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

"Fairness of statement; a subtle and indefinable power of persuasiveness, which I once called light without excessive heat, and yet with the fervour that never passes the bounds either of good taste and of good sense; a dexterity and resourcefulness both in the strategy and the tactics of the forensic field; and a most scrupulous regard for the highest standards of professional honour."

—LORD OXFORD AND ASQUITH, on the qualifications for successful advocacy.

Vol. XV. Tuesday, December 5, 1939. No. 22.

The Notification of Motor Accidents.

ANY motorist, who is unfortunately involved in an accident, is under a dual obligation to notify the fact of such accident. He may be criminally liable, if he fails to do so; while, civilly, he may place himself under a heavy financial liability by reason of his neglect to comply with the relevant statutory provisions.

Section 5 of the Motor-vehicles Amendment Act, 1936, is a statutory command to the motorist concerned in any accident, and applies whether he is negligent or not: *The King v. Bowden*, [1938] N.Z.L.R. 247; and, as to the obligation to ascertain whether any person has been injured and to render all practicable assistance to an injured person, see *The King v. Tait*, [1939] N.Z.L.R. 543. Before there can be a breach of the section, there must be an "accident"; and that word, as used in the section, includes an event untowards so far as the motorist is concerned, which may cause injury to the person to whom it happens: *The King v. Bowden* (*supra*).

Section 5 (1) provides that where an accident arising directly or indirectly from the use of a motor-vehicle occurs to any person, the driver of the motor-vehicle must stop, and he must also ascertain whether he has injured any person, in which event he must render all practicable assistance to the person injured. The phrase, "accident arising directly or indirectly from the use of a motor-vehicle," in the subsection was held in *Bowden's* case to be of general application and not to be restricted to the "hit and run" motorist.

Every person who fails to comply with any obligation imposed on him by the foregoing provision commits a crime, and is liable on indictment to imprisonment for a term of five years, or to a fine of five hundred pounds.

Subsection 2 of the same section provides:

> "In the case of any such accident (whether any person has been injured thereby or not) the driver of the motor-vehicle shall, if required, give to any constable, or to any person concerned, his name and address, and also the name and address of the owner and the registered number and the distinguishing mark or marks of the motor-vehicle. If the accident involves injury to any person and has not already been reported to a constable the driver shall forthwith report the same at the nearest police-station."

A breach of this subsection constitutes an offence, and the person committing it is liable to a fine of £20.

The word "forthwith" in subs. 2 means within a reasonable time, or as soon as reasonably possible; in other words, prompt notice be given at the nearest police-station: see, generally, as to the word "forthwith," (1932) 8 N.Z.L.J. 53.

This highly penal section must be construed as far as possible by giving each word its popular meaning, and not attributing to it any technical legal sense. This construction should be given because the section is addressed to motorists generally, and nowadays the large majority of adult males in all classes of society and a very large number of females are motorists: per Myers, C.J., delivering the judgment of the Court of Appeal in *The King v. Bowden* (*supra*), at p. 254.

In *The King v. Tait* (*supra*), at p. 548, the Court of Appeal, when dealing with the meaning of subs. 1, *cit. sup.*, said that a driver of a motor-car must understand that, when an accident has happened, and he goes away without having rendered any assistance by reason of the assumption that the injured person is dead—which assumption turns out to be wrong—he does so at his peril. It seems, therefore, that if a motorist assumes that an accident in which he has been involved has not resulted in injury to any person, and he fails to report forthwith at the nearest police-station, he likewise places himself in peril of the penal consequences of subs. 2, if it turns out that any person has been injured, and he has not already given the necessary particulars of the accident to a constable or to any person concerned.

Turning now to the civil obligations of a motorist who fails to report an accident to the insurance company insuring him against third-party risks, s. 11 (1) of the Motor-vehicles Insurance (Third-party Risks) Act, 1928, provides as follows:

> "11 (1) On the happening of any accident affecting a motor-vehicle and resulting in the death of or of personal injury to any person, it shall be the duty of the owner forthwith after such accident, or if the owner was not in charge of the motor-vehicle at the time of the accident, forthwith after he first becomes aware of the accident, to notify the insurance company of the fact of such accident, with particulars as to the date, nature, and circumstances thereof. . . .
>
> "(2) Notice of every claim made or action brought against the owner or to the knowledge of the owner made or brought against any other person on account of any such accident shall be forthwith thereafter given by the owner to the insurance company, with such particulars as the insurance company may require."

In a recent judgment, *Public Mutual Insurance Co. of New Zealand, Ltd. v. H. and H. Motors*, delivered by Mr. Justice Ostler, at Invercargill, on the 13th ult., the facts were that an accident had occurred to a female passenger in a motor-vehicle with which a motor-bus, the property of the defendants, collided. Eight weeks after the date of the accident, the insurance company was first notified of the accident, in a letter from the motor-bus proprietors, which was as follows:—

> "At the time we were led to believe that Miss H. was suffering from shock and no claim was likely to be made, so we never advised you, but now we learn that, whether the injury was serious or not, a claim is to be lodged."

This letter, the learned Judge observed, indicated that the driver had reported to the defendants that he honestly thought that the injuries were slight and that no claim would be made, and the controlling director of the defendant company knew this on the date of the accident. But, His Honour proceeded, after quoting subs. 1 of s. 11, *cit. sup.*,

> "The words 'personal injury' in the subsection have no qualification. They are not confined to serious personal injury, or personal injury for which the person injured indicates that he intends to make a claim. If there is any personal injury at all, it is the duty of the owner of the motor-vehicle forthwith after he becomes aware of the accident to report it. Shock is personal injury, and the controlling director of the defendant company knew that the young woman was suffering from shock. It was, therefore, his duty to report, and he failed to do so."

Again, in this subsection, the word "forthwith" is used. In *Australian Provincial Assurance Association, Ltd. v. Harman*, [1931] G.L.R. 557, His Honour the Chief Justice, Sir Michael Myers, said that s. 11 of the Motor-vehicles Insurance (Third-party Risks) Act, 1928, makes it plain that it is the duty of the motorist to see that prompt notice of the accident is given to the indemnifying insurance company. He proceeded:

> "Section 11 does not use the words 'prompt notice.' It requires that notice shall be given forthwith after the accident or after the owner of the car which does the damage first becomes aware of the accident, but no doubt the word 'forthwith' means within a reasonable time, which is very much the same thing as 'prompt'."

In the same case, His Honour went on to refer to the liability cast on motorists by subs. 4 of the same section, which is as follows:—

> "(4) If the owner fails to give any notice or otherwise fails to comply with the requirements of this section in respect of any matter, the insurance company shall be entitled to recover from him as a debt due to it an amount equal to the total amount, including costs, paid by the insurance company in respect of any claim in relation to such matter."

The learned Chief Justice said:

> "The insurance company indemnifies the owner, and it is the company's money that is at stake. Consequently it is only just that the company should have the earliest opportunity of investigating the claim and of preparing the defence, or, if it satisfies itself that the accident has arisen through the negligence of the insured, of endeavouring to settle the matter on reasonable terms. The Legislature has recognized the justice of that position, and has in express terms required the insured motor-car owner to give notice of the accident forthwith to the insurance company. It goes further and says that, if the owner fails to give any notice or otherwise fails to comply with the requirements of the section in respect of any matter, the insurance company shall be entitled to recover from him, as a debt due to it, the total amount, including costs, paid by the insurance company in respect of any claim in relation to such matter."

In that case, the offending motor-car owner had to pay to the insurance company, as the price of his failure to notify it of the accident in terms of the subsection, the sum of £478 12s., being the amount of the judgment and costs in the action brought by the injured person against the motor-car owner, and paid, in terms of its statutory obligation, by the insurance company.

In the recent case at Invercargill the insurance company had paid to the injured young woman the sum of £200 in settlement of her claim. The learned Judge gave judgment for this amount and costs against the owners of the motor-bus who had failed to comply with the notice requirements of s. 11.

In the course of his judgment in the recent case, Mr. Justice Ostler referred to the words "any notice" in subs. 4 of s. 11. These words, he said, must be read as "any such notice," as that is the only way in which to make the section comply with the obvious intention of the Legislature.

