is well known that it is a good defence to a charge of bigamy that the accused has been without news of his or her lawful spouse for the past seven years. This defence, unlike that of reasonable belief that the other party was dead, is no part of the common law, but arises out of a proviso to s. 57 of the Offences Against the Person Act, 1861, which exempts from the operation of that section "any person marrying a *second* time whose husband or wife shall have been continually absent for a space of seven years last past, and shall not have been known by such person to be living within that time." Does this proviso afford a good defence in respect of any subsequent marriage taking place in the circumstances envisaged by the proviso? Strangely enough, no definite answer could have been given to this question until January 16, when the Court of Criminal Appeal (Lord Hewart, L.C.J., Charles and Singleton, JJ.) in *R. v. Treanor*, [1939] 1 All E.R. 330, held that the proviso related only to a first bigamous marriage. The facts giving rise to this appeal were that the appellant, having deserted his wife in 1918, contracted a bigamous marriage in 1930 and again in 1938, in respect of both of which he was indicted before Atkinson, J., at the Sussex Autumn Assizes. The prosecution, being unable to prove that the appellant had seen or heard of his wife between 1918 and 1930, offered no evidence on the first charge, but, though having no further evidence in respect of the period up to 1938, contended that the proviso could not avail the appellant in respect of his second bigamous marriage. Atkinson, J., accepted this argument, and, upon the appellant then pleading guilty and being duly sentenced, gave leave to appeal. Delivering their Lordships' judgment in the Court of Criminal Appeal, the Lord Chief Justice pointed out that the words of the proviso were "any person marrying a *second time*," and not "any subsequent time." The defence was therefore only available in respect of the marriage in 1930. The appeal was accordingly dismissed.

Lord Macmillan on Grotius.—To Hugo Grotius—or Hugo de Groot as he is rightly called by his fellow-countrymen—a tablet was unveiled in the Dutch Church in Austin Friars a few days ago, and it was an occasion on which famous lawyers took advantage to pay tribute to a marvellous man who, though in his youth a prodigy, did not shrink but increased in mental power in later years. Despite faults and imperfections in some of his theories and conceptions, his critics admit that he was the father of international law; that his concept of international relations as they ought to be is great and sound and far in advance of the accomplishment of our own time. *Mare Liberum* set out his doctrine of the freedom of the seas; but that was only a small part of his contribution to the law of nations.

Lord Macmillan, the British speaker on the occasion of the unveiling of the tablet, spoke of his literary and legal work and of the genius which made him "the glory not only of the Netherlands but of the whole civilized world." Lawyers are apt, he said, to regard him only as the author of the great treatise *De jure belli ac pacis*, while others thought of him as a great politician, statesman, diplomat, practising advocate and devout theologian.

"But, great as were his attainments in those fields of learning, it was by his pioneer work in international law that he was destined to make his most conspicuous contribution to civilization. The lessons of Grotius come home to us with renewed significance in these days when the gospel of law and order, of which he was the inspired prophet, is being set at naught in so many quarters. The state of the world on which he looked out from his study windows bore a poignant resemblance to the disorder of our own time."

I like the story of his wife's ingenuity and how she compassed his escape when, in 1619, he was undergoing a life sentence of imprisonment in the fortress of Louvenstein, and she was living with him on the condition that if she left the prison she should not return. The following version is taken mainly from the *Encyclopædia Britannica*:

The ingenuity of Madame Grotius at length devised a mode of escape. The books which he had done were sent out weekly in a chest along with his linen. After a time the warders who at first had regularly opened the chest and carefully examined it, grew careless and allowed it to pass without examination.

Madame prevailed on her husband to allow himself to be shut up in it before the usual time of collection. The two soldiers who carried it out complained of the weight, saying that "there must be an Arminian in it." "There are, indeed," said Madame, "Arminian books in it." The chest was carried out without further comment and eventually reached the house of a friend; and when it was opened the father of international law arose and came forth unhurt. He was then dressed like a mason, presented with hod and trowel, and so found his way over the frontier. He went first to Antwerp and then to Paris, where he arrived in April, 1621. In October he was joined by Madame Grotius, and was presented to Louis XIII who granted him a pension. "Pensions," according to one version, "were readily promised in France at that time, because they were never paid." He did, in fact, receive some small instalments.

On August 29, 1645, he died, at the age of sixty-two.

