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"Unlike the great artist or the great thinker, the mind and temperament of the great advocate must mirror that of his generation."

—DEREK WALKER SMITH AND EDWARD CLARKE, in *The Life of Sir Edward Clarke.*

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The Courts Emergency Powers Regulations.

IT was inevitable, on the outbreak of war, that some provision should be made to enable persons temporarily embarrassed owing to the commencement of hostilities of such far-reaching effect to meet their obligations by extending the time for payment. But the Courts Emergency Powers Regulations, 1939 (Serial No. 176/1939), provide another bulwark of defence for those who never pay unless compelled by process of law. These regulations, instead of allowing a defendant to seek the protection of the Courts when unable to meet his obligations owing to the war, have compelled plaintiffs, as a condition precedent for proceeding with their just claims, to make a preliminary application to the Court, thus enabling dishonest or deliberately dilatory debtors to take further steps to protect themselves in case the necessary leave to proceed is forthcoming.

The regulations are not, however, without precedent. They effect what the Courts (Emergency Powers) Act, 1914 (4 & 5 Geo. V, c. 78), as amended in 1916 (6 & 7 Geo. 5, c. 18), and in 1917 (7 & 8 Geo. 5. c. 25), did in Great Britain during the War of 1914-1918. In fact, the present regulations follow almost identically the wording of portions of that statute, as amended. On its passing the *Law Times* (London), speaking editorially in December 1914, objected to the form in which the debtor was protected. It said:

> "The whole method upon which the procedure has to be worked is wrong, and has placed a large amount of extra work upon the officials to whom the applications have to be made. One would have thought that those responsible for its drafting would have foreseen this result."

Legal opinion in England seems then to have favoured the more simple method of leaving it to the defendant to make objection, and to bring evidence in support of his application to delay the processes of the Court in actions and other proceedings brought against him in war-time.

The English statute was the subject of much consideration by the Courts, and, while some judgments on the original statute were abrogated by the Amendment Acts of 1916 and 1917, the judgments of the Divisional Courts, both Chancery and King's Bench, with an occasional judgment of the Court of Appeal, are now useful in assisting us to interpret the equivalent provisions of our Courts Emergency Powers Regulations, 1939.

It must be remembered, however, that some of these decisions have been replaced by these regulations. For instance, Reg. 4 (2) (*d*) gives effect to the decision of Warrington, J., in *In re Farnol Eades Irvine and Co., Ltd., Carpenter v. The Company,* [1915] 1 Ch. 22, where he held that a debenture-holder can issue a writ of summons claiming the usual relief in a debenture-holder's action and move for the appointment of a receiver and manager without any application for leave of the appropriate Court.

Clause 2 (2), which provides that a person, who presents a winding-up petition founded on the non-payment of money due under that judgment, must obtain the leave of the appropriate Court to proceed, negatives the effect of *In re A Company,* [1915] 1 Ch. 520, when the Court of Appeal (reversing Astbury, J.) held that a winding-up petition was neither a proceeding to execution, nor a proceeding to the enforcement of a judgment within the meaning of the section in the Courts (Emergency Powers) Act, 1914, similar in its language to cl. 4 (1) (*a*) of the regulations. Other words in the sub-clause nullify the effect of the judgment in *In re Bassett's Application,* (1915) 60 Sol. Jo. 132.

Under cl. 2 (1) of the regulations, "judgment" means

> "any judgment or order of any Court (whether given or made before or after the commencement of these regulations) for the payment or recovery of a sum of money . . ."

These were the words in s. 2 (1) (*a*) of the Courts (Emergency Powers) Act, 1914 (Gt. Brit.). In *Dobb v. Henry Dobb, Ltd.,* [1918] 1 Ch. 443, Swinfen Eady, L.J., in the Court of Appeal, said that the Act was intended to alleviate the position of persons who were unable to make the payment due from them by reason of the circumstances attributable directly or indirectly to the then present war, and a liberal and beneficial construction should be given to it. In his opinion, the Act should be read and construed as extending to any judgment or order for the payment of any sum whatever unless such sum be excluded from its operation by the terms of the Act itself, or some subsequent statute, or Order in Council. It would thus extend to an order to pay costs as taxed, and leave to proceed to execution would be necessary.

The definition of judgment, quoted above in part, proceeds: "or for the recovery of possession of land in default of payment of rent." Consequently, the leave of the Court is necessary for the summary taking possession of land in default of non-payment of rent, but leave of the Court is not necessary under the regulations to entitle a landlord to bring action against his tenant for recovery of the possession of the demised premises under a clause for re-entry for non-payment of rent. Leave, however, is necessary for the issue of a writ of possession upon a judgment obtained in such an action.

The corresponding English section used the words "exercise any right of re-entry." In *Ness* v. *O'Neill,* [1916] 1 K.B. 706, an action was brought to recover possession of certain premises. The appellant agreed to lease the premises for a term of three years from September 29, 1908, at an agreed rent, and there was provision for re-entry or non-payment of rent for ten days after the same became due. On November 30, 1915, the defendant having continued in possession

on the terms and conditions contained in the agreement, a month's rent became due and remained unpaid for ten days. On December 14, the respondent brought an action to recover possession. The respondent had made no application under the Courts (Emergency Powers) Act, 1914, for leave to bring the action. Final judgment for possession was given, and an order made that there should be no stay of execution under the statute, as to possession after seven days. Rowlatt, J., who affirmed this order, from which there was an appeal to the Court of Appeal (Swinfen Eady, Pickford, and Bankes, L.JJ.).

In his judgment, with which the other members of the Court concurred, Swinfen Eady, L.J., said:

> "It is to be observed that the proceedings mentioned in clause (*b*), whereby a person to whom money is owing may enforce payment thereof, are all, with one exception, proceedings which can be taken independently and without an order of the Court—proceedings, that is to say, of a summary nature. 'Levy any distress, take, resume, or enter into possession of any property, exercise any right of re-entry, realize any security, . . . forfeit any deposit, or enforce the lapse of any policy of insurance,' all refer to things which can be done out of Court and without its intervention."

(In our regulations these matters are grouped under the term "legal remedy," as distinct from "judgment," in Cl. 2 (1).)

Later, in his judgment, His Lordship observed:

> "The plaintiff is entitled without leave of the Court, not to proceed in a summary way—she is not doing that—but to exercise her right to bring an action to recover possession. A judgment for possession recovered in an action on a proviso for re-entry for non-payment of rent is a means of enforcing payment of the rent in arrear; it is in effect a judgment to enforce the payment of money. This is illustrated by the fact that upon payment of the rent in arrear and all costs the defendant can obtain relief. It is not suggested that a writ of possession on such a judgment can be obtained without the leave of the Court. The plaintiff has obtained that leave. A tenant is amply protected, inasmuch as leave is necessary before the landlord can either take possession in a summary way or obtain a writ of possession upon a judgment, and on any application for such leave the Court may, under subs. 2, in its absolute discretion stay execution or defer the operation of the landlord's remedy. There is no ground, however, for the contention that the writ of summons claiming possession cannot be issued without leave of the Court. The appeal therefore fails."

The question will be asked, What is "a proceeding to execution or otherwise to the enforcement of any judgment" within the meaning of cl. 4 (1) (*a*) of the regulations? *In re A Company*, [1915] 1 Ch. 520. Lord Cozens-Hardy, M.R. in his judgment at p. 526, said:

> "'Execution on the judgment' is a technical term. It is a legal process by which the judgment creditor, in that character, and for his sole benefit, by a proceeding in the same action seeks to satisfy his judgment wholly or partially . . . . It remains to consider the subsequent words 'or otherwise to the enforcement of the judgment.' These words seem to me to meet the common case in which the judgment creditor obtains a receiver when he cannot get legal execution. There may be other cases, but I cannot construe the section as to extend it to a winding-up petition which may be presented by a petitioner who is not a judgment creditor, and which does not enure for the sole benefit of the judgment creditor, but must enure for the benefit of all the creditors."

Phillimore, L.J., in his judgment, at p. 527, said:

> "The words 'execution' and 'enforcement of a judgment' are terms of art. Execution is, I think, meant for the old common law process by which the sheriff, in obedience to one of the old common-law writs, procures for the judgment creditor the fruits of his judgment. 'Enforcement of process' is used in Order xlii, vv. 3 and 24, to cover as well the modes of compelling obedience to their decrees, orders, or sentences in use in the Court of Chancery or the Court of Admiralty, and now conferred as well as the powers of issuing execution, upon the High Court of Justice."

The words "institution of proceedings" reproduced in cl. 4 (2) (*d*) of the regulations were interpreted by Peterson, J., in *In re Anderson and Son, Ltd., Bacon v. Anderson and Son, Ltd.*, [1916] W.N. 321, when he said that the only interpretation that could be given to those words was that which treated the "institution" as being "the commencement" of proceedings.

The definition of "legal remedy" in cl. 2 (1) (*d*) of the regulations includes "The realization of any security." This phrase came before a Divisional Court (Horridge, and Salter, JJ.,) for consideration in *Braybrooks v. Whaley*, [1919] 1 K.B. 435. Section 1 (1) of the Courts (Emergency Powers) Act, 1914, provided that

> "from and after the passing of this Act no person shall . . . (*b*) . . . realize any security (except by way of sale by a mortgagee in possession) . . . except after such application to such Court and such notice as may be provided for by rules or directions under this Act. . . ."

On August 3, 1917, the defendant, the mortgagee of certain land but not in possession thereof, put up the same for sale by auction, and the plaintiff agreed to buy it. Completion was to take place on October 11. Shortly after the auction, it was brought to the notice of the defendant by the mortgagor that he had not obtained the leave of the Court under the above subsection to realize his security, and on August 24 the defendant purported to annul the sale on this ground. No application was ever made to the Court under the Act of 1914. In an action by the plaintiff for specific performance or for damages for the loss of his bargain, the County Court Judge awarded damages beyond the return of the deposit. On appeal, it was held that the sale was only a step towards realizing the security, and that an application to the Court under the Act of 1914 could have been made at any time before the date of completion.

In his judgment, Horridge, J., at p. 439, said:

> "We have to see whether the section prohibits the taking of a step to realize a security by making a contract to sell the property, or whether an application may be made to the Court at any time before the complete process of realization—in this case by conveyance—is carried out. In other words, was the contract itself a 'realizing of the security' before entering into which leave ought to have been obtained, or does realization mean a complete realization in the sense of a completed conveyance when the property will be conveyed and the purchase money paid? There is not very much authority to assist us."

After quoting, by way of analogy, cases on the word "foreclosure," His Lordship continued on p. 440:

> "The material words of the section with which we are dealing may fairly be taken to mean 'completely realize any security,' and do not refer to a mere step towards realizing the security. In this case the contract of sale was merely a step by the mortgagee towards realizing his security, and therefore before the realization was complete an application could have been made to the Court for its leave."

Salter, J., agreed; and, on p. 441, he added:

> "The subsection in question says that a mortgagee shall not 'realize any security' without the leave of the Court, but I do not think a mortgagee 'realizes' his security by the sale of land until he has received the purchase money. The Act is for the protection of the mortgagor, and I fail to see any reason why a mortgagor is not sufficiently protected if

an application, upon proper notice to him, is made at any time before completion. The defendant, therefore, cannot say that he was absolved from applying because it was too late. With regard to the suggestion that the application would have failed on the merits I think that where it is alleged that damage has been caused to a person by reason of the wrongful omission of another to take some step which it was his duty to take, the onus rests upon the person in default, if he alleges that the step must have failed, to prove it."