In the words of Blair, J., in *S.I.M.U. Mutual Insurance Association v. Minson's Ltd.*, [1938]N.Z.L.R. 829, 840, the whole of s. 11 is framed to ensure that on the happening of an accident the indemnifiers are to get prompt notice, and that nothing shall be done by the insured in anywise to prejudice the indemnifier's position. And this necessarily imposes on the motorist concerned in an accident the strict observance of the statutory provisions in regard to notification, or, in default of giving such notice, the ever-present possibility of his incurring the civil liability to which reference has been made.

The Workers' Compensation Court.

FOR some years this JOURNAL has consistently, and frequently, advocated the establishment of a separate Court to deal exclusively with claims for workers' compensation, with jurisdiction completely isolated from the Court of Arbitration, which would be left to the consideration of purely industrial matters. Over the whole lifetime of the JOURNAL, editorial support has been given to this proposal, principally because of the need for the speeding up of the work of an overburdened tribunal. The Court itself was not at fault, as it has always worked at high pressure and its judgments have been given with commendable expedition. But delay in the settlement of claims under the Workers' Compensation Act led to consequences that were disadvantageous, in differing ways, to employers, workers, and insurance companies.

It is a matter for satisfaction that the reform which we have so often advocated has now been adopted by the Government, and the announcement made by the Minister for Labour that the Hon. Mr. Justice O'Regan would preside over a separate Workers' Compensation Court, while another Court of Arbitration would deal exclusively with industrial matters, is an improvement in the method of dealing with workers' compensation claims that is in the best interests of the whole community.

From the reports in the daily Press, it seems that the Judge of the Workers' Compensation Court is to have associated with him a nominated employers' member and a nominated workers' member. This, we think, is a great mistake. The questions that arise out of cases coming before the Court under the Workers' Compensation Act, 1922, are purely matters of law: the application of well-settled principles of law to the facts. It would appear that the experience of all other countries, especially that of Great Britain, where a similar statute is in operation, points to a Judge alone as the proper tribunal. The addition of lay members is an excrescence that is peculiar to New Zealand. This seemingly arose out of the fact that the primary purpose of our Court of Arbitration was the administration

of the Industrial Conciliation and Arbitrations Acts from their inception, with the Court statutorily constituted to exercise the jurisdiction given by those statutes. The Workers' Compensation duties of the Court were given to it as an itinerant tribunal in being, as a matter of convenience rather than because of its suitability. In this connection, notice must be taken of the fact that, in certain conditions, proceedings for the recovery of compensation may be taken before a Magistrate alone; and, when judgment for compensation is recovered, in the Magistrate's Court, it has the effect of a judgment given by the Court of Arbitration.

Again, in its compensation jurisdiction the Court of Arbitration is a Court of Law that has always been bound by the decisions of the Judicial Committee of the Privy Council and of the House of Lords on corresponding sections in the English statute, as any such provision must, in the absence of a very clear indication to the contrary in the New Zealand statute, be deemed to be adopted here in the sense put upon it by the superior Courts in Great Britain.

It seems to us that the Government might very well consider assimilating to the Court of Arbitration in its workers' compensation jurisdiction the present method of dealing with workers' claims adopted in the consolidation of the statute law found in the Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58) and in the Consolidated Workmen's Compensation Rules, 1913–1931, where the principle of arbitration with all interests present is retained, and the final course is to resort to the Court, where a Judge alone sits as an arbitrator and exercises his powers as a Judge, and applies the well-settled principles of workers' compensation law to any questions of law which arise.

Summary of Recent Judgments.

SUPREME COURT. Wellington. 1939. October 27; November 8. *Blair, J.*

DUTHIE v. UNION AIRWAYS OF NEW ZEALAND, LIMITED.

Practice—Trial—Special Jury—"Difficult questions in relation to scientific, technical, business or professional matters"—"Technical"—"Business"—Statutes Amendment Act, 1939, s. 37.

It is necessary, in order to satisfy the requirements of s. 37 of the Statutes Amendment Act, 1939, before an action, issue, or criminal case can be tried before a Judge with a special jury, that the matter must not only be of a scientific, technical, business, or professional character, but that it must be a difficult question as well.

Semble, The cases aimed at by that part of s. 37 relating to "difficult business matters" are cases in connection with "business," using that term in its ordinary mercantile or banking acceptation than in a matter that relates to "business" of a technical character, as here, the "business" of conducting aeroplane services involving technical problems.

Counsel: C. G. White, in support; **Leicester,** to oppose.

Solicitors: R. A. Young, Christchurch, for the plaintiff; **C. G. White,** Wellington, for the defendant.

SUPREME COURT. Wellington. 1939. September 21; November 22. *Blair, J.*

SMITH v. BUCHANAN.

Government Railways—Level Crossings—Offence of Driving across a Level Crossing when "an engine or any carriage or wagon" approaching—*Mens rea*—Velocipede or Jigger—Whether a "Carriage"—Government Railways Act, 1926, s. 29 (*c*).

Section 29 (*c*) of the Government Railways Act, 1926, imposes a duty on persons crossing level crossings to take reasonable precautions to ascertain whether there is "an engine or any carriage or wagon" approaching from either direction.

Where a driver of a vehicle has actual or constructive knowledge of the fact that there is approaching "any engine or any carriage or wagon" on the railway line within a half-mile of a level crossing, and he drives or attempts to drive across such crossing, he commits an offence under the section.

A railway velocipede, or jigger, used to carry railway servants is a "carriage" within the meaning of that word as used in the phrase "an engine or any carriage, or wagon" in s. 29 (*c*) of the Government Railways Act, 1926.

McIver v. Thomasson, (1908) 10 G.L.R. 330, followed.

Counsel: Cunningham, for the appellant; **Atmore,** for the respondent.

Solicitors: W. H. Cunningham, Crown Solicitor, Wellington, for the appellant; **Harper, Atmore, and Thomson,** Otaki, for the respondent.

COURT OF ARBITRATION. Auckland. 1939. September 26; November 2. *O'Regan, J.*

***In re* NEW ZEALAND MOTOR AND HORSE DRIVERS' AWARD.**

Industrial Conciliation and Arbitration—Award—"Industry"—Whether Road-construction and Repair Work within Definition—Industrial Conciliation and Arbitration Act, 1925, s. 2 (1)—Industrial Conciliation and Arbitration Amendment Act, 1937, s. 2 (1).

Road-construction and repair work come within the definition of "industry," as defined by s. 2 (1) of the Industrial Conciliation and Arbitration Act, 1925, as amended by s. 2 (1) of the Industrial Conciliation and Arbitration Amendment Act, 1937.

Counsel: Lisle Alderton, for the appellant; **Haigh,** for the Drivers' Union.

Solicitors: Lisle Alderton and Kingston, Auckland, for the appellant; **F. H. Haigh,** Auckland, for the Drivers' Union.

SUPREME COURT. New Plymouth. 1939. November 7. *Smith, J.*

THE KING v. HARRIS.

Criminal Law—Indecent Assault on Male—Whether restricted to Sodomitical Interference—Crimes Act, 1908, s. 154 (1) (*c*).

The phrase "indecently assaults" in s. 154 (1) (*c*) of the Crimes Act, 1908, which makes it an offence for any person, being a male, indecently to assault any other male, is not confined to sodomitical interference, but includes an interference by a male with the private parts of another male,

R. v. Hare, [1934] 1 K.B. 354, applied.

Counsel: **R. H. Quilliam,** for the Crown; **Brokenshire,** for the accused.

Solicitors: **R. H. Quilliam,** Crown Solicitor, New Plymouth, for the Crown; **Standish, Anderson, and Brokenshire,** New Plymouth, for the accused.

Case Annotation: *R. v. Hare*, E. and E. Digest, Supp. Vol. 15, para. 8121a.

SUPREME COURT. Auckland. 1939. Sept. 18, 19; November 9. *Callan, J.*

NORTON v. WILLIAMS AND OTHERS.

Easement—Right of Way—Claim by Virtue of Twenty Years uninterrupted Enjoyment—True Title shown by Claimant excluding Presumption of lost Grant—Prescription Act, 1832 (2 & 3 Will. 4, c. 71) s. 2.

