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"At a time when law and justice are being attacked by the forces of barbarism, it is necessary that every branch of that legal order which is so fundamental a part of English life should be maintained."
—PROFESSOR A. L GOODHART.

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DESTITUTE PERSONS' PROCEEDINGS: SOLICITOR-AND-CLIENT COSTS AGAINST HUSBAND.

A RECENT judgment of interest to solicitors, particularly in relation to the costs that may be awarded in Destitute Persons' proceedings, was recently given by His Honour Mr. Justice Smith, on appeal from the Magistrates' Court: *Taylor* v. *Beer*, [1940] N.Z.L.R. 177.

The appellant was a solicitor who had sued the defendant husband for itemized professional costs incurred by defendant's wife, who was represented by the appellant in connection with three distinct matters, in regard to which such costs were charged. These matters were (*a*) a charge of assault laid by the wife against her husband; (*b*) an application by the wife for sureties of the peace as against her husband; and (*c*) complaints filed by the wife for separation, maintenance, and guardianship orders under the Destitute Persons Act, 1910.

The appellant solicitor rendered no bill to the wife in respect of the costs incidental to these matters, but sent his itemized bill of costs to the husband, as being liable for his wife's necessaries.

The learned Magistrate held, (1940) 1 M.C.D. 302, that proceedings by a wife against her husband for assault are not necessary for her protection, the appropriate proceedings being a summons for sureties of the peace; and, where there are no reasonable grounds for bringing proceedings for assault, or for assuming that the husband and not the wife would be responsible for the costs, the wife's costs are not recoverable from the husband. His Worship followed *Grindell* v. *Godmond*, (1836) 5 Ad. & E. 755, 111 E.R. 1351, and distinguished *Michael Abrahams, Sons, and Co.* v. *Buckley*, [1924] 1 K.B. 908. Next, the learned Magistrate was of the opinion that s. 78 of the Destitute Persons Act, 1910, gives to the Court of summary jurisdiction full and exclusive powers to deal with all costs incurred in respect of applications for orders under that statute; and the provisions of the statute bind the wife's solicitor as well as the wife. He held, therefore, applying *Cale* v. *James*, [1897] 1 Q.B. 418, that a solicitor cannot recover from a husband the solicitor-and-client costs of proceedings for separation and maintenance orders brought by his client against her husband except to the extent to which the Court, in making orders on such complaints, had ordered such costs to be paid. Finally, the learned Magistrate held that solicitor-and-client costs relative to a wife's proceedings for recognizances of the peace, while payable by the husband, cannot be recovered in the Magistrates' Court; and, in any event, they cannot exceed the amount ordered at the hearing of the complaint to be paid.

On appeal to the Supreme Court from the Magistrate's decision, the first question considered by His Honour, Mr. Justice Smith, was whether the decision that the Destitute Persons Act, 1910, excluded any remedy in respect of costs other than that specified in the statute was correct. The learned Judge said that the power to award costs under the Destitute Persons Act, 1910, is contained in s. 78, which provides that a Magistrate is given the same power of ordering costs to be paid as is conferred by the Justices of the Peace Act, 1927, in the case of complaints. That is a power to order the same costs as may be ordered in the case of informations: see s. 111 (2) of the Justices of the Peace Act, 1927. That power, in its turn, is contained in s. 91 of the Act of 1927, which gives convicting Justices a power to order the payment of such costs as they think just and reasonable. In His Honour's opinion, the view expressed by the late Mr. Justice Page in the cases he decided, *Chapman, Tripp, Cooke, and Watson* v. *Richards*, (1933) 29 M.C.R. 53, and *Chapman, Skerrett, Tripp, and Blair* v. *Marley*, (1921) 16 M.C.R. 185, was correct. The judgment proceeded:

> The general principle is clear, and is stated in *16 Halsbury's Laws of England*, 2nd Ed., 702, 703, and I quote para. 1135:
>
> "A wife who is deserted by her husband, or is turned away by him without adequate cause, or is compelled to leave him in consequence of his misconduct, has, by implication of law, authority to pledge his credit for the costs of taking legal advice, and for costs as between solicitor and client of and in connection with such legal proceedings as may be necessary for her security and protection, or as may reasonably be incurred in taking proceedings against him. She may, for instance, pledge his credit for the costs of exhibiting articles

of the peace against him, where such proceedings are necessary by reason of his violence, or for the costs of and in connection with a suit for the restitution of conjugal rights. But she has no implied authority to pledge his credit for the costs of prosecuting him by indictment for assault, because such prosecution is not necessary for her security or protection, nor does her implied authority extend to the costs of or incidental to an application to a Court of summary jurisdiction for a separation or maintenance order, because the Court to which any such application is made has been given exclusive jurisdiction over such costs."

The last exception quoted depends on *Cale* v. *James*, [1897] 1 Q.B. 418.

The Court below had taken the view that the principle of *Cale* v. *James*, (*supra*), decided on the Summary Jurisdiction (Married Women) Act, 1895 (Eng.) applies to the Destitute Persons Act, 1918. In *Cale* v. *James*, it was held by Wright and Bruce, JJ., on appeal from the County Court, that the Legislature in passing the statute in question did not intend that, in cases under it, proceedings for the costs involving further expense might be taken in another Court. The statute, Wright, J., said, intended that the Court of summary jurisdiction should deal with all questions as to costs, and left that Court perfectly free to make any order as to costs it may think fit against either the wife or the husband. This provision, His Lordship added, bound the solicitor as well as the wife, because the solicitor's rights are derivative. The question of costs should, therefore, be dealt with exclusively by the Court of summary jurisdiction and an action would not lie to recover in any other Court costs incurred in respect of applications under the statute.

His Honour Mr. Justice Smith considered that the principle of *Cale* v. *James* does not apply to the Destitute Persons Act, 1910, which contains more extensive provisions than those in force under the Summary Jurisdiction Act, 1895 (Eng.), on the true construction of which *Cale* v. *James* was decided. After reviewing ss. 30, 34, and 45 of the Destitute Persons Act, 1910, and, referring to the orders that may be made in pursuance of these sections, His Honour proceeded :

It is clear that the preliminary work required of a solicitor for obtaining orders of these kinds is not the kind of work usually done in Court for the purpose of obtaining maintenance, separation, and guardianship orders. It would be very inconvenient if the Magistrate had to attempt to assess the value of that kind of work for the purpose of including a recompense to the solicitor in any order for costs which the Magistrate might make. I think the Magistrate's power is to award party-and-party costs, and that the right of the solicitor to claim his solicitor-and-client costs from the husband has not been taken away by the provision enabling a Magistrate to order such costs as may be ordered under the Justices of the Peace Act, 1927.

The appeal was, therefore, allowed in respect of the costs incurred upon proceedings under the Destitute Persons Act, 1910.

On the appeal, it was also urged that the Magistrate's judgment was also wrong in holding, on the authority of *Grindell* v. *Godmond*, (1836) 5 Ad. & E. 755, 111 E.R. 1351, that the proceedings for assault were not the proper proceedings for the protection of a wife ; but, on this ground the appellant failed, as the learned Judge held that the Magistrate was right in following the authority cited. His Honour said :

The argument was that although it was held in *Grindell* v. *Godmond* that the appropriate remedy was a summons for sureties of the peace, the powers of the Court in dealing with accused persons had been extended and that upon proceedings for assault a husband could now be admitted to probation, ordered to keep away from the wife, and kept under the surveillance of the Police for a defined period, and that such action might be much more effective than requiring the husband to enter into recognizances, even with sureties, to keep the peace towards his wife. I was impressed by this argument at the hearing, but on reflection, I have come to the conclusion that I should not act upon it. The case of *Grindell* v. *Godmond* was decided by a strong Court, and the view taken by that Court was approved by Lord Campbell, C.J., in *Brown* v. *Ackroyd*, (1856) 5 El. & Bl. 819, 826, 119 E.R. 686, 688. The learned Chief Justice said : "It has been held that the husband is not liable for the expenses of an indictment instituted against himself by the wife, and quite rightly ; for that is a proceeding instituted not for the protection of the wife, but for the punishment of the husband. That distinction was properly taken in *Grindell* v. *Godmond*." This view was obviously approved by McCardie, J., in *Michael Abrahtm, Sons, and Co.* v. *Buckley*, [1924] 1 K.B. 908, 909, at a time long after the provisions of the Offenders Probation Acts had been enacted. I think, therefore, that I should not hold that the mere power to place the husband on probation is sufficient to alter the authority of the cases. The principle is that the wife must take proceedings which are primarily for her own protection and not for the punishment of her husband.

Finally, His Honour held that upon the earlier reasoning of his judgment, it was clear that in respect of the proceedings for sureties of the peace the appellant was entitled to his solicitor-and-client costs from the respondent husband, and that the jurisdiction enabling him so to recover them was not excluded by the provisions of the Destitute Persons Act.

The position with regard to costs against husbands in cases of assault and sureties of the peace seldom arises, by reason of the more usual practice of issuing complaints for summary separation in those cases where husbands have been guilty of assaults on, or molestation of, wives.

The judgment on the appeal confirms the view generally held by practitioners with regard to costs in cases under the Destitute Persons Act, 1910—namely, that the costs allowed by the Court are party-and-party costs, and that the solicitor for the complainant is entitled to submit a bill for, and recover, solicitor-and-client costs against the defendant husband. In general practice, however, such a bill is not rendered. Parties in this class of cases are usually people on the lower grade of wages ; and, although a judgment would go for solicitor-and-client costs, the prospect of recovery would be small.. It is the usual practice, therefore, to accept the amount allowed by the Court in satisfaction of costs. In many cases, where parties are above the minimum wage, or the husband has means, a settlement or mutual agreement is arrived at ; and the question of costs is easily agreed upon between the solicitors for the parties. If, however, such cases should go to Court, an itemized bill for solicitor-and-client charges would be rendered to the husband.

A question has arisen as to the correct practice then, with regard to party-and-party costs allowed by the Court. In some quarters it is regarded that the costs allowed by the Court are in the nature of counsel's fees. Some support for this contention lies in the fact that the Magistrates have a discretionary power with regard to costs, and award a greater or lesser fee in accordance with the time taken and the apparent measure of responsibility of the solicitor for the complainant. On the other hand, a more generally accepted—and probably sounder—view is that the correct practice is to render a solicitor-and-client bill, and to give credit to the client for the amount of party-and-party costs awarded by the Magistrate.

SUMMARY OF RECENT JUDGMENTS.

COURT OF APPEAL.
Wellington.
1940.
April 4.
Myers, C.J.
Kennedy, J.
Northcroft, J.

BIGGS v. WOODHEAD. (No.2.)

Practice—Appeals to Privy Council—Appeal from Interlocutory Order directing New Trial on Ground of Misdirection—Discretion of Court of Appeal—Whether Question of General or Public Importance involved—Defendant's Opportunity of Appeal after final Judgment or New Trial—Privy Council Rules, 1910, R. 2 (b).

