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BOARDINGHOUSES: LIABILITY FOR LOSS OF GUEST'S PROPERTY.

THE question of thefts in boardinghouses has come before the public recently in a Police warning based on reports of losses by visiting servicemen in city boardinghouses, when, in an expressive phrase, they complained of being "rolled" for their wallets. This question, to the lawyer, is not of mere passing interest, since, for various reasons, it seems likely that the habit of living in boardinghouses will tend to increase owing to the shrinkage of incomes from taxation, increases in the cost of living, and the difficulties attendant on the scarcity of domestic help. These people who go to live in boardinghouses take their belongings with them, and the liability of boarding-house-keepers for losses while they are resident in such houses is the same as it is in respect of losses by members of the travelling public who are their temporary guests.

The rule as to the liability of a licensed innkeeper for the goods of his guests has long been fixed and is well known, and still exists except in so far as it has been limited by the Innkeepers' Liability Act, 1863, in England, and by the Licensing Act, 1908, in New Zealand. Since the last edition of *Smith's Leading Cases*, nothing has been added to the law in this respect to what may there be found under *Cayle's Case* in the first volume. But, as to boardinghouses, the common law was in no condition of certainty when, in 1905, *Scarborough* v. *Cosgrove* went to the Court of Appeal: [1905] 2 K.B. 805. Darling, J., as he then was, had held that a boardinghouse-keeper was under no liability to take care of his boarders' goods unless they were handed to him for safe custody; and he directed a verdict and gave judgment for the boardinghouse-keeper.

The plaintiff based her case on negligence, in that the defendant was bound to take reasonable care of her guests' persons and chattels, and that the system of one key only for the bedroom, which guests were debarred from taking away, the absence of keys for drawers, &c., alone or coupled with the fact that no steps were taken to ascertain the respectability of guests before admission, disclosed a want of care on the part of the defendant which had led to the loss of her jewellery at the hands of a boarder who had turned out to be a thief well known to the Police. Darling, J., withdrew the case from the jury, holding that "there must be something more than negligence, that there must be something which the law calls misfeasance, and that negligence in this case was not enough."

In the Court of Appeal, Collins, M.R. (with whom Mathew, L.J., concurred), and Romer, L.J., held that, though some of the earlier judgments went far to support the view of the trial Judge, there were others of at least equal weight which imposed on a boarding-house-keeper the duty to take reasonable care for the safety of property brought by a boarder to his house.

In his judgment, Collins, M.R., at p. 818, said:

> The general control of the house must be in the keeper. By the nature of the arrangement itself the custody of the lodger's effects must be in him when the lodger is not himself in his room, and the consideration paid ought as a matter of business to secure some protection for the lodger where the ordinary conditions to which he is expected to conform put it out of his power to look after his effects himself. I can see no reason why there should be a presumption of immunity in his case from the common duty of a person accepting a charge to exercise at least ordinary care; *a fortiori* where he undertakes it for reward. The guest and the baggage are both in a house of which he has the control, and his obligations to both of them arise in the same way out of the relation itself. It seems to me that the onus lies on those who affirm there is no duty. . . . The evidence raised a case for the jury whether there was a failure of reasonable care on the part of the defendant to which the loss of the plaintiff's jewellery was attributable. I think they were the proper tribunal to decide it, and that we should be usurping their functions if we withheld it from their consideration.

As Romer, L.J., pointed out, that there is an intermediate case between the case where some of the luggage has been committed temporarily, during the stay of the lodger, into the sole custody of the landlord, and there would then be a duty on the landlord to take reasonable care of it, and the case where, by arrangement between the parties, the guest has taken upon himself solely the care of his luggage, and where, whatever may be the duties of the landlord towards his guest, they could not be treated as based on the footing that in any sense he had the custody or partial custody of the luggage. The difficulty in the law, as the learned Lord Justice found it, and which the Court of Appeal resolved, was where the luggage cannot be said to be in the custody of either the landlord or his guest, as when it is placed in a room appropriated as a bedroom for the sole use of the guest, who has

the sole control of the room, subject to the duty and entry of the landlord's servants for all necessary or proper purposes. The key of the room is committed to the care of the guest during the night, but at other times it had to be in the custody of the landlord's servants. Seeing that the landlord carries on his business as boardinghouse-keeper for reward, the learned Lord Justice said he is bound to carry on that business with reasonable care, having regard to the nature and normal conduct of the business as known to the guest, or as represented to the guest by him; and, if by reason of a breach of that duty on his part the lodger's property is lost, he should be held liable for the loss to the guest.