A claim under the Prescription Act, 1832, to a right of way by virtue of twenty years' uninterrupted enjoyment thereof rests ultimately upon the presumption of a lost grant. Where the true root of title has been shown by the claimant, there is no room for the application of the law of prescription.

Therefore, where a plaintiff's testimony in support of such a claim alleges, as the basis of his use of the alleged right of way, a parol arrangement made between him and the life tenant of the alleged servient tenement and acts of part performance, and excludes the possibility of a written grant to him which has since been lost, the presumption of a lost grant is impossible.

Gardner v. Hodgson's Kingston Brewery Co., Ltd., [1903] A.C. 229; **Wheaton v. Maple,** [1893] 3 Ch. 48; and **Labrador Co. v. The Queen,** [1893] A.C. 104, applied.
Carpet Import Co., Ltd. v. Beath and Co., Ltd., [1927] N.Z.L.R. 37, [1926] G.L.R. 425, distinguished.

Counsel: **Bainbridge,** for the plaintiff; **Prendergast,** for the defendants.

Solicitors: **Anderson, Snedden, and Bainbridge,** Auckland, for the plaintiff; **Brookfield, Prendergast, and Schnauer,** Auckland, for the defendants.

Case Annotation: *Gardner v. Hodgson's Kingston Brewery Co., Ltd.*, E. and E. Digest, Vol. 19, p. 53, para. 298; *Wheaton v. Maple, ibid.*, p. 55, para. 317; *Labrador Company v. The Queen, ibid.*, p. 54, para. 300; *Carpet Import Co., Ltd. v. Beath and Co., Ltd., ibid.*, Supp. Vol. 19, p. 6, note t, ii.

SUPREME COURT. Invercargill. 1939. November 9, 13. *Ostler, J.*

PUBLIC MUTUAL INSURANCE COMPANY OF NEW ZEALAND (IN LIQUIDATION) v. H. AND H. MOTOR SERVICES.

Insurance—Motor-vehicles (Third-party Risks)—Failure to Report Accident—Passenger in Motor-vehicle suffering from Shock—Obligation of Owner of Colliding Vehicle to Report to his Insurer—"Personal injury"—"In any notice"—Motor-vehicles Insurance (Third-party Risks) Act, 1928, s. 11 (1) (4).

The words "personal injury" in s. 11 (1) of the Motor-vehicles Insurance (Third-party Risks) Act, 1928, are not confined to serious personal injury, or personal injury for which the person injured indicates that he intends to make a claim. If there be personal injury at all—*e.g.*, shock—it is the duty of the owner of the motor-vehicle forthwith, after he becomes aware of the accident, to report it.

The words "in any notice" in s. 11 (4) must be read as "any such notice."

Counsel: **Moller,** for the plaintiff; **Tait,** for the defendant.

Solicitors: **Stout, Lillicrap, and Hewat,** Invercargill, for the plaintiff; **W. G. and J. Tait,** Invercargill, for the defendant.

Payment of Wages.

And Deductions therefrom.

By BRUCE SINCLAIR-LOCKHART, LL.M.

The duty cast upon an employer of payment of wages would seem of such limpid clarity that none could be at fault in either law or in fact in its performance. Yet a series of statutes originating in England with the Truck Act, 1831 (1 and 2 Wm. 4, c. 37), has been found to be necessary to define the rights of the employee and the obligations of the employer in this regard. We have in New Zealand similar statutory enactments provided for in Part I of the Wages Protection and Contractors Liens Act, 1939, which from January 1, 1940, will supersede Part II of The Wages Protection and Contractors' Liens Act, 1908; and it is the purpose of this article to review in brief, and in the light of judicial decisions, some of the main features of Part I of the new statute.

Attention may first be attracted to the interpretation of the term "worker" given in s. 2 (which corresponds with s. 28 of the repealed statute), according to the essence, namely, "any person in any manner employed in any service or work," which means "any person in any manner employed in work of any kind or in manual labour." The English Truck Acts, on the other hand are concerned apparently only with manual workers, other than domestic servants. The interference, therefore, in New Zealand, with freedom of contract by Part I is of very much wider ambit than is so with similar legislation in England.

A policy of *laissez-faire* had been pursued in England regarding the conditions governing the relationship of master and servant for centuries, but in the nineteenth century, with the rapid growth of industrialism, the old common-law attitude of non-interference was found impracticable, leading to legislation to obviate the mischief which from time to time was springing up, one form of which was the undesirable tendency of an employer to pay his employee not in cash but in kind or in money's worth. Deductions were sought to be made before the pay-envelope was handed to the worker, resulting in a depreciation of his legitimate earnings and in an accretion of indirect profit to his employer out of the supply of goods to his workmen in payment of wages. The English Truck Acts were passed to remedy this growing evil. Reference may now be made to instances which have been judicially decided to be infringements of the Truck Acts and it is fair to say that the decided English cases to be cited apply very strongly to the legal position in New Zealand under Part I as well.

In the case of *Glasgow v. Independent Printing Co.*, [1901] 2 I.R. 278, there was an agreement by a workman to accept shares of the company employing him in part payment of wages. In the Irish Court of Appeal, the decision turned upon the construction of the Truck Act, 1831, of England, which had been extended to Ireland. Of ss. 1 and 3 of this Act, which are not dissimilar in their purport to ss. 5 and 8 of Part I, it was said by Lord Ashbourne, in the course of his judgment, at p. 310, that

> "they make the meaning of the Act absolutely clear, that the wages of workmen should be paid in current coin of the realm, and every effort to pay them otherwise is declared

to be illegal, null, and void; and considering the clearness of those provisions, and the stringency of the language used in the Act, I have arrived at the conclusion that this agreement was an attempt to pay wages otherwise than in current coin of the realm, and was therefore illegal, null, and void."

Section 5 of the New Zealand Act postulates that "in every contract made with any worker the wages of the worker shall be made payable in money only, and not otherwise," and if any part of such contract is in contravention of this section, that part is declared illegal and void, and severable from the remainder of the contract.

Section 8 is now set out in full:

"The entire amount of the wages earned by or payable to any worker shall be actually paid to him in money, and not otherwise, and every worker shall be entitled to recover from his employer in any Court of competent jurisdiction so much of the wages earned by the worker as has not been actually paid to him by his employer in money."

It will be seen that there is some repetition in these two sections of the important principle that wages must be actually paid in money only, and it is a matter of observation that in ascertaining how much is payable as wages the employer can subtract nothing except the deductions expressly sanctioned by the statute. There is adequate authority for the statement that this section "must be read with the ordinary understanding that payments in money to persons authorized by the workman to receive the same are equivalent to payments to himself." It is entirely unnecessary, therefore, to go through the form of first paying the money to the employee, for him to hand it to some one else in whose hands he desires to place it: see *Kellick v. Adams*, (1893) 12 N.Z.L.R. 715, per Richmond, J.; *Carnachan v. National Trading Co. of New Zealand, Ltd.*, [1925] N.Z.L.R. 81, per Stringer, J.; and the House of Lords' judgment in *Hewlett v. Allen*, [1894] A.C. 383.

It is also important to note that the provisions of Part I do not arise until after it has been ascertained in any given case when and what remuneration can be decided to constitute wages: see, on appeal, *Carnachan v. National Trading Co. of New Zealand, Ltd.*, [1925] G.L.R. 178.

