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"Where law ends, tyranny begins."—WILLIAM PITT.

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JURISDICTION IN CIVIL AND INDUSTRIAL MATTERS.

THERE seems to us to be a great amount of confusion of thought in the present controversy in the Press regarding an alleged conflict of jurisdiction between the Supreme Court (and the Magistrate's Court) and the Court of Arbitration. Consequently, it cannot be expected that the public generally can understand the position as it is presented to them. As a result, the ancient authority of a High Court of Justice, here, the Supreme Court, to restrain by certiorari any inferior Court from exceeding its jurisdiction is confused with appeals to or from the Supreme Court; while the concurrent jurisdiction of the Magistrates' Court with the Court of Arbitration to impose penalties for breaches of awards seems to have become confused with the jurisdiction of the civil Courts to adjudicate upon, and to enforce, contracts.

In order to put the matter in its proper perspective, the following propositions, which appear to us to be incontrovertible, must be kept in mind:

(*a*) The Supreme Court, by the process known as a writ of certiorari, in the exercise of its superintending power over Courts of inferior jurisdiction, may examine the legality of the proceedings of any of those Courts, and may determine whether or not, in the particular judgment or proceeding in issue, such Court has exceeded its jurisdiction.

(*b*) The Court of Arbitration has, in the proper exercise of its statute-given authority, exclusive jurisdiction for the settlement of industrial disputes; and no award, order, or proceeding of that Court is liable to be challenged, appealed against, quashed, or called in question by any Court of judicature on any account whatsoever: Industrial Conciliation and Arbitration Act, 1925, s. 97.

(*c*) In determining claims arising out of contract, the Supreme Court (or on appeal therefrom, the Court of Appeal), or the Magistrates' Court, within the respective jurisdiction of either of them, has jurisdiction in claims arising out of contract; but the Court of Arbitration has no jurisdiction in civil actions, such as claims arising out of contract.

(*d*) In determining claims arising out of contract, the Court of Appeal, the Supreme Court, or the Magistrates' Court in no way infringes the jurisdiction of the Court of Arbitration.

(*e*) If the Magistrates' Court should exceed its jurisdiction by determining matters solely within the jurisdiction of the Court of Arbitration, it can be restrained from such excess of jurisdiction by certiorari.

(By jurisdiction is meant the authority which a Court has to decide matters that are litigated before it, or to take cognizance of matters presented in a formal way for its decision. The jurisdiction of a Court is defined by the statute which created it and which prescribes the limits of its authority. Such a limitation may be either as to the kind and nature of the actions or matters of which the particular Court has cognizance, or the amounts which may be the subject of litigation before it.)

In expanding the foregoing propositions, it is first necessary to say that, by no stretch of the imagination can the function of the Supreme Court in restraining the Court of Arbitration from an excess of jurisdiction be likened to an appeal. An appeal is the asking a superior Court to set aside or vary the judgment of an inferior Court given within the latter Court's jurisdiction. As we have seen, no appeal lies from the Court of Arbitration to any other Court of judicature. It was held by the Privy Council in *R.* v. *Nat Bell Liquors, Ltd.*, [1922] 2 A.C. 128, a Canadian appeal, that the questions into which it would be competent for a superior Court to go on appeal have no relation to the functions of a superior Court on certiorari, in which proceeding all that such a Court can do is to ascertain whether or not the decision was one within the jurisdiction of the Court which gave it. Thus, in *Blackball Miners* v. *Judge of the Court of Arbitration*, (1908) 27 N.Z.L.R. 905, the Court of Appeal, in rejecting a motion for certiorari, held that, however erroneous in fact and law the decision of the Court of Arbitration might be, so long as it purported to be acting in pursuance of the statute creating it, and confined itself to the subject-matter of that statute, it is absolutely beyond the control of, or any interference by, the Supreme Court. In *New Zealand Waterside Workers Federation Industrial Union of Workers* v. *Frazer*, [1924] N.Z.L.R. 689, a motion for certiorari was again dismissed by the Supreme Court

which held that s. 97 must be read subject to the proviso that the award, order, or proceeding protected from examination was an award, order, or proceeding within the jurisdiction of the Court of Arbitration, and that certiorari would go to bring into the Supreme Court an industrial award in respect of excess of jurisdiction. Again, in *Holloway* v. *Judge of the Court of Arbitration*, [1925] N.Z.L.R. 551, a Full Bench of the Supreme Court again held that, even if the Court of Arbitration had been wrong in its interpretation of the power conferred on it by s. 69 of the Shops and Offices Act, 1921–22, and, in the course of exercising its jurisdiction, had committed an error of law, the Supreme Court could not interfere by certiorari. As there had been no excess of jurisdiction on the part of the Court of Arbitration, certiorari could not lie, and there could be no appeal, as that Court's jurisdiction had been properly (even though it might have been erroneously) exercised. In the case of an error in the judgment of other inferior Courts, the remedy would ordinarily have been an appeal; but, as we have seen, no appeal lies to the Supreme Court from a determination of the Court of Arbitration.

To remove the right of the Supreme Court to examine the judgment of any inferior Court which has exceeded the statutory limits of its jurisdiction would be to set up with regard to the latter Court, what the late Sir John Salmond characterized as "a system of judicial autocracy." The resulting danger was shown by Mellor, J., in *Ex parte Bradlaugh*, (1878) 3 Q.B.D. 509, when he said that, without the restraining power given to the Supreme Court by certiorari, a Magistrate, could, in the absence of jurisdiction, make any order he pleased without question. By means of certiorari sure protection is given to every person who comes before any inferior Court. It is clear, therefore, that the existence and exercise of this controlling authority on the part of the Supreme Court, is again to quote Sir John Salmond, an essential point of civil freedom and public policy.

We now come to the jurisdiction of the Supreme Court, and the Magistrates' Court within the limits of its statutory jurisdiction, to adjudicate on questions arising out of contract. In *Wilson* v. *Dalgety and Co., Ltd.*, [1940] N.Z.L.R. 323, a decision of the Court of Appeal that has been subjected to much uninformed criticism, a claim in contract for wages came before the Full Bench of the Supreme Court (Sir Michael Myers, C.J., and Blair, Kennedy, and Northcroft, JJ.). In determining the amount of wages to be paid to a worker whose duties came within both an award and an industrial agreement under each of which a different rate of payment applied, the Court resolved a seeming conflict by holding that an award obtained by one union cannot prevail over an existing and operative industrial agreement entered into by another union: each is of equal validity and enforceability with the other. So long as a worker is engaged in any particular employment, it is clearly inevitable that he may appear to be subject to two unrelated awards or industrial agreements, or to one award and an industrial agreement which conflict. The Court held that so long as he is engaged in that particular employment, he can be subject to only one award or industrial agreement at one and the same time. That seems to us to be ordinary common sense, if we may with respect say so. The Supreme Court, in deciding this case, went to the judgments of the Court of Arbitration, and carefully examined all the decisions of that Court in which the seeming conflict had arisen. As the result of that examination, the Supreme Court adopted and approved the principle of "substantial employment" long used as a test by the Court of Arbitration; and it held that, if a worker appeared to be subject to two unrelated awards or industrial agreements or to one award and an industrial agreement, which conflict, the question is decided by ascertaining in which industry he is principally, or "substantially," employed. Thus, in determining the wages to be paid, the status of the worker must first be found, and the only reasonable and satisfactory principle or test to be applied in such a case has always been and still is recognized by the Court of Arbitration to be what is called the doctrine of "substantial employment"; and that is what the Supreme Court held.