On a motion by the respondent (defendant in the Court below) for leave to appeal to His Majesty in Council against the order of the Court of Appeal for a new trial (*ante*, p. 108) application was made for leave to amend the motion by adding as one of the grounds of the appeal that the question involved in the appeal was "one which by reason of its great general or public importance, or otherwise, ought to be submitted to His Majesty in Council for decision."

Hay, in support of motion; *Taylor*, to oppose.

Held, dismissing the motion, 1. That, if the motion were so amended, the question involved would not be such a question.

2. That the refusal of leave to appeal would not seriously prejudice the defendant who, if the plaintiff succeeded, would be in a position to appeal from the whole result, which would necessarily include the judgment in the new trial action, so far as the question of direction was concerned, the learned Judge on the new trial being bound to direct the jury in accordance with the judgment of the Court of Appeal.

Solicitors: *Horner and Burns*, Hawera, for the appellant; *L. M. Moss*, New Plymouth, for the respondent.

SUPREME COURT.
Wanganui.
1940.
March 6;
April 5.
Johnston, J.

GORDON AND ANOTHER v. COMMISSIONER OF STAMP DUTIES.

Public Revenue—Death Duties (Succession Duty)—Gift of Legacies to Executors free of Death Duties—Whether pecuniary Legacy or by way of Remuneration—Whether Allowance should be made for Legacies in computing the Succession Duty payable by the Residuary Legatees—Death Duties Act, 1921, s. 16 (1).

Testatrix by her will appointed two executors and gave each of them £1,000 free of death duties. By a codicil she gave one of them £1,000 "in addition to the legacy bequeathed to him" by her will.

On case stated under s. 62 of the Death Duties Act, 1921,

Haggitt, for the appellants; *Bain*, for the respondents.

Held, 1. That all the legacies were pecuniary legacies within the meaning of s. 16 (1) (*a*) of the Death Duties Act, 1921, and were not bequeathed by way of remuneration.

2. That no allowance could be made for the said legacies in computing the succession duty payable by the residuary legatees.

In re Thorley, Thorley v. *Massam*, [1891] 2 Ch. 613; *In re Mollett*, (1907) 27 N.Z.L.R. 68; and *In re Knox*, (1911) 30 N.Z.L.R. 522, 13 G.L.R. 555, applied.

Bulleid v. *Commissioner of Stamps*, (1912) 31 N.Z.L.R. 273, 14 G.L.R. 414; *Elder's Trustee and Executor Co.* v. *Gibbs*, [1923] N.Z.L.R. 503, G.L.R. 120; and *In re Appleton, Barber* v. *Tebbit*, (1885) 29 Ch.D. 893, referred to.

Solicitors: *Treadwell, Gordon, Treadwell, and Haggitt*, Wanganui, for the appellants; *Bain and Fleming*, Crown Solicitors, Wanganui, for the respondent.

Case Annotation: In re Thorley, Thorley v. *Massam*, E. and E. Digest, Vol. 21, p. 52, para. 345; *In re Appleton, Barber* v. *Tebbit, ibid.*, Vol. 23, p. 442, para. 5113.

COMPENSATION COURT.
Auckland.
1940.
March 1, 8; April 10.
O'Regan, J.

BROPHY v. THE KING.

Workers' Compensation—Accident arising out of and in the Course of Employment—Worker injured after Dismissal, but while doing Work incidental to Termination of Employment—Liability of Employer—Workers' Compensation Act, 1922, s. 3.

A worker who is injured after the termination of his contract of service is entitled to compensation should he suffer injury by accident while doing anything reasonably incidental or ancillary to that termination.

A housemaid, after her dismissal and before the payment of her wages, put her bedroom in order and was injured while carrying the refuse therefrom that she had put in a tin as usual to empty it into a rubbish tin,

F. H. Haigh, for the suppliant; *G. S. Meredith*, for the respondent.

Held, That the accident arose out of and in the course of her employment.

Cowler v. *Moresby Coal Co., Ltd.*, (1885) 1 T.L.R. 575, and *Riley* v. *William Holland and Sons, Ltd.*, [1911] 1 K.B. 1029, 4 B.W.C.C. 155, applied.

Molloy v. *South Wales Anthracite Colliery Co., Ltd.*, (1910) 4 B.W.C.C. 65, referred to.

Solicitors: *F. H. Haigh*, Auckland, for the suppliant; *V. R. S. Meredith*, Crown Solicitor, Auckland, for the respondent.

SUPREME COURT.
Wellington.
1940.
April 5.
Johnston, J.

MAISEY v. MAISEY.

Divorce and Matrimonial Causes—Practice—Service—Directions as to Service—Respondent charged with Criminal Offence, but not apprehended—Whether Judicial Notice can be taken of Issue of Warrant—Affidavit required.

Where a warrant has been issued for respondent's arrest, but the Police cannot find him, the motion for an order dispensing with personal service of the citation and petition should be supported by an affidavit by the Police Inspector in charge of the case incorporating an extract from the *Police Gazette* as to the issue of the warrant.

Counsel: *A. J. Mazengarb*, for the petitioner, in support.

Solicitors: *Mazengarb, Hay, and Macalister*, Wellington, for the petitioner.

SUPREME COURT.
Dunedin.
1939.
August 1;
September 14.
1940.
February 27;
March 1.
Smith, J.

In re **DENNISTON AND HUDSON.**

Land Transfer—Transmission—Two or more Joint Proprietors—"No Survivorship"—Sanction of Court required for Transmission—Trusts and Trustees—Court's Function in protecting Beneficiaries—Land Transfer Act, 1915, ss. 132, 133, 134.

The sanction of the Supreme Court or of a Judge thereof is required under s. 133 of the Land Transfer Act, 1915, for the registration of any transmission of land under that statute of which two or more persons are registered as joint proprietors and on the certificate of title of which the words "No survivorship" have been entered.

As the function of the Court is to protect persons beneficially interested under a trust, the Court must make itself acquainted with the rights of the beneficiaries in relation to a proposed

transfer or other dealing under ss. 133 and 134 of the said statute.

In re The Tararua Club, (1908) 27 N.Z.L.R. 928, 11 G.L.R. 114; *In re Main*, [1931] N.Z.L.R. 670, G.L.R. 51; and *Main* v. *District Land Registrar*, [1939] N.Z.L.R. 220, G.L.R. 143, referred to.

Counsel: *Sinclair*, for the petitioners.

Solicitors: *Solomon, Gascoigne, Solomon, and Sinclair*, Dunedin, for the petitioners.

SUPREME COURT. Wanganui. 1940. March 4, 5, 20. *Johnston, J.*

PATERIKI HURA AND NGAROIMATA MOOTU v. THE NATIVE MINISTER AND AOTEA DISTRICT MAORI LAND BOARD.

Natives and Native Land—Injunction—Timber—Native Land Court restraining the Cutting of Timber on Native Land—Certiorari to set aside Injunction—Matters for determination by Supreme Court—Native Land Act, 1931, ss. 50, 533—Native Purposes Act, 1938, s. 3.

Apart from the question of fraud, on a motion for certiorari to set aside an injunction made by the Native Land Court under s. 533 of the Native Land Act, 1931, as amended by s. 3 of the Native Purposes Act, 1938, prohibiting the cutting or removal of timber from any Native freehold land, the only question to be determined by the Supreme Court is whether the Native Land Court was properly seised of the matter brought before it.

Hakopa Te Ahunga v. *Seth Smith*, (1906) 25 N.Z.L.R. 587, applied.

Te Heuheu Tukino v. *Aotea District Maori Land Board*, [1939] N.Z.L.R. 107, referred to.

Counsel: *Hampson* and *Cleary*, for the Native owners; *Cooke*, K.C., and *Izard*, for the Aotea District Maori Land Board; *Bain*, for the Native Minister.

Solicitors: *Hampson and Chadwick*, Rotorua, for the Native owners; *Marshall, Izard, and Wilson*, Wanganui, for the Aotea District Maori Land Board; *Bain and Fleming*, Wanganui, for the Native Minister.

EXECUTORS AND TRUSTEES.

An Anachronistic Distinction.

By WARRINGTON TAYLOR.

The law at present makes a distinction of considerable importance between executors and trustees.* This article aims at showing that there is no logical or practical necessity for the distinction, and that in fact the three offices of executor, administrator, and trustee could, with advantage, be merged into a single comprehensive office of trustee. The existing differences in their rights, duties, and powers are due not so much to any fundamental distinction in the nature of the three offices, as to the historical accidents of their development.

To explain this, it is necessary to give an outline of their development and to state various elementary points, the full implication of which in relation to executors and trustees may not be realized unless the "long and complicated story" (as *Snell* calls it) is viewed as a whole.

From the earliest times in English law, a man could make a will disposing of his *personal* property, although it is interesting to note, he had at first to leave certain just shares to his wife and children, and only later acquired the right of absolute disposal. The law required that his debts should be paid out of the personalty before it was divided to those named in the will, and the executor was the person appointed by the will to attend to this.

In those days there could be no elaborate dispositions extending far into the future, and so there was no need of any other officer (such as a trustee) to carry out extended duties after the executor had the estate ready for distribution.

If a man died leaving personal property but no will, or had neglected to name an executor in it, the King as *parens patriae* used originally to take his goods and administer them among his creditors and his relatives. Later this power was delegated to the lords of the manors and later to the clergy, and then by a statute of 31 Ed. III, in 1357, the Ecclesiastical Court was required to depute, to the next and most lawful friends of the deceased, the duty of administering his goods. These administrators had somewhat similar functions to executors. Thus the offices of both executors and administrators were established by about the year 1357.

By the common law from the earliest times the goods actually vested in the executors or administrators as their "property," subject of course to their duty to pay the debts and then divide among the beneficiaries or next-of-kin. The law had not yet worked out the more complicated idea of one person holding only the nominal ownership, with the beneficial rights outstanding "in trust" for a beneficiary. When the debts were paid the executor or administrator had to do something to transfer the "property" in the assets (chattels or leaseholds) from himself to the beneficiaries and as the modern ideas of written and registered transfers had not yet developed, this was accomplished by giving his "assent" to the legacy or to the vesting in the next of kin. This could be given in various ways, either express or implied—*e.g.* word of mouth was sufficient—or in the case of chattels or money, he could hand them over and this was equivalent to assent. Until the assent was given, the "property" remained in the executor, and the beneficiary had only an inchoate title, a mere right to call on the executor by an administration action to carry out his duties. Though the goods devolved by law on the executors immediately, by virtue of the will, they had to prove the will in the Ecclesiastical Courts (which had jurisdiction over wills), as the only legal evidence of their right to deal with the goods was the probate copy of the will handed back to them by the Court.