In 1936, the English Court of Appeal was faced with a set of facts which was alleged to be a breach of the Truck Acts and the question involved could easily present itself in New Zealand on the wording of s. 8 of the 1939 statute. I refer to *Kenyon v. Darwen Cotton Manufacturing Co., Ltd.*, [1936] 1 All E.R. 310, which is a helpful authority if one desires to elucidate the intention of the section. In this case the cotton mills of the respondent company had been closed on account of bad trade and economic depression, and with the concurrence of the work-people a scheme was devised to reopen the factory whereby they were to become shareholders in the company. Small weekly deductions were to be made from their wages the purpose of which was to put additional capital into the concern. In return the purchase of shares was credited to the employee who in this instance was a female worker. The Court of Appeal condemned the scheme as a colourable evasion of the statutes because it was considered the employers were making deductions in order to pay themselves. The fact that the appellant acquiesced directly or inferentially to such deductions could not condone a persistent breach of the law. The test in the view of Slesser L.J. could be stated thus: "Were her wages actually paid to her in the current coin of the realm?" and the answer the Court considered must be "No." It followed that "the contract taken as a whole was one whereby she was to receive consideration for her labour in part otherwise than by payment of wages in current coin of the realm." It was held that it was of cardinal importance that a broad legal interpretation should be given to the crucial sections which are similar in their provisions to the relevant sections of our New Zealand legislation; and that the transaction on the facts fell within the express statutory prohibition. The inhibition of the statute therefore attached. Finally it may be illuminating to cite the following excerpt from the judgment of Lord Justice Scott in which at p. 319 he summarizes the whole duty of the employer where remuneration is to be paid to the employee thus:

"The money must be paid over so completely and finally that it then and there becomes the workman's very own, being received into his possession subject to no sort or kind of undertaking however tacit that he is either to return any part of it or use it in a particular manner or lay it out for a particular purpose. The phrase precludes the idea of any payment which is not final and absolute; it calls for a payment which shall leave the payee wholly free and untrammelled in his enjoyment of it, and by implication forbids the exaction of any condition or promise or obligation from him as recipient as to what he will do with his money after receipt."

It is not entirely without doubt since the judgment of the English Court of Appeal in *Pratt v. Cook, Son, and Co. (St. Paul's) Ltd.* [1938] 4 All E.R. 356 which was not unanimous whether weekly wages plus not minus dinner and tea, worth an additional 10s. per week, fall within the penal provisions of the Truck Acts. A majority judgment of the Court held that there was no deduction within the meaning of the Truck Act, 1831, and that such meals could be supplied as part of the remuneration of the employee without infringing the statutory provisions. At p. 364 of the report there is, in the dissenting judgment of Goddard, L.J., the following valuable historical outline of the background of the Truck Acts:—

"The mischief against which the Act was aimed is well known. It has been described by many writers, and by none more vividly than by Disraeli in Book 3 of his novel *Sybil*. Workmen were forced to take their wages partly, and sometimes wholly, in kind, or they were tied to the employer's shop—the tommy shop, as it was called—for the purchase of necessaries. Often wages were paid at such long intervals that the workman could only live by incurring credit with his employer for necessaries, for which exorbitant prices were charged. The price was then deducted from his next wages, with the result that sometimes he got no money from year's end to year's end."

A short discussion upon a selection of other statutory provisions contained in Part I may be of value, although it can perhaps be said that the spirit and true intention of the statute law on the subject is largely contained in ss. 5 and 8 already discussed. No contract of service may stipulate as to the mode in which the worker may expend his wages: s. 6. In the absence of an agreement in writing to the contrary, manual workers must be paid weekly, and other workers at intervals of not more than one month: s. 7. The employer is not allowed to make any set-off or counterclaim in respect of any goods received by the plaintiff from him on account of his wages: s. 10. It is illegal for an employer to make deductions from wages in respect of any policy of insurance against injury by accident: s. 13.

Due consideration must also be given to the exemptions from the provisions of Part I contained in s. 19;

and I shall enumerate some of these in order to illustrate further the nature of the statute. Part I does not extend or apply, where *inter alia*, (*a*) an employer supplies to any worker any medicine or medical attendance; (*b*) where an employer supplies to any worker who has engaged with him to fell bush with the requisite materials or tools to any amount not exceeding in any case the amount of two months' wages; (*c*) Where such employer lets at an agreed rent to any worker the whole or any part of any tenement. These provisions do not apply with respect to any persons employed as seamen, or in agricultural or pastoral pursuits. Where the section applies, it is permissible for the employer, or his agent in respect of any such rent, medicine, medical attendance, materials or tools, board, lodging, or meals, to make any deduction or stoppage of a reasonable amount from the remuneration of the worker.

The employer is not prevented from advancing to any worker any money to be contributed by him to any friendly society, life insurance company or savings-bank, or other society or association whatever, or money for the relief of such worker or his wife or family in sickness, or from advancing money to any member of the worker's family by his order, and for any of these purposes the employer may make deductions from the remuneration of the employee; but this does not authorize an employer to advance any moneys for the payment of premiums on accident-insurance policies.

Nothing in Part I may be construed to prevent the making of any provision in any award or industrial agreement under the Industrial Conciliation and Arbitration Act, 1925, or to render invalid any such provision already made: s. 19 (4).

A recent addition to the list of authorized deductions from wages has been initiated by the social security legislation. Of course, deductions from wages may be specifically authorized by statute at any time and there is a good instance of this *modus operandi* in the provisions of the Social Security Act, 1938. It is therein provided that the Social Security Contribution shall consist of (*a*) a registration fee; and (*b*) a charge on salaries, wages, and other income, which is at the rate of one shilling in the pound, speaking in round figures. The registration fee may be deducted from salary or wages by the employer in certain circumstances; and the Act is accordingly enabling and permissive; but, in respect of the charge on salaries, it is mandatory in its terms and compels the employer to make deductions to meet the tax at the time of payment of salaries and to affix to the wages-sheet the requisite social security stamps.

In conclusion, it may not be inappropriate to say that only a limited survey and analysis of the law dealing with this subject has been attempted, but it is hoped that this article is sufficiently informative to put the reader upon the right lines of inquiry in the event of a problem presenting itself in the everyday routine of business and commercial affairs.

" To succeed at the Bar, a man requires three things: he must be very ambitious, very poor, and very much in love."

—The late SIR EDWARD CLARKE, K.C.

The School of International Law.

A New Zealander at The Hague

Miss Isobel Wright, LL.B., of Christchurch, who has been continuing her legal studies at Oxford, recently attended the Mid-summer Session of the School of International Law, held at The Hague. She had obtained one of five studentship grants made to England, three of which went to Oxford.

Since Miss Wright entered at Lady Margaret Hall, Oxford, last year, she has had a very interesting and successful year both scholastically and otherwise. Amongst other things she was fortunate in winning the Winter-Williams Women's Law Scholarship open to women law students, who had been at Oxford for not more than eleven terms. She secured this Scholarship during her first term.

Later she was elected President of the Geldart Society, a Society composed of Women Law Students at Oxford. She was also asked to take the place of an absentee upon the Oxford Law Committee, of which Sir William Holdsworth is the President, and Professor C. K. Allen and Professor Brierly, Vice-presidents.

In addition, Miss Wright secured her Blue for tennis, playing against Cambridge in May last. She also secured a further Blue for cricket. She is also on the Committee of the recently formed New Zealand Oxford Club.

The War has, however, interfered with her continuing at Oxford this year, as she is now serving in the Women's Auxiliary Air Force.

In a letter home, Miss Wright tells of her experiences at The Hague, while attending the School of International Law at the Peace Palace.

" French is the official language here; and so every one is supposed to be able to understand it or speak it reasonably. Of course most people can, but, as you know, I'm not very proficient; and, though the lectures are pretty hard to understand, it's amazing fun trying to talk to different people. Thank goodness others find the lectures rather boring—last week at anyrate, and difficult to follow. They talk so fast. This week is a bit better, especially the lectures about the U.S.A. Supreme Court and its contribution to International Law.

" There is a wonderful collection of people here about four or five English people (three from Oxford). several Americans, Germans, a Pole or two; Italians. Spaniards, Roumanians, Luxemburgers, Bulgarians, French, Dutch, Swedes, and Danes, and probably a few others—amazingly interesting as you may imagine. Some are students, some professors and lawyers, some in the diplomatic service. I have been dubbed universally by the men as 'Mlle. Nouvelle Zealande.'

" We started off with lectures in the morning, and then, the first afternoon, we had a tea to meet everyone. I took a friend, and she was very amused. She said everyone was very interested in her till she spoke Dutch, and then they decided she wasn't. There are so few girls that we were simply taken round and introduced to everyone. You'd get as far as shaking hands—everyone does this here on the slightest provocation. I always forget, and they probably think I'm very rude. You said *Bon jour*, and you were whisked off again immediately.

"Then the next afternoon we went all over the Parliament Buildings in The Hague; and, as we went into the Binnolot, or Square where all the Government Buildings are, we had a wonderful view of Prince Behrnard leaving in his car. I could have touched him, and so I took a photo. He had been seeing the Prime Minister. There is a Cabinet on at present which seems to be giving the people fits and makes them very jumpy. There is an intense anti-German feeling here. As a matter of fact they are still half mobilized and all along the sea-front, where we go and drink coffee at an open-air cafe, are sandbagged trenches still manned by soldiers. It gave me a queer feeling when I saw them, despite the fact that nowadays you see soldiers everywhere, as many in England as on the Continent.