More recently, in February of this year, *McNabb* v. *Dixon*, [1942] N.Z.L.R. 225, brought another variation to be decided by Northcroft, J., inasmuch as the conflict in a claim for wages arose between the terms of a private contract of employment and an award. The question was as to what wages was a worker entitled who works for his employer in the two capacities. The learned Judge applied the doctrine of "substantial employment."

In answer to an argument of counsel in *McNabb's* case, His Honour referred to s. 97 of the Industrial Conciliation and Arbitration Act, 1925, already quoted; and said that that section does no more than say that the decisions of the Court of Arbitration are final and may not be taken into the Supreme Court or Court of Appeal upon an appeal. It does not say that the reasons upon which the Court of Arbitration may have proceeded should always be accepted as correct and that the Supreme Court should subordinate its conscience and its judgment to an opinion expressed by the Court of Arbitration in an entirely different case, merely because it seems to cover the same point. That would have the effect of making the Supreme Court, in a matter which is peculiarly within its jurisdiction—as here, a civil claim, where the question was whether one person owed another person a sum of money—entirely subordinate to an opinion expressed by the Court of Arbitration. His Honour went on to say that the Supreme Court treats the judgments of the Court of Arbitration and the reasons for those judgments with the utmost respect; but the Supreme Court in its own sphere must preserve its integrity and it must decline to be coerced to adopt the opinion of a President of the Court of Arbitration when that opinion may be unacceptable in a legal sense to the Supreme Court. His Honour said he was confident that was not the meaning of s. 97, and he did not think the Legislature so intended.

When it comes to penalties for breaches of award, the position is different. Where the Court of Arbitration, in proceedings in which penalties are sought for breach of award, has placed a certain interpretation upon a particular clause in an award, the Magistrates' Court, in proceedings on a similar nature, is bound to follow the decisions of the Court of Arbitration, which, in such matters, stands in the position of a Court of superior jurisdiction to the Magistrates' Court. This arises from the fact that a decision of the Court of Arbitration in quasi-criminal proceedings, such as a claim for a penalty for breach of award, is not open to question except for want of jurisdiction: Industrial Conciliation and Arbitration Act, s. 97, quoted above. This was recently held by Mr. A. M. Goulding, S.M., in *Scott* v. *Empire Printing and Box Co., Ltd.*, (1942)

2 M.C.D. 307. The question has assumed greater importance since the passing of s. 4 of the Industrial Conciliation and Arbitration Amendment Act, 1937 (No. 2), which empowers the Court of Arbitration to delegate to any Stipendiary Magistrate any of its powers and functions under the principal Act or under the Apprentices Act. Subject to the right of appeal from the decision of any such Stipendiary Magistrate to the Court of Arbitration, the decisions of the delegated authority are binding upon the parties: see *Inspector of Awards* v. *Waimea Fire-blight Committee*, (1940) 2 M.C.D. 1, a decision of Mr. J. A. Gilmour, S.M., as delegate of the Court of Arbitration.

All claims for money arising out of contract, within the jurisdiction of the Magistrates' Court, as given to it by the Magistrates' Courts Act, 1928, come before the Magistrates' Court for determination. It is immaterial what the nature of those claims may be; and it is inevitable that some of them are claims for wages. On the other hand, the Court of Arbitration has no jurisdiction in civil matters, and it has no appellate jurisdiction from the Magistrates' Court in civil matters. Since the Court of Arbitration has no jurisdiction in a civil action, such as a claim in contract, it is not, with regard to the Magistrates' Court, a Court of superior jurisdiction in civil matters. No appeal in such a case can lie to the Court of Arbitration; the Magistrate's judgment can be reviewed in a civil matter only by the Supreme Court. As the learned Magistrate in *Scott's* case (*supra*) said, if in a certain matter an inferior Court is given jurisdiction and another Court in the same matter has no jurisdiction at all, then it seemed to him that the decision of the latter Court, though it may involve determination of the very question which calls for decision by the first-named Court, is not binding on that Court. At the same time, he added, the decision of the Court of Arbitration in matters involving the interpretation of industrial awards must be entitled to great weight and great respect in the Magistrates' Court, though its decision is only persuasive in civil actions.

It is well-established law that, as a general rule, that that part alone of a decision of a Court of law is binding upon Courts of co-ordinate jurisdiction and inferior Courts, which consists of the enunciation of the reason or principle upon which the question before the Court has really been determined: *19 Halsbury's Laws of England*, 2nd Ed. p. 251, para. 556; *Osborn to Rowlett*, (1880) 13 Ch.D. 774; *The Vera Cruz*, (1884) 9 P.D. 96, 98.

As the learned Magistrate, in *Scott's* case, has pointed out, in proceedings in which penalties are sought against employers for breaches of award, the Magistrates' Court is bound to follow the decision of a Court of Arbitration in proceedings of a similar nature in which penalties had been sought against employers. On the other hand, claims for wages in the Magistrates' Court are in the nature of a civil action, and such an action can, according to the amount involved, be the subject of an appeal as of right, or with leave of the Magistrates' Court to the Supreme Court, but not to the Court of Arbitration which has no jurisdiction, original or appellate, in civil actions. If, in any such action, the Magistrates' Court followed a decision of the Court of Arbitration given not in a civil action, but in proceedings of a quasi-criminal nature, the burden of an appeal to the Supreme Court would, in many cases, be cast on persons who would be unable to bear it.

We think that, when the true position of the respective Courts is analyzed, it becomes clear that a lot of loose thinking, and possibly bad advice, has completely obscured the clear-cut and unconflicting distinctions of jurisdiction conferred upon each of the Courts in question. Always where there is confused thinking, untenable proposals are likely to be made. But not all the ingenuity of the mind of man has yet been able to discover, in any set of circumstances, a remedy for a disease that has never existed.

SUMMARY OF RECENT JUDGMENTS.

COURT OF APPEAL.
Wellington.
1942.
March 10, 11;
April 1.
Sir Michael Myers, C.J.
Blair, J.
Kennedy, J.
Callan, J.
Northcroft, J.

PERPETUAL TRUSTEES, ESTATE, AND AGENCY COMPANY OF NEW ZEALAND, LIMITED v. SIDEY AND ANOTHER.

Will—Construction—Gift to Descendants—"Per stirpes"—*Residue* "*Divisible* per stirpes *among the children grandchildren and remoter issue of such of my children as shall have left issue.*"

A testator's will contained the following clause:

"And from and after the death of the last survivor of my said four children as aforesaid I give devise and bequeath the whole of my residuary estate real and personal to and amongst my then surviving descendants in such manner that the same shall be divisible *per stirpes* among the children grandchildren and remoter issue of such of my children as shall have left issue."

The testator left four children, the last survivor of whom died in 1941. One of the children died some years earlier without having had issue. The other three all had issue living at the date of the distribution, the only son of one of testator's sons, four children of another son of the testator, and three children and one grandchild of a deceased daughter of the testator. There were therefore, nine persons who participated.

On originating summons removed by consent into the Court of Appeal, the following questions were sought to be determined:—

Whether upon the true construction of the said clause the trustees of the said deceased should take the children of the said deceased as the stocks for the stirpital division amongst the surviving descendants of the deceased and should divide the residue into three equal parts, one of which should go *per stirpes* to the issue of each of the three children who have left issue; or whether the trustees should take the grandchildren of the said deceased as the stocks for such stirpital division, and should divide the residue into nine equal parts, one of which should go to each of the eight surviving grandchildren and one to the only child of the deceased ninth grandchild.