The liability of a boardinghouse-keeper for the safe keeping of guests' belongings was again raised before Swift, J., in *Caldecutt* v. *Piesse*, (1932) 49 T.L.R. 26, and his judgment has more than a merely legal interest. Here, the plaintiff was staying in the defendant's "hotel." In the course of his judgment the learned Judge spoke of it as a "guest-house," and its keeper as the "keeper of a guest-house," as he did not think the defendant was an innkeeper, since there did not seem to be present any of the attributes of an innkeeper at common law. The evidence showed that the "hotel" was an unlicensed house which served no meals to non-residents; it did not receive applicants for lodging indiscriminately, and a week was the shortest period for which ordinary guests were booked. From what appears in the report we should think that the house was what till lately was usually called a boardinghouse, but which now sometimes takes to itself the title—supposed to be more dignified—of a "residential hotel." Whatever it may be called, the distinction between the two terms is, from the point of view of the host's liability, of no importance. The plaintiff guest stayed at this "guest-house" for some months. She found that she could not lock her door on the outside, and between August and December, 1931, frequently asked that steps should be taken to enable her to lock her room when she went out. Nothing was done, and it seems to us a very important fact that the defendant (the proprietress) in mid-November said that she would be responsible for the plaintiff's property until a lock which could be locked from the outside was provided. It is true that this remark was made when the plaintiff was leaving the guest-house for a week end; but as she was only going to be away for two nights during a week-end, when even carpenters do not work, we think it must be taken that the hostess undertook the safe keeping of the plaintiff's property until a proper means of securing it was provided. It was not provided before December 14, when her ring disappeared, and in due course the action followed.

It seems to have been common ground that the ring was taken by a Mr. Smith, another guest who had pleasant manners, and an affection (real or affected) of the heart, which brought him to the defendant's guest-house while he was under the specialist's care. This person made himself agreeable to the plaintiff—such people usually do. He was invited—on one occasion only and when the plaintiff was not alone—to have tea in her room. On this slight ground the defendants sought to sustain a plea of contributory negligence. She had, they said, enabled the thief to find out where her ring was, and made it easy for him to steal it—after which he disappeared.

The learned Judge applied *Scarborough* v. *Cosgrove* (*supra*), and he had only to decide as a matter of fact whether the defendant had taken reasonable care. She received the plaintiff into her house on terms which made it likely that the plaintiff would keep valuables in her room. Yet, in spite of repeated requests, she did not take an easy step to enable her guest to lock up her room when she left it. This was clearly a careless thing to do, and, coupled with the assurance given to the plaintiff, would have formed ample material to present to a jury. It only remained to consider whether the plaintiff, by her invitation to a casual fellow-guest to visit her room, contributed to the chain of events which resulted in her loss. This case reaffirmed the liability of all boardinghouse-keepers and was probably received with some concern by numbers of that praiseworthy class. The only real gainers were the locksmiths.

The duty of a boardinghouse-keeper in New Zealand at common law is determined by *Scarborough* v. *Cosgrove* (*supra*), and the question now arises, is the liability of the boardinghouse-keeper unlimited, or is a limit placed upon it? In other words, are those private hotels and boardinghouses in New Zealand, which are unlicensed but which cater for the accommodation of travellers, common inns; and, if they are common inns, are their proprietors entitled to the same limitation for the loss of their guests' goods as the Legislature has given to the proprietors of licensed premises? Both questions came up for consideration in *Kerrigan* v. *Smith*, (1941) 2 M.C.D. 164.