The above observations apply solely to personal property, for land devolved strictly according to feudal

* For a recent discussion of some aspects of this distinction, see Mr. K. M. Gresson's article "Assent by an Executor," in (1939) 15 NEW ZEALAND LAW JOURNAL, 124.

tenure without any power of leaving it by will—this being gradually fought for and acquired over several centuries and not completed until the Wills Act, 1837. The executors or administrators were therefore only concerned with the goods of the deceased (and of course leaseholds), and it is interesting to note that our form of affidavit to lead grant of probate still preserves this distinction, for in it the executor swears "faithfully to execute the will by paying the *debts and legacies* so far as the property will extend, and the law bind." No reference is made in either the affidavit or the probate to the faithful carrying-out of gifts of *land*, for the simple reason that when probate was evolved, the will had nothing to do with land and the executor was only concerned with debts and legacies.

A body of law was therefore developed regarding the powers and duties of executors and administrators, such as power of selling and mortgaging, power to act severally as well as jointly, their position regarding the Statutes of Limitation and rules for their appointment and devolution. Trusts and trustees were evolved several centuries later under quite different circumstances, and so it came that quite different rules were developed with regard to trustees in connection with the points just mentioned.

The feudal and medieval land owners and farmers seem to have chafed under feudal restrictions of tenure, much as their modern brothers kick against present Government restrictions. Their lawyers were no less ingenious in those days in overcoming restrictions and they soon developed a successful though indirect technique for disposing of land by will. A man transferred his land by foeffment during his lifetime to two or three trusted friends who plighted their faith to deal with it as he might direct, which usually was to hold it to the feoffor's use during his life and after his death to hold it upon the uses he should declare in his will. The Courts of law would not recognize or enforce such uses, but the Courts of Chancery took it upon themselves to compel the feoffee to carry out the use according to his promise, and thus was established an easy and effective way of leaving land by will to whoever one liked, despite the feudal rules of descent. However, it appears that this practice also defeated certain rights and revenues of the Crown, and just as now when the profession finds a loophole in the Stamp or Death Duties Acts, Parliament intervenes to abolish the practice, and in 1535 passed the Statute of Uses which, curiously enough, did not directly prohibit uses, as they were evidently too deeply imbedded in the legal texture, but aimed at rendering them ineffective by converting the future use into an immediate legal estate. For the moment this abolished the power of dealing with land by either trusts or wills, but the inconvenience to property owners was so great that the power of disposing of land by will was substantially restored by the Statute of Wills, 1540.

(To be continued).

LIABILITY IN MOTOR-COLLISION CASES.

Experience in Other Countries.

By PAUL P. HELLER, LL.D. (VIENNA).

Austrian legislation is mentioned in Mr. W. J. Sim's paper* read to the Dominion Legal Conference in Christchurch in 1938, in support of the remit that the Conference approve of the principle of absolute liability in motor-collision cases with provision for assessment of damages by a Judge and two assessors.

New Zealand lawyers might be interested to hear that Austrian lawyers and lawyers of other countries whose legislation provided for absolute liability in motor-collision cases have considered a restriction and limitation of the absolute liability.

Before investigating the objections which have arisen against the Austrian law by an experience of thirty years, it is necessary to point out the fundamental provisions of the Austrian Act of the year 1908.

The Austrian Civil Code of the year 1811 is based on the principle that there is no liability without wilfulness or negligence. Departing from that principle, the Austrian Act of 1908 (amended in 1922), regarding the liability in motor-collision cases†, was the first special Act in the world regulating that subject-matter. Similar Acts have been passed in Germany in 1909, in Greece in 1911, in Italy in 1912, in Sweden in 1916, in Denmark in 1918, in the Netherlands in 1925, in Norway in 1926, in Switzerland in 1932, and in Czechoslovakia in 1935.

The Austrian Act establishes the absolute liability of the owner and driver of a motor-vehicle for death, personal injury, and damage to property caused by the use of a vehicle on public roads and streets. "Use" means that either the vehicle is operated or that the motor of the unmoved vehicle is running. An injury or a damage to property is caused *by the use* of the vehicle, if it is the effect either of the movement of the vehicle or of the running of the motor. There is, consequently, no absolute liability for damage to property caused in the unloading of a standing car because an accident during the unloading has no relation to the "use" of the car‡.

But the owner is not liable if at the time of the accident either the vehicle was handed over to another person using it on his own account and on his own risk—*e.g.* the bailee of a vehicle§—or if at that time the owner was deprived of the use of his vehicle by an unlawful act of another person—*e.g.*, by a thief.

* See (1938) 14 N.Z.L.J. 124.

† See a paper by W. Bauerreiss, read to the Austrian Insurance Association in 1936.

‡ *Cf. Commercial Union Insurance Co., Ltd.* v. *Colonial Carrying Co. of New Zealand, Ltd.*, [1937] N.Z.L.R. 1041.

§ *Cf.* the Motor-vehicles Act, 1924, s. 2.

Then these other persons—*e.g.*, the bailee or the thief—are liable in the place of the owner‖.

The owner, or in his place bailee or thief, as above mentioned, and the driver are liable subject to the exception that they can prove that the accident is caused (*a*) by the wilfulness or negligence of a third person; or (*b*) by the wilfulness or negligence of the person whose death or bodily injury is the result of the accident, or whose property was damaged; or (*c*) by *force majeure*.

The professional employed driver, moreover, is not liable, if he is not guilty of wilfulness or negligence (Amendment of 1922 in favour of the professional driver, abolishing his absolute liability).

If the damage is *partly* caused by wilfulness or negligence of the injured (damaged) person or of a third person, then a proportionate part of the claims has to be awarded: *cf.* Admiralty Rules.

In the case of collisions there is no absolute liability with regard to the reciprocal claims of owners and drivers of the vehicles in collision. But other persons—*e.g.*, a pedestrian—who are injured or whose property was damaged are entitled to raise claims, based on the principle of absolute liability, against the owners and drivers of *all* colliding vehicles, and the owner and driver of one vehicle is, therefore, not allowed to plead and to prove that the collision was caused only by the wilfulness or negligence of the driver of another vehicle. The drivers of colliding vehicles are, therefore, never "third persons."

The Act provides for the absolute liability of the vehicle owner and driver for claims of conveyed persons, whose death or bodily injury occurred, and for claims of the owner of carried goods, provided that they are carried for an adequate consideration, or in the course of the business of carrying passengers or goods for hire or reward, or in the service or by the order of the vehicle owner or driver.

There is no absolute liability of owner and driver of a vehicle not capable of a speed in excess of about fifteen miles (twenty-five kilometres) per hour.¶

No claim, based on absolute liability, shall be enforceable by action if such an action is commenced (*a*) after a period of six months beginning on the date on which the claimant was informed of the injury (damage) and of the person liable to indemnify him; and (*b*) after a period of three years from the day of the accident without regard to the claimant's knowledge.

The claimant, moreover, is barred of his right of action if he negligently failed to notify the accident to the person liable within four weeks from the date on which he first had knowledge of the person liable provided that the accident has not otherwise come to the knowledge of the person liable.

In spite of the principle of absolute liability, provided by several provisions of the Austrian Act, there remain many claims enforceable only in the case of negligence or wilfulness on the part of the driver. Such claims are—*e.g.*, the claim of passengers carried for nothing, the reciprocal claims of owners and drivers of colliding vehicles, and claims after the expiration of the previous mentioned periods. The Act provides with regard to these claims, enforceable only in the case of negligence or wilfulness, that the owner is liable for the negligence or wilfulness of all persons engaged for operating the vehicle provided that the act done—in a wrong manner—was one which the person was engaged to do.

. It is not lawful to exclude or modify the liability, as constituted in the Act, by previous agreements**.

The legislation of other countries, regarding the liability in motor-collision cases, differs from the Austrian Act. In Austria the defence may be pleaded that the accident was caused by the negligence of a third person, and, if proved, there is no liability. While in Germany the defence may be successfully pleaded that the accident was *caused* by the act of a third person—irrespective of his negligence—*e.g.*, by the act of an insane person. On the other hand the Swiss Act of 1932 exempts from the absolute liability only in the case of *grave* negligence on the part of the injured or damaged person or of a third person, and the Norwegian Act exempts only in the case of a grave negligence on the part of the injured or damaged person, but not in the case of negligence or wilfulness of a third person.

There is no absolute liability at all for injuries of carried passengers and for damages to carried goods according to the German and Dutch Acts. Injured passengers and owners of carried goods must prove negligence.

Legal and economic objections arose against some provisions of the Austrian Act. To own and drive a car was a sport or a luxury in 1908. Statistical figures of 1908, regarding motor-vehicles, are not available to the author. As far as I remember there had been about 100,000 motor-vehicles in Austria before the Anschluss in 1938 (population about 6,000,000). About 300,000 motor-vehicles existed in New Zealand on March 31, 1938, and 280,327 were actually upon the roads. New Zealand is usually credited in statistical compilations as being exceeded in respect of the number of motor-vehicles per head of population (estimated population about 1,600,000 on September 30, 1938) only by the United States and by Canada††. The large increase in the number of motor-vehicles and their economic importance—on the Continent as well as in New Zealand—has in the course of thirty years modified the opinion regarding the problem of a just and equitable regulation of the legal relations between owners and drivers of cars on the one hand and especially the pedestrians on the other hand.

One of the objections which has arisen against the provisions of the Austrian law concerns the claims of injured pedestrians. In New Zealand as well as in Austria the pedestrians have to keep to the footpath. When there is an authorized pedestrian-crossing which is reasonably available to any pedestrian who is crossing a roadway, then if the pedestrian does not use such crossing, he shall yield the right of way to motor-vehicles on the roadway‡‡. A pedestrian, walking or,

‖ *Cf. Gibb's Law of Collisions on Land*, 4th Ed. 45: "The person who has the control of the driver in the execution of his duty is the person who is liable in law for his negligence." But with regard to New Zealand motor-vehicles law, *cf.* Motor-vehicles Insurance (Third-party Risks) Act, 1928, s. 3: "For the purpose of this Act and of every contract of insurance thereunder every person other than the owner who is at any time in charge of a motor-vehicle, whether with the authority of the owner or not, shall be deemed to be the authorized agent of the owner acting within the scope of his authority in relation to such motor-vehicle."

¶ *Cf.* Traffic Regulations, 1936, Reg. 6 (1) (*d*).

** *Cf.* Motor-vehicles Insurance (Third-party Risks) Act, 1928 s. 13.

†† *Cf.* The New Zealand Official Year-book, 1939.

‡‡ The Traffic Regulations 1936, Part V.—According to the Viennese Traffic Regulations pedestrians must yield the right of way to motor-vehicles on the roadway, even if there is no authorized pedestrian-crossing available.

standing on a pavement or footpath, waiting on a safety zone or using the authorized pedestrian-crossing, if knocked down by a motor-vehicle, might—according to the opinion of Austrian lawyers—be entitled to claims based on absolute liability. But—contrary to the provisions of the Austrian Act—the pedestrian walking on the roadway used for vehicular traffic, should, if knocked down, be entitled to claims only in the case of wilfulness or negligence on the part of the driver.