Johnstone, K.C., and *Warrington Taylor*, for the plaintiff; *Sim*, K.C., and *Armitage*, for the first defendant; *Cooke*, K.C., and *A. N. Haggitt*, for the second defendant.

Held, by the Court of Appeal (*Myers*, C.J., *Blair*, *Kennedy*, and *Callan*, JJ. (*Northcroft*, J., dissenting), That (reasons given in the respective judgments of the majority) the trustees of the will take the grandchildren of the testator as the stock for the stirpital division, and divide the residue of the estate into nine equal parts, one of which should go to each of the surviving grandchildren and one to the only child of the deceased ninth grandchild.

Robinson v. *Shepherd*, (1863) 4 DeG.J. & S. 129, 46 E.R. 865, followed.

Staples and Co., Ltd. v. *Corby*, (1899) 17 N.Z.L.R. 734, 1 G.L.R. 198, applied.

Gibson v. *Fisher*, (1867) L.R. 5 Eq. 51; *In re Wilson, Parker* v. *Winder* (1883) 24 Ch.D. 664; *In re Dering, Neall* v. *Beale*, (1911) 105 L.T. 404; *In re Alexander, Alexander* v. *Alexander*, [1919] 1 Ch. 371; *Wheeldon* v. *Burrows*, (1879) 12 Ch.D. 31; and *In re Watts, Cornford* v. *Elliott*, (1885) 53 L.T. 426, referred to.

Solicitors: *Collier, Taylor, and Salmond*, Dunedin, for the plaintiff; *Downie Stewart, Payne, and Forrester*, Dunedin, for the first defendant; and *Ramsay and Haggitt*, Dunedin, for the second defendant.

SUPREME COURT. Auckland. 1942. March 5, 18. *Callan, J.*

COMMISSIONER OF TAXES v. WALLACE AND OTHERS.

Public Revenue—Death Duties (Gift Duty)—Husband's Moneys invested in Wife's Name—Promissory Note on demand given by Wife to Husband in respect of each Investment—Irrecoverable after Six Years from Date of Gift coming into existence when Debt Irrecoverable—Whether Penal Gift Duty chargeable—Death Duties Act, 1921, ss. 36 (d), *58.*

A husband, a retired coach-builder, in the years 1922, 1923, and 1924, made investments in the name of his second wife, who was many years younger than himself, out of moneys provided by him. On each occasion a promissory note on demand was given by the wife to the husband for the amount of money so invested, there being five promissory notes in all, totalling £17,252. No demand for repayment was made under any promissory note. The wife gave no further acknowledgment of liability thereunder, and never made any payments either for interest or on account of principal in respect of such liability. After the respective investments were made, the capital and income thereof were retained by her to the entire exclusion of the husband. He made no gift statement and paid no gift duty; but it appeared that in 1925 the husband and wife had disclosed the promissory note transactions to the Land and Income Tax Department, for that Department notified the Stamp Office—presumably by virtue of the exception to the obligation of secrecy contained in s. 56 (1) (*a*) of the Land and Income Tax Act, 1923—that the husband had advanced £27,000 to his wife on promissory notes.

The husband died in 1941, having made a will in 1939, whereby he appointed his wife one of his executors, and, after leaving her £500, gave the balance to two hospitals. After his death, the solicitors for the executors obtained from the wife a statutory declaration setting out the facts with regard to the promissory notes and the investments, and stating that "the general purpose of the transactions evidenced by the promissory notes was to effect a gift to me of the moneys secured thereby."

In an action by the Commissioner of Stamp Duties against the executors of the will of the husband for gift duty and penal gift duty in respect of alleged gifts by the husband to his wife during his lifetime,

V. R. S. Meredith, for the plaintiff; *W. S. Spence*, for the defendants.

Held, 1. That the debt secured by each promissory note became irrecoverable six years after the date of the note.

Norton v. *Ellam*, (1837) 2 M. & W. 461, 150 E.R. 839, and *In re British Trade Corporation, Ltd.*, [1932] 2 Ch. 1, applied.

Thorpe v. *Booth*, (1826) Ry. & M. 388, 171 E.R. 1059, distinguished.

2. That, by virtue of s. 39 (*d*) of the Death Duties Act, 1921, as applied to the facts of the case, gifts of the amounts of each promissory note came into existence when the debt in respect of which the said promissory note was given became irrecoverable through the lapse of time.

3. That the evidence had not established that the promissory notes were mere cloaks or shams, and in the circumstances they should be accepted as having been real and as evidencing debts by the wife which the husband could have enforced by demand, and which he might well have intended to serve as a real protection against his wife.

4. That, in order to proceed upon a claim for penal gift duty s. 58 of the Death Duties Act, 1921, at least this much must be established—namely, that a gift has been made, and that the donor, suspecting that a gift has been made, has not presented the prescribed statement.

5. That the evidence had not established that the husband at any stage of his life had suspected that gifts had been made.

6. That, as the section applied only to default by a donor *with intent* to delay or evade the payment of gift duty, presumption of knowledge of the law could not be invoked so as to attribute to the husband a knowledge of the law as to the debts having become barred by lapse of time.

Solicitors: *V. R. S. Meredith*, Crown Solicitor, Auckland, for the plaintiff; *Nicholson, Gribbin, Rogerson, and Nicholson*, Auckland, for the defendants.

SUPREME COURT. New Plymouth. 1941. November 8; December 5. *Smith, J.*

THOMSON v. PUBLIC TRUSTEE AND OTHERS.

Settlement—Deed of Trust providing for Annuities—Annuities of Specific Amounts based on Investments of £2,150 at 5 per cent., terminable on Death, Remarriage, or Marriage of Annuitant—Such Sum of Capital payable to Settlor as would produce Annuity of Amount of that terminated—Loss of Capital and Reduction of Income—Whether Annuities payable out of Income only—Whether Arrears on Termination of Annuity recoverable by or on behalf of Annuitant—Amount Settlor entitled to recover.

A trust deed, declaring certain trusts in respect of a sum of £2,150 paid to the trustee, made provision for the payment of certain annuities of specific amounts which would be produced if the said sum were invested at 5 per cent. per annum. Annuities to married women were paid to them only during the lives of their respective husbands and thereafter during their widowhood only; to each of unmarried women only during her life, so long only as she remained unmarried; the intention being that on the death, remarriage, or marriage, as the case might be, of the annuitant, whichever event should first happen, the annuity would cease, and the trustee should pay over to the settlor an amount equal to that which, if invested at 5 per cent. per annum, could produce an annuity equal to that receivable by the annuitant who should have died, remarried, or married, as the case might be. Following on the depression, there was a loss of capital and a reduction of income, and the annuities, if they were to be regarded as annuities, available from a fund of £2,150, invested at the rate of 5 per cent. per annum, had fallen into arrears.

On originating summons to determine certain questions arising as to the rights of the annuitants and of the settlor,

Thompson, plaintiff, in person; *L. M. Moss*, for the Public Trustee, as executor of the will of George Macaulay Brown, deceased; and *Spratt*, for the second defendants.

Held, 1. That the annuities were payable only out of income.

2. That arrears existing when an annuity ceased upon the death, remarriage, or marriage of an annuitant were not recoverable by an annuitant.