In *Barnard v. Foster*, [1916] 1 K.B. 632, the plaintiff, a stockbroker, bought certain shares on the instructions of the defendant. The plaintiff paid for the shares, but, as the defendant declined to take delivery and pay for them at the settlement, the plaintiff sold at a loss and sued the defendant for the difference between the money paid for them and the amount which they realized at the resale. The Court of Appeal (Swinfen Eady, Phillimore, and Pickford, L.JJ.) assumed, but did not decide, that the shares were "security" within the meaning of that term in the section of the English statute reproduced in para. (*d*) of the definition of "legal remedy" in cl. 2 of the regulations; and they held that the plaintiff, at the time he realized the shares, was "a mortgagee in possession" within the meaning of what is now cl. 4 (2) (*b*) of the regulations, and was therefore entitled to realize the security without first obtaining the leave of the Court.

Clause 3 (2) of the regulations provides

"Where at any time after the commencement of these regulations any person who is not at that time a member of His Majesty's permanent forces is called up for naval, military or air service, whether within New Zealand or elsewhere, these regulations shall not apply to any judgment for the recovery of a debt that becomes due by that person by virtue of a contract made after the date on which he is so called up . . ."

In *In re A Debtor*, [1916] 1 K.B. 169, a debtor liable to military service in England under the Military Service Act in England, on May 1, 1918, received a calling-up notice directing him to join the Colours on a day therein specified. Before that date, but after the date of the notice, he had contracted a debt in respect of which the creditor had obtained judgment against him, and, without the leave of the Court, had served him with a bankruptcy notice with which he did not comply. The creditor then presented a bankruptcy petition against him on the ground of non-compliance with the bankruptcy notice. The Registrar dismissed the petition on the ground that the judgment had been stayed by the operation of s. 8 of the Courts (Emergency Powers) Act, 1917, and consequently no act of bankruptcy had been committed by the debtor. (The words of the section were "before the officer or man had joined His Majesty's Forces" but otherwise were similar in effect to Reg. 3 (2), *cit. sup.*)

The Court of Appeal (Swinfen Eady, M.R., Duke, L.J., and Eve, J.) held that a "calling-up notice" was a notice calling an officer or man to the Colours, and at the expiration of that notice he is to be deemed to have joined His Majesty's Forces. Until then, he is not a person who has joined His Majesty's Forces, within the meaning of the section, and, that would be the sensible effect of the section. His Lordship concluded his judgment by saying,

"The manifest object of such a provision was to protect soldiers, officers and men—engaged in the important business of warfare from being harassed by claims under contract."

Duke, L.J., said:

"The learned Registrar took the view that the protective provision of the section was intended to have the office of relieving a man who had been called to actual military service from the obligations which he would have to meet if he has not been so called. It was thought that for that reason the effective time for protection was the time when the man had indeed gone to be a soldier. That seems to me to be very good sense. An examination of the Act of Parliament satisfied me that that is not only the popular but the accurate construction."

It would appear, therefore, that the words "called up" in our regulations would be construed as "leaving for camp," and not as being the mere receipt of a calling-up notice.

The procedure on application for leave of the Court to proceed on to execution on or otherwise to the enforcement of any judgment, to exercise any legal remedy, or to do any of the other matters specified in cl. 4 (1) of the regulations is: (*a*) in the Supreme Court, by motion supported by affidavit; and (*b*) in the Magistrates' Courts in summary manner appearing in Practice Notes, p. 265 post.

As to the costs on such applications, Peterson, J., in *In re Wyatt's Application*, [1918] 2 Ch. 293, said:

"In many small cases under the Courts (Emergency Powers) Acts, costs are assessed in the Chancery Division in the way to which the taxing Master refers [three guineas in ordinary with an extra guinea or so in some cases], but there is not any invariable practice to this effect; and, if the costs of such an application have been increased by the delay or unreasonable conduct of the respondent, I cannot suppose that any Judge would come to the conclusion that the applicant ought to bear the additional costs which have been occasioned by the respondent's conduct."

ADDENDUM: RECENT NEW ZEALAND CASES.

Since the foregoing was in type, two interesting decisions have been given on the Courts Emergency Powers Regulations. The Magistrates' Court receives the first shock of much new legislation, and these judgments are of general interest and importance to all practitioners. It will be seen that each learned Magistrate deals with the matter before him as being *res integra*, so that the decisions on the corresponding English statute remain of current interest here. (The Courts (Emergency Powers) Act, 1939 (2 & 3 Geo. VI, c. 67 (Gt. Brit.), recently passed, is very similar in language to our corresponding regulations).

In a case *Mitchison v. Revell* (to be reported) heard on October 17, in the Magistrates' Court at Wellington, the judgment creditor obtained judgment against the judgment debtor on May 17, 1939, and on September 18 issued a judgment summons. The date for hearing of that summons was October 11, 1939. The judgment debtor was served on October 2, and did not appear on the date for hearing. On September 23, 1939, the Courts Emergency Powers Regulations came into force.

The question arose as to whether any leave was necessary from the Court before the judgment summons was heard. There also arose the wider question as to whether, since the regulations came into force, any leave was necessary upon an application for issue of a judgment summons.

It was held by Mr. A. M. Goulding, S.M., that leave was not necessary in respect of the hearing of the judgment summons in question, nor is it necessary to ask leave under the regulations for the issue of any judgment summons under the Imprisonment for Debt Limitation Act, 1908.*

* This construction was evidently put upon the corresponding English statute, for, within a month of its passing, the Lord Chancellor added to the County Court Rules under it, the following rule: "Proceeding for the enforcement or judgments or orders under s. 1 (1) (*a*) of the Courts (Emergency Powers) Act, 1914, shall include proceedings by way of judgment summonses."

In the course of his judgment, the learned Magistrate said:

"Under Reg. 2 (1) of the regulations, "judgment" means any judgment or order of any Court (whether given or made before or after the commencement of these Regulations) for the payment or recovery of a sum of money or for the recovery of possession of land in default of payment of rent.

"Then follow certain exceptions from the definition which are not material. Reg. 4 (1) says so far as it is relevant that 'subject to the provisions of this regulation no person shall be entitled without the leave of the appropriate Court to do or continue or complete the doing of any of the following acts:—

"'(*a*) To proceed to execution on or otherwise to the enforcement of any judgment.'

"In my view, the judgment creditor who sets in motion the provisions of the Imprisonment for Debt Limitation Act, in no sense 'proceeds to execution' of his original judgment in the sense in which those words are used in Reg. 4 (1). I think the word 'execution' as there used is used in its narrower sense of enforcing civil judgments for the payment of money by certain well-known writs in the Supreme Court, and by levying execution in the Magistrates' Court against the goods, money, or chattels of the judgment debtor.

"I interpret the words in the regulation which follow the word 'execution' 'or otherwise to the enforcement of any judgment' as having reference to certain methods of enforcing judgments for payment of money, which, though not strictly speaking 'execution,' are analogous thereto, *i.e.*, attachment of debts, charging orders, stop orders, and the like."

Another important judgment—*Wellington Cycle Co. v. Warebain*; *S. A. Hunt and Co. v. Scott*; *Fowler v. Burns* (to be reported)—given on October 17, dealt with three actions, which had been commenced for the recovery of chattels held by the defendants under agreements for hire and purchase. The defendants did not appear, and the plaintiff in each case proved that he was entitled to an order for possession.

The question was raised, however, by Mr. J. H. Luxford, S.M., as to whether the Courts Emergency Powers Regulations, 1939, apply to these actions, in which case the proceedings would have had to be stayed until the Court gave leave to proceed.

The regulations, as the learned Magistrate pointed out, are designed:

"to prevent any person without the leave of the Court from, *inter alia*—

"(*a*) Proceeding to execution on or otherwise enforcing any judgment for the recovery of money payable under a contract or for the recovery of possession of land on the ground that rent is in arrear.

"(*b*) Exercising any legal remedy of the kinds specified in para. 2 (1)."

In His Worship's opinion, the intention of the Governor-General is to differentiate between judgments and legal remedies. That is to say, the limitation imposed on the enforcement of judgments has reference to judgments of Courts of competent jurisdiction, while the limitation imposed on the exercise of legal remedies has reference to remedies which may, by virtue of a deed, agreement, Order in Council, or legislative enactment, be exercised without first procuring a judgment of a Court.

The learned Magistrate continued:

"'Legal remedy' is specifically defined and includes 'the taking of possession of any property.' If the owner of a chattel, the subject of a hire-purchase agreement, wishes to seize the chattel in pursuance of the powers conferred by the agreement, he must first obtain the leave of the Court."

He concluded, therefore, that commencing proceedings for the recovery of a chattel however was not, in his view, the exercise of a legal remedy within the meaning of the regulations. That being so, the owner may obtain the necessary order for possession and enforce it in the ordinary way because the limitation on the enforcement of judgments extends only to those relating to the recovery of moneys and to the recovery of land on the ground that rent is in arrear.

We may refer again to these regulations on another occasion.

Summary of Recent Judgments.

SUPREME COURT. Wellington. 1939. September 4; October 6. *Smith, J.*

McGRATH v. COMMISSIONER OF STAMP DUTIES.

Public Revenue—Death Duties (Gift Duty)—Aggregation of Gifts for a Period of Twelve Months—Whether Day of making Gift included in Period—Death Duties Act, 1921, s. 46 (1)—Death Duties Amendment Act, 1923, s. 4 (2)—Finance Act, 1930, s. 30 (1)—Acts Interpretation Act, 1924, s. 25 (*b*).

In the aggregation of gifts under s. 46 of the Death Duties Act, 1921, as amended, the day of the making of a gift is included in the period of twelve months, and the day of the date of the making of the gift must be excluded at the end of the period.

Therefore, a gift made on March 31 may not be aggregated with a gift made on the following March 31.

Counsel: **Watson,** for the appellant; **Broad,** for the Commissioner.

Solicitors: **Chapman, Tripp, Watson, James, and Co.,** Wellington, for the appellant; **Crown Law Office,** Wellington, for the respondent.

SUPREME COURT. Dunedin. 1939. August 4; September 18. *Smith, J.*

ARCHER v. DUNEDIN CITY CORPORATION; SCOTT v. DUNEDIN CITY CORPORATION.

Transport Licensing—Carriage of a private party on "a special occasion"—Meaning of words—Transport Licensing Act, 1931, s. 21 (*b*).

Section 21 (*b*) of the Transport Licensing Act, 1931, provides that

"A passenger-service license shall not be required in the case of— . . .

"(*b*) The carriage by a contract vehicle of a private party on *a special occasion*."

"A special occasion" within the meaning of the section refers to something more than the views and intentions of the members of the party: it must be one of some public note or importance in the locality which is the destination of the party and must not be of frequent occurrence.

Therefore, neither the visit of certain members of the Oddfellows' Lodges in Dunedin to the Lady Lodges in Kaitangata, nor a visit of a party of young people confined to the Boys' and Girls' Bible Classes of a particular Church in Dunedin to another Church gathering in Nelson, was a "special occasion."