Where Lawyers Dine.—It has been said that lawyers have a finger in every pie; and it is the fact that covers are laid for them at every festive dinner worthy of the name. The annual dinner of the Ministry of Labour Dramatic Society might not seem to be the sort of function at which the legal fraternity would have occasion or opportunity to sit down to dine; but there they were, at least a dozen. The presence of Sir Bertram Bircham, M.C., barrister-at-law, was not unnatural, for he is solicitor to the Ministry of Labour. There was also a certain relevance in the presence of Sir Earnest Wingate-Saul, K.C., to propose the toast of "The Society"; he is Umpire under the Unemployment Insurance Acts, although, as such, one of his outstanding characteristics is his complete independence of the Ministry of Labour and of all Executives. He made a speech happy and full of points well taken by the listeners. I gathered that one of his chief difficulties in interpreting and applying the statutes arose from cases in which people might receive holidays with pay and unemployment benefit at the same time; and that the difficulties are not diminished when the period of rest and recreation was a "recognized holiday." Observing that the next production of the Dramatic Society is entitled *Call It A Day*, "I do not care what you call it," he said, "as long as you don't call it A Recognized Holiday."

Of non-practising barristers who proposed or responded to toasts was Lord Bessborough, in great form; and that legislator, law reformer, riverside character, author, playwright, and law reporter of Misleading Cases, Mr. A. P. Herbert, completely successful in effortless amusement, was a post-prandial speaker.

Draftsmanship of a Kind.—A friend drew my attention the other day to the notice on some London trams: "Caution: Passengers Alight at both Ends." Another old one is to be found on the Underground: "Passengers should satisfy themselves as to the destination of the trains as they leave the platform in both directions."

But the classical story along these lines was in *Punch*. A "dear old lady" said to a sailor: "Which end of the ship goes first, my good man?" to which the sailor answered: "Well, ma'am, with a bit of luck they both get away together."

Yours, as ever,

APTERYX.

Annual Meetings.

Canterbury District Law Society.

In the course of the annual report presented to the annual meeting of the Canterbury District Law Society on March 2, by the President, Mr. J. D. Hutchison, reference was made to the Legal Conference held at Christchurch last Easter, with an attendance of a record number of practitioners; the laying of the foundation-stone of the new Christchurch Law Courts by His Excellency the Governor-General; the opening of the new Court-house at Ashburton by the Hon. the Minister of Justice, on June 3; the Saturday closing of members' offices, as from June 1, elsewhere than in South Canterbury; the new Law Clerk's agreement covering the period of two years from September 1; and the great success of the annual golf match and dinner on October 17.

Congratulations were extended to Mr. H. D. Andrews, senior partner of the firm of Joynt, Andrews, Cottrell, and Dawson, on attaining the age of eighty years; and to Mr. A. T. Donnelly on his receiving the C.M.G. in the New Year's Honours.

The Dominion Legal Conference, to be held in Wellington at Easter, 1940, was discussed, and the urgency of securing accommodation in advance was impressed on members.

The following officers were elected for the coming year: President, Mr. J. D. Godfrey; Vice-President, Mr. A. R. Jacobson; Hon. Treasurer, Mr. R. Tywneham; and members of the Council, Messrs. A. W. Brown, L. D. Cotterill, C. H. Holmes, J. D. Hutchison, W. R. Lascelles, E. A. Lee, R. L. Ronaldson, and W. H. Walton (Timaru).

Wellington District Law Society.

The annual meeting of the Wellington District Law Society was held on February 27, seventy-six members being present.

The retiring President, Mr. P. B. Cooke, K.C., occupied the chair until the election of his successor, Mr. A. T. Young.

Mr. Justice Ostler.—Mr. Cooke then referred to the Knighthood conferred upon His Honour Mr. Justice Ostler, and to the pleasure felt by the profession at the bestowal of this honour.

The Council had felt that any resolution in connection with the matter should come from members in general meeting rather than from the Council itself, and so the matter had been held over. He had much pleasure in moving the adoption of the following motion:

> "The members of the Wellington District Law Society respectfully tender their hearty and sincere congratulations to the Honourable Mr. Justice Ostler on the bestowal on him of the dignity of Knighthood by His Majesty the King."

This was carried with acclamation, and the meeting decided to inform His Honour of the pleasure of all that he had once more taken up his duties.

Report and Balance-sheet.—Mr. Cooke, in moving the adoption of the report and balance-sheet, expressed his deep thanks to the Council and to the Secretary for the great help he had had from them during the last year. The cares and duties of the office of President had been made light by their constant helpfulness, which he had appreciated more than he could say.

He then referred to the various matters set out in the annual report.

Mr. Castle, Treasurer, seconded the motion, and pointed out that the finances of the Society were in a very satisfactory and healthy state. He referred to the fact that the Harrison Pension Fund was now closed owing to the death of Mr. Harrison last September, but that it must be a source of gratification to all contributors to realize that they had made it possible for him to end his days in comfort.

The motion was then put to the meeting and carried unanimously.

Election of Council.—President: Mr. A. T. Young, the only nominee, was then declared duly elected, and on taking the chair expressed his appreciation of the honour accorded to him. He said that he entered upon the office with great trepidation, but derived some comfort from the fact that there would be a very efficient Council to support him. On behalf of the Society, he thanked the retiring President for his work during the past year. Only those on the Council knew the work the President had to do, and what varied responsibilities rested on his shoulders. Mr. Cooke had carried out his duties with distinction both to the Council and to the Society. Mr. Young also referred to the retiring members of the Council—Messrs. Anderson, James, Keesing, and Richmond—and thanked them for their assistance.