It was, of course, not intended to abolish entirely the principle of absolute liability for motor-vehicle collisions, as that principle has in Austria been in operation for a period of thirty years. But the exclusion of claims of the pedestrian, walking or standing on the roadway, was one of the proposed amendments to the Act of 1908.

Another proposal considered in Austria has been enacted in other countries whose legislation in motor-vehicle cases is based on the principle of absolute liability. It concerns the measure of damages recoverable. The injured plaintiff in a running-down action, in Austria as well as in New Zealand, is especially entitled to recover damages for past and future loss of income, for the pain and suffering undergone, for the medical expenses, for future disability, and any reduction in his physical capacity to enjoy life. Very high amounts of damages were recovered in Austria, especially for the pain and suffering undergone—*e.g.*, a teacher, paralysed by an accident which happened without any negligence, recovered about £6,000 for the pain and suffering undergone and for his future disability to enjoy life only—there were, moreover, damages assessed for past and future loss of income, &c. The Austrian Courts assessed for every day of pain and suffering, according to the grade of pain and suffering, about £1 to £3, in exceptional cases even £5 daily.

Based on economic reasons a law was proposed in Austria, and was enacted in other countries whose legislation in motor-collision cases is based on the principle of absolute liability, restricting the damages recoverable, provided that there is no proof of negligence, to special damages. The plaintiff in a running-down action shall, therefore, be entitled to recover general damages, especially for pain and suffering undergone, only in the case of proved negligence.

The German, Finnish, and Swiss Acts restrict the damages recoverable to special damages or limit the amounts recoverable by fixing maximum amounts where there is no proof of negligence. According to the Russian law the plaintiff is entitled to recover damages amounting to the compensation under the Workers' Compensation law and higher damages are assessed only exceptionally. Mr. von Haast reported§§ that in the United States a statutory scale of compensation analogous to workers' compensation was proposed Bauerreiss mentioned in his paper, as quoted above, that similar proposals had been made in Belgium, France, and Japan.

The economic effect of an unrestricted absolute liability in motor-collision cases, as provided for by the Austrian Act, and the urgent necessity of restrictions, may be demonstrated in comparing the motor-vehicles insurance (third-party risks) premiums charged in New Zealand on the one hand and in Austria on the other hand.

§§ Compensation for Automobile Accidents, (1933) 9 N.Z.L.J. 296.

Motor-vehicles (third-party risks) insurance has been compulsory in Austria since 1930. With regard to the fact that Austrian third-party risks policies never provide for an unlimited cover, the Austrian Motor-vehicles Regulations limit the minimum-cover, as follows :—

	Service Cars.	Other Cars.	Motor cycles.
	£	£	£
Claims for death or injury of one person	1,000	500	250
Maximum amount for death or injury of persons injured or killed by one accident ..	4,000 ||||	2,000	1,000
Claims for damage to property ..	200	100	50

In spite of the fact that New Zealand third-party risks policies—with exception of claims made by passengers—provide for unlimited cover, the Austrian annual premiums amount to many times the premiums charged in New Zealand.

	Annual Premiums in Austria.	In New Zealand.
	£ s. d.	£ s. d.
Motor-cycles	3 9 0	1 0 0
Private motor-cars	17 0 0	1 6 0
Trade motors	17 2 0	1 18 0
Public motor-cabs	29 5 0	10 0 0
Service cars	75 4 0	7 16 0

The economic and social conditions of New Zealand and Austria are, admittedly, thoroughly different, and one must certainly be very careful in comparing these figures. But they indicate that the proposed legislation must in any case result in a rise of insurance premiums in New Zealand.

The second question that damages should be assessed by a Judge and two assessors,¶¶ was equally discussed in Austria. There are no juries in Austrian Civil Courts, learned Judges decide questions of fact as well as questions of law. But this distinction (question of fact, question of law) is important in Austria with regard to the right of appeal, and I may point out that Austrian Courts consider the question of negligence on the part of the plaintiff or defendant as a question of law and not, as a question of fact.

It was usual in Austrian motor-collision trials to call and hear medical experts to give evidence based merely upon physical examination of the plaintiff and upon hypothetical questions, and technical experts (civil engineers, car mechanics, or dealers) to give evidence relating to the questions of damage and negligence. The idea was to set up a special tribunal for motor-vehicle cases consisting of a Judge and two permanent assessors (a medical and a technical expert). Austrian lawyers expected from that change an uniformity in the declaration of damages and the saving of delay and cost in litigation.

All the problems in question in New Zealand have been considered and solved in different ways in many countries of the world. New Zealand lawyers will, certainly, find the best solution, based on the previous legislative work and on the scientific legal studies of other nations, and on the experience gained abroad.

|||| In the case of more than twenty seats : £8,000.

¶¶ *Cf.* Mr. A. L. Haslam, Trial of Collision Cases, (1936) 12 N.Z.L.J. 104, and Mr. A. H. Johnstone, K.C., The Jury System : Is Reform Desirable ? (1938) 14 N.Z.L.J. 112.

PITFALLS IN CONVEYANCING.

Purchasers' and Mortgagees' Titles.

By C. E. H. Ball, LL.M.

The object of this article is to examine the various pitfalls in obtaining a perfect title to land, with particular reference to land under the Land Transfer system. There are many such pitfalls, and their danger lies not in any profound legal principle, but in their number. Some have always existed, but many more have crept in, sometimes unnoticed, but more often unremembered, with the inflow of new legislation.

Accordingly, even at the risk of appearing often elementary, and perhaps on occasions highly academic, it is proposed to make as nearly as possible a complete list of these dangers, and to comment on them where it appears necessary. It should, however, be remembered that some of them will apply only to limited classes of property.

Capacity of Vendor or Mortgagor.

Trust Boards.—The power to sell contained in s. 13 of the Religious, Charitable, and Educational Trusts Act, 1908, does not include a power to mortgage: *Second Church of Christ Scientist, Christchurch, Trust Board* v. *Symes*, [1930] N.Z.L.R. 65, [1929] G.L.R. 493. But the Supreme Court has a general jurisdiction to authorize any alienation of property shown to be in the interests of the trust: *In re Wellington Diocesan School for Girls (Nga Tawa, Marton) Trust Board*, [1925] N.Z.L.R. 582, G.L.R. 156.

Natives.—The Native Land Act, 1931, restricts dealings by Natives with their land. By s. 117, Native customary land is absolutely inalienable. The selling of Native freehold land generally requires confirmation, and, if by way of mortgage, the precedent consent of the Native Minister: s. 296. The relative provisions of the Act should be consulted where the party proposing to alienate is a Native, a trustee for a Native "person under disability," or the incorporated owners of Native land.

Undischarged Bankrupts.—Although the position in New Zealand may be affected by the Land Transfer Act, it seems at least doubtful whether an undischarged bankrupt can give a good title to even after-acquired freehold land: see *London and County Contracts, Ltd.* v. *Tallack*, (1903) 51 W.R. 408, and cases therein cited.

Infants.—The case of infants alienating land, especially by way of mortgage, presents a real danger, epecially since ignorance of the fact of infancy may afford no protection. It does not appear that the provisions of s. 106 of the Land Act, 1924, or ss. 266 or 267 of the Native Land Act, 1931, authorize alienation of his holding by an infant selector of Crown or Native land: *cf. Nottingham Permanent Building Society* v. *Thurstan*, [1903] A.C. 6.

Mental Defectives.—A mental defective of whose estate a committee has been appointed cannot alienate his property: Mental Defectives Act, 1908, s. 111 (1). Subsection (4) protects transactions entered into *bona fide* without knowledge of the appointment.

Convicts.—A convict cannot alienate his property while subject to Part III of the Prisons Act, 1908.

Executors or Administrators.—Although a person taking from an executor or administrator is generally protected by s. 8 of the Administration Act, 1908, and s. 104 of the Property Law Act, 1908, it seems that after twenty years have elapsed from the death of the testator he should inquire as to whether debts remain unpaid: *In re Tanqueray-Willaume and Landau*, (1881) 20 Ch.D. 465.

Trustees.—A search of a Land Transfer title does not usually give notice that the proprietor is a trustee. If, however, the proposed transferee or mortgagee has notice of a trust, he is put on inquiry.

Companies.—The powers of a company which proposes to alienate its property should be considered, especially if the proposed alienation is by way of mortgage, to verify that the power of alienation is expressly or impliedly conferred by the memorandum of association.

Settlers of Family Homes.—The memorial of a family-home certificate on the title is warning that the land comprised in it cannot be dealt with.

Rates.—All local authorities having rating powers in respect of the land proposed to be dealt with should be ascertained. Where complete alienation is involved, apportionment of rates is required. Where the proposed alienation is by way of mortgage, the mortgagee's solicitor should satisfy himself that no rates are due or overdue. It is expedient to sight the actual rate receipt, since there is some doubt whether a local authority is estopped from claiming rates by incorrect information that payment has been made being given by a servant of the local authority.

Land-tax.—Payment of land-tax should be verified. Owing to the aggregation provisions of the Land and Income Tax Act, it is not sufficient that the value of the land being dealt with is not sufficient to render it, if held alone, liable to land-tax.

Statutory Land Charges.

The Statutory Land Charges Registration Act, 1928, gives notice by registration of statutory land charges which would affect a purchaser or mortgagee. Prior to the passing of this Act, there was no notice by registration, and the solicitor acting for the person taking title required to inquire from all possible authorities which might be entitled to a charge for such items as drainage installations, installations of gas or electricity, and numerous others less frequently occurring. Charges not registered under the Act are those arising under the Land and Income Tax Act, 1923, s. 47 of the Workers' Compensation Act, 1922, s. 228 of the Mining Act, 1926, s. 2 of the Coal-mines Amendment Act, 1927, and charges over Native land not registered under the Land Transfer Act. Moreover, although rates are a charge on land, the charge does not require registration.

(*To be continued.*)

NEW ZEALAND LAW SOCIETY.

Annual Meeting of Council.

(*Concluded from p. 83.*)

Petrol Restrictions.—Letters were received from the Hamilton, Otago, Taranaki, and Wellington Societies concerning the petrol restrictions, and urging that representations should be made to the Oil Fuel Controller with a view to the issue of licenses for extra petrol to solicitors in appropriate cases.

It was decided that the Wellington members should see the Controller and endeavour to have solicitors placed on the semi-essential list.

NOTE.—The Wellington members interviewed the Controller on the day following the meeting and the following letter has since been received and is published for information :—

> In reference to our discussion yesterday afternoon, I desire to confirm the arrangement agreed upon to the effect that applications from barristers and solicitors for petrol allowances are to be made through the local District Law Society, who will forward them to the appropriate Local District Controller with a recommendation in each case.
>
> I am instructing Local Controllers that sympathetic consideration is to be given to those cases where the District Law Society makes a recommendation. I should esteem it a favour if you would kindly arrange to inform your members of this arrangement.