In re Coller's Deed Trusts, Coller v. Coller, [1937] 3 All E.R. 292; *In re Rose*, (1915) 85 L.J. Ch. 22; *Attorney-General* v. *Poulden*, (1844) 3 Hare 555, 67 E.R. 501; *Tarbottom* v. *Earle*, (1863) 11 W.R. 680; *Foster* v. *Smith*, (1846) 1 Ph. 629, 41 E.R. 772; and *Scott* v. *Salmond*, (1833) 1 My. & K. 363, 39 E.R. 719, applied.

3. That, when an annuity ceased, the settlor was entitled to receive the proportionate amount of the principal sum fixed by the deed—*i.e.*, if the amount repayable was £450, on the basis that the capital sum had remained at the original £2,150; but, as the capital fund had been reduced to about £2,033, the said sum of £450 must be reduced by the proportion which £2,033 bears to the sum of £2,150—*viz.*, about £425 10s.

Solicitors: *Nicholson, Kirby, and Sheat*, New Plymouth, for the plaintiff; *L. M. Moss*, New Plymouth, for the Public Trustee; *Morison, Spratt, Morison, and Taylor*, Wellington, for the second defendants.

THE LAWYER AND A CHANGING WORLD.

By THOMAS E. DEWEY, District Attorney, New York County.*

It is highly important that those of us who practice law join together occasionally to consider the problems of the bar. This is necessary not only for the welfare of the profession, but even more because of the special and peculiar relationship of the lawyer to the community.

As lawyers we have trained for many years for our profession. In return the State has granted us a special license; it might even be called a special privilege. Certainly it is an exclusive right to give advice to our fellow citizens and to represent them in controversy. As legislators we lawyers are usually in the majority, and we formulate most of the law. As Judges we interpret the law.

In a larger sense, the most important purpose of lawyers gathering together is to appraise at regular intervals the problems of the world into which we are moving. For as lawyers, we have always had an important part in shaping and giving direction to changes in society. If we are sufficiently alert and open-minded that condition of leadership shall continue into the future.

Throughout modern history lawyers have been in the forefront of the movements of the time. Without immodesty we can say that lawyers have been a principal factor in seeing that the changes which constantly occur in society come about with a minimum of shock and injury to individual liberties or property rights.

Since the foundation of Anglo-Saxon jurisprudence, the freedom of the individual has been largely in the hands of the Bar. Lawyers have prosecuted. Lawyers have also defended and lawyers have judged. So, also, have lawyers helped smooth the path of the constant adjustments between the rights of the individual and property rights.

Of course, we, as lawyers, have a right to sit comfortably in our offices and devote our entire lives to making money. But the fact is, we don't. If we did, the Bar as a whole would lose its vitality and its influence in the community. It would become a moribund and comparatively useless appendage to society.

The Bar as a whole has accepted, by its conduct, the broad duty of the lawyer to participate in the problems of society and work for their solution. If we are to perform that duty usefully, we must pause occasionally and view the scene on which we move and the times through which we pass.

Today, many of the conspicuous characteristics of our economic and social situation are obviously temporary. Living in a period of world emergency and a war economy, we appear to be having a flush of prosperity. Every dollar properly spent on defence is necessary and important. But we all know that our seeming prosperity, by every dollar of increased debt incurred, is increasingly dangerous and temporary. The fact is that we are at the end of the eleventh straight year of depression. Little or no progress toward ending the depression has been made. In addition, many social changes have been made during this period and we are still weakened by the violent dissension over the manner by which they were achieved. Moreover, the central government has acquired more new powers in the last decade than during any similar period in the history of the nation.

The situation has not been helped by the continuous maladministration of many of those new powers. It has been made worse by the misuse of many of those powers to forward economic schemes which were no part of the laws or the authority delegated.

Living as we do today in a world of chaos, most of us are thinking largely in terms of the future. It is a time when men pose questions and seek to find answers to many of the problems that affect human society. In such a time there is inevitably a tendency on the part of some to believe that reaction or a preservation of an untouchable *status quo* are the ultimate aims. There are others who believe that only a radical transformation of human institutions can be a solution.

In such a time the very existence of our own freedoms calls for an extraordinary amount of understanding and leadership by lawyers everywhere. Today, every institution, whether economic or social is in a sense within the province of the lawyer. For the law, broadly speaking, not only shapes such institutions, but affects their working. In the face of demands for rapid change veering sharply to the left or sharply to the right, the lawyer is expected to select the soundest solutions. It is his function as a lawyer not to be reactionary to the point where he cannot see the movements in a changing world. Nor is it his function to be radical to the point where he fails to prevent the destruction of institutions and concepts of human rights.

All of our institutions are undergoing a period of re-examination and revaluation. Every aspect of the manner by which we have organized our lives is under critical scrutiny. Our whole economic system is under attack. Certainly only the institutions which broadly and effectively serve the community are sure to survive. In such a period the point of view of the Bar needs to be one of unselfish and open-minded leadership. Our point of view in approaching this period will determine our usefulness and the relationship of the profession to the world we will live in.

How shall we arrive at a point of view in a confused world?

Lawyers are very much like scientists. We have an innate yearning for the absolute. We should like to be able to go to the law books and come back with a

*Address delivered at Annual Meeting of the Federation of Bar Associations of Western New York at Rochester, New York, on September 13, 1941.

positive answer to the questions which rise in the course of practice. Of course we know that these absolute answers rarely exist. The law constantly moves and the answers which were absolute yesterday may be doubtful today and may be the reverse tomorrow.

It is a curious thing that the layman often views the law as a field where certainty is obtainable. The layman usually believes even more strongly than the lawyer, in the absolute validity of the doctrine of *stare-decisis*. Yet in his own profession or business the layman will readily recognize that conditions constantly change from decade to decade and often from year to year.

It follows inevitably that the great issues of tomorrow will continue to be solved in terms of a synthesis of conflicting trends. Amidst the internal struggles of society if we, as lawyers, recognize that solutions come from compromise and from mergers of ideas, the Bar can continue to serve in leading the way. It can serve in the nature of a catalytic agent for the forces of change.

This is the essential of our point of view. How, then, shall it be carried into action? Of course the lawyer occupies a dual role. Professionally, he is an advocate for clients. Personally, he is a leader of public opinion. For example, a lawyer may make a practice of defending burglars at the Bar. In doing so, he can perform the highest function of the lawyer—that of defending human liberty. But in his personal capacity that same lawyer is an expert in the field of criminal law and he owes an obligation to the community to see that the criminal law is strengthened and the process of justice made speedier and more efficient. Accordingly, though it may be against the interest of prospective clients, I submit that it is the duty of that same lawyer to help in the passage of legislation which will make more certain the punishment of the guilty.

In broader fields the modern problem is more complex. The Bar tends inevitably to be linked in interest, as well as to some extent in philosophy of conduct, with its clients. Thus, a man who represents financial interests tends to become, in his capacity as a citizen, an advocate of the viewpoint of his clients. A lawyer who exclusively represents labour unions tends to think only in terms of the objectives of labour. A lawyer who represents real estate clients tends to become identified with their special point of view in the fields of assessment and municipal taxation.

In such special representation, a lawyer often becomes a leading authority in the field and, therefore, one of the most useful citizens for the public generally.

Now, to whom does that lawyer's special knowledge or skill belong? Does it belong to the client who retains him? I believe it belongs to the client only in the particular matter for which the lawyer is hired.

Does this special skill belong to the lawyer? It cannot belong wholly to the lawyer because he is specially licensed by the State to exercise the privilege of practising law.