Mr. S. J. Castle, the only nominee, was declared duly elected Vice-President and Mr. D. G. B. Morison, the only nominee, Treasurer.

The following members of Council were elected: (*a*) By branches—Palmerston North, Mr. J. W. Rutherfurd; Feilding, Mr. J. Graham continues in office; Wairarapa, Mr. C. C. Marsack continues in office. (*b*) Wellington members: The following were elected: Messrs. A. B. Buxton, T. P. Cleary, P. B. Cooke, K.C., A. M. Cousins, E. P. Hay, D. Perry, W. P. Shorland, and J. W. Ward.

Delegates to the New Zealand Law Society.—Messrs. H. F. O'Leary, K.C., G. G. G. Watson, and A. T. Young, the only nominees, were elected to represent the Society on the Council of the New Zealand Law Society.

Mr. O'Leary returned thanks on behalf of his co-delegates and himself. He congratulated Mr. Young on being elected President, and pointed out that he was one of the very select band of fathers and sons who had in turn held the office of President of the Society. The only other instance he could remember was that of the Hon. T. W. Hislop and his son, the present Mayor of Wellington, Mr. T. C. A. Hislop. Mr. Young's father, Mr. T. Young, had been President in 1908, and now the son was occupying the same position.

Mr. O'Leary then referred to the Conference at Easter last year in Christchurch, which had been exceedingly successful. The Conference in Wellington next year would be a most important one, and the best that could be hoped would be to equal the efforts of the Canterbury Society, which could hardly be surpassed. The Council of Law Reporting had been duly constituted during the year, its five ordinary members now being elected by the Council of the New Zealand Law Society. He hoped that the profits to the Council would in future go to the help of some of the poorer District Law Societies. The Guarantee Fund was in a flourishing state, and its assets were rapidly building up. He mentioned the importance of all Councils giving close consideration to applications for admission, and instanced a case where a claim had been made on the Guarantee Fund in connection with defalcations by a young solicitor who had committed theft as a clerk but who had been admitted in spite of this. The Disciplinary Committee was functioning well and had had a number of meetings during the year.

Auditors.—Messrs. Clarke, Menzies, Griffin and Co. were appointed auditors for the forthcoming year.

Easter Holidays.—It was unanimously decided, without discussion, that the Easter holidays should be from the usual closing-hour on Thursday, April 6, to the usual opening hour on Monday, April 17.

Christmas Holidays.—It was unanimously decided, also without discussion, that the Christmas holidays should be from the usual closing-hour on Friday, December 22, 1939, to the usual opening hour on Wednesday, January 10, 1940.

New Agreement with Legal Employees.—The President pointed out that the Society as such had no status to act for the employers only in arranging an agreement between employers and employees, as it consisted of members of both parties, but relations between employers and employees were such that he felt that the matter should be discussed in the presence of all. He explained that the existing agreement was expressed to expire on December 31 last and that the Wellington Industrial District covered both Wanganui and Hawke's Bay, both of which Societies had to be consulted concerning any agreement made. The Council had appointed Mr. D. Perry and Mr. D. R. Richmond to consider the proposals made by the clerks, and these gentlemen had furnished a report to the Council. Comments had been received from the other Societies and from the Branches of the Wellington Society, and these had already been taken into account. Negotiations had reached the stage when a meeting had been arranged to be held in Palmerston North on Thursday, March 2, this to be attended by representatives of both clerks and employers. It was hoped that this joint conference would result in a complete agreement being reached. He then referred in detail to the clerks' proposals.

It was unanimously decided that the action of the Council in appointing Messrs. Perry and Richmond as negotiators should be approved. It was further decided that the negotiators should be given full power to continue and complete negotiations and to come

to a final agreement without reference to a further general meeting.

Certain points which might be of assistance to the negotiators were then discussed.

Centennial Legal Conference.—The President drew attention to the Legal Conference which was being held in Wellington during Easter of 1940, and pointed out that this was likely to be the largest Conference ever held in New Zealand. In view of the probability of extreme congestion in Wellington, preliminary steps had already been taken in connection with the booking of halls for the Conference and the accompanying functions and for accommodation at the hotels.

As the arrangements for the Conference were likely to be extensive, he asked the meeting to authorize the Council to form such Committees as they thought fit to cover all Conference activities. He, therefore, moved the following motion, which was seconded by Mr. Richmond and carried unanimously :—

> "That the Council be authorized to make all necessary arrangements with a view to holding a legal Conference at Wellington following Easter, 1940, and with a view thereto to appoint Committees and with power to co-opt such persons as shall be thought fit for service on such Committees."

Mr. O'Leary mentioned the matter of Remits and Papers for the Conference. In the past they had had varied and interesting ones, but he suggested that on this occasion a different procedure should be adopted.