English Barristers on War Service: Preserving their Practice.—The Secretary drew attention to the following resolution of the General Council of the Bar in England :—

> With the object of preserving as far as possible the practice of every barrister who is unable to attend to it owing to service in His Majesty's Forces or other whole-time public service in connection with the war, the General Council of the Bar has resolved as follows :—
>
> 1. That every barrister remaining in practice should make it a point of honour—
>
> (*a*) To do what he can to ensure that every serving barrister shall get back his practice when he is able to resume work at the Bar ;
>
> (*b*) Meanwhile, so far as is reasonably practicable, to do any work for any serving barrister which is entrusted to him, whether or not he has been in the same chambers, or whether he is senior or junior, on such terms as to sharing fees as they shall agree, and, in default of any agreement, sharing the fees equally, other than the clerk's fees, which should go to the clerk of the barrister who does the work.
>
> The above applies both to King's counsel and junior counsel, but so that no King's counsel may do work for a junior counsel, nor junior counsel for a King's counsel.
>
> (*c*) That any barrister doing work for a serving barrister should after his signature to pleadings or other documents add the words "for [*A.B.*], absent on war service," and if holding a brief shall state to the Court that he is holding it in the absence of [*A.B.*] on war service.
>
> 2. That a serving barrister shall be entitled to send or have sent on his behalf to every professional client a notice with a covering letter in a form which has been approved by the Bar Council and the Law Society, indicating (if he is in a position to do so) the name or names of any barrister or barristers with whom he has made actual arrangements to do his work when possible.
>
> 3. That on his return to practice a serving barrister shall be entitled to notify those who, prior to his departure, had been his professional clients that he has returned to practice at a given address.
>
> 4. That it shall be a point of honour to inform a solicitor who has delivered or is proposing to deliver a brief or instructions for a serving barrister of the effect of this resolution, and to invite him in delivering or transferring the brief or instructions to add to the name of the barrister selected by him (whether or not one of those named pursuant to para. 2) the words "in the absence of [*A.B.*], on war service.
>
> 5. That any barrister to whom a brief or instructions may be delivered in circumstances to which the foregoing paragraphs apply (even if the name of the serving barrister is not endorsed upon them) shall make it a point of honour where reasonably practicable to accept the papers and to do the work and to account to the serving barrister for an agreed proportion of the fee when paid, or, in the absence of agreement, for half the fee.

Notice to Guarantor under Mortgagors and Lessees Rehabilitation Act, 1936: Incidence of Costs.—The Wanganui Society wrote as follows :—

> Messrs. A. and Messrs. B. recently applied to my Council for a ruling as to the incidence of costs of notice to a "guarantor" under the Mortgagors and Lessees Rehabilitation Act, 1936.
>
> My Council ruled that the costs were payable by the mortgagee and could not be collected from the mortgagor as mortgagees' costs.
>
> Messrs. , being dissatisfied with this ruling, have asked that the matter be referred to the New Zealand Society.
>
> I therefore enclose copies of the original letters to my Society and request that the necessary steps be taken to obtain your Society's ruling.
>
> *Enclosure No. 1.*
>
> Under the Mortgagors and Lessees Rehabilitation Act, 1936, s. 54, Messrs. , on behalf of a first mortgagee for whom they act, gave notice to a principal party (who became a guarantor for the purposes of the Act) under the mortgage for the purpose of continuing the guarantor's liability. The guarantor, who was a covenanting party under the mortgage and became a guarantor for the purpose of the Rehabilitation Act, was the husband of the mortgagor and the loan was made to the husband and wife. The mortgage is a mortgage over a farm property which the husband farms, and Messrs. say that it was necessary, in the protection of their client's security, to give this notice, and that their fee for same, £1 11s. 6d., is costs properly incurred by their client, the first mortgagee, in protection of her security, and as such is recoverable from the mortgagor. They further say that by cl. (6) of the Fourth Schedule to the Land Transfer Act, 1915, it is provided that all moneys expended by the mortgagee in lawfully exercising or enforcing any power, right, or remedy under the mortgage shall be payable to the mortgagees by the mortgagor upon demand, and until so paid shall be charged on the said land. In the case of *Bowen* v. *Redmond*, [1926] N.Z.L.R. 644, G.L.R. 218, Mr. Justice Ostler decided that this clause did create a contract by the mortgagor to pay to the mortgagee costs and expenses properly incurred in protecting the security, and that upon this contract an action would lie. The mortgage does not negative the implied covenant and conditions implied in the mortgage, but does have an express covenant by the mortgagors to pay all costs and expenses reasonably incurred by the mortgagee in enforcing or attempting to enforce or to secure the observance or performance of any covenant, condition, or agreement herein contained or implied. Messrs. particularly point out that portion of the judgment, being the last paragraph in the second column on p. 220 and the following paragraph on p. 221. They say the covenant contained in cl. 6 is implied in the mortgage in question, and the express covenant is to the same effect, and that by Mr. Justice Ostler's decision both the implied covenant and the express covenant create a contract by the mortgagors to pay to the mortgagee costs and expenses properly incurred in protecting the security, and that upon this contract an action will lie, and that the Mortgagors and Lessees Rehabilitation Act does not affect the position as it does not deal with mortgagees' costs except to provide for the costs in proceedings before the Court or Adjustment Commission. Further, that it is the practice in this district to charge the mortgagor with the fee in question.
>
> *Enclosure No. 2.*
>
> That the fee in question is payable by the mortgagee ; that at the time the liability was entered into, the above

Act was not in force; that from the mortgagor's point of view it was not necessary for the notice to be given; that the failure to give this notice would free the guarantor from liability; and that the Act was passed in relief of mortgagors, not for the purpose of inflicting a further liability on them; that it is contrary to the practice in this district to charge the mortgagor with the fee in question.

It was decided to refer the question to the Conveyancing Committee for a ruling.

Preparation of Wills without Charge.—The Wellington Society wrote as follows:—

At the last meeting of the Council the following letter was received from a practitioner, and it was decided to bring the matter to the attention of this Council with a recommendation that the suggestion made should be adopted:—

It has occurred to the writer that the time might now be opportune for your Society to consider the advisability of practitioners preparing wills free of charge, and taking steps to make this known to the public either by advertising or other means.

Whilst the members of your Council will probably agree that such a suggestion is one which it does not relish, nevertheless it is hoped that it will receive your full consideration, and that steps will be taken to ascertain the views of the profession on the matter.

The President referred the meeting to the Society's Ruling No. 152, the gist of which was:

The Council disapproves of the practice reported from Dunedin of solicitors making wills without charge, and suggests that the practice be discontinued forthwith.

On the motion of Mr. Fell, it was decided to refer the Wellington Society to Ruling No. 152, and to inform them that this ruling was reaffirmed by the Council.

Wages Protection and Contractors' Liens Act, 1939, s. 32: Retaining One-fourth of Moneys Payable.—The following letter was received from a Wellington firm:—

Under the 1908 Act an employer or contractor was required to "retain in his hands one-fourth part of the money payable under the contract." In s. 32 of the 1939 Act the wording is "one-fourth of the contract price payable by him."

Section 59 in the old Act has been interpreted by the Courts as meaning one-fourth of the money immediately payable to the contractor—that is, one-fourth of the amount earned up to a given time—and thus a progress payment of three-fourths of the amount earned could be paid by the employer.

The alteration in the wording to "one-fourth of the contract price payable by him" on the face of it would appear to mean one-fourth of the total contract price, and the result would be in, say, a £20,000 contract, that a contractor must do over £5,000 worth of work before he could have a progressive payment, and then only the amount earned in excess of £5,000.

The definitions of "contract price" differ in the two Acts. Under the new Act "contract price" means the amount of the consideration for the performance of any work under any contract. It is hard to construe into the definitions a meaning that *consideration* for the performance of any work means anything other than the total consideration for the work (performed and to be performed) under the contract.

If your Committee agree that there is a doubt, we would ask that an amending Act be obtained as soon as possible.

Assistance to Enlisted Practitioners.—Mr. Castle stated that the Wellington Society, at its meeting held on the previous evening, had been considering the question of establishing a fund to assist enlisted practitioners in meeting their commitments. He inquired if any of the other Societies had gone into the same matter.

Delegates stated that the subject had not been discussed elsewhere, and several members mentioned the Soldiers' Assistance Board, which had been set up to assist in the direction indicated. Others also pointed out that care would be necessary to see that the Patriotic Purposes Emergency Regulations were not infringed.

No motion was passed in connection with the discussion.

Admissions to the Profession in 1939.—The following figures were obtained too late for inclusion in the Annual Report:—

	Admissions.
Auckland	25
Canterbury	7
Gisborne	1
Hamilton	4
Hawke's Bay	3
Marlborough	0
Nelson	1
Otago	6
Southland	1
Taranaki	1
Wanganui	2
Westland	0
Wellington	17
Total	68

Of the foregoing admissions, two were in respect of restorations to the roll; thirty-eight were barristers and solicitors; eighteen were solicitors; three were barristers by examination; and seven were barristers under the five years' rule.

Legal Conference Fees.—The Otago Society wrote as follows:—

At a meeting of my Council held yesterday, the matter of this 5s. levy was discussed, and I was instructed to advise you that the opinion of this Society is that, in view of the postponement of the Legal Conference, there should be no levy made this year, as it is felt that members will strongly object. It is suggested that this matter be brought up at the next meeting of the New Zealand Law Society on the 27th instant.

After it had been pointed out that the idea was to have two years' collections always available for a Conference, and that in some of the Societies the Conference fees for 1940 had already been paid, it was decided, on the motion of Mr. Watson, to collect the fees this year, but that if no Conference were held next year there should be no levy during 1941.

Soldiers out of New Zealand: Affiliation Orders.—The following letter was received from a Wellington firm:—

As you are aware, the writer attended at Trentham Camp last night, pursuant to the arrangement made by the Society, when the following question was raised by one of the officers:—

Apparently a great many inquiries are being made as to the position of the men who are threatened with applications for affiliation orders. The difficulty does not arise where proceedings are taken prior to the embarkation, but there appears to be no procedure for—

(*a*) Service of any summons,

(*b*) Arrangements for the taking of evidence of the alleged putative father once the proposed defendant has left with the forces,

There may also be a further question of maintenance and enforcement in the event of an order being made,

It is suggested that this is a matter which might well be referred to the New Zealand Society for attention by the Government.

It was decided to refer the letter to the Standing Committee for their consideration and action.

The Staff.—The President expressed his gratitude to the Secretary and staff for their work during the year, pointing out that it was due to their efforts that the business of the Council went through so smoothly.

LONDON LETTER.

By Air Mail. Somewhere in England,
April 2, 1940.