Then, does it belong to the State? It does not belong to the State except in totalitarian nations.

This special knowledge which we acquire as members of the Bar must inevitably be an asset of the community and of our fellow citizens as a whole. It follows then that except when under specific retainer, the expert knowledge we have acquired in special fields must be contributed to the community. Moreover, it must be contributed solely in accordance with our own convictions as to the best interests of the community.

Clients may often disagree with a lawyer's independent judgment as a citizen. But in the long run the lawyer's independent judgment will usually be of greater good to the clients he serves than if he followed only their views of the moment.

By way of illustration, consider the Securities and Exchange Acts. It is one of many similar illustrations, but it will do. In the main, almost every business and financial institution affected by the Securities Act or the Exchange Act vigorously opposed those pieces of legislation. They denounced the concept and the substance of the proposed laws. The result was inevitable. The public and the Congress were convinced that such total opposition must be selfish. As a futher result, these same experts who knew most about the field were ignored in the drafting of the bills. The laws were passed. Then, because almost everybody who knew the subject had been against the laws, those who were appointed to administer them were again men without practical experience or understanding of the field.

The result was chaos. The laws were badly drafted. They are so vague in many respects that nobody knows what they mean. They are so ambiguous that they can be and have been used to venture into economic experiments which were never contemplated or discussed at the time of their enactment.

The commissioners have changed with deadly regularity. At the expense of capital, labour and the public at large, we have spent the last seven years educating one commissioner after another only to have him leave as soon as he learned something about his job.

The result is unfortunate for the public and the special groups involved. It is the result of both unrealistic zeal on the one hand and blind opposition on the other. And yet, today I am informed that the sentiment of those affected by the Acts is now overwhelmingly in favor of the principles and many of the practices under the Acts. If those affected by the Acts had participated in their drafting, the financial history of this past decade might well have been different. If the experts at the Bar, aside from cases where they were retained, had participated in the drafting, years of great loss might well have been avoided.

Similarly, in matters of taxation, the views of the lawyer as a citizen may be sharply at variance with those of particular clients. It seems to me that except where it conflicts with a specific retainer, it is the lawyer's duty to himself and to the Bar actively to advocate his own views however they may conflict with those of some clients. By such adherence to principle, we shall obtain for government a better synthesis of expert knowledge. It will be far better than we can now get by the process of pitting Treasury experts on one side against those who are merely serving private clients on the other.

In short, the lawyer must be a philosopher, as well as a craftsman. He must think in terms more broad than the exigencies of the moment. He must be a student of social changes. He must be prepared to lead public thought and take his part in moulding it.

If the lawyer is absent from such leadership, we shall fail to preserve the essentials of our system. If he is active in it, we shall progress and we shall progress soundly.

We must think of laws and administration in terms of large-scale perspective. We must view the future with open minds and participate in shaping it. This is not only the right of the lawyer but it is his duty. And if history is the guide to the future, the lawyer should be its keen interpreter. Accepting this as its role, the Bar will lead us to a sound future and in doing so will preserve itself.

PRACTICE NOTE.

Infants: Compromises of Claims for Bodily Injury.

The Judges at the Court of Appeal have discussed the question of the procedure to be followed in relation to applications for the Court's approval of compromises of claims by infants for bodily injury resulting from another's negligence.

Where a proposed compromise arises from a claim in respect of which an action has already been commenced, then the application for the Court's approval should be by way of motion in the action, supported by affidavits designed to establish the desirability from the infant's point of view of the proposed compromise.

Where the proposed compromise arises in respect of a like claim, and no action has actually been commenced, then the matter may be brought before the Court by way of originating summons as sanctioned in *Anderson* v. *Liddell*, [1931] N.Z.L.R. 1198.

Cases have occurred where the initiative in proceedings to obtain the Court's approval has been taken not by or on behalf of the infant, but by and on behalf of the person responsible for the injury to the infant. That appears to have been the position in *Anderson* v. *Liddell* (*supra*). The Court in that case was concerned only with the question whether the originating summons procedure could be availed of for such an application and did not address its mind to the question as to who should have the carriage of such proceedings. The Judges are of the opinion that, whether or not an action has been commenced, it is as a general rule not desirable in the case of compromises of claims for bodily injury to infants that the initiative in bringing such a matter before the Court should be taken by the person who was responsible for the injury to the infant.

GRANT OF ANNUITY.

In Consideration of Money payable on Annuitant's Death.

By E. C. Adams, LL.M.

Explanatory Note.

This is an interesting but unusual type of precedent. Usually annuities are purchased from insurance companies in consideration of a cash payment made by the annuitant. But here the annuity of £50 per annum is not to be paid for until the annuitant dies, when the assets which deceased has vested in trustees, are to be liable for a payment of £1,400 to the persons who have paid the annuity, called "the contributors." It will be observed that the contributors are not legally bound to pay the annuity; but, if they do, they are to be entitled to the sum of £1,400 payable as aforesaid, or to a lesser sum proportionate to what they have paid bears to an annuity of £50 per annum.

An instrument such as this raises nice questions of death, gift, and stamp duties.

Assuming that the annuitant (the so-called settlor) cannot be proved to have other than the normal expectation of life, then the value of £50 per annum payable during the annuitant's life and the *present* value of £1,400 payable on her death, will be actuarily calculated according to the Life Expectation Tables in use by the Stamp Department. If the *present* value of £1,400 is *greater* than the actuarial value of her annuity then, unless the maxim, *De minimis lex non curat*, is applicable, the annuitant is deemed to have made a gift and the value of the gift for gift-duty purposes will be the *present* value of £1,400 payable as aforesaid, the consideration therefor (the value of the annuity) being ignored, for the annuity is to consist of *future* payments: s. 49 of the Death Duties Act, 1921. When the annuitant dies, the gift would come into her estate for death-duty purposes; but probably the value of the gift, for the purposes of s. 5 (1) (*c*), would be merely the value of the inadequacy of consideration, for it is doubtful whether s. 49 applies to death duty. Of course, on her death, the value of the settled property *less* the said sum of £1,400, would also come into her estate for death-duty purposes under s. 5 (1) (*h*); for, as to the residue, she has reserved a *general* power of appointment, unless she has exercised the power by instrument *inter vivos* in favour of a person other than herself, in which case it will not be liable to death duty, unless such appointment has been exercised within three years of her death. But note that the *inter vivos* exercise of a general power is itself a gift, if made in favour of any person other than the donee of the power: s. 39 (*e*) of the Death Duties Act, 1921.

If the *present* value of £1,400 payable as aforesaid, is not greater than the actuarial value of the annuity, then she has made no gift, and as to the corpus there would come into her estate for death-duty purposes, the value of the settled property at her death *less* the sum of £1,400, unless of course as above indicated she had exercised her *general* power more than three years before her death. And whether or not she made a gift by the initial transaction, any *arrears* of income from the trust property, *plus* income therefrom *apportioned* up to date of her death, must be included in her estate under s. 5 (1) (*a*).

As to the liability of the transaction to stamp duty, the transfer from the settlor to the trustees would be liable to *ad valorem* conveyance duty at the rate of 11s. for every £50 as to the land; and 5s. 6d. for every £100, as to the mortgage; provided that there would be a deduction on so much thereof as might be liable to gift duty: s. 87 of the Stamp Duties Act, 1923. The declaration of trust itself would be liable to a duty of 15s., under s. 101 (3), as amended by s. 9 of the Finance Act, 1930.

PRECEDENT.