Miller v. Pill, Pill v. Furse, and Pill v. J. Mutton and Son, [1933] 2 K.B. 308; **Nelson v. Blackford,** [1936] 2 All E.R. 109; **M'Dougall and Carruthers v. Paterson;** [1933] S.C. (J.) 39, and **MacMillan v. Western S.M.T. Co., Ltd.,** [1933] S.C. (J.) 51, referred to.

Counsel: **F. B. Adams,** for the appellant; **A. N. Haggitt,** for the respondent.

Solicitors: **F. B. Adams,** Dunedin, for the appellant; **Ramsay and Haggitt,** Dunedin, for the respondent.

Case Annotation: *Miller v. Pill, Pill v. Furse, and Pill v. J. Mutton and Son,* Supp. Vol. 42, para. 76*q*; *Nelson v. Blackford, ibid.*, E. and E. Digest, para. 76*r*; *M'Dougal and Carruthers v. Paterson, ibid.*, para. 45; *Macmillan v. Western S.M.T. Co., Ltd., ibid.*, para. 46.

SUPREME COURT. Christchurch. 1939. October 2, 3. *Northcroft, J.*

In re **BEATTY, BEATTY AND OTHERS v. BEATTY AND OTHERS.**

Adoption of Children—Devolution of Property of Adopting Parents—Under "Will . . . prior to the date of such order of adoption"—Construction—Infants Act, 1908, s. 21 (*a*).

The words "prior to the date of such order of adoption" in para. (*a*) of the proviso to s. 21 (1) of the Infants Act, 1908, which is as follows:—

"Provided that such adopted child shall not by such adoption—

"(*a*) Acquire any right, title, or interest in any property which would devolve on any child of the adopting parent by virtue of any deed, will, or instrument prior to the date of such order of adoption, unless it is expressly so stated in such deed, will, or instrument"—

are adjectival words qualifying "deed, will, or instrument"; and the proviso, when it speaks of a deed, will, or instrument prior to the date of the order of adoption, refers to priority in date as between the deed, will, or instrument and the order of adoption.

Therefore where by will a testator devised property to all the children of a named son, an adopted daughter, adopted by such son after the execution of the will but before the death of the testator, took no interest under the said devise.

In re Horiana Kingi, Thompson v. Erueti Tamahau Kingi, [1937] N.Z.L.R. 1025, approved.

Counsel: T. K. Papprill, for the plaintiffs; **F. D. Sargent,** for the defendant, M. E. Beatty; **K. M. Gresson,** for the defendant, S. W. Beatty.

Solicitors: Papprill, Son, and Corcoran, Christchurch, for the plaintiffs; **Slater, Sargent, and Connal,** Christchurch, for the defendant, M. E. Beatty; **K. M. Gresson,** Christchurch, for the defendant, S. W. Beatty.

SUPREME COURT. Christchurch. 1939. August 24; October 5. *Northcroft, J.*

In re **FEATHER (DECEASED), FEATHER v. PUBLIC TRUSTEE.**

Will—Construction—Devises and Bequests—Contingent Bequest to Infant Intermediate Income—Whether Segregation of Legacy—Whether "Property held in trust for an infant contingently on his attaining the age of twenty-one years"—Trustee Act, 1908, s. 113.

By her will, testatrix gave her grand-nephew, A., shares held by her at her death in a company "for his *own use and benefit on attaining the age of twenty-one years.*" "All the rest residue and remainder" of her estate were given to her trustee for conversion and disposal according to the directions that followed.

In an action by A. against the trustees to recover the dividends on the shares bequeathed to him, accruing before his attaining the age of twenty-one years.

England, for the plaintiff; **K. M. Gresson,** for the defendant.

Held, 1. That the legacy of these shares had not been segregated from the remainder of the estate by being set aside in the hands of trustees so as to pass their dividends to A.

2. That s. 113 of the Trustee Act, 1908, did not apply to these shares, the legacy not being held in trust within the terms of the section.

In re Eyre, Johnston v. Williams, [1917] 1 Ch. 351; **In re Dickson, Hill v. Grant,** (1885) 29 Ch.D. 331; and **In re Boulter, Capital and Counties Bank v. Boulter,** [1918] 2 Ch. 40, applied.

In re Cotton, (1875) 1 Ch.D. 232, referred to.

Solicitors: Lane, Neave and Wanklyn, Christchurch, for the plaintiff; **K. M. Gresson,** Christchurch, for the defendant.

Case Annotation: *In re Eyre, Johnston v. Williams,* E. and E. Digest, Vol. 23, p. 411, para. 4811; *In re Dickson, Hill v. Grant, ibid.,* p. 452, para. 5246; *In re Boulter, Capital and Counties Bank v. Boulter, ibid.,* para. 5250; *In re Cotton, ibid.,* p. 450, para. 5222.

COURT OF ARBITRATION. New Plymouth. 1939. September 13, 26. *O'Regan, J.*

INSPECTOR OF AWARDS v. KIBBY.

Industrial Conciliation and Arbitration Acts—Award—Blanket Provisions of Amendment Act (No. 2), 1937—Whether applicable to Dominion Awards—Industrial Conciliation and Arbitration Amendment Act (No. 2), 1937, s. 5 (1).

The "blanket" provisions of s. 5 (1) of the Industrial Conciliation and Arbitration Amendment Act (No. 2), 1937, refer only to applications under s. 41 of the principal Act, under which district awards only are made, and are inapplicable to Dominion awards.

Counsel: Sheat, for the defendant.

Solicitors: Wilson and Sheat, New Plymouth, for the defendant.

COURT OF ARBITRATION. Dunedin. 1939. June 30; July 3; August 10. *Callan, J.*

FROST v. NEW ZEALAND SHIPPING COMPANY, LIMITED.

Workers' Compensation—Liability for Compensation—Worker Suffering a Non-fatal Accident—Giving-up of Heavy Work because of Discovery of Disease rendering such Class of Work dangerous—Whether Compensation payable—Workers' Compensation Act, 1922, s. 3.

In order to found a claim for compensation the worker must prove that his working-capacity has been reduced or the duration of his working-life has been shortened by the accident.

Thus, compensation is not payable to a man who has ceased doing heavy work, not because of his incapacity to do it, but from a decision not to work on account of the discovery that there existed a disease which rendered continuous heavy work dangerous to him.

Armstrong v. New Zealand Shipping Co., Ltd., [1938] N.Z.L.R. 167, G.L.R. 215, distinguished.

Counsel: F. B. Adams, for the plaintiff; **I. B. Stevenson,** for the defendant company.

Solicitors: Adams Bros., Dunedin, for the plaintiff; **J. S. Sinclair and Stevenson,** Dunedin, for the defendant company.

COURT OF ARBITRATION. Christchurch. 1939. July 28; September 5. *Callan, J.*

McGREGOR (INSPECTOR OF AWARDS) v. DALGETY AND COMPANY, LIMITED.

Industrial Conciliation and Arbitration — Award — Industrial Agreement—Employer bound by Retail Grocer's Assistants' Award and by Clerical Employees Industrial Agreement—Worker engaged partly in Grocery and partly in Clerical Work—Whether Test of "Substantial employment" applicable.

A company bound by a Grocer's Assistants and Drivers' Award and also by a Clerical Employees' Industrial Agreement employed an employee both as a grocer's assistant and as a clerical worker. From 25 per cent. to 30 per cent. of his time was spent on the grocery work, and from 75 per cent. to 80 per cent. on clerical work.

Sim, K.C., for the respondent.

Held, That the provisions of the agreement could not displace the obligations of the award and the employee was entitled to receive the award wages of a grocer's assistant; and there was no need, in the circumstances of the case, to resort to the test of substantial employment.

In re Northern, Wellington, &c., General Warehousemen's Award, [1937] G.L.R. 231, 37 Bk. of Awards, 1045, distinguished.

Solicitors: Duncan, Cotterill, and Co., Christchurch, for the respondent.

SUPREME COURT. Wellington. 1939. Sept. 8, 27. *Myers, C.J.*

FUREY AND OTHERS v. COMMISSIONER OF STAMP DUTIES.

Public Revenue—Death Duties—Succession Duty—Definition of "Child" including "the widow of a son"—Widow of Son at Date of Will but remarried at Death of Testatrix—Whether "a child"—Death Duties Act, 1921, ss. 2, 17 (4) (7).

By her will a testatrix left a life interest in her residuary estate to her daughter-in-law, R., who was described in the clause appointing executors and trustees, of whom R. was one, as a widow, her husband having died four days prior to the date of the said will. After that date and before the death of the testatrix, R. remarried.

W. H. Cunningham, for the appellant; **Broad,** for the respondent.

Held, That at the date of the death of the testatrix R. was not "the widow of a son" (included in the definition of "a child of the deceased" in s. 2 of the Death Duties Act, 1921) within the meaning of s. 17 (4) of the statute, having lost that status, and must be regarded as taking as *persona designata.*

Newman v. Newman, [1927] N.Z.L.R. 418, (*sub. nom., Re Gracia, Newman v. Newman*), G.L.R. 215, and **Neill v. Commissioner of Stamp Duties,** [1939] N.Z.L.R. 236, applied.

Solicitors: Luke, Cunningham, and Clere, Wellington, for the appellants; **Crown Law Office,** Wellington, for the respondent.

SUPREME COURT. Wellington. 1939. Sept. 12, 19. *Reed, J.*

KINSMAN v. RICKARD.

Shops and Offices—Statute—Articles of Apprenticeship—Entered into prior to Commencement of Act—Whether abrogated thereby—Whether Statute has retrospective Effect—Shops and Offices Amendment Act, 1936, s. 8.

Section 8 of the Shops and Offices Amendment Act, 1936, has no retrospective effect so as to abrogate articles of apprenticeship entered into prior to the commencement of that Act.

Counsel: W. H. Cunningham, for the appellant; **Spratt,** for the respondent.

Solicitors: Luke, Cunningham, and Clere, Wellington, for the appellant; **Morison, Spratt, Morison, and Taylor,** Wellington, for the respondent.

COURT OF ARBITRATION. Christchurch. 1939. August 7; September 5. *Callan, J.*

NEW ZEALAND FEDERATED HOTEL AND RESTAURANT EMPLOYEES' INDUSTRIAL ASSOCIATION OF WORKERS v. PERRY'S HOTEL OCCIDENTAL, LIMITED.

Industrial Conciliation and Arbitration—Award—Worker engaged for Greater Part of Working-time in Administrative and Supervisory Duties outside scope of Award—Balance of Working-hours occupied in Work covered by Award—Whether such Worker within Scope of Award.

A housekeeper in a licensed hotel, whose chief duties, upon which she spent the greater part of her time, were administrative and supervisory and outside the scope of the applicable award, but who devoted a small part of her working-hours to work covered by the award, is within the scope of the award.

Canterbury Traction and Stationary Engine-drivers, &c., Union v. Aulsebrook and Co., [1918] G.L.R. 49, 18 Bk. of Awards 1336; **Inspector of Awards v. Auckland Gas Co., Ltd.,** [1938] G.L.R. 374; **Bing Harris and Co., Ltd. v. Lightfoot,** [1918] G.L.R. 133, and **Smith and Smith, Ltd. v. Werry,** [1938] N.Z.L.R. 276, G.L.R. 160, distinguished.