Mr. J. W. Heenan, Under-Secretary of Internal Affairs, had asked the New Zealand Law Society if it could undertake the preparation of a History of Law and Justice in New Zealand over the last hundred years. Mr. N. H. Good, Secretary of the Auckland Society, who had done a considerable amount of research into legal history, had been asked to furnish a report on the proposed volume, and this had now come to hand and would be considered at the next meeting of the New Zealand Law Society. The probability was, however, that the cost of such a volume would be prohibitive. Mr. O'Leary suggested therefore, that the Papers for the Conference should all have a historical bias. He thought the Conference Committee should invite practitioners throughout New Zealand to undertake the work of preparation of such papers, which would then be published in the LAW JOURNAL or as separate publications and so remain as a permanent record. Mr. Luckie pointed out that accommodation would be very limited in Wellington during the Exhibition period and that billeting might be the only way to deal with visitors. Members would have to be prepared to undertake such billeting.

Scales of Costs.—A member pointed out that considerable increases in wages were provided for by the proposed new agreement, and he thought that corresponding increases should be made in all scales to meet the extra cost. He therefore moved the following motion :

> "That the incoming Council should consider the question of increasing all scales of costs by 10 per cent. to cover increased expenses."

The seconder said that all costs seemed to be rising and that every one else, apart from the legal profession, seemed to be getting more. The motion was put to the meeting and declared lost.

Obituary.

Mr. E. D. Mosley, S.M.

Mr. E. D. Mosley, who recently retired from the position of Stipendiary Magistrate at Wellington, because of ill-health, died on February 23, in Christchurch, aged sixty-three years. Mr. Mosley was a Magistrate in Christchurch for eight and a half years, and served in the four centres, and at Timaru.

Mr. Mosley was born at Inchclutha, Otago, a son of the second wife of his father, who came to New Zealand in 1848, on the *John Wycliffe*. He was educated in Dunedin, and was still young when his father died. He went to work, continuing his studies in his spare time. While a junior clerk in an ironmonger's business, he gained his junior Civil Service pass, ranking twenty-fourth on the list for the whole Dominion.

Mr. Mosley joined the Government service as a clerical cadet in the Government Printing Office in 1893, but transferred to the Justice Department and began work in the Magistrate's Court in Wellington. While there, he studied under a tutor; and shortly after being transferred to the Magistrate's Court in Dunedin, he passed his preliminary examinations in law. Before he transferred to Christchurch in 1897, he had qualified as a solicitor. Further extensive experience as a member of Court staffs, and as Mining Registrar and Receiver of Gold Revenue, preceded his entry into the practice of law in Christchurch as a partner of Mr. G. W. C. Smithson. Early in 1918 he was appointed a Magistrate.

Mrs. Mosley is a sister of Mr. J. G. L. Hewitt, S.M., Also surviving are two sisters, two elder brothers, and an only son, Mr. J. W. Mosley, Papanui.

CHRISTCHURCH TRIBUTES.

The Magistrate's Court was crowded on the morning after Mr. Mosley's death, when tributes were paid to him by the President of the Canterbury Law Society, Mr. J. D. Hutchison. There was a large gathering of practitioners, traffic inspectors, and police, and the Bench was occupied by Messrs. H. A. Young, S.M., senior Magistrate for New Zealand, E. C. Levvey, S.M., and F. F. Reid, S.M. The Police Force was represented by Inspector H. Martin.

"Mr. Mosley had a strong sense of justice, and a wealth of experience," said Mr. Hutchison, addressing the Court. "He had a most equable temperament and his sense of humanity was always evident, especially in the most trying of criminal cases." In expressing his regret for the profession, Mr. Hutchison referred to the work of Mr. Mosley as a Magistrate and as chairman of the Napier Hospital Inquiry, and of the Post and Telegraph Appeal Board.

Replying, Mr. Young said that his colleagues concurred with Mr. Hutchison's remarks, saying that Mr. Mosley had served his fellow-men well. He had never spared himself in his efforts for good.

WELLINGTON BAR'S APPRECIATION.

A large gathering of members of the profession in Wellington met at the Magistrates' Court to honour Mr. Mosley's memory. On the Bench were Mr. J. L. Stout, S.M., Mr. J. H. Luxford, S.M., Mr. W. F. Stillwell, S.M., and Mr. A. M. Goulding, S.M. Among those present in Court were Mr. H. F. O'Leary, K.C., President of the New Zealand Law Society, and Mr. B. L. Dallard, Under-Secretary for Justice.

The senior Magistrate, Mr. J. L. Stout, S.M., said that his colleagues and he felt they should make some fitting reference to the death of their former colleague, who had left behind him the memory of an honourable career of public service. "It does not need any words from me," Mr. Stout concluded, "to remind you of his sterling qualities and human sympathies."