THIS DEED made the day of 19 BETWEEN A. B. of Wellington, spinster (hereinafter called "the settlor") of the first part C. D. of Auckland artist of the second part E. F. of Christchurch law clerk of the third part (the said C. D. and E. F. being sometimes hereinafter referred to severally as "the contributor" and jointly as "the contributors") and G. H. of Wellington merchant and I. J. of Wellington sheepfarmer (hereinafter called "the trustees") of the fourth part WHEREAS the settlor has requested the contributors each to pay her the yearly sum of twenty-five pounds during her life upon receiving at her death the lump payments hereinafter appearing and has for the purpose of securing such last-mentioned payments to the contributors by memorandum of transfer of even date herewith transferred unto the trustees as joint tenants the land more particularly described in the first part of the schedule hereinafter written and the memorandum of mortgage more particularly described or referred to in the second part of the said schedule as security in the premises as hereinafter appears AND WHEREAS the trustees have agreed to accept the trusts hereinafter mentioned NOW THIS DEED WITNESSETH that in pursuance of the premises it is hereby declared and agreed by and between the parties hereto that the trustees shall stand possessed of the lands described in the first part of the said schedule and of any lands that may hereafter be purchased in substitution for the same under the powers in that behalf hereinafter contained and of the proceeds of any sale of any such lands and of the mortgage moneys described in the second part of the said schedule and of all investments from time to time representing any of the moneys aforesaid (all hereinafter collectively referred to as "the trust funds") UPON the trusts following that is to say:—

1. As to the said lands and any lands that may hereafter be purchased in substitution for the same so long as the same remain unconverted IN TRUST for the settlor and her assigns during the life of the settlor subject to the obligation on the part of the settlor of keeping all buildings thereon respectively insured in the names of the trustees against loss or damage by fire to their full insurable value and in other respects without impeachment of waste.

2. As to the proceeds of any sale of any such lands as aforesaid not applied in the purchase of other lands and as to the remainder of the trust funds UPON TRUST to invest the same upon such investments as may be permitted to trustees by the law for the time being in force in New Zealand with power from time to time to vary such investments AND UPON TRUST to pay the income of such investments to the settlor and her assigns during all the days and years of her life.

3. FROM and after the death of the settlor—

(*a*) If each or either contributor his executors or administrators shall have paid to the settlor during the residue of her life commencing from the date of the first payment by each contributor hereinafter mentioned the annual sum of twenty-five pounds by equal half-yearly payments (free of exchange) in each year at Wellington aforesaid or elsewhere in the Dominion of New Zealand as such contributors may from time to time be directed by the settlor in writing under her hand such payments to be respectively made by the said C. D. on the first days of the months of April and October and by the said E. F. on the first days of the months of January and July in each year (the first of such payments having been made by the said C. D. as on the first day of April One thousand nine hundred and forty one and by the said E. F. as on the first day of January One thousand nine hundred and forty one as the settlor doth hereby acknowledge) UPON TRUST to pay to each contributor his executors administrators or assigns the sum of seven hundred pounds.

(*b*) If each or either contributor his executors or administrators shall at any time discontinue such half-yearly payment then UPON TRUST to pay to such contributor his executors administrators or assigns a sum bearing the same proportion to the said sum of seven hundred pounds held in trust for such contributor as the total amount of all half-yearly payments actually made by such contributor his executors or administrators under the provisions of this clause bears to the amount which he or they would have paid had such payments been continued during the said residue of the life of the settlor.

(*c*) If upon any such discontinuance as aforesaid the settlor (who shall be at liberty so to do) shall accept from any other person or persons (jointly or severally) the like half-yearly payments so discontinued as aforesaid then UPON TRUST to pay to such other person or persons his or their executors administrators or assigns (*pari passu* with the lump payments referred to in the last preceding clause (*b*) hereof) a lump sum or sums bearing the same proportion to the said sum of seven hundred pounds as the total amount or respective amounts of all half-yearly payments actually made by such person or persons his or their executors or administrators referable to the said sum of seven hundred pounds under the provisions of this clause bears to the amount which he or they would have paid had such half-yearly payments been made by him or them during the whole of the life of the settlor from the date of the first payment paid by the contributors.

PROVIDED ALWAYS that all payments to be made by the trustees hereunder shall be made free of exchange at Wellington aforesaid PROVIDED ALSO that nothing contained in these presents shall be deemed to bind the contributors or either of them or any such other person or persons as aforesaid or their respective executors or administrators to continue to make such payments as aforesaid or shall prejudice their respective rights to discontinue such payments at any time PROVIDED ALSO

that no such discontinuance or any default on the part of either of the said contributors or any such other person or persons as aforesaid his or their executors or administrators shall prejudice or in any way affect the rights of the other or any other of them his executors administrators or assigns under these presents.

4. SUBJECT to the foregoing provisions IN TRUST for such person or persons as the settlor may by deed or deeds revocable or irrevocable or by her will appoint and in default of any such appointment or so far as the same may not extend IN TRUST for the settlor her heirs executors and administrators absolutely PROVIDED ALWAYS that if during the lifetime of the settlor by reason of a sale of the said lands or of any lands that may hereafter be purchased in substitution for the same or from any other cause the funds in the hands of the trustees as capital and subject to the provisions of the trusts hereby declared shall in the estimation of the trustees be more than sufficient to provide for the payments to be made in pursuance of paragraph numbered 3 hereinbefore contained and incidental expenses then it shall be lawful for the trustees without being liable for any involuntary loss thereby occasioned to pay to the settlor or her assigns or her appointees by irrevocable appointment the excess of such funds over the amount which shall in the estimation of the trustees be sufficient to provide for such payments as aforesaid and the receipt of such person as aforesaid shall be a good discharge to the trustees for the moneys so paid AND THIS DEED ALSO WITNESSETH and it is hereby further declared and agreed that it shall be lawful for the trustees with the consent in writing of the settlor during her life and after her death at their discretion to sell the said lands or any lands that may hereafter be purchased in substitution for the same or any part or parts thereof respectively upon such terms as the trustees (with such consent as aforesaid) shall think fit and no purchaser from the trustees shall be concerned to inquire as to the propriety of any such sale or be concerned to see to the application or be answerable for the loss mis-application or non-application of any purchase money paid by him AND ALSO that the trustees may at any time or times during the life of the settlor and with her consent lay out all or any part of the trust funds in the purchase of any freehold lands or buildings in New Zealand and such purchased hereditaments shall be held by the trustees upon the like trusts as are hereby declared concerning the lands described in the said schedule and with the like powers authorities and discretions AND in consideration of the premises the settlor doth hereby covenant separately with the trustees their heirs and assigns and separately with the said C. D. and separately with the said E. F. and their respective executors administrators and assigns that she will keep all buildings on the said lands or on any lands that may hereafter be purchased in substitution for the same so long as the same remain unconverted respectively insured in the name of the trustees against loss or damage by fire to their full insurable value but in other respects without impeachment of waste.

IN WITNESS whereof these presents have been executed the day and year first hereinbefore written.

THE SCHEDULE HEREINBEFORE REFERRED TO.

The First Part.

ALL THAT piece or parcel of land situate in the Provincial District of &c.

The Second Part.

Memorandum of mortgage dated and registered in the Land Registry Office of under number securing the sum of given by one and affecting all that parcel of land &c.

SIGNED SEALED AND DELIVERED by the said A. B. in the presence of :— } A. B. (Seal.)
Witness .
Occupation .
Address .