Counsel: K. G. Archer, for the appellant; **Tracy,** for the respondent.

Solicitors: Archer and Barrer, Christchurch, for the appellant; **Tracy and White,** Christchurch, for the respondent.

COURT OF ARBITRATION. New Plymouth. 1939. September 13, 26. *O'Regan, J.*

CARTWRIGHT v. MARTIN ET UX.

Workers' Compensation—Liability for Compensation—Neighbouring Farmers assisting each other—Injury to One while so Employed—Contract of Service essential prerequisite to Liability—Workers Compensation Act, 1922, s. 2.

Where two farmers, who were neighbours habitually worked for one another from time to time, but there were no settlements and no money payments and neither party had a policy of indemnity against the liability imposed by the Workers Compensation Act, 1922,

R. J. O'Dea, for the plaintiff; **Sheat,** for the defendants.

Held, That, although the plaintiff was working with the implied authority of the defendant and hence that the accident by which he was injured arose out of his employment, the onus of proof that the parties contemplated contractual relations was on the plaintiff, and that he had not discharged it.

Hinkeley v. Dickson, (1915) 17 G.L.R. 497, applied.
Masters v. Manson. [1939] N.Z.L.R. 50, distinguished.

Solicitors: O'Dea and O'Dea, Hawera, for the plaintiff; **Malone, King, and Tyrer,** Stratford, for the defendants.

SUPREME COURT. New Plymouth. 1939. August 15. *Reed, J.*

JONES v. McDONALD.

Licensing—Offences—Supplying Liquor to Youth "apparently under the age of twenty-one years"—Youth's Statement to Supplier that he was over that Age—Magistrate, finding as fact that Youth apparently under Twenty-one—Whether justified in dismissing Information on Ground that Offence trifling—Licensing Act, 1908, ss. 202, 205—Licensing Amendment Act, 1914, s. 6—Licensing Amendment Act, 1916, s. 42—Justices of the Peace Act, 1927, s. 92 (1).

On an information against a person other than the licensee under s. 205 (*b*) of the Licensing Act, 1908, for supplying liquor in licensed premises to a person apparently under the age of twenty-one years in breach of s. 202 (as amended) of that Act, a Magistrate, who finds as a fact that the person supplied was apparently under the age of twenty-one years must convict the supplier and inflict a suitable penalty.

He is not justified in dismissing the information under s. 92 (1) of the Justices of the Peace Act, 1927, on the ground that the offence was of so trifling a nature that it is inexpedient to inflict any punishment, for the reason, *inter alia,* that the real offender was the person supplied, who by his untrue statement caused the commission of the offence by the supplier without guilty intention on the part of the latter.

Eccles v. Richardson, [1916] N.Z.L.R. 1090, G.L.R. 704, applied.

Counsel: Quilliam, for the appellant; **Sheat,** for the respondent.

Solicitors: Govett, Quilliam, Hutchen, and Macalian, New Plymouth, for the appellant; **Nicholson, Kirkby and Sheat,** New Plymouth, for the respondent.

Reciprocal Admission.

New Zealand and English Solicitors.

Mr. W. J. Heyting, now of London, in a letter to the Secretary of the New Zealand Law Society, dated July 28 last, says :

" Some time ago I was in correspondence with you with a view to obtaining a grant of reciprocity by the Society of the Inns of Court here in England to New Zealand barristers, and as you are aware, the Society of the Inns of Court have amended their regulations to grant such reciprocity.

" By the time, however, that the reciprocity was granted I had an opportunity of joining a firm and therefore decided not to avail myself of the reciprocity provisions.

" I hear, however, that there are other New Zealand barristers who are now availing themselves of the reciprocity and I am glad that my efforts should be of assistance to them.

" I am now anxious to obtain a somewhat greater reciprocity for New Zealand solicitors to be admitted as solicitors here than is at present granted by the Law Society here.

" As it happens there is at present a Bill before Parliament to amend the Solicitors Act. This Bill was presented in the House of Lords by Lord Wright, and I enclose a copy of it herewith. I have accordingly written to Lord Wright and I also enclose a copy of my letter.

" The Bill is at present in Committee and as certain of its provisions are to come in force as from November 1, it is probable that the Bill will be enacted as soon as Parliament reassembles early in October. If therefore advantage is to be taken of the present Bill, it is necessary that this matter should have the consideration of the Law Society here at once.

" I should therefore be very grateful if the New Zealand Law Society would consider the point raised by me in my letter to Lord Wright and take the matter up directly with the Law Society here if they should agree with the contents of my letter to Lord Wright.

" You will observe that I am not suggesting that there should be any alteration to the provisions in New Zealand for the admission of English solicitors as solicitors there. All I urge is that greater reciprocity should be granted in England to New Zealand solicitors and I hope that the New Zealand Law Society will see its way to give the matter its support in time to enable the Law Society here to deal with the question, especially as I know that the suggestions made by me will be of more than individual benefit to me alone and cannot but be of value to New Zealand solicitors desiring to practice in England.

" I would add that I have mentioned the matter to the High Commissioner for New Zealand, who indicated his willingness to take the matter up on receiving the necessary authority from the New Zealand Law Society."

The following was the text of Mr. Heyting's letter to Lord Wright :—

" I write with reference to the Solicitors Bill which you presented to the House of Lords in April and should greatly appreciate it if you would allow me to draw your attention to a provision of the Solicitors Act, 1932, which in some cases works considerable hardship without any rational justification and might, therefore, in my submission, well be amended.

" Section 35 of the Act, re-enacting the Colonial Solicitors Act, 1900, provides that a solicitor of a Superior Court in a British possession to which the section applies ' Who has been in practice before such Court for not less than three years ' may, subject to the conditions laid down, be admitted as a solicitor in England without passing any examination and without serving any articles.

" The Act gives no discretion in favour of Colonial solicitors who have not been in practice before the Superior Court of the Colony in which they were admitted for the full prescribed period of three years, even though they possess what appears to be the more valuable qualification of experience for an equivalent or even longer period with a busy firm of solicitors in England.

" The effect of this is peculiarly unfortunate, having regard to the fact that the time when an ambitious Dominion or Colonial solicitor is free to come to this country is not when he is about to be come established in his own country after three years' practice there, but shortly after he has been admitted ; and feels, not illogically, that it would be more useful to spend three years acquiring a practical knowledge of the law in England than to become immersed in his own country in order to acquire the theoretical right of being admitted in England three years later when he knows nothing of English practice.

" There is no doubt a technical difference between having theoretically been in practice as a solicitor for three years (though it be a Dominion or Colony) and having been in practice as a managing clerk in London. I respectfully submit, however, that this difference is purely technical, as it would be difficult to find a Dominion or Colonial solicitor who has only been in practice three years, who has during that time been in practice on his own account as principal or whose status has in fact been any more independent or more responsible than that of a managing clerk. A solicitor who has been in practice as such has no doubt a right of audience before the Lower Courts of his Dominion or Colony, but it is significant that except in exceptional circumstances, all that a Dominion or Colonial solicitor is in practice asked to produce by way of evidence that he has been in practice for three years before his admission here is three annual practicing certificates ; no question being asked as to whether he has been in practice on his own account, or how substantial, responsible, or independent his work has in fact been or whether he has ever been inside a Court.

" I, of course, fully realize that individual cases should not be the subject of legislation, but they do demonstrate the defects in such legislation, and I therefore respectfully submit the facts of my own case to illustrate the hardship which to my knowledge has deterred a number of Colonial solicitors from seeking to take advantage of the section.

" I was admitted as a solicitor in New Zealand on March 28, 1929, and almost immediately thereafter was sent to New York in connection with the winding-up of a large estate. I was engaged in New York on this commission until July, 1931, when, after completing it, I came to London. Shortly after my arrival I joined a firm of solicitors here, and have for a number of years occupied the position of managing clerk in full and almost independent charge of a great variety of legal work, in the course of which I have had to assume the responsibility of legal missions to Berlin, Warsaw, Vienna, Geneva, Amsterdam, Paris, and elsewhere.

" This experience, however, has served me nothing for the purpose of becoming admitted here, even though it has involved work of a far more responsible and complicated nature than I would ever have had to handle as a practicing solicitor in the much smaller spheres of legal practice in New Zealand and even though it has required a practical knowledge of English law and procedure which I would not have had if I had been in practice in New Zealand for three years.

" I accordingly had to become articled to one of my principals for a period of five years in the ordinary way with the necessity of spending a year at a recognized Law School and passing all the examinations prescribed by the Act, just as if I had never studied law before ; and this notwithstanding the fact that I hold the LL.B. degree of the University of New Zealand, the LL.B. degree of Columbia University in New York, and have written quite a number of legal articles in recognized English and Scottish Law Journals, and read papers on legal subjects before the Grotius and other Legal Societies, besides occupying an almost advisory capacity in my firm here in London on complicated legal questions.

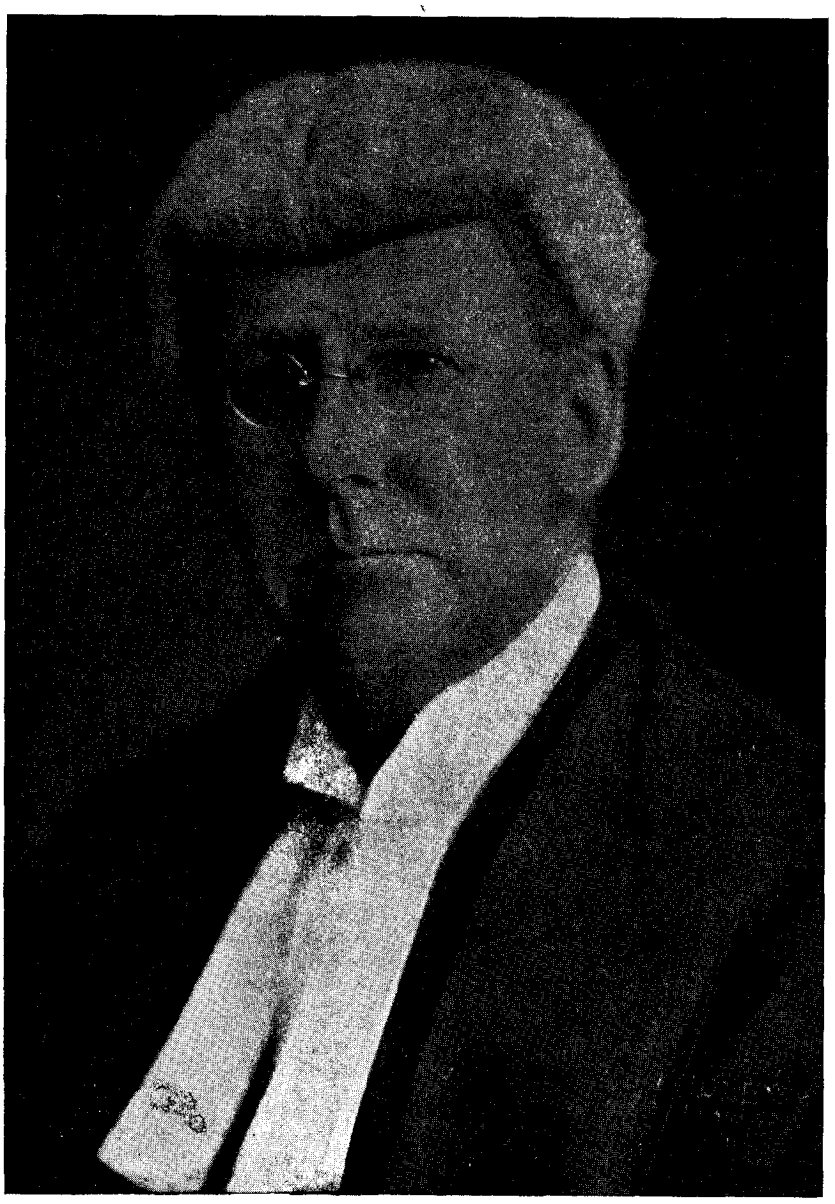
" My position is no doubt somewhat unusual, but it does illustrate the point which I should respectfully like to make that s. 35 of the Solicitors Act, 1932, might well be amended by giving the Master of the Rolls a discretion to admit Dominion and Colonial solicitors to which the section applies, who have not been in practice before the Courts to which they were admitted for three years, but who have had practical experience in England for an equivalent time upon such terms as to further examination or articles for such period as the Master of the Rolls in each case might consider necessary, having regard to the intellectual qualifications and practical experience which the particular applicant in each case has had."