Addressing the Bench, the President of the Wellington District Law Society, Mr. P. B. Cooke, K.C., said:

"Your Worships, the members of the Wellington District Law Society ask your leave to join in what has been said from the Bench.

"Mr. Mosley was senior S.M. here from April 19, 1935, till June, 1938—a little over three years.

"As soon as he came to sit in this Court it was apparent to every one of us who practised before him that he possessed in a marked degree those qualities of impartiality and patience that are so vital in the administration of justice, and short as was the period that he presided here, it took us a much greater time to realize that we were practising before a man who possessed an informed, discriminating, and sympathetic mind.

"Your Worships, the kind and encouraging word from him has meant much to the young practitioner—the helpful suggestions that he made to persons who were without legal aid have meant much to them—and his continuous and obvious desire to do what was fair as between man and man have meant much to all who came in contact with him in this Court.

"His ability as a lawyer and his humanity as a man enabled him worthily to discharge the duties of his high office, and it is a melancholy reflection to us that one whom we learnt to respect and to trust, and that one who showed us in no uncertain way that beyond any question he was our friend, is no longer with us.

"We respectfully ask his sorrowing relatives to accept our sincere sympathy in their bereavement."

The Court then adjourned as a mark of respect to Mr. Mosley's memory.

Mandates and Nationality.—Some interesting points in international law and modern history came up recently in the Court of Criminal Appeal (*R. v. Ketter, Times*, February 22). Matters of this kind rarely come before the Court, but, if I may say so, we believe that even the most critical of the professors of international law will concur in the decision. The question was whether the appellant, who was a Palestinian citizen under the Palestine Citizenship Order in Council of 1925, and had got a passport from the High Commissioner of that territory, was a British subject or an alien. The 1925 Order (S.R. & O., 1925, No. 777) applies on its face to "Turkish subjects resident in Palestine." It made them at one blow citizens of a new and local type. It seems from the report that the appellant certainly was a Turkish subject on August 1, 1925, when the Order came into force; but, even if it could do so, it did not purport to divest Palestinian citizens of their status as Turkish subjects. Yet, though still a Turkish subject, the appellant would have also become a British subject under our Nationality Acts if Palestine had been annexed. It never has been annexed: and the result is that the appellant has one nationality and one citizenship, but that neither is British. We have some sympathy for a man who thought that with a passport marked "British," even though it had the qualification "Palestine," he was entitled to the status of a British subject: but here he was wrong.—APTERYX.

Practice Precedents.

In Divorce: Summons for Appointment of Medical Inspector and Hearing of Suit in Camera.

Section 55 of the Divorce and Matrimonial Causes Act, 1928, enacts that the Court, on the application of either the petitioner or the respondent, or at its discretion, if it thinks it proper in the interests of public morals, may hear and try any such suit or proceeding in Chambers, and may at all times in any suit or proceeding, whether heard or tried in Chambers or in open Court, make an order forbidding the publication of any report or account of the evidence or other proceedings therein, either as to the whole or any portion thereof; and the breach of any such order, or any colourable or attempted evasion thereof, may be dealt with as contempt of Court.

In *C. (otherwise W.) v. C.*, (1915) 34 N.Z.L.R. 626, it was held that in the interests of public decency and morality all suits for nullity of marriage should be heard *in camera*. Mr. Justice Cooper expressed the opinion that although there is no settled practice in New Zealand regulating the appointment of medical inspectors for the purpose of a nullity suit, a reasonable procedure is for each party to nominate three qualified persons and for the Court to select one from each list submitted.

In England the procedure is by way of summons: see *Rayden and Mortimer on Divorce*, 3rd Ed. 253. In New Zealand, procedure by way of summons is the usual course; and, upon an order being made, the Judge directs that the medical inspectors shall be appointed by the Registrar, and directs the Registrar to fix the time and place of examination. After the order is sealed, a notice of appointment of medical inspectors and time and place of examination is filed in Court and a copy served on the opposite party. In England, application for examination may be made only after the answer has been filed or the respondent has failed within the proper time to file an answer to the appeal. This is likewise the course adopted in New Zealand, though, in an unreported case at Wellington, the learned Chief Justice made an order for examination where no appearance or answer had been filed, and before the time for filing an answer had expired, on an affidavit being filed showing the respondent was about to depart from New Zealand.

If an examination takes place, the report is filed, and may be inspected by either party, who may obtain a copy of same. If there is no attendance of the party to be examined, the medical inspectors make an affidavit to that effect.

SUMMONS FOR APPOINTMENT OF MEDICAL INSPECTORS AND HEARING IN CAMERA.

IN THE SUPREME COURT OF NEW ZEALAND.

.....District.

.....Registry.

(In Divorce.)