The defendants were the proprietors of the Grand Central, a private hotel in the City of Wellington, catering for permanents and casuals. There could be no doubt, from the advertisements inserted by the defendants in the *Automobile Association Handbook* and other publications, that their hotel was held out as a place where travellers might obtain accommodation. The plaintiff resided in the Manawatu district and went to Wellington on a short visit. The manager informed her of the number of her room and showed her to it. Her belongings were contained in a leather hat-box. The door of the room had two locks. One was the ordinary door fastening which could be opened by the handle: the other was a Yale lock. No keys were provided for either lock. The Yale lock was snipped back. The plaintiff could have released the snip while she was in the room, and thus locked her door; but she had no means of operating the lock from the outside. On the second day of her visit, before leaving the room for dinner, she closed the wardrobe door, but was unable to lock it because there was no key. She had placed her belongings including a silver-fox fur in the wardrobe. She also closed the bedroom door as she left the room. When she returned after dinner, she found that the whole of the things she had put in the wardrobe had been removed. The management was informed at once and the Police summoned. It was admitted that a thief entered the room and stole the plaintiff's property. The hat-box was subsequently recovered in a damaged condition, but no trace of anything else had been found. The learned Magistrate found as a fact that the plaintiff's loss was not caused through the wilful act or the default or neglect of the defendants or any one in their employ: nor was it caused through any neglect or default on the part of the plaintiff. He also found as a fact that the defendants held themselves out as ready and willing

to supply accommodation to travellers: that the plaintiff was received by the defendants as a *bona fide* traveller and retained that status at all material times; and that the value of the goods lost by the plaintiff was £35.

Mr. Luxford, S.M., said that there is a widespread belief in New Zealand that the common-law liability of an innkeeper attaches only to licensed publicans—*i.e.*, houses licensed under the Licensing Act, 1908, which specifically declares, in s. 172, that "every house for which a publican's license or an accommodation license is granted shall be considered a common inn." The statute then proceeds, in s. 174, to limit the common-law liability of an innkeeper for the loss of the goods of "any lodger or guest." An "innkeeper" is defined in s. 2 to mean "a licensed publican, and includes the holder of an accommodation license." The learned Magistrate, after reviewing the legislation since 1866 when the Innkeeper's Liability Act (repealed in 1881) was passed, found that the licensing legislation does not limit common inns to houses for which publicans' or accommodation licenses have been granted. He referred to *Cunningham* v. *Philp*, (1896) 12 T.L.R. 353, and to *Webb* v. *Fagotti Bros.*, (1898) 79 L.T. 683, to show that it is well established in England that a temperance hotel may be a common inn. He proceeded:

> The essential ingredient of a common inn is the holding out by the owner of a house that he will receive all travellers and sojourners, who are willing to pay a price adequate to the sort of accommodation, provided they come in a situation in which they are fit to be received. Whether a place is a common inn or not is always a question of fact. Once a person holds out that he is ready and willing to receive travellers, he becomes liable as an innkeeper to every guest whose property is lost or damaged while staying in the inn, if the person was a traveller when he was received and maintained that status at the time the loss or injury occurred.

The learned Magistrate concluded that the proprietor of a private hotel or boardinghouse may be the keeper of a common inn, but, in respect of the loss of his guests' goods, he is without the protection which the Legislature by s. 174 of the Licensing Act, 1908, gives to a licensed publican or the holder of an accommodation license whose liability it limits to £30 in respect of the loss of, or injury to, goods brought to his licensed premises by a guest, with certain specified exceptions.