The New Zealand Law Society has cabled to Mr. Heyting its approval of his proposal, and has asked him to interest the High Commissioner for New Zealand in promoting the reciprocal admission of New Zealand and English solicitors.

Retirement of the Hon. Sir John Reed.

INFORMAL FAREWELL AT WELLINGTON.

A very large and representative gathering of the legal profession assembled at the Supreme Court, Wellington, on the morning of October 2, on the occasion of the retirement from the Supreme Court Bench of the Hon. Sir John Reed, who had been acting as a temporary Justice since December 26, 1936, after holding office as Judge since 1921.



Hon. Sir J. R. Reed, Kt., C.B.E.

Among those present were the Hon. H. G. R. Mason, Attorney-General; Mr. H. H. Cornish, Solicitor-General; Mr. J. L. Stout, S.M.,; Mr. J. H. Luxford S.M.; Mr. W. H, Stilwell, S.M.; and Mr. A. M. Goulding, S.M.

Mr. A. T. Young, President of the Wellington District Law Society, said it was his privilege to address Sir John Reed on behalf of the Wellington practitioners, who thanked him for consenting to meet them in an informal way.

"Your Honour was elevated to the high office of one of His Majesty's Judges in 1921, and you have now held that office continuously for eighteen years, which is an unusually long period," Mr. Young said. "We in Wellington count ourselves fortunate that during practically the whole of your judicial career you have been stationed in Wellington. His Majesty was pleased to confer upon you in 1936 the honour of Knighthood, and, if I may say so, there never was a better merited title conferred (*applause*).

"In British countries we have learnt to expect a high degree of judicial excellence, and I say with respect that your Honour has at all times and in all places maintained to the full that high standard. It is not so much to your judicial attainment that I desire to refer to-day. Your Honour has been more than ordinarily endowed with the milk of human kindness and understanding (*applause*). Each and everyone of us has at one time or another had help and encouragement at your hands for which we are grateful.

"While your Honour held office it was hardly fitting for us to give public expression to our feelings, but now that you have officially relinquished the high office of Judge we are not under the same restraint, and, on behalf, therefore, of the Wellington Bar, I desire to say to you 'Thank you' for all those little acts of kindness of courtesy and of help which at all times have made the task of counsel appearing before you so pleasant.

"And now it remains for us to say farewell. We hope that you will long be spared to enjoy your well-earned retirement, and it is the wish of all of us that you and Lady Reed will enjoy good health.

"I do not know what hobby or vice you propose to follow, but I expect that Bridge will be one of the vices. My wish is that in whatever directions your activities lie, you will bid and get many a grand slam vulnerable and that is the wish of all of us" (*applause*).

The New Zealand Law Society.

The next speaker was Mr. H. F. O'Leary, K.C., President of the New Zealand Law Society, who said he was sure the practitioners throughout New Zealand would desire to be associated with their brethren in Wellington in this farewell and in this expression of affection and esteem for Sir John Reed.

"It must be remembered that your practice at the Bar was in Auckland, where you are very well known

and your duties as a Judge did not confine your work to Wellington. Your regular and frequent visits on Circuit made practitioners in every Circuit town of the North Island, and in some in the South Island, very well acquainted with you, I, therefore, have much pleasure in associating the profession throughout New Zealand with the gathering," Mr. O'Leary proceeded. "This is a gathering of farewell, but it is also a gathering which as I have said desires to manifest its esteem and affection for you (*applause*). To practise before you has been a delight—a delight, because whether you were for us or against us you were ever patient and courteous, urbane and pleasant (*applause*).

"I would think too that you have enjoyed your sojourn on the Bench. You came well equipped with law, and after a very extensive practical experience and a wide knowledge of men and the world. But perhaps you have particularly enjoyed your period because of the possession of these qualities of patience, courtesy, and urbanity which have meant so much to us.

"We do hope that you and Lady Reed, who have shared together your early struggle, your period of success at the Bar, and, finally, your dignity as a Judge, will long live to enjoy a happy and honourable retirement into which I assure you you take the good wishes and the sincere regards of the profession throughout New Zealand (*applause*).

Sir John Reed, in reply, said he very much appreciated the practitioners' action in assembling to say good-bye. He felt that he had no right to expect it in view of the fact that notice of his leaving the Bench has so often failed to eventuate.

"Moreover on one at least of these occasions you have wined me and dined me and formally wished me good-bye," he continued. "And this does not only apply to Wellington, but to several of the other Circuit towns as well. It reminds me of something in one of Gilbert and Sullivan's operas:

"'I go, I go' (*Chorus*): 'But you don't go.'

"You might very well have thought on this occasion: 'We have already said good-bye more than once and there is no duty of courtesy which calls upon us, again to take any notice when he does slip off.' I therefore take it as a very sincere compliment that you have come here this morning, no doubt at some personal inconvenience, to mark—I think I may safely say—my final retirement.

"It is more than eighteen years since I first sat on the Bench in Wellington," said Sir John. "As I look back over the years I have been on the Bench my mind recalls the many eminent counsel who were in active practice at the Bar when I was first appointed. Death has accounted for some, and we no longer have with us Sir Francis Bell, Sir Charles Skerrett, Sir Alexander Gray, Sir John Findlay, Sir Thomas Wilford, Mr. MacGregor, who was Solicitor-General and who afterwards became Mr. Justice MacGregor, and many others. Then, elevation to the Bench has accounted for the removal from the Bar of our present Chief Justice, Mr. Justice Blair, Mr. Justice Smith, Mr. Justice Kennedy, Mr. Justice Fair, and Mr. Justice Johnston. That all these that I have mentioned, in their time, as well as other members of the Bench, have all appeared as counsel before me, makes me appreciate that I grow old and have probably tarried too long on the Bench. Of those who were on the Bench when I first joined it Sir Walter Stringer and Sir Alexander Herdman alone are living.

"My appointment took place on the retirement of three Judges—Mr. Justice Edwards, Mr. Justice Cooper, and Mr. Justice Chapman—and they were replaced by Sir John Salmon (who had been acting temporarily), by myself, and by Mr. Justice Adams, in that order of seniority.

Changes in the Judiciary.

"It appears strange now that when I first went on the Bench there was not a single Judge who owned a motor-car or who played golf. Mr. Justice Edwards had a motor-cycle, and it was a source of great annoyance to him that big drays and lorries would not give him proper room to pass on the road. He didn't forget it, either, when a lorry-driver happened to come into the witness-box.

"The result of the absence of the distraction of owning a motor-car or playing golf was a very full attendance of Judges on Saturdays, Sundays, and holidays in the Judges' Library. I acquired that habit then, and, curiously enough, it is one of the things that I shall miss most.

"In the Courts in my first few years on the Bench an action or criminal charge involving a motor-car was very exceptional. It was the commencing period of a depression following on a boom in land, with the result that the principal cases were actions in which contracts for the purchase of land were involved, the purchasers endeavouring to get out of their contracts owing to the bottom having dropped out of the land market.

The Current Trend of Affairs.

"The law Courts reflect, as in a mirror, the current trend of affairs," continued Sir John. "I do not attempt to foreshadow what the reflection may be of the conditions now coming upon us. Is it possible that prosecutions for attempted evasion of income-tax may occupy part of the time of the Courts. Then I think it is fairly obvious that the Supreme Court will be required to interpret some of the new legislation. A draftsman, however competent, in dealing with new legislation, cannot be expected to visualize and provide for every condition that may arise in its operation, with the result that the industrious and worthy lawyer will be given the opportunity of earning an honest penny in assisting to straighten out the tangles, and arguments pro and con will revolve round that pleasing fiction 'the intentions of the Legislature.' May you all have a fair share of the briefs.

"The substantial business of the Supreme Court will, however, still be motor-collision cases and divorces," said Sir John. "I have said that when I first came on the Bench motor-collision cases were rare. As the use of motor-cars increased, so did these actions. Until comparatively recently the plaintiff almost never failed in his action. Looked at from the point of view of the Bar, this was a highly satisfactory state of affairs, but it was not so regarded by the Bench.

"Numerous cases came before us where it was obvious that the plaintiff was not entitled to succeed, and I know of nothing more trying to the nerves of a Judge than to see a jury deliberately ignoring the evidence and allowing sympathy with an injured plaintiff to give him a verdict to which he was not entitled. At first the Courts set aside some of these verdicts, but when the Privy Council refused to support the Court and held that the jury was the tribunal to decide, nothing more could be done.

"In England, however, they got over the difficulty by making the tribunal the Judge, unless he saw fit to order a jury. This legislation has not been followed in New Zealand, but what almost amounted to a scandal is being otherwise rectified.

"The spread of the ownership of motor-cars amongst all classes of the community has resulted in a fair proportion of the members of a common jury being themselves owners, with the result that two things follow: first, such owners are able to understand and appreciate the evidence of the movements of those concerned in a collision, and from their own knowledge are able to judge where the fault lies; and, secondly, they appreciate the injustice of branding an innocent person of negligence causing the death or injury of a fellow-citizen, unless they are satisfied that the evidence requires such a verdict.

"'After all,' they probably reason, 'I might be in that position myself some day, and how would I like to have my character as a motorist branded for all time as a negligent driver, when the fault lay entirely on the injured person?' My personal experience is that latterly it has become increasingly difficult for counsel to obtain verdicts from juries in favour of plaintiffs in motor-collision cases unless the evidence clearly warrants it. From the point of view of a Judge this is eminently satisfactory.

THE ALARMING INCREASE OF DIVORCE CASES.

"I have mentioned divorce cases," continued Sir John. "These are increasing to an alarming extent The worst features in connection with these cases are, first, that so many of the marriages have been of short duration, and, secondly, the absence of children born of the marriages. It used to be said that the economic position ruled the size of a family, and that given good social conditions a reasonable number of children would be permitted to be born.