"On Wednesday, all the Academie went off in a bus to Amsterdam to look at the paintings in the Rijks Museum—Rembrandts, Frans Hals, Reubens, and other very famous paintings. They were wonderful. I wish we could have stayed longer. We saw of course the famous 'Night Watch' of Rembrandt. The colour, lighting, and composition is amazing. We drove to Amsterdam along a new road—a beauty—four lines of traffic and no cross-roads, and bicycles off on a road of their own, over typical Dutch country-side—very flat and all divided up into smallish squares of different crops by ditches to drain the fields. Trees grown in straight lines along the sides of these water-courses, and an occasional windmill completes the picture.

"I don't think I have told you that the Course is held at the Palais de la Paix—the Palace built to house the Permanent Court of Arbitration and later the Permanent Court of International Justice. I think it is rather an imposing brick building with a very fine tower; floodlit at night, it is most impressive. Standing in beautiful grounds, too, its surroundings set it off effectively—lovely green lawns and along one side a perfect blaze of colour, sunken rose-gardens, zinnias, dahlias, and lily ponds, all very formal but in keeping and relieved somewhat by a mass of trees in the background. In the centre of the formal gardens is a small statute to Erasmus, and further round under the shade of the trees, so that the very darkness of its surroundings make it even more grim, is a bronze entitled the Spectre of War (*Le Spectre de la Guerre*). The library endowed by Carnegie—to whom also the establishment of these annual lectures is due—is very fine, and we can use it quite freely. Consequently I have taken full advantage of it—not so much for International Law as for my vac. work. They have a full section of English Law and Reports, besides of course many others. I take great pleasure in putting a notice on my books, printed in three languages—'Reserved, please do not touch.'

"The Peace Palace itself inside is rather disappointing in some ways. I wandered through it one morning. The Meeting Hall is good, furnished quite simply with the coats-of-arms of all the different countries embroidered on the backs of the chairs.

"On Saturday we had a terrific day. To begin with, the birth of a princess was heralded by a salute of fifty-one guns at 7 a.m. By 7.45 when I left for the station, flags were out on all the houses and buildings and there were already signs of festivities. We went to the Chateau Loewestein on the Meuse, where Hugo Grotius was imprisoned for a time, and from where he escaped in a chest. He was the father of International Law, and so I thought I ought to go and do homage to him, especially as we had lunch in his room.

"If for nothing else, the trip was worth while for the short journey we had up the river. It was a great sight. We passed great black barges with cargoes of wood and coal piled so high that the decks were almost level with the water—back and forth incessantly they steamed belching out great clouds of even blacker smoke—on any available space lounged the crew basking in the sun while their washing, rather a doubtful grey in colour, flapped between the masts or funnels. Here and there we passed a fisherman in a bit of a cockle-shell which bounced over the wash made by the barges as they steamed past. In the background were the flat green fields—some of them already harvested, the stooks of wheat breaking up the sameness of the country-side—straight lines of trees, a windmill with whirling sails and the inevitable village church with its tall brick tower pointed at the top like a pyramid.

"We were met at the Chateau by the caretaker—a kindly old man with white hair and a gentle musical voice—once inside we were not allowed to take photos. I think it is some sort of military fort though they swear it is only an ancient monument. Going over a drawbridge and under an archway we were in a tiny village with a street of about 50 yards long. On one side was a row of semi-detached cottages and on the other the garrison's quarters, the guardroom and the Commandant's house. The Chateau itself, surrounded by a moat and approached by a drawbridge, is just an empty brick shed with high walls slit by tiny windows. Grotius's room had a bronze plaque and a few pictures and one or two very decayed-looking wreaths. *I nearly got myself arrested by trying to take photos—but pacified the military policeman by taking his photo instead.* He couldn't speak French or English, and I can only say 'Good morning' and 'Thank you,' in Dutch! Even then he wasn't too sure about me and followed me about for the rest of the time there.

"We paid a visit to one more village where we had tea and then got back about 7 p.m. By this time I was beginning to wonder whether I was not rather sorry Grotius had lived there, but it was very interesting all the same and well worth it."

The Profession and the Public.

A Sceptic in Parliament.

When the Legal Aid Bill (now passed) was before the Legislative Council, the Leader of the Council, Hon. Mr. Wilson, gave a comprehensive and effective summary of the purpose of the free legal-aid scheme for poor litigants to be administered by the District Law Societies. At the conclusion of his speech, *Hansard* reports the following comments:

"The HON. MR. ARCHER.—Sir, there has been a good deal of discussion in theological quarters as to whether the day of miracles is past; but I think that this Bill demonstrates that the day of miracles is not past, because it surely must be a miracle if a man can get anything out of a lawyer without paying for it.

"The HON. MR. PERRY.—That has been happening since Genesis."

There was no further discussion, and the Bill passed all its stages.

Conveyancing Notes.

Purchasing Clause in a Lease.

Two kinds of purchasing clause must be distinguished —(1) a covenant to purchase, or, as it is called, a compulsory purchasing clause, binding from the outset on both parties; and (2) an optional purchasing clause exercisable by the lessee if he so elects. There is no reason in theory why there should not be a third kind—an obligation on the lessee to purchase if the lessor so requires, but in practice this is not met with, and it would be outside the scope of s. 94 of the Land Transfer Act, 1915.

In leases for twenty-one years or over an option to purchase, to be enforceable as such, must be kept within the rule against perpetuities—*i.e.*, it must be made exercisable within a life or lives in being and twenty-one years afterwards: *Woodall v. Clifton*, [1905] 2 Ch. 257. (The personal action for breach of covenant is however outside the rule against perpetuities, and damages, though not specific performance, can be obtained against the lessor: *Worthington Corporation v. Heather*, [1906] 2 Ch. 532). If in a long lease an option not so limited should slip past the District Land Registrar and obtain the benefit of registration, it is not clear whether the general law would apply or be overridden by the circumstance that the clause was in a registered instrument; the conveyancer should, of course, not permit such a question to arise. (As a compulsory purchasing clause creates an immediate executing interest in land, the rule against perpetuities does not then apply.)

Under the general law the burden of a purchasing clause, being something extraneous to the relation of landlord and tenant, does not run with the reversion (*Woodall v. Clifton*, (*supra*)), but when placed on the Land Transfer Register no doubt it binds every registered proprietor of the reversion for the time being.

Unless the benefit of a purchasing clause is made available for the lessee in person exclusively, it passes to the assigns of the lease and probably passes upon a registered transfer of lease without being specially mentioned; but a carefully prepared transfer of lease will include an express assignment of the benefit of the purchasing clause.

Under a mortgage of the lease, unless expressly assigned to the mortgagee, the benefit of the purchasing clause remains exercisable by the lessee, but if he exercises it the existence of the mortgage prevents the merger of the lease in the fee when acquired: *Bevan v. Dobson*, (1906) 26 N.Z.L.R. 69. A properly drawn mortgage will, however, include the benefit of the purchasing clause in the security, provided that the fee when obtained shall be subject to the mortgage (thus producing an equitable charge), and give the mortgagee a power of attorney to execute in his own favour a legal registrable mortgage (thus converting the equitable charge into a statutory charge).

Unless expressly empowered, trustees who grant a lease with an option to purchase commit a breach of trust, such an arrangement being held to be improvident; if the value falls the property is left on the trustees' hands when the lease expires, whilst if it rises they have lost the opportunity to sell at better advantage. If, however, the land is under the Land Transfer Act, this is a matter between the trustees and their beneficiaries; since trusts do not appear on the register the fact that the lessors are trustees is no reason why the Courts should not hold them to their bargain: *Fels v. Knowles*, (1906) 26 N.Z.L.R. 604. As one of the duties of a trustee is said to be to commit beneficent breaches of trust, it is probable that not a few purchasing clauses have been granted by trustees.