In *Scarborough* v. *Cosgrove* (*supra*), the boarding-house was one of a general nature at which boarders by the week or casual guests were accommodated. In *Caldecutt* v. *Piesse* (*supra*), the boardinghouse was one of usually permanent residents, and, as such, had not the attributes of a common inn. In both these cases, the same rule was applicable, in fact, as Collins, M.R., said in the former case, at p. 812, "I think there is a fallacy in the suggestion that because a boarding or lodging house keeper does not come under the full liability of an innkeeper, he is exempt from all obligation to take care." In *Kerrigan* v. *Smith*, the learned Magistrate was confining his attention to a private hotel which catered for the casual travelling public as well as for permanent boarders, and was a common inn. Accordingly, the distinction made by Swift, J., in *Caldecutt* v. *Piesse* does not affect the common-law liability of the keeper of a boardinghouse for permanent lodgers, while, on the other hand, the observations of the learned Magistrate in *Kerridge* v. *Smith*, while referable to a "mixed" boardinghouse, may not be applicable to one which caters for permanent lodgers only, to the exclusion of the travelling public, though the common-law liability of the boardinghouse-keeper for the loss of his guests' property is the same in both classes of houses.

The position in New Zealand, therefore, appears to be that the common-law duty of a boardinghouse-keeper, whether he caters for permanent or temporary guests, is to take reasonable care for the safety of property brought by a guest into his house; and his liability, on proof of a breach of that duty, in the absence of proof of contributory negligence on the guest's part, is limited only by the value of the property stolen from the guest.

SUMMARY OF RECENT JUDGMENTS.

SUPREME COURT.
Whangarei.
1943.
March 12, 26.
Callan, J.

WHINRAY v. PUBLIC TRUSTEE.

Contract — Misrepresentation — Fraudulent Misrepresentation — Misrepresentation innocently made by One Agent as to Facts—Knowledge of True Facts by Another Agent, who knew nothing of Representation and supplied No Inaccurate Information—Whether Principal liable.

A principal is liable for fraudulent misrepresentation where either the principal himself or an agent, knowing the representation to be false, causes an innocent agent of the principal, who believes it to be true, to communicate it to and thus mislead the party to whom the representation is made. But the principal cannot be saddled with fraud unless he himself or some agent has guilty knowledge with reference to the representation complained of; and the principal is not liable for fraud merely because the true facts were known to one agent, who knew nothing of the representation, supplied no inaccurate information and in no way failed in his duty, and another agent innocently made a representation to a third party contrary to the facts.

The defendant's office had notice of the revaluation of a property that was for sale, which revaluation would, and, in fact did, substantially increase the rates payable in future years. M., who was handling the estate of which the property formed part, knew of the revaluation and discussed with another officer, B., who had just joined the staff, whether an objection should be lodged against the revaluation. Eventually, M. prepared a report, seen by B., advising against an objection. When his report had been adopted particulars of the new values were amended in the estate file by M. B., who had forgotten about the revaluation, gave the plaintiff, who subsequently purchased the property, particulars of the outgoings, from the file which he had in his hand, mentioning the rates for the previous year, but without referring to the revaluation.

In an action by the plaintiff against the defendant removed into the Supreme Court,

Turner, for the plaintiff; *Webb*, for the defendant.

Held, 1. That the plaintiff had not proved a warranty.

2. That, on the evidence, B. had not fraudulently suppressed the facts of the revaluation and its effects on the probable outgoings.

3. That, as no officer of the defendant had acted fraudulently, the claim for fraudulent misrepresentation failed.

Derry v. *Peek*, (1889) 14 App. Cas. 337, and *Anglo-Scottish Beet Sugar Corporation, Ltd.* v. *Spalding Urban District Council*, [1937] 2 K.B. 607, [1937] 3 All E.R. 335, applied.

London County Freehold and Leasehold Properties, Ltd. v. *Berkeley Property and Investment Co., Ltd.*, [1936] 2 All E.R. 1039, considered.

Solicitors: *Connell, Trimmer, and Lamb*, Whangarei, for the plaintiff; *Webb and Ross*, Whangarei, for the defendant.