BETWEEN A. B. &c. petitioner otherwise known as

AND

C. B. &c. respondent.

LET the respondent her solicitor or agent appear before the Right Honourable Sir Chief Justice of New Zealand at his Chambers Supreme Court House on day the day of 19 at the hour of 10 o'clock in the forenoon or so soon thereafter as Counsel can be heard

TO SHOW CAUSE why an order should not be made that a medical inspector (or medical inspectors) be appointed to examine and report upon the parts and organs of generation of the said C. B. (otherwise known as) the respondent in this cause OR FOR SUCH FURTHER OR OTHER ORDER as this Honourable Court shall deem proper AND FOR A FURTHER ORDER directing that the trial of this cause be heard *in camera* UPON THE GROUNDS

1. That it is customary that such inspector[s] be appointed.
2. It is proper that the said cause should be heard *in camera*.

Dated at this day of 19 .
Registrar.

This summons is issued by &c.

ORDER FOR EXAMINATION, ETC.

(*Same heading.*)

day the day of 19 .

UPON READING the summons for appointment of a medical inspector and for an order that the cause be heard *in camera* sealed herein AND UPON HEARING Mr. of Counsel for the petitioner and Mr. of Counsel for the respondent IT IS ORDERED by the Honourable Mr. Justice that the Registrar at do appoint two medical inspectors in the City of to examine and report upon the parts and organs of generation of the said C. B. (otherwise known as) (or if the cause is defended the petitioner and respondent do each submit three names of medical practitioners to the Registrar who shall then appoint two from these six practitioners to be the medical inspectors selecting one from the three names submitted by the petitioner and the other from the three submitted by the respondent) the respondent in this cause and that the said C. B. (otherwise known as) be ordered to appear before such medical inspectors at such time and place as the said Registrar shall appoint and that seven days' notice of such appointment be given to the respondent the said C. B. (otherwise known as) AND IT IS FURTHER ORDERED that the said cause be heard *in camera*.

Registrar.

NOTICE OF APPOINTMENT OF MEDICAL INSPECTORS AND TIME AND PLACE OF MEDICAL EXAMINATION.

(*Same heading.*)

WHEREAS by order of the Supreme Court of New Zealand at on the day of 19 it was ordered that the Registrar of the Supreme Court of New Zealand at do appoint two medical inspectors in to examine and report upon the parts and organs of generation of the said C. B. (otherwise known as) the respondent in this cause and that the said C. B. (otherwise known as) the said respondent be ordered to appear before such medical inspectors at such time and place as the said Registrar shall appoint. TAKE NOTICE that I appoint X. and Y. of medical practitioners to be medical inspectors in this suit AND FURTHER TAKE NOTICE that I appoint day the day of 19 at 11 o'clock in the forenoon at the consulting-rooms of the said X. number : Street and 3 o'clock in the afternoon of the same day at the consulting-rooms of the said Y. number : Street to be the times and places for such examinations.

Dated at this day of 19 .
Registrar.

NOTE.—An affidavit of service of the summons should be filed if there is no appearance of the respondent, but there should be a clause showing that the respondent was personally known (or as the case may be) to the person serving and the reasons why the respondent was so known. There must be satisfactory proof of identification.

AFFIDAVIT OF SERVICE OF NOTICE.

(*Same heading.*)

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

1. That I am a law clerk in the employ of Messrs. solicitors for the petitioner herein.
2. That on the day of 19 I served upon the above-named respondent at number : Street by delivering the same to her personally an order under seal of this Honourable Court for appointment of medical inspectors and that the cause be heard *in camera* and a notice of appointment of medical inspectors and times and places of examination. Copy of such order and notice are annexed hereto and marked "A" and "B" respectively.
3. That upon being served with such order and notice as aforesaid the respondent perused them in my presence and then made certain statements to me. I then asked the respondent if she would be prepared to sign such statement and she said "yes" and thereupon sat down and wrote the said statements and signed and dated them in my presence. Attached hereto and marked "C" is such signed statement.
4. That the respondent is personally known to me having had various dealings with her on behalf of my firm over a period of three years.
5. That on day the day of 19 I served upon X. and Y. at their consulting-rooms at and respectively by delivering same to them personally a copy of the said notice appointing them medical inspectors in this cause.

Sworn &c.

AFFIDAVIT OF MEDICAL INSPECTOR, RESPONDENT HAVING FAILED TO APPEAR FOR EXAMINATION.

(*Same heading.*)

I X. of the City of medical practitioner make oath and say as follows :—

1. That on day the day of 19 I was served with a copy notice appointing me to be a medical inspector in this suit and appointing day the day of 19 at 11 o'clock in the forenoon at my consulting-rooms at number : Street in the City of aforesaid to be the time and place for the examination of the above-named respondent.
2. That I was present at my said consulting-rooms from 11 o'clock until 11.30 o'clock in the forenoon and during that time no person giving the name of C. B. (otherwise known as) attended at my said consulting-rooms or in any way communicated with me and for this reason I was unable to conduct an examination in terms of the said notice of the above-named C. B.

Sworn &c.