SIGNED SEALED AND DELIVERED by the said C. D. in the presence of :— } C. D. (Seal.)
Witness .
Occupation .
Address .

SIGNED SEALED AND DELIVERED by the said E. F. in the presence of :— } E. F. (Seal.)
Witness .
Occupation .
Address .

PRACTICAL POINTS.

1. Change of Name.—*Infant—New Zealand Practice—Effect of Emergency Regulations.*

QUESTION : A. a spinster, is the mother of an illegitimate child whose birth is registered as C.D. the father's name being D. A. later married E. The child who lives with A. and E. is known as C.E. It is now desired to regularise the name of the child (now nearly sixteen years of age) as C.E. We have advised that the birth certificate cannot be altered, that there is nothing whatever to prevent a person (minor or adult) adopting any desired name—surname or christian ; that as a precaution and for matter of record a deed poll is desirable. 1. Is our advice correct ? 2. Is there any provision in New Zealand as there is in England, for registration of a deed poll ? 3. Should the change of name be advertised in the *New Zealand Gazette* ?

ANSWER : For the present the name cannot be changed. Subject to certain exceptions, which do not apply to the present case, Reg. 3 of the Change of Name Emergency Regulations, 1939 (Serial No. 1939/138) prohibits any person assuming a name other than that by which he was known at the date of the coming into force of the said regulations. As to aliens, see also the Aliens Emergency Regulations, particularly the Aliens Emergency Regulations, 1940 (Serial No. 1940/293), Reg. 41.

Apart from these regulations, although apparently an adult person could not at common law, change his christian name there now seems no reason why he should not change his christian name or names and surname. It would seem that an infant has legally no power to change his name : *Re Edwards, Lloyd* v. *Boyes*, [1910] 1 Ch. 541, 551.

In order to preserve testimony and to obviate the doubt and confusion which a change of name is likely to involve, and to leave no doubt of the identity of a person whose name has been changed, it is customary in New Zealand to evidence the declaration of a person's intention to change his name by a deed poll, duly executed and attested and filed in the Registry of the Supreme Court, and to give public notice by advertisement in the *New Zealand Gazette*.

There was no specific provision in New Zealand for the registration of a deed poll, but Reg. 4 of the Change of Names Emergency Regulations, 1939, has recognized the practice. For the law and precedents, see *23 Halsbury's Laws of England*, 2nd Ed., p. 560, para. 822, and *Goodall's Conveyancing in New Zealand*, 331.

2. Bankruptcy.—*Creditor's Petition—Non-compliance with Bankruptcy Notice.*

QUESTION: It is proposed to file a creditor's petition in bankruptcy founded on noncompliance with a bankruptcy notice. What are the requirements with regard to setting out in the petition the act of bankruptcy relied upon?

ANSWER: Where the act of bankruptcy relied on by a petitioning creditor is failure to comply with a bankruptcy notice, the petition must state the date of the act of bankruptcy. It is insufficient to state that the debtor failed to comply with a bankruptcy notice served upon him on a day named. The petition must state that the debtor failed before a day, eight days later than the day on which the bankruptcy notice was stated to have been served, to comply with such notice: *In re Dunhill, Ex parte Dunhill*, [1894] 2 Q.B. 234.

Failure to state the act of bankruptcy in these terms is a common error in creditor's petitions, where noncompliance with a bankruptcy notice is relied upon as the ground of the petition.

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3. Divorce.—*Return and Filing of Citation—Divorce Rules, R. 19.*

QUESTION: A divorce petition has been served, and subsequent to such service the citation has been lost. What is the position in view of R. 19 of the Divorce Rules, which requires the return and filing of the citation in the Registry of issue with a certificate of service endorsed on such citation?

ANSWER: In such a case it would be necessary to file a motion for leave to be excused from returning the citation on the ground that it had been lost: see *Wilson* v. *Wilson*, (1912) 32 N.Z.L.R. 139.

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4. Magistrates' Court.—*Confession—Fees—Costs.*

QUESTION: Is a defendant on signing a confession of claim liable to pay any fee whatever? If when giving a confession a defendant does not pay the judgment fee, can the confession be ignored and judgment taken by default? Or can extra costs be awarded against him merely because he has not paid the fee for judgment?

ANSWER: Strictly speaking, there is no such fee as a "confession" fee. It will be noted that under R. 24 there is no fee payable for lodging the written confession or consent to judgment with the Clerk. The only fee payable in connection with a confession at all is that incidental to obtaining judgment on confession. Under s. 108 application for judgment on confession must be made by the plaintiff; and by s. 176 (1) all fees must in the first instance be paid by the party on whose behalf any proceedings are taken—in this case the plaintiff. On a confession he may apply for judgment, or in some instances he may not: some arrangement may be entered into between the parties, and the case be adjourned.

To the second part of the question the answer is, in both cases, No. The only occasion on which a plaintiff is entitled to extra costs where judgment is entered on confession is where the confession has not been lodged and notice given on the day before that fixed for the hearing, in which event he is entitled to half the appearance fee. (NOTE: this half appearance fee is referred to in *Wily and Cruickshank's Magistrates' Courts Practice*, 2nd Ed. 182, as "half the prescribed hearing fee." But there is no question of a hearing fee in the case of a straight-out confession.)

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5. Infants and Children.—*Custody—Form of Application Fees Payable.*

QUESTION: How should an application for custody under the Infants Act, 1908, be made in a Magistrates' Court? Are there any fees payable in respect of such application?

ANSWER: By originating application under the Magistrates' Courts Amendment Rules, 1940. The rule is that where new jurisdiction is conferred upon a Court, but no special procedure is prescribed, the ordinary procedural provisions apply, with consequent payment of fees if any. By the Magistrates' Courts Amendment Rules, 1940, provision is made for all cases except those in which special procedure is provided. The effect of the amending rules is to apply to all applications made under the Rules, the scale of fees provided in respect of proceedings under the Magistrates' Courts Act, 1928. It will be seen that the rules shall be read with and form part of the Magistrates' Courts Rules, 1928, R. 3; and just as the scale applies to all applications made under the 1928 rules, so likewise does the scale apply to proceedings under the amending rules of 1940. Reg. 6 (15) and (32) seem to be added *ex abundanti cautela*. The result of the rules is that a similar position obtains under them as in the case of proceedings under the Supreme Court Code. This appears to be the true legal position. But the Department concerned has, it is understood given an express ruling that if proceedings are taken under any Act that does not make provision for the payment of any fees, then no fees are chargeable.

In view of this ruling, no fees would be payable in respect of any such application, no fees having been prescribed by the Act in question. The payment of service and mileage fees is expressly provided for. This Departmental ruling must be regarded as a very satisfactory one, particularly from a working point of view.

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6. Chattels Transfer.—*Transfers and Satisfactions of Instruments—Same Parties—One or more Documents.*

QUESTION: Where you have the same grantor and grantee under several or more instruments, and it is desired to register transfers or satisfactions of the instruments can this be effected in one transfer or satisfaction, or must there be filed separate transfers and satisfactions of each instrument?

ANSWER: The several or more transfers or satisfactions may be included in the one document; but a separate fee of 5s. is payable in respect of each transfer of satisfaction.

AUCKLAND LAW SOCIETY.

Annual Meeting.

The annual general meeting of the members of the Law Society of the District of Auckland was held in the University College Hall on March 6, 1942. The President, Mr. W. H. Cocker, occupied the chair.