Case Annotation: Derry v. *Peek*, E. and E. Digest, Vol. 35, p. 27, para. 185; *Anglo-Scottish Beet Sugar Corporation, Ltd.* v. *Spalding Urban District Council, ibid.*, Supp. Vol. 35, p. 13, para. 484a; *London County Freehold and Leasehold Properties, Ltd.* v. *Berkeley Property and Investment Co., Ltd., ibid.*, Supp. Vol. 1, p. 101, para. 2258a.

SUPREME COURT. Auckland. 1943. March 11, 19. *Callan*, J.

OPIE v. PETERSEN.

Licensing—Offences—Illegal Sale—Unchartered Club—Members ordering Liquor from Brewery through Secretary—Liquor obtained by Secretary at Wholesale Price—Members charged Retail Price, difference becoming Part of Club's Funds—Whether Illegal Sale to Members—Licensing Act, 1908, s. 195 (1).

A football association had a genuine club, which was not a chartered club. Neither the secretary of the association, who was in charge of the club rooms, nor any officer of the association had a license under the Licensing Act, 1908, in respect of the association's club premises, in which any member who so wished had provided for him a liquor locker, the key of which was kept by the secretary. The requirement that all liquor should be consumed on the premises of the association was strictly enforced. Each of thirty members notified the secretary that he required one dozen large bottles of beer and paid or rendered himself liable to pay 24s.—*viz.*, 2s. a bottle. The secretary combined the orders into one order for thirty dozen bottles from New Zealand Breweries, Ltd., and gave the names of the thirty members. The company charged 16s. 6d. a dozen, the wholesale price; but the price paid by the individual member was always 24s. a dozen, the retail price, the difference between the two sums went into the proceeds of the association, and amounted to considerable dimensions. The company sent the beer to the association's rooms and a delivery-docket addressed to the secretary with a statement "1 dozen to each of the following" (and then followed the names of the thirty members who had given the orders). The secretary placed or caused to be placed one dozen bottles in the locker of each of the thirty members.

An information was laid against the secretary for that, not being a person exempt by the Licensing Act, 1908, from requiring a license to sell liquor and not being duly licensed to sell liquor, he sold liquor contrary to s. 195 (1) of that statute. He was convicted. On appeal by the secretary from such conviction,

W. W. King, for the appellant; *V. R. S. Meredith*, for the respondent.

Held, 1. That the transaction prior to the placing of the liquor in the locker included a sale thereof to the members by the appellant (as secretary of the association) and was, therefore, a breach of s. 195 (1).

2. That the appellant was only the agent of the individual member to purchase liquor from the brewery on that member's behalf.

Webb v. *Grant*, [1923] G.L.R. 637, and *Tiki Paaka* v. *Maclarn*, [1937] N.Z.L.R. 369, G.L.R. 214, referred to.

3. That there was a purchase of liquor from the brewery by the association, and a separate transaction between the association and its individual members; and such transaction was a "sale" within the meaning of s. 195 (1) and not merely a transfer of a special property in the goods from all the other association members to the consumer member, in consideration of the price paid by him.

Bryant v. *Eales*, [1916] N.Z.L.R. 1065, G.L.R. 775, applied.

Graff v. *Evans*, (1882) 8 Q.B.D. 373; *Trebanog Working Men's Club and Institute, Ltd.* v. *Macdonald*, [1940] 1 K.B. 576, [1940] 1 All E.R. 454; and *Upton* v. *The Colonial Secretary*, (1903) 23 N.Z.L.R. 82, 6 G.L.R. 55, distinguished.

Quaere: Whether *Graff* v. *Evans*, (1882) 8 Q.B.D. 373, applies in New Zealand to every club, chartered or unchartered.

Watford v. *Miller*, [1920] N.Z.L.R. 837, G.L.R. 497, referred to.

Solicitors: *C. Hunt*, Auckland, for the appellant; *Crown Solicitor*, Auckland, for the respondent.

Case Annotation: Graff v. *Evans*, E. and E. Digest, Vol. 8, p. 522, para. 109; *Trebanog Working Men's Club and Institute* v. *Macdonald, ibid.*, Supp., Vol. 8, p. 110, para. 111c.