NOTE.—If two examiners are appointed there should be included an appropriate clause stating that the other named medical inspector was also in attendance. The affidavit is then made and sworn by both medical inspectors.

Recent English Cases.

Noter-up Service

FOR

Halsbury's "Laws of England"

AND

The English and Empire Digest.

DIVORCE.

Desertion—Letter by Deserting Spouse Asking for Meeting to Discuss Resumption of Cohabitation—No Reply by Other Spouse—Whether Period of Desertion Interrupted.

A deserted spouse must be ready to consider and discuss a proposal as to resumption of cohabitation, or desertion will terminate.

PRATT *v.* PRATT, **[1939] 1 All E.R. 503. C.A.**

As to offer to return: see HALSBURY, Hailsham edn., vol. 10, pp. 657, 658, par. 967; and for cases: see DIGEST, vol. 27, pp. 312-315, Nos. 2901-2929.

Nullity—Respondent's Alleged Pregnancy by Some One Other than Petitioner—Birth of Child—Admissibility of Evidence of Non-access Before Marriage Ceremony — Rule in *Russell* v. *Russell*—Matrimonial Causes Act, 1937 (c. 57), s. 7 (1) (*d*).

Evidence of non-access can be given in respect of the period before marriage.

JACKSON *v.* JACKSON (OTHERWISE PRUDOM), **[1939] 1 All E.R. 471. P.D.A.D.**

As to grounds for decree of nullity: see HALSBURY, Hailsham edn., Supp., Divorce, par. 945A; and for cases: see DIGEST, vol. 27, p. 265, No. 2326 *et seq.*

CRIMINAL LAW.

Incest—Stepdaughter—Suggested Adultery during Lifetime of Mother's First Husband—Necessity for Evidence of Non-access.

The law does not permit an inquiry whether some man other than the husband is more likely to be the father of a child unless proper evidence of non-access is first given.

R. *v.* HEMMINGS, **[1939] 1 All E.R. 417. C.C.A.**

As to incest: see HALSBURY, Hailsham edn., vol. 9, pp. 484–486, pars. 830–836; and for cases: see DIGEST, vol. 15, pp. 852, 853, Nos. 9352–9362.

DISCOVERY.

Interrogatories—Defendant previously Witness at Inquest—Coroner's Notes of his Deposition appended to Interrogatory—Defendant asked whether he made Statements attributed to him by Coroner—Whether Interrogatory allowed.

An interrogatory may be addressed to a defendant as to statements made by him as a witness at an inquest.

SLOAN *v.* HANSON, **[1939] 1 All E.R. 333. C.A.**

As to interrogatories in cases of negligence: see HALSBURY, Hailsham edn., vol. 10, pp. 421, 422, par. 516; and for cases: see DIGEST, vol. 18, pp. 212, 213, Nos. 1599–1610.

EVIDENCE.

Admissibility—Documents—Evidence of Deceased Witness—Statement Made to Police Officer and Signed by Deceased—Deposition of Evidence Given on Oath in Police Court but Not Signed by the Deceased—Evidence Act, 1938 (c. 28), s. 1.

An unsigned deposition made by a Justices' clerk of evidence given on oath at a Police Court by a witness since deceased may be admitted in evidence.

BULLOCK *v.* BORRETT, **[1939] 1 All E.R. 505. K.B.D.**

As to documentary evidence: see HALSBURY, Hailsham edn., vol. 13, p. 640, par. 708 *et seq.*; and for cases: see DIGEST, vol. 22, pp. 191, 192, Nos. 1615–1625. See also YEARLY SUPREME COURT PRACTICE, 1939, p. 626.

FOOD.

Milk—Breach of Warranty—Fraudulent Misrepresentation—Breach of Statutory Duty—Action for Damages—Whether Remedy Restricted to Penalty—Infected Milk—Sale of Goods Act, 1893 (c. 71), ss. 13, 14—Food and Drugs (Adulteration) Act, 1928 (c. 31), s. 2.

A breach of s. 2 of the Food and Drugs (Adulteration) Act, 1928, does not of itself give rise to a civil remedy.

SQUARE *v.* MODEL FARM DAIRIES (BOURNEMOUTH), LTD., **[1939] 1 All E.R. 259. C.A.**

As to adulteration of milk: see HALSBURY, Hailsham edn., vol. 15, pp. 208–211, pars. 383–389; and for cases: see DIGEST, vol. 25, pp. 126–131, Nos. 474–512.

HUSBAND AND WIFE.

Summary Jurisdiction — Maintenance Order — Procedure — Absence of one Justice during Part of Hearing—Evidence Subsequently Read Over—Case Remitted for Hearing—Matrimonial Causes Rules, 1937, r. 67 (6).

Justices must hear and see so much of the examination and cross-examination of a witness as will enable them to form a reliable estimate of credibility.