"Wages have been raised to a sum which is based on providing for at least one child in a home, but this does not seem to result in the production of a child. Perhaps the fact that the cost of rearing a child would limit the amount of petrol that could be purchased for the motor-car may affect the position. I don't know; what I do know—I have recently seen it authoritatively stated—is that the increase of population threatens to come to a standstill in New Zealand in 1943—four years hence—if the birth-rate continues to deteriorate and unless emigration sets in again to fill the gap. This, however, is not the time or place to discuss this question. Having called attention to the position as revealed in proceedings in the Courts, my duty is at an end."

At the conclusion of the function Sir John shook hands with every one who had attended the gathering.

Death Duties Accounts.

Stamp Office Requirements.

In the regulations under the Death Duties Act, 1921, it is provided that Form L should set out the age of the deceased and the ages of the successors. The Stamp Duties Office asks that practitioners should insert these particulars in Form L when forwarding accounts.

Shares in foreign companies, sometimes returned in the Tenth Schedule, should always be correctly returned in the Twenty-sixth Schedule.

The Year Books: The Ancestors of the Red Book.

By S.H. MOYNAGH.

The modern red Year Book does not inspire the same feeling of respect and necessity as, say, *Salmond on Torts*, *Morison on Companies*, or *Goodall on Conveyancing*, to mention, at random, a few of our New Zealand legal authors, but what a mine of information it is, comparable only with Alban Butler's *Lives of the Saints* or *Mrs. Beeton's Cookery Book*. Grimly clad in kingly, but cautionary crimson, it stands an almost living warning of the dire penalties we may expect from The Eagle Eyed Ones if we expansively inform them in our Divorce Petition, when it is unnecessary, that our miserably pathetic client knows nothing of connivance or collusion, or if our newly engaged (to wed) typist dreamily makes us swear an affidavit that we have served our Petition exactly one year and four days before we issued it; or again, what silent rebuke it gives us when we send an all urgent Writ to our Agent to serve, and he, with sublime indifference, sends it back having taken the affidavit of service himself. "You consult me now," it almost shrieks at us, "but never before you fall in."

We seldom condescend to buy it either, but rely on some more opulent brother to pass us on a discarded copy when he has acquired his latest. Looking at a copy (duly acquired in this manner) the other day, I asked a friend if he knew anything of its ancestry or beginnings—he knows most things. He said nothing much at the time, but next morning bore down on me flourishing a little insignificant green book of Lectures delivered at London University in 1921 by Professor W. C. Bolland, of Lincoln's Inn, Barrister-at-Law. And what a delight it proved!

Most practitioners vaguely know that there exists somewhere a semi-mythical collection of English Year Books, but, beyond that, very little. The writer had seen a collection of the magnificent reproductions of the Selden Society housed in the vestibule of a New Zealand Law Society Library but, being on a holiday, had not time to browse through some of them. This lack of knowledge about them is not restricted to lawyers. The Professor tells us that even the Editors of the *Encyclopædia Britannica* up to the time of the eleventh edition apparently did not know of them either, because the Red Book is not referred to. But as they are the Ancestors of a book with which we live and work, it seems not inappropriate to write something about them especially with the solid assistance and unimpeachable authority of Professor Bolland behind us. It will be early apparent that anything that is written will necessarily be drawn from the Professor, and, in the beginning, I plead "guilty" in advance to the many charges of plagiarism that may be hurled at me.

The number of Lectures is three, and it is proposed to deal with them in the Professor's own sequence. The book is annealed with an introduction by Sir Frederick Pollock, who in his very limited scope also manages to gambol in much speculation concerning them. He says:

> "I agree with Mr. Bolland that the MSS. we have cannot well have been mere private fair copies of notes taken in

> Court. His reason for regarding them as commercial productions are to my mind very persuasive. Exactly when the production of such books for sale became a business, and whether it was more systematic as time went on, are questions capable of solution only when the later Year Books are critically examined."

Just so. There is nothing new under the sun, and there is some little consolation in the thought that the old Year Books inferentially tell us the editing of many new additions was then as now a feature of legal existence. It seems to have been an ever-present feature of professional life for even old Ecclesiastes complains "of the making of many books there is no end; and much study is a weariness of the flesh." Without doubt the old Year Books followed one another in rapid succession. Still to-day a reader who is lucky enough to possess reprints of them will find that they are of a fascination only equalled by one Book in our common tongue, and, when the knowledge of them spreads, they will acquire a vogue equal to, if not exceeding, say, Pepys. This cult for them has existed down all the years. The Professor tells us that Serjeant Maynard, who died in 1690, loved the old Year Books so well that he always carried one in his coach to divert him when travelling. (He said he always chose it before any Comedy); and that a girl teacher in far-away Mount Holyoke College in Massachusetts (a leading women's College in the United States of America) always took out in her boat every evening for recreation a Volume of the Year Books of 6 & 7 Edward II. And some of us remember the veneration with which the late Professor Garrow used to speak about them in his quiet retirement at Nelson.

All this seems a tiresome prologue, and I can hear some testy reader say "Come back to where you started." All right. In the first Lecture, Professor Bolland gives us a magnificent word-picture of the place of the Year Book's nativity: Westminster Hall.

> "And somewhere in that Hall, perhaps in the apprentices' crib, perhaps elsewhere, there is a little company of men, how few or how many I will not even attempt now to guess, who in some sort of shorthand of their own are noting down in the living language of the day the speeches and shifting arguments of the Serjeants and the matter of fact they spoke of, hot from the actual present life of the time, the jibes, the retorts, the quips, the criticisms of the Court, the judgment—whatever else that might interest them and what these men noted and wrote down make what we call to-day the Year Books, or part of them."

Apparently the Books are more of the nature of a diary of contemporary events than is the austere, detached chronicle of their latter-day descendant. One of the weighty happenings they chronicle and the first noted by Mr. Bolland was at the opening of a Court sitting the meticulous care to search all the Taverns adjacent to the Courts for musty or bad wine. Unfortunately, it is not recorded whether these precautions were taken in the interest of the Bench or the Bar, or, as is more likely, of the witnesses. The writers of the Books followed the Courts in their progress through the Shires, so that in them we find a survey not only of medieval urban England but of the rural parts as well. Many a quaint story of all the pomp and ceremony of the opening of the Assize in the Shires is retailed, recalling somewhat dimly the alleged pomp once displayed at the opening of our Circuit Courts in New Zealand. It is regretted that the majesty of the law in the Shires in those early days was more feared than welcomed, for we read that in 1233 the men of Cornwall "flew into the Forests at the approach of the Justices rather than abide their coming and all that it meant." However this may not be as bad as it seems, for it must be remembered that the Cornish were Celts and that this phenomenon of rapid movement at the approach of the King's Justices, though more often in isolated units than *en masse*, was not unknown even in these our times.

(To be continued).

Obituary.

Professor James Adamson.

Many legal practitioners throughout New Zealand will have learned with real regret of the recent death of Professor James Adamson. Victoria University College has always been proud of its Law School, and for its pre-eminence in this direction the College is greatly indebted to Professor Adamson, who for over thirty years, has guided the destinies of this Faculty. The profession also will have been influenced to a considerable extent by the fact that so many of its members received a large part of their early training in legal thought and practice at the hands of a teacher of such profound knowledge and high attainments.

The late Professor Adamson.

Professor Adamson was born in Forfar, Scotland, and educated at Dundee High School and the University of Edinburgh, where he graduated M.A. and LL.B. After a few years in practice as an advocate at the Scotch Bar, he was appointed to one of the Law Chairs and Dean of the Faculty of Law at Victoria University College in 1908.

The qualifications which Professor Adamson brought to his academic career in New Zealand were outstanding. Of his record as a student in the Faculty of Law at the University of Edinburgh, Sir Ludovic Grant, Dean of the Faculty, wrote: "It is no exaggeration to say that his record is one which has been rarely surpassed and rarely even equalled." Particularly interesting is the opinion which Lord Shaw of Dunfermline (then the Right Hon. Thomas Shaw, Lord Advocate for Scotland) had of Professor Adamson: "My regret, frequently expressed, is that Scotland does not afford a sufficiently ample career for men like Mr. Adamson whose equipment in learning and in law would justify public positions of great importance and value." Well equipped as he was to undertake his professional duties in New Zealand, Professor Adamson at all times strove earnestly and energetically to set for his many students a high standard of scholarship in law. He was a man of wide reading, particularly in the subjects in which he

specialized, and his deep knowledge of those subjects was well known and respected by those whom he taught.

Many real friendships grew up between the Professor and those who passed through the College as his students. It was always a matter of the greatest interest to him to follow the careers and to hear with appreciation of the successes of those whose first steps in the law had been his lectures in Jurisprudence and whose last official acts in qualifying had been to pass in Conflict of Laws under his tuition. Those who have been associated with Professor Adamson on the staff of the Law School at Victoria University College came to regard him with a very real affection, coupled with great admiration for the way in which he carried out his duties during the past few years in spite of constant and increasing ill-health.

Some years ago Professor Adamson, desiring to be more closely associated with members of the profession, was admitted to the New Zealand Bar by His Honour the late Sir Charles Skerrett, then Chief Justice.

To Mrs. Adamson is expressed the sympathy of Professor Adamson's many friends in the profession.

The War and the Judiciary.

Some Changes and Disabilities.

As to the effect of the last War on His Majesty's Judges in this country, hear the late Lord Justice Scrutton during the latter years of hostilities:

"One curious chapter in the history of the war I hope will not be allowed to pass unrecorded. One of the most interesting and symbolic functions of the Judges before the war was when with great state and archaic ceremony they went a circuit through the counties of England as representing the King to do his justice. The Red Judge was the terror of parochial criminals; and every county had its curious local incidents of a bygone past. At Exeter, in the twentieth century, the troops are confined to barracks till the Judge releases them, because in the eighteenth century there was a military officer who salutes, offers him the parade of the day, and inquires if there are any orders for the forces. At York the Judge in full robes attends a State breakfast, waited on by an official wearing the actual cap given to the ancient city by, I think, Henry IV, and the Judge, laden with a bouquet, struggles to eat marmalade under the handicap of a full-bottomed wig. At Newcastle the Lord Mayor calls on the Judges, and informs them they are going over the hills to Carlisle. (They are not; they are going first-class to Durham by the N.E.R.). And the Mayor mentions they will need daggermen to protect them against the wild Scots, so he presents the Judge with a gold coin, a Jacobus or Carolus, with which to hire daggermen. The Judge accepts the coin gratefully, converts it into a brooch for his daughter or grand-daughter, and goes off by train to Durham. On these historical and ceremonial functions, the war has pressed heavily.

"The Grand Jury, after centuries of dignified functions, have been released from their duties at assizes, and the Grand Jury lunch is no more.

"The Judge on a long and lonely circuit, when he is supposed to live, like the Sovereign he represents, in unapproachable grandeur to the tune of *God Save the King*, was cheered by the company of his youthful marshal, who acted as a sort of A.D.C.; but nearly all the marshals are serving their country at the front. The progress of the Judge to Court was in a heavy coach drawn by stalwart horses and preceded by mounted police or javelin men. But the horses are drawing the guns, the javelin men are throwing bombs, and the Judge is whirled along in a motor, to the disadvantage of any stately procession. The Judge, who used to walk with a deferential escort to his reserved railway carriage, is now lucky if he has not to stand in the corridor of the train while going his circuit.