SUPREME COURT. Wellington. 1943. March 17; April 14. *Myers*, C.J. *Blair*, J. *Smith*, J. *Johnston*, J. *Fair*, J.

HAZLEDON v. ANDREWS.

Road Traffic—Motor-vehicles—Right-hand Rule—Unregulated Intersection—Motor-vehicles approaching Intersection from Different Directions—Motor-vehicle possessing Right of Way turning to its Right—Obligations of Drivers—"With safety"—Traffic Regulations, 1936 (Serial No. 1936/86), Reg. 4 (6).

A motor-vehicle having the benefit of the right-hand rule under Reg. 4 (6) of the Traffic Regulations, 1036, does not lose it by turning to the right at a T or other intersection.

Mortlock v. *Shelton* (unreported: Fair, J., Auckland, September 18, 1940) approved.

Dayman v. *Tisher*, [1941] S.A.S.R. 205, and *Skinner* v. *Day*, [1941] S.A.S.R. 19, referred to.

So held by Full Court, in allowing an appeal from the decision of a Stipendiary Magistrate.

Semble, per *Blair*, *Smith*, *Johnston*, and *Fair*, JJ. (*Myers*, C.J., *dubitante*). The right-hand rule applies in favour of a vehicle which turns right at an intersection across the track of another vehicle approaching in the opposite direction on a parallel course.

Observations on aspects of the right-hand rule and on the obligations of drivers of motor-vehicles thereunder, and diagrams illustrating its operation in various types of intersections.

Counsel: *O'Shea* and *A. R. Cooper*, for the appellant; *Sievwright*, for the respondent.

Solicitors: *John O'Shea*, City Solicitor, Wellington, for the appellant; *A. B. Sievwright*, Wellington, for the respondent.

SUPREME COURT. Wellington. 1943. March 19. *Myers*, C.J.

INSPECTOR OF MINES v. ONAKAKA IRON AND STEEL CO., LTD., AND OTHERS.

Practice—Appeals to Court of Appeal—Appeal sought from Supreme Court's Determination on Appeal from Inferior Court—Question of Delay—Leave granted subject to stringent Conditions—Judicature Act, 1908, s. 67.

An appeal to the Supreme Court from a decision of a Warden under s. 13 of the Iron and Steel Industries Act, 1937, was dismissed. Immediately after the delivery of judgment was completed on December 14, 1942, the Solicitor-General, for the appellant, made an oral application to the Court for leave to appeal from the determination of the Supreme Court to the Court of Appeal required by s. 67 of the Judicature Act, 1908; but, at his request and by common consent, the Court stood the application over *sine die* for further consideration. On February 12, 1943, the Solicitor-General filed a formal notice of motion for leave to appeal and served it on February 15. The application was not heard until March 19, and the appeal could not be heard at the March sitting of the Court of Appeal. A preliminary objection was taken on behalf of the respondents that the application should be dismissed on the ground of delay.

Held, That, although to some extent the respondents might have been delayed, the granting of leave to appeal in a case involving a very large amount of money with substantial questions of law and matters of public interest and importance would not involve oppression or great hardship to them.

Leave to appeal was therefore granted subject to the stringent conditions set out in the judgment.

Gaynor v. *Lacey* (*No. 2*), [1920] N.Z.L.R. 745, G.L.R. 390; *Young* v. *Hall*, [1929] N.Z.L.R. 804*n*; and *Rutherford* v. *Waite*, [1923] G.L.R. 34, distinguished.

Counsel: *Solicitor-General* (*Cornish*, K.C.) and *Treadwell*, for the appellant; *Cooke*, K.C., and *White*, for the Onakaka Iron and Steel Co., Ltd. (in Liquidation); *Weston*, K.C., and *Julia Dunn*, for the Golden Bay Proprietary, Ltd. (in Liquidation); *Sim*, K.C., and *Guise*, for the Pacific Steel, Ltd.