WHITTLE *v.* WHITTLE, **[1939] 1 All E.R. 374. P.D.A.D.**

As to procedure in summary jurisdiction applications: see HALSBURY, Hailsham edn., vol. 10, pp. 844, 845, pars. 1346–1348; and for cases: see DIGEST, vol. 27, pp. 562–564, Nos. 6185–6217.

INSURANCE.

Motor Insurance—Duty to Insure—Causing or Permitting the User of an Uninsured Car—Breach of Statutory Duty—Road Traffic Act, 1930 (c. 43), s. 35 (1).

An auctioneer who has sold a car does not "cause or permit" it to be removed from the sale-room without statutory insurance within the meaning of the Road Traffic Act, 1930, s. 35 (1).

WATKINS *v.* O'SHAUGHNESSY, [1939] **1 All E.R. 385. C.A.**

As to insurance of third-party risks: see HALSBURY, Hailsham edn., vol. 18, pp. 561, 562, pars. 908, 909; and for cases: see DIGEST, Supp., Insurance, Nos. 3217*x*–3217*cc*.

SALE OF GOODS.

Failure to Deliver—Insolvency of Seller—Clause Providing for Insolvency—Notice Condition Precedent—Clause Providing for Default—Voluntary Default—General Produce Brokers' Association Contract.

The invoicing-back clause in the contract of the General Produce Brokers' Association operates in favour of the sellers equally with the buyer, even though the sellers may be in default under the contract.

J. F. ADAIR AND CO., LTD. *v.* BIRNBAUM, **[1938] 4 All E.R. 775. C.A.**

As to the exclusion of market price rule: see HALSBURY, vol. 29, p. 199, par. 266; and for cases: see DIGEST, vol. 39, pp. 671, 672, Nos. 2582–2587.

STREET TRAFFIC.

Speed Limit—Driving at Speed "Dangerous to the Public"—Motor-van—Dangerous in Circumstances of the Case—Road Traffic Act, 1930 (c. 43), s. 11 (1).

If a vehicle is driven at a speed which is dangerous to the public, having regard to the traffic which might reasonably have been expected to be on the road, that is an offence, even though no one was actually endangered.

DURNELL *v.* SCOTT, **[1939] 1 All E.R. 183. K.B.D.**

As to speed restrictions: see HALSBURY, Hailsham edn., vol. 31, pp. 669, 670, par. 979; and for cases: see DIGEST, Supp., Street Traffic, Nos. 222*a*–222*j*.

Rules and Regulations.

Health Act, 1920. Camping-ground Regulations Extension Order, 1939. No. 1. March 6, 1939. No. 1939/22.

Animals Protection and Game Act, 1921-22. Animals Protection and Game Regulations, 1939. March 8, 1939. No. 1939/23.

Transport Licensing Amendment Act, 1936. Transport (Rental Vehicles) Notice, 1939. March 7, 1939. No. 1939/24.

Transport Licensing Act, 1931. Rental Vehicle Regulations, 1939. March 8, 1939. No. 1939/25.

Motor-vehicles Insurance (Third-party Risks) Act, 1928. Motor-vehicles Insurance (Third-party Risks) Regulations. Amendment No. 4. March 8, 1939. No. 1939/26.

Motor-vehicles Act, 1924. Motor-vehicles (Registration-plate) Regulations, 1934. Amendment No. 6. March 8, 1939. No. 1939/27.

New Zealand Centennial Act, 1938. Centennial Exhibition Order, 1939. March 8, 1939. No. 1939/28.

Customs Act, 1913. Customs Export Prohibition Order, 1939. No. 2. March 15, 1939. No. 1939/29.

New Books and Publications.

Legislative Forms. 4th Edition, 1938. By Russell. (Butterworth and Co. (Pub.) Ltd.) Price 53/-.

Lawyer's Remembrancer, 1939. (Butterworth and Co. (Pub.) Ltd.) Price 7/-.

Journal of the Society of Public Teachers at Law, 1938. (Butterworth and Co. (Pub.) Ltd.) Price 5/-.

Questions and Answers from the Justice of the Peace. Vol. 5. (Butterworth and Co. (Pub.) Ltd.) Price 83/-.

County Court Claims. 2nd Edition, 1938. By McCleary. Price 42/-.

By-laws of Local Authorities, 1939. By Scholefield. (Butterworth and Co. (Pub.) Ltd.) Price 34/-.

New County Court Practice, 1939. (Butterworth and Co. (Pub.) Ltd.) Price 60/-.

Factory Acts. 15th Edition, 1938. By Redgrave. (Butterworth and Co. (Pub.) Ltd.) Price 34/-.

Annual Practice, 1939. 57th Edition. (Sweet and Maxwell.) Price 34/-.

Coal Act, 1938. By F. A. Enever. (Solicitors' Law Stationers Society.) Price 49/-.

Coal Act, 1938. By R. F. Roberts. (Wildy and Sons.) Price 10/6.

Law of Food and Drugs, 1938. By Ivor Jennings. (John Knight and Sons.) Price 34/-.