And worst of all, the hand of the Food Controller is on the Judge of assize. The Judges were at first told by some subordinate official that they were in the same class as a commercial traveller, and must get their meals at an hotel. A suitable outburst of judicial wrath induced a superior official to promote the Judges to the same position as an ambassador, but the food is still a difficulty.

"Imagine the feelings of a Judge of assize when, as I am creditably informed has happened, he is informed that his housekeeper has managed, after twenty-four hour's struggle and a long wait in a queue, to get two mutton chops for the Judge and his staff, and he is driven to accept the hospitality of the Bar, who as usual have managed to look after themselves. I believe at present the Judge's luggage, never very small as he travels the circuit, includes his ration of sugar and a limited supply of Government cheese. How are the glories of circuit fallen!"

The late Lord Rutherford of Nelson.

Some Missing Letters.

Letters containing information necessary for a complete record of the life of the late Lord Rutherford of Nelson, the great New-Zealand-born scientist, may still be in existence somewhere in New Zealand.

This fact is reported by A. S. Eve, in the official biography of *Rutherford* published on September 22 by the Cambridge University Press. The story, in Dr. Eve's words, is as follows:

> "From the time of his going to Cambridge until the year of the death of his mother, Rutherford used to write with great regularity every two weeks, and give her an account of the events of his life. After her death about a dozen of these letters were published in a New Zealand newspaper without Rutherford's consent. He did not approve of this publicity and wrote a request that all the letters written by him to his mother should be sent to him at Cambridge. They never came. On his death the trustees both wrote and cabled that the letters should be sent promptly to England so that they could be incorporated in this authorized life. The letters were traced to a lawyer's office, but during a move they seem to have entirely disappeared. It need not be pointed out how grievous a loss this is to the world of letters and science. Indeed this brief account is here given in the hope that somewhere or somehow the missing letters may be found and published."

If any practitioner knows the whereabouts of the missing letters, he would do a great service by informing the Cambridge University Press, Bentley House, 200 Euston Road, London, N.W.1.

Practice Notes.

The Courts Emergency Powers Regulations, 1939.

The Courts Emergency Powers Regulations came into force on September 23, and are designed primarily to protect any person in respect of a contract entered into before that date, if he is financially unable immediately to fulfil his obligations thereunder by reason of circumstances directly or indirectly attributable to any war in which His Majesty may be engaged. The protection is extended to a person other than a member of His Majesty's permanent forces, who may be called up for naval, military, or air service, in respect of any contract entered into before he is called up.

The scheme of the regulations is to prohibit the enforcement of certain judgments or the exercise of certain legal remedies without the leave of the appropriate Court. That is to say, the person against whom the judgment is to be enforced, or the legal remedy exercised, must be given an opportunity of showing cause why leave should not be given.

There is a clear intention in the regulations to differentiate between judgments and legal remedies. The limitation imposed on the enforcement of judgments has reference to judgments of Courts of competent jurisdiction; that imposed on the exercise of legal remedies, to remedies which may be exercised without first procuring a judgment of the Court.

The expression "legal remedy" has been defined to mean certain specified acts, which ordinarily may be done without the intervention of the Court. Thus the owner of a chattel, the subject of a hire-purchase agreement, is no longer entitled to seize the chattel upon the default of the hirer, unless the leave of the Court has first been obtained. Yet there is no restriction on the right of the owner to sue for and obtain an order for possession of the chattel, and any such order may be enforced without leave because it is not a judgment, as defined.

The restrictions on the exercise of the powers of a mortgagee may be the subject of controversy owing to the absence of the definition of the word "mortgage."

The regulations may operate unfairly on creditors who wish to attach debts owing to the judgment debtor. In the past, the interlocutory order was obtained *ex parte*, and all the rights of the judgment debtor in the debt thereupon passed to the creditor as if assigned to him by deed. The object of the procedure is to enable the judgment creditor to intercept moneys payable to the judgment debtor. If the debtor is to receive notice of an application for leave to attach a debt before the interlocutory order is made, the debtor may be given an opportunity to circumvent the creditor. The purpose of the regulations might well be achieved, if the leave of the Court were required before moving for the order absolute, or uplifting any money paid into Court by the subdebtor.

The Magistrates in Wellington have approved the following form of Application for leave to proceed under the Regulations:—

IN THE MAGISTRATES' COURT HOLDEN AT WELLINGTON

Plaint No. /19 .

Minute-book No. /19 .

IN THE MATTER of the Courts Emergency Powers Regulations, 1939;

AND

IN THE MATTER of the Magistrates' Courts Act, 1928,

OR

BETWEEN.....

of....., ...,

APPLICANT

AND.....

of....., ...,

RESPONDENT.

APPLICATION

Under Regulation 5 of the Courts Emergency Powers Regulations, 1939.

I [*or* We],.....(Solicitor(s) for) the above-named applicant HEREBY APPLY FOR LEAVE OF THE COURT [*or* MAGISTRATE] to exercise the following remedy or remedies, under Regulation 4 of the above Regulations.

Dated at.....this.....day of....., 19.....

.....

Solicitor(s) for Applicant.

NOTICE OF TIME AND PLACE FOR HEARING ABOVE APPLICATION.

To the above-named respondent,.....

TAKE NOTICE that the above application will be heard at the MAGISTRATES' COURT, WELLINGTON (Upstairs Court-room No.) at the hour of.....a.m. on.....day, the.....day of....., 19....., AND THAT if you desire to oppose such application upon the grounds that you are unable immediately to satisfy the judgment or to pay the debt or to perform the obligation in question BY REASON OF CIRCUMSTANCES DIRECTLY OR INDIRECTLY ATTRIBUTABLE TO ANY WAR IN WHICH HIS MAJESTY MAY BE ENGAGED YOU MUST APPEAR and show cause why an Order of the Court or of the Magistrate should not be granted AND THAT if you do not appear such application will be heard and determined in your absence.

Given under my hand and the Seal of the Court, this..... day of....., 19.....

Clerk of Court.

[To the Respondent: If you are under Military Control and by reason of your military duties (or for other cause while under Military Control) you are prevented from attending personally at the hearing, you must obtain a certificate from your superior officer stating that you are unable to attend and setting out the reason. The certificate should be delivered to (or posted to reach) the Clerk of Court by noon of the day preceding the day of hearing.]

[ENDORSEMENT.] Plaint No. /19 .
Minute-book No. /19 .

IN THE MAGISTRATES' COURT
HOLDEN AT WELLINGTON.

IN THE MATTER of the Courts Emergency Powers Regulations
AND
IN THE MATTER of the....., 19....

BETWEEN.....
Applicant,
AND.....
Respondent.

APPLICATION FOR LEAVE
TO

Date of Filing:.....
Date of Hearing:.....

Decision:

Stipendiary Magistrate.

.....for Applicant.
.....for Respondent.

AFFIDAVIT OF SERVICE OF APPLICATION AND NOTICE OF HEARING.

I,....., of....., ..., do swear that I served the within-named .....with an application and notice a copy of which is within written by delivering the same to him personally at.....on.....the.....day of ....., 19....., or by sending the same to him by registered letter (numbered.....) addressed to him at his last known or most usual place of abode—namely, ... on the.....day of....., 19....., and I attach hereto a receipt for such registered letter given by a Post officer and purporting to be signed by the said respondent.

Sworn at..... this.....day of....., 19....., before me :—

.....
(*Signature of Deponent.*)

Justice of the Peace for New Zealand.
Clerk of the Court.
Solicitor of the Supreme Court.

This application must be served personally or by registered post not less than seven days before the day of hearing unless grounds exist which in an ordinary action would have justified an order for summary service under the powers conferred by s. 71 of the Magistrates' Courts Act, 1928.

Correspondence.

The Indeterminate Sentence: Reply by the Chairman of the Prisons Board.

The Editor,
NEW ZEALAND LAW JOURNAL,
Wellington.

SIR,—

In your JOURNAL of September 19 you publish an article on "The Indeterminate Sentence and Prison Reform," by A. M. Finlay, Ph.D. LL.M., which I have read with some interest, though there is nothing new in it. I have not heard of this writer, but gather from reading his article that he is at present in America. It is obvious that he is not acquainted with the principles on which the Prisons Board in this country, of which I am Chairman, performs its functions, and this ignorance has led him into a serious misstatement of fact which is somewhat surprising in a man who has had so high an education as to have obtained the degree of Doctor of Philosphy. After giving an account of the functions of the Parole Board in America the writer says :

> "At first sight this might appear to be almost indistinguishable from the functions of the New Zealand Prisons Board, but there is in fact a wide difference, for in the United States of America the guiding consideration is not the length of time served, but evidence of rehabilitation. Moreover, the release of a prisoner on probation in New Zealand seems to be a reward for docile behaviour during his incarceration, a sort of reduction for good conduct."

This passage contains or implies a statement of fact that with the New Zealand Prisons Board the guiding consideration in recommending release is the length of time served and the good conduct of the prisoner while in prison, which is quite untrue, and shows that the writer has no knowledge of the work done by our Prisons Board. A similar statement has been made by a few persons banded together under the name of the New Zealand Howard Penal Reform League, who are so anxious to attack the administration of criminal justice and of prisons in this country that they can find little good in the first and none whatever in the second. If the writer had even taken the trouble to consult the Reports to Parliament of our Prisons Board he could not have made this mistake. In the Report for 1936 a full statement is made of the material put before the Board in order to enable it to arrive at a decision, and of the matters which the Board takes into consideration in making or declining to make a recommendation. The report contains the following passage :—

> "The Secretary of the Board is required to prepare and place before the Board a full statement of the circumstances connected with each case that is brought up for consideration. In actual practice files are produced, giving summarized extracts from the depositions, the evidence, and the prisoner's history, and record, which contain the family history showing mental and criminal tendencies (if any), career of crime (if any), mode of life, conduct, and industry whilst in detention, response to previous treatment (if any), Magistrate's report, medical reports, Police reports, and reports and recommendations of officers in charge of prisons. The petitions of the prisoner and reports by relatives, friends and interested social workers are also placed before the Board.
>
> "When reviewing cases, the Board takes into consideration the question of oversight and employment on release, in many cases directing the Secretary to write to interested persons likely to befriend or assist a prisoner and possibly prevent further lapse into crime. It is claimed that much of the success of the system is due to the care exercised in this direction. The Prisons Board regularly reviews cases and frequently cases are considered several times before release or discharge is agreed upon, the aim being the rehabilitation of the offender without undue risk to the community.
>
> "The ready co-operation of the Director-General, Mental Hospitals Department, and his staff of trained psychiatrists, in conducting examinations of prisoners and inmates continues to be of very valuable assistance to the Board."

It will be seen from the above-quoted extract, which accurately describes the Board's method of procedure, that the consideration upon which it bases its recommendations for release on probation from indeterminate sentences is the likelihood of rehabilitation.

Yours truly,
H. H. OSTLER,

Judge's Chambers,
Wellington, October 4, 1939.

Acts Passed, 1939.