Whilst an agreement to purchase is in force (whether a compulsory purchasing clause, or an optional clause when notice to exercise the option has been given) the remedy of the lessor to sue for rent or to distrain is for the time being suspended, though it may revive if by reason of the lessee-purchaser's default the contract for purchase comes to an end: *Bevan v. Dobson (No. 2)*, (1907) 26 N.Z.L.R. 497.

A purchasing clause is generally made subject to the condition that the lessee shall have duly paid his rent and observed the provisions of the lease up to the time when the right of purchase is exercised: *cf. 20 Halsbury's Laws of England*, 2nd Ed. 66. This is no doubt a reasonable provision, but its effect is less stringent than its literal sense; a breach that has been healed or a delay in payment of rent afterwards overtaken no longer impedes the right to purchase: *Nash v. Preece*, (1901) 20 N.Z.L.R. 141. In any case relief can be granted by the Supreme Court: Property Law Act, 1908, s. 94 (6).

—A.E.C.

New Zealand Law Society.

Council Meeting.

(*Concluded from p. 292*).

Production in Court of Statements made to Police and Traffic Inspectors.—The following letter from the Commissioner of Transport had been circulated:—

> "I am directed by the Hon. the Minister of Transport to advise that he has received representations, through the Commissioner of Police, for the purpose of having a clause included in the proposed Transport Bill, whereby privilege will be given for statements made to Police or Traffic Inspectors. The proposed clause is to the following effect:
>
> > "No statement made or information furnished to any constable or Traffic Inspector in relation to any accident in which a motor-vehicle is involved, or in relation to any offence alleged to have been committed against any Act, regulation, or by-law relating to the use of motor-vehicles shall be produced or divulged in any civil proceedings in any Court, except with the consent of the person who made the statement or furnished the information.
>
> "The Minister is desirous of having the views of your Society concerning the proposal, and I shall be pleased to hear from you as soon as possible."

All Societies replied, Westland being the only one in favour of the suggestion made, but the President pointed out that the clause had not been included in the Transport Amendment Act and the matter had apparently been dropped. It was decided, however, to send to the Minister a copy of all the reports for his information.

Reciprocal Admission of New Zealand and English Solicitors.—Mr. W. J. Heyting wrote, pointing out that a New Zealand solicitor with three years' practice in New Zealand was entitled to be admitted in England without further trouble, but that a New Zealand solicitor with three years' practice in England was not so entitled to admission, irrespective of the fact that his English practice might have been infinitely more valuable than any he could have obtained in New Zealand. As an amendment of the Solicitors' Act was being introduced in England, Mr. Heyting thought that an effort should be made to have a suitable clause included in the amendment to meet the position, and he enclosed a copy of a letter which he had forwarded to Lord Wright on the subject.

Delegates were of opinion that the suggestion was a good one and it was decided to act as requested by Mr. Heyting.

Motor-vehicles: Noting Conditional Purchase Agreement on Registration Card.—The Marlborough Society wrote as follows :—

"At a meeting of the Council of this Society a suggestion was brought forward, and after discussion was embodied in a resolution unanimously carried, that the New Zealand Law Society should be requested and recommended to consider and take appropriate action in the direction of having the existence of a conditional purchase agreement included in the particulars recorded on the registration cards of motor-vehicles.

"The desirability of some such provision arose out of a recent local amalgamation of a number of transport operators, considerable difficulty having been experienced by the solicitor concerned in obtaining reliable information as to whether or not any conditional purchase agreement existed with respect to some of the vehicles concerned, and all members of the Council were able to call to mind other cases where a similar difficulty had arisen. It was pointed out in the discussion that a conditional purchase agreement is in effect an encumbrance affecting the title to a car or other motor-vehicle, and the lack of knowledge of the existence of such an encumbrance might adversely affect the position of a purchaser. It was further pointed out that a motor-vehicle frequently exceeds in value small sections of land, yet in the case of the latter an intending purchaser is always able to ascertain whether or not the title to it is encumbered. Probably the majority of cars are nowadays purchased under a conditional purchase agreement which is frequently afterwards assigned to a finance corporation, and if the existence of such an agreement and the names of the original parties to it were briefly recorded on the registration card held by the postal authorities, it would be a comparatively simple matter to trace the position at any particular time. It should be a matter causing little additional trouble for the Motor Registration Department to make the appropriate inquiry and note down the information on the registration-card when a new car is registered, and on each relicensing of the vehicle. Nothing more should be required than a bare statement as to whether or not a conditional purchase agreement exists and if it exists, the name of the seller or hirer.

"Would you kindly arrange for the matter to be given consideration by your Council in due course ?"

It was thought that the matter should have careful consideration before adoption, as it was an attempt to import the land registration system into motor registration, and a trained staff would be needed for the purpose. He thought that the matter should be held over until the next meeting to enable the District Societies to consider it.

It was accordingly decided to adjourn consideration until the next Council meeting.

Legal Practices of Soldiers.—The following letter was received from the Hon. W. Perry :—

"After the last war a suggestion was made that a Memorial Tablet be erected in the Supreme Court Library to those who fell. Great difficulty was experienced in ascertaining what members of the legal profession had enlisted and had been killed or died of wounds. After a great deal of work, mostly done by Mr. J. S. Hanna, the names of those who had fallen were ascertained and the tablet erected.

"It occurs to me that the Secretaries of District Law Societies should be circularized and requested to keep a record, as far as possible, of those who enlist and of the casualties. Lists might also be published from time to time in the LAW JOURNAL.

"I also suggest that those practitioners who are unable to take any active part in the present war should do their very best to help to carry on the practices of those who enter the armed forces."

The Secretary drew attention to a circular by the Wellington Society which had been issued to its members in 1915 :—

"The Council of the Wellington District Law Society has set up a Committee for the purpose of devising ways and means for assisting in organizing the resources of the profession for the purposes of the war, and for facilitating the enlistment of those of its members who are willing to join the Expeditionary Forces of the Dominion.

"The Council invites those practitioners who wish to enlist but find difficulties in their way to make use of the Committee by seeking its advice and co-operation, and those practitioners, who are unable to enlist but willing to give assistance to those who can, to communicate with the Committee; also that practitioners generally will help in the cause by offering any suggestions that they may think useful to the Committee in the object for which it has been set up.

"The suggestions have been already made :—

"1. That a registry be kept of the practitioners in the towns, and the qualified clerks of the larger firms, who would be willing to be appointed locum tenens by legal practitioners enlisting and desiring to appoint a locum tenens. In the case of the larger firms the principals may help the cause by doing themselves work that has devolved upon their responsible managing clerks.

"2. That if those members of the profession whose circumstances render it difficult for them to enlist communicate their difficulties to the Committee, the difficulties may possibly be overcome by the aid of those members of the profession, who, being unable to go themselves, feel it their duty and privilege to help those who do, and to lighten their burdens.

"All communications received by the Committee will, of course, be treated as strictly confidential.

"The Committee would be glad to know,

"1. If, being desirous of enlisting, and finding difficulties in arranging for the carrying on of your business or difficulties impeding your enlistment, in what way do you think that your fellow-practitioners can assist you ?

"2. If, being unable to enlist yourself, you are willing to act as a locum tenens to some solicitor leaving with the Expeditionary Forces, or to give any other assistance, and if so, what ?

"3. If you have any suggestion to make to the Committee which you think will help it in the development of its scheme of mutual co-operation.

"All communications should be addressed to the Society's Secretary, Supreme Court Library, Wellington, and marked 'Co-operative Scheme.'

"It will be understood that the proposals are on the basis of mutual co-operation by the members of the profession, and that the Law Society has only initiated the idea as the Executive of the profession, and does not undertake any responsibilities."

(NOTE.—The above letter was sent to all practitioners in the Wellington District and it is noted in the 1918 Wellington District Law Society Annual Report that, although members approved of the scheme, solicitors enlisting in the meantime had apparently been able to arrange their business affairs without the assistance of the Council, as no application had been received by the committee.)

It was decided in this matter also that each District Law Society should have its attention drawn to the points raised and be asked to take such action as it desired.

Barrister or Solicitor acting for Local Body of which he is a Member.—Messrs. Godfrey and Hutchison reported that they had prepared the following ruling for circulation :—

"A practitioner who is a member of a Borough Council should not accept appointment as solicitor to that Council nor should he act as counsel for that borough in any matter in which counsel is engaged.