Solicitors: *Crown Law Office*, Wellington, for the appellant; *Glasgow, Rout, and Cheek*, Nelson, for the Onakaka Iron and Steel Co., Ltd. (in Liquidation); *Kelly and McNeil*, Hastings, for the Golden Bay Proprietary, Ltd. (in Liquidation); *Perry, Finch, and Hudson*, Timaru, for the Pacific Steel, Ltd.

Right Hand

THE RIGHT-HAND RULE.

A Consideration of Hazledon v. Andrews.

By C. Evans-Scott.

The recent decision of the Full Court in *Hazeldon* v. *Andrews* (to be reported) confirms the opinion expressed in my former article, (1941) 17 N.Z.L.J. 247—namely, that a vehicle having the benefit of the right-hand rule does not lose it by turning right at an intersection. The leading judgment is that of Mr. Justice Blair, who states as follows:

> Regulation 14 (6) is quite clear in its terms. It deals with the common case of two motor-vehicles approaching an unregulated intersection from different directions and it demands that if there be a possibility of collision a driver must give way to any vehicle (other than a tram) approaching on his right. The fact that a car possessing right of way may, instead of going straight across the intersection, intend to turn to its right or actually turns to its right does not create any change in the respective rights.

This decision, with which the other members of the Court concurred, satisfactorily settles a question which has been the subject of much conflict of opinion in the Magistrates' Courts.

The Full Court also laid down, obiter, another principle —namely, that a vehicle, not otherwise entitled to the benefit of the rule, can acquire it by turning at an intersection across the track of another vehicle approaching in the opposite direction on a parallel course.

A somewhat strange feature of the judgments is that this *obiter dicta* is expressed substantially without reasons. Moreover, the Chief Justice concurred with some doubt. Mr. Justice Blair, who wrote the leading judgment, does not refer to the principle in the body of his judgment. It appears only in explanatory notes at the foot of diagrams in an appendix to his judgment. In fact the only member of the Court who gives reasons for the obiter dicta is Mr. Justice Smith, who merely expresses the opinion that the word "crossing" was introduced in 1936 to extend the scope of the regulation so that the rule would apply to any crossing of the area of the intersection whatever the direction might be. With respect to the Full Court, it is submitted that the *obiter* opinion is (*a*) wrong in law, and (*b*) impracticable and dangerous. I will deal with each comment separately.

(*a*) Wrong in Law.

In my previous article, I referred to two opinions expressed in the New Zealand Supreme Court and one in the South Australian Supreme Court, all of which lay down the reverse principle, but none of which is mentioned by the Full Court. I refer to the summing-up of Mr. Justice Smith in *Sheffield* v. *McCallum* (see 14 N.Z.L.J. 13), the judgment of the learned Chief Justice in *Commerer* v. *Stratford Carrying Co., Ltd.*, [1934] N.Z.L.R. 551, and the judgment in *Drew* v. *Gleeson*, [1937] S.A.S.R. 380. It is true that those opinions were expressed upon a regulation which did not contain the words "or crossing"; but in my previous article I set out reasons why those words should not be interpreted as reversing the principle laid down in those opinions. There is no need to repeat those reasons here, but I would make some additional observations.

The principle laid down in the three mentioned cases is merely an instance of the well-established common-law rule that he who makes a manoeuvre which may create a situation of danger is bound to satisfy himself that he can do so with safety. If there be any danger of collision he must wait until the danger is past. This rule is so well established that authorities are really unnecessary, but I would refer to a most apposite passage from the judgment in *Webb* v. *Black*, [1937] S.A.S.R. 360, where Napier, J., said at page 362:

> "The act of turning across the line of oncoming traffic is one that involves a duty of care, which is not necessarily discharged by merely giving the conventional signal of the intention to turn" (*Kleeman* v. *Walker* ([1934] S.A.S.R. 199 to 205)). In *Hodges* v. *Coombes* ([1931] 33 W.A.L.R. 85), Dwyer, J., denies that a motorist has any right to turn across traffic travelling in the opposite direction and to expect the driver of an oncoming vehicle to give way for that purpose. I respectfully agree with that view, although it may be necessary to point out, as in *Kleeman* v. *Walker* (*supra*), that the rule is to be reasonably understood and applied.