Public Acts.

No. 10. Adhesive Stamps Act, 1939.
No. 22. Agricultural Emergency Regulations Confirmation Act, 1939.
No. 24. Appropriation Act, 1939.
No. 30. Customs Acts Amendment Act, 1939.
No. 13. Domestic Proceedings Act, 1939.
No. 8. Emergency Regulations Act, 1939.
No. 43. Fair Rents Amendment Act, 1939.
No. 3. Finance Act, 1939.
No. 38. Finance Act (No. 2), 1939.
No. 14. Hire-purchase Agreements Act, 1939.
No. 18. Hutt Road Act, 1939.
No. 1. Imprest Supply Act, 1939.
No. 5. Imprest Supply (No. 2), 1939.
No. 2. Industrial Conciliation and Arbitration Amendment Act, 1939.
No. 37. Industrial Conciliation and Arbitration Amendment (No. 2) Act, 1939.
No. 34. Land and Income Tax Amendment Act, 1939.

No. 4. Land and Income Tax (Annual) Act, 1939.
No. 35. Land Laws Amendment Act, 1939.
No. 7. Land Transfer Amendment Act, 1939.
No. 42. Legal Aid Act, 1939.
No. 12. Legitimation Act, 1939.
No. 25. Local Legislation Act, 1939.
No. 40. Marketing Amendment Act, 1939.
No. 19. Meat Act, 1939.
No. 16. Municipal Association Act, 1939.
No. 28. Native Purposes Act, 1939.
No. 17. New Zealand Library Association Act, 1939.
No. 20. Nurses and Midwives Registration Amendment Act, 1939.
No. 26. Patents, Designs and Trade-marks Amendment Act, 1939.
No. 6. Property Law Amendment Act, 1939.
No. 41. Reserve Bank of New Zealand Amendment Act, 1939.
No. 23. Reserves and Other Lands Disposal Act, 1939.
No. 32. Rural Housing Act, 1939.
No. 21. Small Farms Amendment Act, 1939.
No. 31. Social Security Amendment Act, 1939.
No. 39. Statutes Amendment Act, 1939.
No. 11. Summary Penalties Act, 1939.
No. 15. Taieri River Improvement Amendment Act, 1939.
No. 9. Transport Law Amendment Act, 1939.
No. 36. Visiting Forces Act, 1939.
No. 27. Wages Protection and Contractors' Liens Act, 1939.
No. 29. War Expenses Act, 1939.

Local Acts.

No. 10. Auckland City Empowering Act, 1939.
No. 1. Bluff Borough Empowering Act, 1939.
No. 2. Bluff Harbour Board and Bluff Borough Council Empowering Amendment Act, 1939.
No. 3. Christchurch City Empowering Act, 1939.
No. 4. Christchurch Tramway District Amendment Act, 1939.
No. 11. Lower Clutha River Improvement Amendment Act, 1939.
No. 8. Napier Harbour Board Loan Amendment Act, 1939.
No. 5. Nelson Harbour Board Empowering Act, 1939.
No. 6. New Plymouth Borough Land Exchange and Empowering Act, 1939.
No. 9. Otago Harbour Board Empowering Act, 1939.
No. 7. Papanui Memorial Hall Enabling Act, 1939.
No. 12. Waikato Airport Act, 1939.

Private Act.

No. 1. Otago Presbyterian Church Board of Property Amendment Act, 1939.

Recent English Cases.

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

AGENCY.

Commission—Agent Prevented from Earning—Sole Agent—Sale Effected Through Another Agent After Termination of his Authority—Damages—Assessment of Damages.

A sole agent is not necessarily entitled, if the property is sold through other means, to the full commission on the price paid.

HAMPTON AND SONS, LTD. *v.* GEORGE, **[1939] 3 All E.R. 627. K.B.D.**

As to sole agents: see HALSBURY, Hailsham edn., vol. 1, pp. 256, 257, par. 431; and for cases: see DIGEST, vol. 1, pp. 559, 560, Nos. 2081–2083.

BANKERS.

Cheque—Wrongful Dishonour—Non-trader—Proof of Damage.

If a cheque drawn by a person who is not a trader is wrongfully dishonoured, only nominal damages can be awarded unless actual damage is proved.

GIBBONS *v.* WESTMINSTER BANK, LTD., **[1939] 3 All E.R. 577. K.B.D.**

As to wrongful dishonour: see HALSBURY, Hailsham edn., vol. 1, p. 827, par. 1348; and for cases, see DIGEST, vol. 3, pp. 217–221, Nos. 549–570.

DIVORCE.

Desertion—Agreement at Time of Marriage to Live Apart—Subsequent Requests by the Petitioner to Cohabit—Unreasonable Refusal.

Where there has been no cohabitation by agreement between parties to a marriage, there may be desertion if one party unreasonably refuses to set up a home.

SHAW *v.* SHAW, **[1939] 2 All E.R. 381. P.D.A.D.**

As to desertion: see HALSBURY, Hailsham edn., vol. 10, pp. 654–658, pars. 964–967; and for cases: see DIGEST, vol. 27, pp. 306–316, Nos. 2837–2939.

Desertion—Insanity—Certification of Deserting Spouse—Presumption Against Rationality on Subject of Cohabitation—Whether Statutory Period Interrupted.

The presumption that desertion is suspended by insanity is a rebuttable one.

BENNETT *v.* BENNETT, **[1939] 2 All E.R. 387. P.D.A.D.**

As to divorce on the ground of desertion: see HALSBURY, Supp. Divorce, par. 971; and for cases: see DIGEST, vol. 27, p. 319, Nos. 2974–2977.

GIFTS.

Donatio Mortis Causa—Chattels—Delivery—Choses in Action—Bank Deposit Book.

The delivery of a bank deposit book is not a valid donatio mortis causa *of the money in the deposit account.*

DELGOFFE *v.* FADER, **[1939] 3 All E.R. 682. Ch.D.**

As to delivery in *donatio mortis causa*: see HALSBURY, Hailsham edn., vol. 15, pp. 743–747, pars. 1284–1287; and for cases: see DIGEST, vol. 25, pp. 543–546, 550–555, Nos. 300–313, 357–390.

INNS AND INNKEEPERS.

Negligence—Duty to Light Passages—Reasonable Hours—Doorway Leading Immediately to Steep Flight of Steps.

The general duty of an innkeeper to take proper care for the safety of his guests extends to those places where they may reasonably be expected to go at reasonable hours.

CAMPBELL *v.* SHELBOURNE HOTEL, LTD., **[1939] 2 All E.R. 351. K.B.D.**

As to personal safety of guests: see HALSBURY, Hailsham edn., vol. 18, pp. 148–150, pars. 206, 207; and for cases: see DIGEST, vol. 29, pp. 9, 10, Nos. 116–127.

MONEYLENDING.

Memorandum—Insufficiency—Guarantee and Bill of Sale—Clause that if Bill of Sale Became Invalid, Guarantors Would Repay Loan and Interest—Clause not Referred to in Memorandum—Moneylenders Act, 1927 (c. 21) s. 6.

The memorandum of a loan secured by a bill of sale and a guarantee must contain any unusual terms in the guarantee.

CENTRAL ADVANCE AND DISCOUNT CORPORATION, LTD. *v.* MARSHALL, **[1939] 3 All E.R. 695. C.A.**

As to sufficiency of memorandum: see HALSBURY, Hailsham edn., vol. 23, pp. 190, 191, par. 280; and for cases: see DIGEST, Supp., Money and Moneylending, Nos. 353*a*–353*y*.

NEGLIGENCE.

Degree of Care Required — Children — Allurement — Child Running into Highway—Lorry Laden with Sacks of Sugar—Sugar Escaping on to Highway—Provision of Look-out Man at Rear.

Where a dangerous object is brought on the highways, and that object is an allurement to children, adequate precautions must be taken to prevent injury to children arising therefrom.

CULKIN *v.* MCFIE AND SONS, LTD., **[1939] 3 All E.R. 613. K.B.D.**

As to standard and degree of care in case of children: see HALSBURY, Hailsham edn., vol. 23, pp. 584–586, par. 836; and for cases: see DIGEST, vol. 36, pp. 68–72, Nos. 433–472.

Property Adjoining Highway—Forecourt Indistinguishable from Pavement—Duty to Repair Forecourt—Liability to Passer-by.

The owner of premises adjoining the highway owes a duty to make that part of the premises adjoining the highway safe for passers-by who might suppose that such part was in fact part of the highway.

OWENS *v.* THOMAS SCOTT AND SONS (BAKERS), LTD., AND WASTALL, **[1939] 3 All E.R. 663. K.B.D.**

As to duty towards public of owner of premises adjoining public place: see HALSBURY, Hailsham edn., vol. 23, pp. 619–621, par. 870; and for cases: see DIGEST, vol. 26, pp. 416–419, Nos. 1356–1380.

Fire—Accidental Fire—Escape of Fire to Adjoining Premises —Principle in *Rylands* v. *Fletcher*—Fires Prevention (Metropolis) Act, 1774 (*c.* 78), s. 86.

A drum of paraffin is a dangerous article within the doctrine of Rylands *v.* Fletcher.

MULHOLLAND AND TEDD, LTD. *v.* BAKER, **[1939] 3 All E.R. 253. K.B.D.**

As to negligence in regard to fire: see HALSBURY, Hailsham edn., vol. 23, pp. 624–627, pars. 875–881; and for cases: see DIGEST, vol. 36, pp. 53–55, Nos. 333–340.

STREET TRAFFIC.

Reporting Accidents—Accident Due to Presence of Vehicle on Road—Damage to Stone Wall and to Vehicle—Failure of Driver to Report Accident to Police or to Give Name and Address—Whether Damage or Injury to Any Person, Vehicle, or Animal—Road Traffic Act, 1930 (c. 43), s. 22.

Damage to a wall is not damage to "any person, vehicle, or animal" under s. 22 of the Road Traffic Act, 1930.

PAGET *v.* MAYO, **[1939] 2 All E.R. 362. K.B.D.**

As to reporting accidents: see HALSBURY, Hailsham edn., vol. 31, pp. 675, 676, par. 998; and for cases: see DIGEST, Supp., Street Traffic, No. 232*d*.

Rules and Regulations.

Industrial Efficiency Act, 1936. Industry Licensing (Oyster-dredging) Notice, 1939. September 21, 1939. No. 1939/178.

Industrial Efficiency Act, 1936. Industry Licensing (Fish-export) Notice, 1939. September 21, 1939. No. 1939/179.

Industrial Efficiency Act, 1936. Industry Licensing (Fish-canning) Notice, 1939. September 21, 1939. No. 1939/180.

Industrial Efficiency Act, 1936. Industry Licensing (Fish Retailing) Notice, 1939. September 21, 1939. No. 1939/181.

Industrial Efficiency Act, 1936. Industry Licensing (Fish Wholesalers) Notice, 1939. September 21, 1939. No. 1939/182.

Industrial Efficiency Act, 1936. Industry Licensing (Fishing) Notice, 1939. September 21, 1939. No. 1939/183.

Fisheries Act, 1908. Trout-fishing (North Canterbury) Regulations, 1937, No. 2, Amendment No. 2. September 20, 1939. No. 1939/184.

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