The annual report showed that eleven ordinary meetings and ten special meetings of the Council had been held during the year. The number of practising certificates issued was 489, a decrease of seventeen compared with the number of the previous year. The following members and ex-members had died during the year: Sir James Parr, G.C.M.G.; Messrs. J. Alexander, C.M.G., E. C. Blomfield, J. F. S. Briggs, J. F. Callanan, M. H. Hampson, W. P. Hopkins, A. A. Hough, E. J. D. Patterson, and F. H. Williamson.

Practitioners with the Forces.—One hundred and fifty-one practitioners and clerks were on service abroad or in New Zealand. Messrs. G. J. Cutler, G. S. Hesketh, J. E. Moodie, L. McDonald, and A. M. Ziman had died on active service. Mr. F. F. Ching had been reported missing, and Mr. J. A. Jamieson wounded and missing. Messrs. G. E. Cairns and H. G. Carruth had been reported wounded. The following had been reported prisoners of war: Messrs. J. B. Callan, M. E. Daniel, F. T. C. Fenton, R. H. Forder, A. G. Gray, C. P. Hutchinson, and J. M. Stevenson.

Brigadier Barrowclough, M.C., D.S.O., Croix de Guerre, had received a bar to his Distinguished Service Order, and had had conferred on him the Military Cross (Greek), Class A. Lieutenant-Colonel Rudd had received the Distinguished Service Order and Lieutenant-Colonel N. L. Macky, M.C., had been mentioned in despatches.

Three quarterly gift parcels had been forwarded to every member and clerk serving abroad, and Christmas

greetings had been cabled to those overseas. Letters had been received expressing the appreciation of the recipients of the greetings and parcels.

The number of wills and powers of attorneys prepared in military camps by members of the society was now over eight thousand, of which more than half were held by the society in safe custody. Now that soldiers were instructed to have their wills made prior to entering camp, the work thrown on members in this connection would be lighter.

The Benevolent Fund now stood at £928 19s. Members of the profession and their clerks had contributed the sum of £1,465 10s. 3d. to the Fighting Forces Fund. Practically the whole of this sum had been obtained by voluntary contributions from practitioners.

Fifty-one inquiries had been made for missing wills under the scheme instituted by the society for this purpose.

Steps had been taken to black out portion of the library. Only this portion was to be used at night. The rest would, of course, be available for use during the daytime.

The President moved the adoption of the annual report and balance-sheet. The motion was seconded by Mr. Mason and carried.

The New President and Council.—For the position of President there was only one nomination, that of Mr. Spencer R. Mason, who was accordingly declared elected. Mr. Mason assumed the chair, and thanked members for the honour they had done in electing him President. He referred to the great increase in recent years of the work of the society, and in particular made mention to that made necessary by the Audit Regulations and the newly instituted Benevolent Fund.

Messrs. A. Milliken and J. Stanton were declared elected Vice-president and Treasurer respectively, they being the only nominees for these positions. As a result of a postal ballot the following were declared elected members of the Council: Messrs. W. H. Cocker, S. I. Goodall, V. N. Hubble, L. P. Leary, A. H. Johnstone, K.C., and J. B. Johnston.

On the motion of Mr. Rogerson seconded by Mr. Milliken, the President, and Messrs. W. H. Cocker, A. H. Johnstone, K.C., and J. B. Johnston were elected members of the Council of the New Zealand Law Society. Mr. N. A. Duthie was elected auditor for the coming year. Mr. A. H. Johnstone, K.C., reported on the present position of the Fidelity Guarantee Fund. On the motion of the President a hearty vote of thanks was carried to the retiring President, Mr. Cocker, who had been a member of the Council for ten years. Votes of thanks also were passed to Messrs. J. Kalman, O. L. Martelli, L. M. Lennard, S. W. W. Tong, and J. N. Wilson, who had acted as scrutineers in connection with the postal ballot for the election of the members of the Council.

Mr. Milliken gave particulars of the figure set out in the balance-sheet, and referred to the mortgage securities held by the society. He paid a tribute to the work of Mr. Mason as Vice-president and as convenor of the Complaints Committee.

Country Practitioners.—Mr. L. Buddle, of Whakatane, raised the question of the representation of country practitioners on the Council, and moved that it be a recommendation from the meeting to the incoming Council that they should investigate the matter of representation on the Council of country practitioners. This was carried.

RULES AND REGULATIONS.

Industrial Efficiency Act, 1936. Industrial Efficiency (Motor-spirits Retailers) Regulations, 1941. Amendment No. 1. No. 1942/78.

Board of Trade Act, 1919. Board of Trade (Onion Regulations), 1939. Amendment No. 2. No. 1942/79.

Post and Telegraph Act, 1928. Telegraph Regulations, 1939. Amendment No. 4. No. 1942/80.

Board of Trade Act, 1919. Board of Trade (Raw Tobacco Price) Regulations, 1942. No. 1942/81.

Control of Prices Emergency Regulations, 1939. Price Order No. 77 (Raw Tobacco). No. 1942/82.

Emergency Regulations Act, 1939. Marine Insurance (War Risks) Emergency Regulations, 1942. No. 1942/83.

War Damage Act, 1941. War Damage Regulations, 1941, Amendment No. 1. No. 1942/84.

Mining Act, 1926. Mining Regulations, 1926. Amendment No. 9. No. 1942/85.

Cook Islands Act, 1915, and section 7 of the Statutes Amendment Act, 1941. Cook Islands Native Land Court Rules, 1916. Amendment No. 1. No. 1942/86.

Control of Prices Emergency Regulations, 1939. Price Order No. 78 (White Oats). No. 1942/87.

Emergency Regulations Act, 1939. Food-distributing Companies Taxation Emergency Regulations, 1942. No. 1942/88.

Emergency Regulations Act, 1939. War Loan and War Gift Emergency Regulations, 1940. Amendment No. 1. No. 1942/89.

Labour Legislation Emergency Regulations, 1940. Defence Works Labour Legislation Suspension Order, 1942. Amendment No. 1. No. 1942/90.

Emergency Regulations Act, 1939. Taxicab Emergency Regulations, 1942. No. 1942/91.

Emergency Regulations Act, 1939. Emergency Shelter Regulations, 1942. Amendment No. 1. No. 1942/92.

Emergency Regulations Act, 1939. Emergency Reserve Corps Regulations, 1941. Amendment No. 2. No. 1942/93.

Emergency Reserve Corps Regulations, 1941. Emergency Precautions Service (Conditions of Service) Order, 1942. No. 1942/94.

Labour Legislation Emergency Regulations, 1940. Holidays Labour Legislation Modification Order, 1941. Amendment No. 1. No. 1942/95.

Labour Legislation Emergency Regulations, 1940. Overtime and Holidays Labour Legislation Suspension Order, 1941. Amendment No. 1. No. 1942/96.

National Service Emergency Regulations, 1940. Registration for Employment Order No. 2. No. 1942/97.

Emergency Regulations Act, 1939. Colonial Detention Emergency Regulations, 1942. No. 1942/98.

Emergency Regulations Act, 1939. Samoa Emergency Regulations, 1942. No. 1942/99.

Rabbit Nuisance Act, 1928. Rabbit Board Postal-voting Regulations, 1942. No. 1942/100.

Emergency Regulations Act, 1939. Apiary Registration Suspension Emergency Regulations, 1942. No. 1942/101.

Emergency Regulations Act, 1939. Orchard Registration Suspension Emergency Regulations, 1942. No. 1942/102.

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