My dear EnZ-ers,—

The interest of the war has hitherto centred mainly on the operations at sea. The loss of life which the intensification of war on the Western front would mean has so far been avoided, and it is to be hoped will be avoided until the objects of the struggle have been attained by other means. Warfare in the air is also held in restraint. Presumably, both on land and in the air, restraint is a matter of prudence on each side. But, in the present war, as in the last, prudence has not acted as a restraint on the attacks by Germany on enemy and neutral shipping and it is interesting to note that the same questions of International Law which were being discussed then have arisen now. In the first volume of the transactions of the Grotius Society, which was founded in 1915 for the discussion of "Problems of the War," there was a paper by the late Dr. Hugh Bellot on "The Destruction of Merchantmen by a Belligerent," and in the second volume this was followed by a paper by the late Lord Phillimore intended to be supplementary to Dr. Bellot's paper. Each was dictated by the extent to which Germany was violating the rules of International Law. "If Germany," wrote Dr. Bellot, "in pursuance of her present theories of military necessity, refuses to fall into line and continues to flout the rules and usages of warfare, she must be treated as the pariah of nations." Lord Phillimore, then Sir Walter Phillimore—he had first resigned from the Court of Appeal—suggested "pirate" as the appropriate word.

Other troubles of a neutral are being abundantly illustrated. They arise out of the more drastic methods employed by a belligerent in order to subdue the enemy. The chief example is the cutting off of neutral traffic by means of a blockade. The establishment of a blockade, where it is effective, is a recognized belligerent right, and though it deprives neutrals of the opportunity of commerce, they are not entitled to complain. The present semi-blockade of Germany by way of reprisal is sanctioned by a decision arising out of the last war: *The Leonora*, [1919] A.C. 974. But the question is perhaps not closed, and the consequent interference with traffic appears to be criticized in America.

Ministerial Changes.—The Ministerial changes in France afford an interesting instance of the elasticity of constitutional government. The Premier moves out of the first place, but does not retire into private life. On the contrary, he takes office again under a new chief and with colleagues different from those whom he commanded yesterday. The new Premier selects his team and presents them to the Lower House who receive them with an approval which is by no means unanimous, but which gives promise of a majority should the malcontents move a vote of no confidence. In the whole process of change and rearrangement the electors are never asked to express an opinion. Even if at the last general election, Monsieur X. was put forward as prospective Premier and now retires, Monsieur Z. takes office without any reference or appeal to the country. He has only to secure a working majority in the Lower House when he first presents himself and his position is secure. Some time has elapsed in England since we thought that the retirement of a Prime Minister meant an appeal to the people. If the Premier retires all his colleagues go with him. The new Premier appoints his colleagues and they go before the House of Commons as they did in 1931. Yet it is generally felt that if the Ministerial changes are great the electors should have an opportunity of saying whether they like the new Ministry or not. The conclusion appears to be that in wartime the House of Commons or Chamber of Deputies is supreme. So long as a new Premier has their support no consultation of the electors is necessary. Indeed, modern practice bears out what Gladstone once said—that it is for the Commons, not the electorate, to dismiss Ministers.

Action against States.—Nobody can sue a State in our Courts. The rule has long been recognized as one of international courtesy, and has been sustained by many decisions of the Courts. It was brought up for discussion, and again confirmed last term in the Court of Appeal: *Godman* v. *Winterton and Others* (*Times*, March 13). The plaintiff was an agent who had done some work for a committee called the Inter-Governmental Committee. This was set up at Geneva in 1938 by a larger committee representing over thirty States. Its object was to help people to get out of Germany who desired to cease their residence there.

It is not quite clear how much work the plaintiff had done. The assertion in the defence that his claim was "frivolous and vexatious" may be mere pleading. In any case, the Committee refused payment of sums demanded by him for work done as their agent. His action to recover payment for the work had been struck out as far as the Court of Appeal. The simple ground was that the defendants were representatives of Sovereign States, against which no action could be brought in our Courts. The subject is well dealt with in *Salaman* v. *Secretary of State for India*, [1906] 1 K.B. 613, and is discussed more lately in *Johnson* v. *Pedler*, [1921] 2 A.C. 262.

The Solicitors Bill.—The Solicitors (Emergency Provisions) Bill, has now passed the House of Lords and has gone to the Commons, where it should not be long delayed. The power to allow earlier presentation for the final examination has been made retrospective to validate the recent examination. The Society's power to hold what examinations it chooses has been limited to the present emergency. To legislate otherwise would mean a permanent alteration in s. 26 (1) of the Solicitors Act, 1932. Certain clauses have been omitted, notably that which varied the application of the fees for practising certificates. It is now a wholly emergency Bill, and should pass without controversy. It has, of course, nothing to do with the proposed legislation on the subject of defalcations and an indemnity fund; nor does it touch the subject of compulsory membership of the Law Society. As soon as a Bill on those lines is before Parliament, the profession will be in an easier position with its critics.

The Map of Europe.—Another treaty—the Russo-Finnish Treaty—has been added to the long list of Agreements which mark the ever-changing map of Europe. It is an incident in the game of grab in which all the dictator-controlled countries are engaging. Many years ago, in the period of the last century in which

Great Britain was leaving continental ambitions severely alone, *Punch* commemorated the game by a famous cartoon of an eagle with outstretched wings clutching his victim and the underwritten motto, "Let us Prey." Great Britain is now with France embarked upon a different policy—whether rightly or wrongly it is not for us to express an opinion—the main object of which appear to be to rescue the victims from the eagle. This, too, though hardly more than six months of war have gone, must in due course lead to another treaty. Only Mr. Welles who, after a tour of European capitals, has gone back to report to President Roosevelt, can say what statesmen on this side are willing to do to avoid the general catastrophe which the continuance of armed conflict threatens. But sound sense requires that his mission should not be wholly negative.

Debtors and the War.—The recent decision of the Court of Appeal in *Landau* v. *Huberman and Others* throws further light to help lawyers in the interpretation of the Courts (Emergency Powers) Act, 1939. The leading case of *A.* v. *B.*, [1940] 1 K.B. 217, [1939] 4 All E.R. 169, made two general rules—that inability to pay must be established, and that inability must be shown to be due to circumstances arising out of the war. The recent case shows what is necessary to establish inability to pay. It is not enough for a debtor who carries on business in partnership with other people to prove that the business is adversely affected by the war and so escape from all liability for debts incurred by it. He must go further and show the Court that his own resources are so diminished that he cannot support the partnership by payment of its debt, and that the diminution of these resources is due to the war. He must show this in detail and it is not enough for him to say that he has not "any available private means." The decision is, of course, based on the old rule that partners are individually liable for the debts incurred by a partnership.

Judicial Duty.—Mention of the murder of Sir Michael O'Dwyer should distinguish between the position of Sir Michael O'Dwyer and General Dyer in relation to the suppression of the disturbance. It was under General Dyer's orders that the suppression of the rioting took place which resulted in the deaths of nearly four hundred persons. Sir Michael O'Dwyer was at the time Lieutenant-Governor of the Punjab, and he had no direct part in the suppression, though he was prepared to support General Dyer. Hence the particular justification in the libel action of *O'Dwyer* v. *Nair* alleged that General Dyer committed an atrocity, and that Sir Michael O'Dwyer caused or was responsible for its commission. The trial lasted nearly five weeks, and, Mr. Justice McCardie, in directing the jury, expressed his own opinion on the evidence that "General Dyer, in the grave and exceptional circumstances, acted rightly." The view of the Hunter Commission and of the Government was different, and General Dyer was removed. But the Judge remained convinced that his summing-up was in strict accordance with his legal duty. There was a hostile motion by Mr. Lansbury in the House of Commons, but it was withdrawn in deference to a statement by the Prime Minister, Mr. Ramsay Macdonald, in which he said that the Government would always uphold the right of the Judiciary to pass judgment even on the Executive, if it thought fit; but that being the right of the Judiciary, it was all the more necessary that it should guard itself against pronouncements upon issues involving grave political consequences which were not themselves being tried. In the view of the Judge the issue of General Dyer's conduct was being tried, though his conception of his judicial duty may have carried him too far.

Yours as ever,

APTERYX.

GIFT DUTY AND DEATH DUTY.

Official Receipts for Trust Account Audits.

The Commissioner of Stamp Duties has issued the following memorandum to the Assistant Commissioners of Stamp Duties. This memorandum contains the instructions that he agreed to issue, following representations made by the New Zealand Law Society, regarding the particulars that are to be set out in the official receipts issued on the payment of gift duty and death duty, and provides for the numbering of the third copies of the requisitions (Form D).

The New Zealand Law Society and the New Zealand Society of Accountants have represented to me that the efficiency of the audit of Law Trust Accounts would be increased if the official receipts issued by this Office contained sufficient information to enable the payments to be identified by the auditor. With a view to assisting the auditors, the following instructions shall be observed:—

(*a*) A receipt that is issued on the payment of gift duty or death duty, in addition to indicating the nature of the payment, shall contain the name of the donor or the name and the record number of the estate, as the case may be.

(*b*) In the case of payments made on account of stamp duty, if the requisition (Form D) is presented in triplicate with the documents the official requisition number corresponding with that written on the receipt is to be printed on each copy by means of the hand-numbering machine. Where documents are received through the post for stamping, the third copy of the requisition, duly numbered and with the official receipt affixed thereto, is to be returned with the documents in the usual way. If a third copy of the requisition is not presented for numbering, the triplicate number is to be printed on the office copy as evidence that a numbered requisition form was not obtained by the person paying the duty.

The requisitions for other payments that are entered in the daily cash book are to be dealt with in a similar manner.

ANNUAL MEETINGS.

Wellington District Law Society.

The annual meeting of the Wellington District Law Society was held on Monday, February 26, 1940, at 8 p.m., in the Small Court-room, Supreme Court, Wellington, sixty-one members being present.

The retiring President, Mr. A. T. Young, occupied the chair until the election of his successor, Mr. S. J. Castle.

Apologies for absence were received from Messrs. James, Buxton, Spratt, D. G. B. Morison, Macarthur, Leicester, Macfarlane Laing, Foster, Hardie Boys, and Graham.

Mr. Young expressed his pleasure at the presence at the meeting of Messrs. Gavin, Thomson, and Todd, of Levin. At a later stage Mr. W. J. Sim, K.C., was welcomed on his return to practise in this City after a long period of practise in Christchurch.

Minutes.—The minutes of the annual meeting held on February 27, 1939, as printed and circulated were taken as read and confirmed.

Report and Balance-sheet.—Mr. Young, in moving the adoption of the report and balance-sheet for the year, referred briefly to the various matters set out in the report. It had been a disappointment to all that the Legal Conference had had to be abandoned but the cancellation had been decided upon by the Council of the New Zealand Law Society. The Society was much indebted to Messrs. D. Perry and D. R. Richmond for the amount of work they had undertaken in bringing the new agreement with the Law Clerks to a successful conclusion.

Though he had undertaken the office of President with some feeling of trepidation, he now felt that the position had been rendered enjoyable owing to the friendship and assistance of the members of the Council and of the profession. Only those in touch with the work of the Society's Office were aware of the great amount of work which was handled there, and he expressed the thanks of the profession to the Secretary and staff.