"The question whether he may, while not holding the appointment of borough solicitor, act occasionally for the Council in minor matters and in any event within the limits prescribed by s. 3 of the Local Authorities (Members' Contracts) Act, 1934, is reserved for further consideration, if necessary."

Social Security Act, 1938, s. 122 (3).—The following reply was received from the Acting Minister of Finance :—

"I have to acknowledge receipt of your letter of the 23rd ultimo, enclosing a copy of the letter received by you from the Secretary, Wellington District Law Society, concerning the above-mentioned section of the Social Security Act.

"Upon referring the matter to the Commissioner of Taxes, who is responsible for the administration of Part IV of the Act, I am advised that the liability imposed on a personal representative by s. 122 (3) is similar to, and in fact continues, the liability imposed by s. 21 (3) of the Employment Promotion Act, 1936.

"It is not the case that a person (or his personal representative) deriving income other than salary or wages will always pay more in charge than a person deriving salary or wages. In many instance the liability is the same, as for example, where both commence for the first time to derive income on April 1, 1939, or subsequent thereto—*e.g.*, new arrivals. In other cases what, *prima facie*, would appear to be an excess liability imposed in respect of income other than salary or wages as against salary or wages, is offset by the fact that on the death of a person in receipt of income other than salary or wages—*e.g.*, from a business or investments—the charge on income subsequently derived by the trustees or by the beneficiaries would not be payable until the fiscal year following the income year."

The Southland Society felt that the reply was not satisfactory and they had accordingly drafted a further report on the matter.

It was decided that the matter should be left in the hands of the Wellington members to make fresh representations to any members of Parliament who would be likely to assist in obtaining the necessary alteration.

Electrical Wiremen's Regulations.—The following letter was received from Wanganui :—

"My Society has received a letter from a firm of solicitors in this district dealing with the effect of Regulation 6D of the General Regulations (1929) under the Electrical Wiremen's Registration Act, 1925.

"At a meeting of my Council held yesterday it was resolved that a copy of this letter should be forwarded to the New Zealand Society for its consideration and action if thought desirable.

Enclosure :

"A case in this district has drawn our attention to the terms of Regulation 6D of the General Regulations (1929) under the Electrical Wiremen's Registration Act, 1925. This regulation states as under :

"'At the hearing of the appeal the appellant may himself appear or may be represented by some person on his behalf and the Board may be represented by any member thereof appointed by the Board, but *no Solicitor of Counsel shall appear or be heard.*'

"The regulations in question concerns appeals by wiremen against the decision of the Board. The Appeal Court consists of a Magistrate and two assessors. The portion of the regulation in question which concerns us is that stipulating that no wireman may engage a solicitor or counsel to appear on his behalf. Apparently such a wireman could be represented by any person at all except a barrister or solicitor, including a barrister or solicitor who has been struck off the rolls for serious misconduct.

"The stipulation would be understandable to some extent if the Appeal Court comprised merely laymen or electrical engineers who might be unable to appreciate the niceties of any points raised by counsel. In this case, however, the Court is presided over by a Magistrate who would probably not only appreciate any submissions of counsel but also would find them actually of assistance to him.

"At the moment we, ourselves, can see no adequate reason for the inclusion of this stipulation in the regulation. We are unaware of the history of the stipulation and the ostensible reasons for its existence in this form. If there is any explanation within your knowledge we shall be pleased to hear from you. If not, it would appear that the matter is probably one which should be taken up by your society. We shall be glad to receive your advices in due course."

It was decided that no useful purpose would be served by taking up this matter at the present juncture and it was accordingly dropped.

Rules Committee: Nomination of Members.—The Secretary of the Rules Committee wrote pointing out that the term of office of the present members would expire on December 31 next and asking for further nominations.

It was unanimously decided that the present members, Messrs. P. B. Cooke, K.C., H. F. O'Leary, K.C., and W. J. Sim, K.C., should be renominated.

Mortgagees Sales: Application to Registry nearest Land Sold.—Messrs. Hadfield, Webb, and Weston reported as follows :—

"We are in receipt of your letter dated 6th instant enclosing copy of a letter from the Wanganui District Law Society under date April 22.

"We have carefully considered the District Society's suggestion to amend s. 78 of the Property Law Act, 1908, and s. 110 of the Land Transfer Act, 1915, but have come to the conclusion that perhaps a more simple way would be to substitute the words 'Supreme Court District' for the words 'Land Registration District.' The boundaries of the Supreme Court Districts are defined in the Orders in Council constituting them and the situation of any land to be sold is easily ascertainable. The distance of a property from the nearest Supreme Court Office is not always the best criterion of convenience in New Zealand and it may be assumed that the question of convenience was fully considered in settling the boundaries of the various Supreme Court Districts."

In Southland there was only one Supreme Court Registry but two Land Transfer Districts, and the adoption of the suggestion would be no improvement. After delegates had spoken to the same effect, it was decided to thank the Committee for their report, but to take no further action in the matter.

Debt Dodgers and the War.—Speaking of the Courts (Emergency Powers) Act, 1939, and the Regulations thereunder, Judge Mitchell Banks said recently at the Scarborough County Court : "We shall have lots of people coming and saying, 'I cannot pay because of the war.' While most anxious to be fair and to exercise my discretion properly, according to the Courts Emergency Powers Act, it had better be known that just saying that will not do. Debtors will have to show me that whereas their circumstances before rendered it possible to pay, the war has rendered it impossible. In the case of people who have not been paying for months or weeks before the war the answer is, 'If you could not do it then, what difference does the war make ?'"

Wellington District Law Society.

Annual Golf Tournament.

Apart from the Devil's Own Golf Tournament, which is held at Palmerston North during the week-end in September which includes Dominion Day and which attracts entries from all over the Dominion, the Wellington Society has for some time past held a tournament in Wellington designed more particularly for local practitioners.

This year the tournament was held at the Hutt Golf Links, on November 29. It attracted an entry of forty-four, as compared with fifty-two on the last occasion, when there was no war, and consequently no members were in camp. Included among the players were the President of the New Zealand Law Society, Mr. H. F. O'Leary, and three of the local Magistrates, Mr. J. H. Luxford, S.M., Mr. W. F. Stilwell, S.M., and Mr. A. M. Goulding, S.M. The Rt. Hon. the Chief Justice and Mr. Justice Johnston, who had hoped to attend in the afternoon, were prevented from doing so owing to Court fixtures.

The Links were in perfect condition, and players were favoured with a warm day tempered by a light breeze.

In the morning a bogey handicap was played, the winner being Mr. R. T. Peacock, with a score of 1 up, the runners-up being Messrs. H. Herd, W. H. Cunningham, and S. A. Wiren.

The afternoon event was a four-ball best ball bogey handicap, the winners being Messrs. L. C. Hemery and W. T. Till with 4 up, while Messrs. Bennett and Virtue and Messrs. Buxton and Young finished with 3 up.

Four non-golfers took part in the morning round and added a light touch to a game which is taken too seriously by most of its adherents. One of these four, who apparently found the distance a little too far in the heat of the day and adjourned for much-needed refreshment, posted his score as "eleven down and seven to play"; while another, if rumour be correct, made a tidy sum on a side-bet that he could complete the course in five under sevens.

Another member of this group, well known for his placid temperament, was observed with his ball well sunk in the sand close to the side of a particularly nasty bunker. The first three shots with a nibblick only made the ball move restlessly in its sandy bed: the next was somewhat better, resulting in a feeble hop which trickled back into the same spot: but the next, struck with the strength of desperation, struck the side of the bunker, shot about eight feet straight up in the air, and was again falling back into the sand when the player put out his hand, deftly fielded the ball, and without the slightest change of expression placed it in his pocket and climbed out of the bunker. Honour was satisfied.

Incidentally, an almost libellous photograph of a group containing two of the Magistrates appeared in the next day's newspaper, to prove to the public that the Government's plea "that life should go on as usual in spite of the war" had not fallen on deaf ears.

The Society's two auditors, who were invited to play as representatives of an allied profession and in case any auditing of cards should be found necessary in the later and more confused stages of proceedings, managed to finish all square after being three up when not far from home. Onlookers were interested to note that the comments of accountants when short putts are missed are almost identical with those of their legal brethren.