The Council was the poorer by the loss of Mr. P. B. Cooke, K.C., who retired under the provisions of the " oldest inhabitant " rule.

Mr. Swan seconded the motion, which was put to the meeting and carried without discussion.

Election of President.—Mr. S. J. Castle, the only nominee, was declared duly elected, and on taking the chair warmly thanked members for his election and said that he was deeply conscious of the honour conferred but would do his best to be worthy of the trust, and endeavour to give satisfaction in the various phases of the Society's activities.

On behalf of the Society he thanked Mr. Young for the excellent work done by him during the year, and stated that he had been a most energetic President and had filled the office with distinction.

Election of Vice-President and Treasurer.—Mr. D. G. B. Morison, and Mr. A. B. Buxton, the only nominees, were declared duly elected to the positions of Vice-President and Treasurer, respectively.

Members of Council.—(*a*) Members elected by branches. Palmerston North, Mr. J. W. Rutherfurd, the only nominee, was declared duly elected. Feilding, as no nomination had been received, Mr. J. Graham continues in office. Wairarapa, as no nomination had been received, Mr. C. C. Marsack continues in office. (*b*) Wellington members. Ten nominations having been received, a ballot was held, and the following were elected: Messrs. T. P. Cleary, A. M. Cousins, E. P. Hay, N. H. Mather, D. Perry, W. P. Shorland, J. W. Ward, and A. T. Young.

Delegates to the New Zealand Law Society.—Messrs. H. F. O'Leary, K.C., G. G. G. Watson, and S. J. Castle, the only nominees, were elected to represent the Society on the Council of the New Zealand Law Society.

Mr. O'Leary thanked the members for his election, saying that all delegates deemed it an honour and a privilege to serve on the New Zealand Council. He traversed briefly the main matters which had occupied the attention of the New Zealand Law Society during the year.

He pointed out that the Society was extremely fortunate in having in Wellington three members who had been appointed a Conveyancing Committee by the New Zealand Law Society and to whom difficult questions of conveyancing practice were referred for consideration and report.

These gentlemen, Messrs. E. F. Hadfield, R. H. Webb and C. H. Weston, K.C., had performed most valuable work, and he tendered to them the sincere thanks of the Society.

Mr. Watson also expressed his thanks, saying that he enjoyed all the work except that on the Disciplinary Committee, which was naturally distasteful to all on that Committee, though obviously it was very desirable that the Society should have power to discipline its own members.

Election of Auditors.—Messrs. Clarke, Menzies, Griffin, and Co. were reappointed for the forthcoming year.

Easter Holidays.—On the motion of Mr. Castle it was unanimously decided without discussion that the Easter holidays should be from the usual closing-hour on Thursday, March 21 to the usual opening-hour on Monday, April 1.

Christmas Holidays.—On the motion of Mr. Wiren, seconded by Mr. Willis, it was decided on a show of hands that the Christmas holidays should be from the usual closing-time on Tuesday, December 24, 1940, to the usual opening-time on Monday, January 13, 1941.

An amendment moved by the Hon. W. Perry, and seconded by Mr. E. T. Clere, that offices should close from noon on Tuesday, December 24, and reopen at the usual hour on Thursday, January 9, was lost.

Legal Aid to Soldiers.—Mr. C. H. Weston, K.C., as a member of the Returned Soldiers' Association, thanked those practitioners who had given their services to provide free legal aid at Trentham Camp. It was very pleasing to see that so many members of the Society were ready to help in this way. The Returned Soldiers' Association was ready to assist

by providing such furniture as might be required in the Hut at the Camp.

The Chairman read a letter from Messrs. Rollings and Gavin, Levin, reporting that the practitioners in that town had arranged with the Air Department for a practitioner to attend at the R.N.Z.A.F. Camp at Weraroa on each Tuesday to render the same service as was being given to the troops at Trentham.

Assistance to Enlisted Practitioners.—Mr. H. R. Biss pointed out that many practitioners had enlisted and would be enlisting, but that many more were held back owing to commitments which could not be met out of their Army pay. He suggested that the Society should give a lead and assist those enlisting. He did not think a flat rate or contribution should be adopted, but that some scheme should be evolved to help the families of enlisted practitioners.

The Hon. W. Perry said that there was much to commend the suggestion and referred to the work of the Soldiers' Financial Assistance Board, which had been set up to assist in the way mentioned by Mr. Biss. The matter was really one for the New Zealand Law Society, and he thought the Council of that body might well get in touch with the board and work out a scheme.

He therefore moved: "That the matter of providing some financial assistance to members proceeding overseas for service should be referred to the incoming Council for consideration in conjunction with the Soldiers' Financial Assistance Board."

The motion was seconded by Mr. Biss, and carried unanimously.

A motion by Mr. Castle that the meeting should express to enlisted practitioners its wishes for the best of fortune and a safe return was carried with acclamation.

Canterbury Law Society.

The annual meeting was held on March 1. The annual report, which was adopted, recorded with regret the deaths of Messrs. H. H. Loughnan, H. O. D. Meares, and J. H. Williams. Mr. H. H. Loughnan was admitted in 1876.

Seven members of the Society and thirteen law clerks, of whom eight were qualified solicitors, had been accepted for service with the Expeditionary Force.

The Camp Commandant at Burnham had been informed that any legal assistance required by the men in camp would be given by the Society. About eight hundred wills had been prepared at the camp by members.

The officers elected for the year were: President, Mr. A. R. Jacobson; Vice-President, Mr. A. W. Brown; and Hon. Treasurer, Mr. R. Twyneham. Council members, Messrs. L. D. Cotterill, J. D. Godfrey, C. H. Holmes, L. J. H. Hensley, W. R. Lascelles, E. A. Lee, R. L. Ronaldson, and G. H. R. Ulrich.

The rules of the Society were altered so as to allow any solicitor in the district who takes out a practising certificate to be elected a member of the Society.

There was a discussion about the protection of practices of members on active service. Mr. A. T. Donnelly pointed out the injustices that were done to soldier solicitors in the last war, many of whom came back to find all trace of their professional connections had gone. Mr. Godfrey outlined the tentative scheme of the outgoing Council which will be developed and then presented to members for their consideration.

Hamilton District Law Society.

At the annual general meeting, held on March 13, there was a large attendance of members, including a number from the towns outside Hamilton.

The election of officers resulted as follows: President, Mr. H. J. McMullin; Vice-President, Mr. E. M. Mackersey; Council members, Messrs. H. M. Hammond, J. F. Strang, F. A. Swarbrick, W. C. Tanner, A. L. Tompkins, G. G. Bell, S. Lewis, and S. S. Preston; Auditor, Mr. A. R. Brown; Delegate to New Zealand Law Society, the President or his nominee.

Eulogistic reference was made to the members retiring from the Council. Mr. C. L. MacDiarmid had been a foundation member of the Society, and, except for two years, had served on the Council ever since its inception, a period of twenty-five years, during which time he had been President on several occasions. Mr. N. S. Johnson had been on the Council for fourteen years, during which he had been President on three occasions. Mr. M. H. Hampson had been a member of the Council for twelve years, and had held the office of Vice-President on several occasions.

Practitioners in the various towns were asked to advise the Secretary from time to time of any members whom they knew to have joined His Majesty's Forces. The members at present in the forces it was mentioned were: Major E. J. Clayton-Greene, O.B.E., at the Forts in Auckland; Captain T. V. Fitzpatrick and Gunner P. Lewis, who had sailed with the First Echelon; Second-Lieutenant F. D. Robertshaw, Sergeant-major G. Gilchrist, and Corporal J. D. Mears are in training with the Special Force.

The holding of the meeting in the evening instead of, as previously, in the daytime, was appreciated and was perhaps responsible for the very wide range of subjects relating to the profession which members present found time to discuss.

Hawke's Bay Law Society.

The annual meeting was held in the Court-house, Napier, on the evening of Wednesday, April 3, Mr. Hugh B. Lusk presiding over an attendance of thirty members. The election of officers resulted in the re-election of Mr. Lusk as President and also as delegate to the New Zealand Law Society, and of Mr. E. J. W. Hallett as Vice-President. Messrs. Chamberlain (Wairoa), Nelson (Dannevirke), E. T. Gifford (Hastings), Grant, Tattersall, and Wood (Napier) were elected to the Council, much pleasure being evinced in the restoration of Mr. Grant's health after his recent illness.

After considerable discussion it was resolved to eliminate the "Saints' days" from the list of holidays observed by the Society.

It was also decided to recognize as proper the practice of preparing free of charge simple powers of attorney for persons going upon military service, and the Council was empowered to remit subscriptions of members on active service.

The annual Bar Dinner will be held, if circumstances permit, during the May Court Sessions.

WAR EMERGENCY LEGISLATION

Finance Emergency Regulations, 1940.

The Finance Emergency Regulations, 1940, which came into force on April 11, are of particular importance to all practitioners concerned with estates with overseas beneficiaries, or with powers of attorney for absentees.

The purpose of the regulations is the prevention of the depletion of New Zealand's overseas funds; and, accordingly, to prevent any moneys or securities leaving New Zealand without permission of the Minister of Finance; and they consequently prohibit any moneys or securities being taken or sent to any person outside the Dominion. Except with permission granted by or on behalf of the Minister of Finance, the prohibition is absolute in respect of all dealings with New Zealand funds by means of bank-notes and other currency, postal notes and money-orders of New Zealand or any other country, bills of exchange or promissory notes, and in respect of securities held in the Dominion in the form of shares, bonds, debentures, debenture stock, and Treasury bills.

For the purposes of the regulations, money is taken or sent out of New Zealand if it is taken or sent by telegraph or post or by means of draft, letter of credit, traveller's cheque, transfer of account, or any other means whatsoever.

Securities may not be taken, sent, or transferred from New Zealand. The transfer of any security includes any transfer by way of loan, mortgage, pledge, or bailment, and a person is deemed to transfer a security from New Zealand if he transfers it from a register in New Zealand to a register outside New Zealand.