At a gathering held in the Club House, the President, Mr. A. T. Young, presented trophies to the winners and runners-up, and expressed to the members of the Hutt Golf Club the appreciation of the Society for their kindness in permitting the use of the Links, and congratulated them on the excellence of the arrangements and the splendid condition of the course.

Practice Precedents.

Court of Review: Motion for Leave to Sell.

Before the Court of Review grants leave to sell land under s. 82 of the Mortgagors and Lessees Rehabilitation Act, 1936, it must be satisfied that exceptional circumstances, having regard to the purposes specified in s. 2 of the Act, have arisen, and as this is the only authorized basis upon which leave may be granted each motion should be founded upon it. In the absence of consent the onus is upon the applicant, or his successor in title, to show that "exceptional circumstances" have arisen; such as ill-health, physical incapacity, death, or lack of finance to maintain (or farm) the property.

Where consents to the sale have been given by creditors who may be entitled to benefit under s. 82 (3) the Court will assume that exceptional circumstances have arisen. Where consents are given subject to specified conditions all orders of the Court are to be read as impliedly incorporating such conditions unless otherwise ordered, and it is regarded as the duty of all solicitors to see that those conditions are faithfully carried out, although, on account of possible conveyancing difficulties, they are not expressly set forth in the order.

All Court of Review orders granting leave to sell should also be read as impliedly incorporating a clause to the effect that the order neither gives to, nor takes away from, any person any right which he would, or would not, have had apart from the Mortgagors and Lessees Rehabilitation Act.

For further comments on s. 82, see *ante*, pp. 142, 152.

MOTION FOR LEAVE TO SELL.

IN THE COURT OF REVIEW.

AUCKLAND REGISTRY.

IN THE MATTER of the Mortgagors and Lessees Rehabilitation Act, 1936

AND

IN THE MATTER of an application by of , [*Occupation*] for adjustment of his liabilities.

Mr. solicitor for the applicant TO MOVE this Honourable Court at a time and place to be appointed FOR AN ORDER pursuant to s. 82 of the Mortgagors and Lessees Rehabilitation Act 1936 that the applicant be granted leave by this Honourable Court to sell to at a price of £ (*a*) all his interest in that piece or parcel of land described in the affidavit filed in support hereof. [AND FOR A FURTHER ORDER that the proceeds of such sale after payment of all reasonable costs commissions and disbursements in connection with the said sale be paid into Court to be applied in accordance with a further order of this Honourable Court (*b*)] AND FOR A FURTHER ORDER that a copy of the order when sealed be registered by the District Land Registrar at against the title to the said land UPON THE GROUNDS (1) that exceptional circumstances having regard

to s. 2 of the Act aforesaid have arisen [and (2) that all creditors having rights under subs. (3) of s. 82 aforesaid have consented to the proposed sale (*c*)] AND UPON THE FURTHER GROUNDS set forth in the affidavit of sworn and filed in support hereof.

Dated at this day of 19

Solicitor for applicant.

(*a*) Insert gross price.

(*b*) This clause to be inserted where applicant and creditors whose adjustable debts have been discharged or postponed agree as to the price being obtained but object to the proposed disposal of the proceeds. In order to avoid delay this order should be asked for pending decision or agreement as to the disposal of the proceeds of sale.

(*c*) This clause should be inserted when all creditors who might benefit under s. 82 (3) have consented to the sale.

AFFIDAVIT IN SUPPORT.

(*Heading.*)

I of [*Occupation*] make oath and say as follows:—

1. That I am (the solicitor for) the applicant above-named.

2. That by order of this Honourable Court dated the basic value of the property hereinafter described was fixed at £ and the following adjustable debts which were either discharged postponed or ordered to be paid by instalments were created:—(*a*)

(*a*) £ to .
(*b*) £ to .
(*c*) £ to .

3. That I have agreed subject to leave of this Honourable Court being granted to sell to at a price of £ all that piece or parcel of land [*Description of land proposed to be sold*].

4. That I propose subject to the approval of this Honourable Court to disburse the proceeds of such sale in the following manner:—[*for example*]

By sale price		£
To rates and land-tax	£	
To first mortgage taken over by purchaser	£	
To cash to first mortgagee ..	£	
To second mortgage taken over by purchaser	£	
To interest to second mortgagee	£	
To expenses commissions and disbursements	£	
To cash balance to applicant ..	£	
	£	£

5. That [*Here set out exceptional circumstances relied upon, if consents are not obtainable*].

Or

5. That all creditors who may have rights under subs. (3) of s. 82 of the Mortgagors and Lessees Rehabilitation Act 1936 have consented to the proposed sale [and to the disposal of the proceeds thereof as above set forth]. That such consents are annexed hereto marked with the letters "A" to " ".

Sworn at, &c.

(*a*) It is necessary here to set out only the debts of those creditors who were affected by s. 49 of the Act, as those are the creditors who may benefit by s. 82 (3).

Practice Notes.

Divorce: Decree for Restitution of Conjugal Rights (Respondent in Camp for Military Duties.)

The following is the endorsement, settled by His Honour Mr. Justice Callan, at Auckland, last week (*L.* v. *L.*), where the decree for restitution of conjugal rights was made against a soldier in a mobilization camp in the course of his military duties:

NOTICE.

The Respondent is hereby notified that it will be accepted as a sufficient compliance with this Order if within the said period of 28 days he:—

1. In fact returns home to the Petitioner for such period as his military duties permit, and files in the Registry of this Court a Certificate that he has done so.

or 2. Being unable because of his military duties to return home even temporarily within the said period, he notifies the Petitioner in writing that he genuinely intends to return to the Petitioner as soon as his military duties permit, and satisfies the Court by affidavit that he so intends but is prevented by his military duties from so returning within the said period.

Recent English Cases.

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

DIVORCE.

Cruelty—Respondent of Unsound Mind—Test of Legal Responsibility—Application of Common Law Rule—Matrimonial Causes Act, 1937 (c. 57), s. 2.

In a petition for divorce, acts committed at a time when the spouse was so insane as not to know the nature and quality of those acts are not in law acts of cruelty.

ASTLE *v.* ASTLE (BY HIS GUARDIAN), **[1939] All E.R. 967. P.D.A.D.**

As to insanity as a defence to cruelty: see HALSBURY, Hailsham edn., vol. 10, pp. 652, 653, par. 958; and for cases: see DIGEST, vol. 27, p. 293, Nos. 2683–2694.

Desertion—Separation Deed—Husband's Failure to Perform Covenant to Pay—Repudiation of Deed—Acceptance of Repudiation by Wife.

In the case of separation by mutual consent, desertion may supervene without cohabitation being resumed.

PARDY *v.* PARDY, **[1939] 3 All E.R. 779. C.A.**

As to desertion: see HALSBURY, Hailsham edn., vol. 10, pp. 654–659, pars. 963–969; and for cases: see DIGEST, vol. 27, pp. 306–319, Nos. 2837–2977.

Desertion—Supervening Insanity of Deserting Respondent—*Animus Deserendi* of Certified Lunatic—Presumption—Matrimonial Causes Act, 1937 (c. 57), s. 2.

No inference can be drawn as to the animus deserendi *of a certified lunatic, and therefore no* animus deserendi *can be found to exist after certification.*

RUSHBROOK *v.* RUSHBROOK (BY HER GUARDIAN), **[1939] 4 All E.R. 73. 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.

Rules and Regulations.

Education Act, 1914. Intermediate Schools and Departments Regulations, 1932, Amendment No. 3. November 22, 1939. No. 1939/246.

Motor-vehicles Act, 1924. Pedestrian-crossing and Safety-zone Regulations, 1939. November 22, 1939. No. 1939/247.

Emergency Regulations Act, 1939. Alien Control Emergency Regulations, 1939, Amendment No. 2. November 22, 1939. No. 1939/248.

Marketing Amendment Act, 1939. Marketing Department (Extension of Powers) Order, 1939. November 22, 1939. No. 1939/249.

Transport Licensing Act, 1931. Transport Licensing Passenger Regulations, 1936, Amendment No. 2. November 22, 1939. No. 1939/150.

Emergency Regulations Act, 1939. Oil Fuel Emergency Regulations, 1939, Amendment No. 2. November 29, 1939. No. 1939/251.