The complete prohibition of the taking, sending, or transferring funds or securities from New Zealand is subject—

(1) In respect of bank-notes, and other currency, postal notes, and money-orders of New Zealand or of any other country, and promissory notes and bills of exchange, to the following exemptions:

(*a*) Transactions in respect of which permits for remission of funds from New Zealand have been granted by the Reserve Bank:

(*b*) Transfers *to* New Zealand through any bank acting as agent of the Reserve Bank; and

(*c*) The taking out of New Zealand by any person leaving the Dominion, on his departure from New Zealand, of an amount of coined silver not exceeding £2, or such larger sum as the Minister of Finance may permit; or, if he is leaving New Zealand with the intention of proceeding to Great Britain or Ireland by direct route, without transhipment, an amount of coined silver not exceeding £5, or such larger sum as the Minister of Finance may permit. (Coined Silver Regulations, 1931, cls. 6 and 7, as amended by the Coined Silver Regulations, 1933, Amendment No. 1); and

(2) In respect of bank-notes, and other currency, postal notes, and money-orders, promissory notes and bills of exchange, and shares, bonds, debentures, debenture stock and Treasury bills, to the following exemption:

Any class of transactions for the time being exempted by the Minister of Finance from the restrictions imposed by the Finance Emergency Regulations, 1940, by notice in the *Gazette*.*

There is no restriction placed on ordinary commercial transactions or dealings with moneys, or with securities, such as shares, debentures and debenture stock of a New Zealand company, between persons resident and remaining in New Zealand. But such moneys, bills of exchange and promissory notes, and such shares and other negotiable securities may not be used directly or indirectly, to deplete any funds or negotiable assets, held within New Zealand, thus:

(*a*) The receipt of any payment out of New Zealand, or the acquisition of property outside New Zealand, cannot be effected by giving as consideration any payment in New Zealand, or by drawing or negotiating any bill of exchange or promissory note, or by transferring any security, or by acknowledging any debt, whereby a right to receive payment in New Zealand is created or transferred; and

(*b*) The satisfying of any payment due in New Zealand, or the right to receive a payment in New Zealand, or the discharge of a debt in New Zealand, cannot be effected by such consideration as the creation or transfer of a right to receive a payment or to acquire property outside New Zealand, or by the disposal of, or other dealing with, any money, securities, or property held or payable outside New Zealand.

In other words, giving any overseas consideration for a payment in New Zealand, and, conversely, giving any consideration in New Zealand for a payment overseas.

Examples.—Without permission granted by or on behalf of the Minister of Finance—

(*a*) A person in New Zealand, intending to visit Australia, cannot deposit a sum of money or transfer any security, or give a bill of exchange to the New Zealand branch of an Australian business, as consideration for an order on that firm's Australian branch entitling him to receive an equivalent in money on his arrival in Australia.

(*b*) A solicitor, having two clients—A. who is the life tenant of an estate in England receiving his income in New Zealand, and B., who derives income from an estate in New Zealand but receives it in England, where he resides—cannot arrange for the funds in England to satisfy B.'s income and for the estate in New Zealand to transfer to A. an equivalent amount to pay him the income which he is entitled to receive.

(*c*) A solicitor, in order to pay a legacy in England may not send securities to the amount of such legacy to England for realization there, even though the will specifically provides for the transfer of such securities to the legatee.

(*d*) No one may use money or securities in New Zealand in order to acquire, say, shares in Australia or Great Britain, even though no money or securities are actually transferred overseas, as by paying for Australian or English funds by means of discharging a debt in New Zealand for the person who undertakes to pay a like amount to his order in Australia or in England.

(*e*) A firm in New Zealand, wishing to discharge a debt in Philadelphia, cannot, when supplying goods to a person in New York, for which in the ordinary course of business it would have the right to receive payment in New Zealand, give an order to such person to make the payment to its creditor in Philadelphia.

(*f*) No one may transfer securities primarily payable in New Zealand with an option for payment overseas.

(*g*) A solicitor having funds to his credit in an American bank may not send from New Zealand a cheque drawn on that bank.

No trafficking in foreign currency is allowed; so that New Zealand currency may neither be converted into the currency of any other country, nor *vice versa*, other than at a rate of exchange for the time being fixed or approved by the Reserve Bank.

There are special restrictions on the taking out of New Zealand by travellers of any money or securities; and goods, consigned or otherwise, taken or sent from New Zealand overseas may be examined and searched

* It appears likely that a list of exempted classes of transactions will be published in the *Gazette* during the coming week.

to ascertain whether any moneys or securities are being sent with such goods. Any money or securities seized from a traveller or otherwise are forfeited to and become the property of the Crown, unless the Minister of Finance otherwise directs.

Every person who applies to the Minister or to any other person for any permission or exemption under the regulations must furnish such information and particulars as the Minister or other person may from time to time require. Subject to the provisions of the regulations, the Minister or other person, in his discretion, may refuse any such application, or may grant the application wholly or partly, and either unconditionally or upon or subject to such conditions as he thinks fit. Any permission or exemption granted under the regulations may be at any time revoked by the Minister or by the other person by whom it was granted or by one or other of them at will; and any condition upon or subject to which any such permission or exemption is granted may from time to time be varied, revoked, or added to by the Minister or by the other person who granted the permission or exemption.

Everyone who commits an offence against the regulations is liable on summary conviction to a fine not exceeding £200 or to imprisonment for a term not exceeding twelve months, or to both such fine and such imprisonment in the case of an individual, and to a fine not exceeding £1,000 in the case of a company or other corporation.

RECENT ENGLISH CASES.

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

BAILMENT.

Liability of Owner—Hire of Deck Chair—Conditions Negativing liability—Conditions on Notice Exhibited Where Chairs Stacked—Further Conditions on Ticket.

A ticket issued for the hire of a deck chair is a receipt given to the hirer to prove payment, and there is no presumption that it contains conditions of the contract of hire.

CHAPELTON *v.* BARRY URBAN DISTRICT COUNCIL, **[1940] 1 All E.R. 356. C.A.**

As to liability of bailor: see HALSBURY, Hailsham edn., vol. 1, pp. 757–759, pars. 1241–1243; and for cases: see DIGEST, vol. 3, pp. 72–75, Nos. 133–148.

BASTARDY.

Presumption of Legitimacy—Separation Deed—Evidence of Non-access—Admissibility.

Where spouses are living apart under a separation agreement or an order of the Court, and a child is born, neither spouse can give evidence of non-access.

ETTENFIELD *v.* ETTENFIELD, **[1940] 1 All E.R. 293. C.A.**

As to the rule in *Russell* v. *Russell*: see HALSBURY, Hailsham edn., vol. 2, pp. 562, 563, par. 772; and for cases: see DIGEST, vol. 3, pp. 364–368, Nos. 54–97.

BILLS OF SALE.

Receipts on Sale of Furniture—Unregistered—Whether Goods in Possession or Apparent Possession of Grantee—Sale to Housekeeper Residing on the Premises—Bills of Sale Act, 1878 (c. 31), ss. 4, 8.

The principle of Ramsay *v.* Margrett *does not have any bearing where the transaction is between a man and his domestic servant and the latter has the use of the goods only as a servant.*

YOUNGS *v.* YOUNGS, **[1939] 1 All E.R. 349. C.A.**

As to apparent possession: see HALSBURY, Hailsham edn., vol. 3, pp. 65–67, pars. 110–112; and for cases: see DIGEST, vol. 7, pp. 110–118, Nos. 649–685.

RULES AND REGULATIONS.

Fisheries Act, 1908. Quinnat Salmon Regulations 1940. March 13, 1940. No. 1940/48.

Fisheries Act, 1908. Sea-fisheries Regulations 1939. Amendment No. 2. March 13, 1940. No. 1940/49.

Social Security Act, 1938. Social Security (Supplementary) Regulations 1940. March 20, 1940. No. 1940/50.

Marketing Act, 1936, and the Agriculture (Emergency Powers) Act, 1934. Citrus Fruit Regulations 1940. March 20, 1940. No. 1940/51.

Industrial Efficiency Act, 1936. Industrial Efficiency (Motor-spirits) Regulations, 1940. March 7, 1940. No. 1940/45.

Plumbers Registration Act, 1939. *Plumbers Regulations, 1931.* Amendment No. 6. March 7, 1940. No. 1940/46.

Customs Act. Customs Amending Regulations, 1940. March 13, 1940. No. 1940/47.

Surveyors Act, 1938. Survey Regulations, 1940. March 20, 1940. No. 1940/52.

Land Act, 1924. Land Act Technical Fees Regulations, 1940. March 20, 1940. No. 1940/53.

Motor-spirits (Regulation of Prices) Act, 1933. Motor-spirits Prices General Regulations, 1938. Amendment No. 9. March 20, 1940. No. 1940/54.

Board of Trade Act, 1919. Board of Trade (Fish-export Price) Regulations, 1940. March 20, 1940. No. 1940/55.

Education Act, 1914. Primary Teachers' Grading Regulations, 1926. Amendment No. 4. April 3, 1940. No. 1940/56.

Patents, Designs, and Trade-marks Amendment Act, 1939. Patents, Designs, and Trade-marks Convention Order, 1940. April 3, 1940. No. 1940/57.

Samoa Act, 1921. Samoa Native Regulations, 1938. Amendment No. 1. April 3, 1940. No. 1940/58.

Emergency Regulations Act, 1939. Waterfront Control Commission Emergency Regulations, 1940. April 9, 1940. No. 1940/59.

Emergency Regulation Act, 1939. Patents, Designs, Trade-marks, and Copyright Emergency Regulations, 1940. April 10, 1940. No. 1940/60.

Board of Trade Act, 1919. Board of Trade (Raw Tobacco Price) Regulations, 1940. April 10, 1940. No. 1940/61.

Emergency Regulations Act, 1939. Dependency Medical Appointments Emergency Regulations, 1940. April 10, 1940. No. 1940/62.

Health Act, 1920. Camping-ground Regulations Extension Order, 1940. No. 2. April 5, 1940. No. 1940/63.

Marketing Amendment Act, 1939. Purchase of Scheelite Order, 1940. April 10, 1940. No. 1940/64.

Emergency Regulations Act, 1939. Finance Emergency Regulations, 1940. April 10, 1940. No. 1940/65.

Motor-vehicles Act, 1924. Motor-vehicles (Registration-plate) Regulations, 1934. Amendment No. 7. April 10, 1940. No. 1940/66.

Emergency Regulations Act, 1939. Ships and Aircraft Detention Emergency Regulations, 1940. April 12, 1940. No. 1940/67.

Waterfront Control Commission Emergency Regulations, 1940. Suspension Order under the Waterfront Control Commission Emergency Regulations, 1940. April 12, 1940. No. 1940/68.

Extradition Acts, 1870 to 1935 (Imp.) Iceland (Extradition: New Zealand) Order in Council, 1940. January 16, 1940. No. 1940/69.

Noxious Weeds Act, 1928. Noxious Weeds Act Extension Order, 1940. April 17, 1940. No. 1940/70.

Emergency Regulations Act, 1939. Oil Fuel Emergency Regulations, 1939. Amendment No. 4. April 17, 1940. No. 1940/71.

NEW BOOKS AND PUBLICATIONS.

Strahan's Digest of Equity. 6th Edition, 1939. (Butterworth and Co. (Pub.) Ltd.) Price 30/-.

Huber's Jurisprudence of my Time. 2 volumes. (Butterworth and Co. (Pub.) Ltd.) Price £8/-/-.

British Encyclopaedia of Medical Practice. Vol. 12, 1939. (Butterworth and Co. (Pub.) Ltd.) Price 52/6d.

Topham's Real Property. 9th Edition, 1939. (Butterworth and Co. (Pub.) Ltd. Price 21/-.