To the same effect is the decision in *Warren* v. *Heinzel*, [1923] S.A.S.R. 429, which is referred to by the Chief Justice in *Commerer* v. *Stratford Carrying Co., Ltd.* (*supra*).

The compiler of the *Summary of the Traffic Regulations, 1936*, mentioned in the judgment of Mr. Justice Blair, no doubt intended to refer only to this rule when he stated, "If you are changing direction yourself give way to all other traffic."

Between this well-established common-law rule and the case of a motorist, who, *having the right of way*, turns right at an intersection, there is a clear distinction. In the former case the change of direction creates the danger; in the latter it reduces it.

If the opinion of the Full Court be correct a manoeuvre which creates a danger actually enables the offending driver to acquire a right of way over the driver who is endangered. The Full Court apparently comes to this conclusion solely on account of the introduction of the words "or crossing" in the regulation.

> It is in the last degree improbable that the Legislature would overthrow fundamental principles, infringe rights, or depart from the general system of law, without expressing its intention with irresistible clearness: *Maxwell on the Interpretation of Statutes*, 8th Ed. 73.

In *Sheffield* v. *McCallum* (*supra*) Mr. Justice Smith stated that the regulation applies when the two vehicles are in *different* roads. It is submitted that this limitation still applies notwithstanding the amendment. The regulation is an intersection rule intended to regulate the rights and duties of motorists coming from different roads which intersect. It was never intended to alter the respective rights and duties of vehicles approaching one another in the same road.

(*b*) Impracticable and Dangerous.

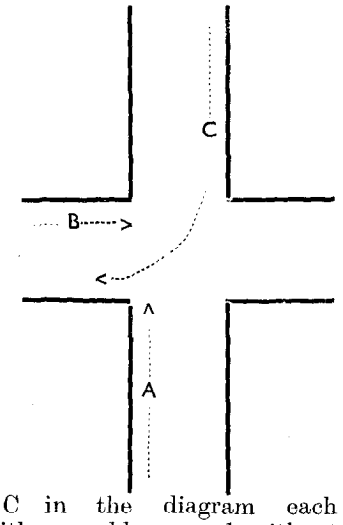
The rule involved in the *obiter* opinion of the Court is in many respects impracticable. I will mention several instances of such impracticability.

The last sentence of Reg. 14 (6) reads as follows:

> No driver of a motor-vehicle shall increase the speed of his vehicle when approaching any intersection under the circumstances set out in this clause.

How is a motorist to know whether he is "approaching any intersection under the circumstances set out in this clause" when he does not know until he reaches the intersection whether or not he has to give way to another vehicle approaching him in the opposite direction? In daylight he would, of course, be able to see the other driver's signal some distance before reaching the intersection; but at night, unless the driver of the other car is fortunate enough to have a trafficator which works, his first intimation would come from the turning of the other car across his track.

Next, consider a situation which is continually arising at intersections, as illustrated by the diagram.



Under the right-hand rule C has to give way to B, and B to A. If, as stated by the Full Court, C, by turning across the track of A, thereby acquires the right of way over A, the result is that each vehicle has to give way to the one on its right. A deadlock is thereby created, and if any one of the drivers proceeds he would commit an offence.

A similar deadlock could arise between two vehicles. If A and C in the diagram each desired to turn right neither could proceed without committing an offence because each vehicle would be crossing on the right of the other. It is true that under the common law there is no general rule governing the obligations of A and C in such circumstances and the driver would have to depend upon the ordinary courtesies of the road. If, however, the right-hand rule applies, the ordinary courtesies of the road would not protect either driver from a charge of a technical breach of the regulation.

It would appear that the above practical difficulties have escaped the notice of the Full Court.

I am not overlooking the fact that even the ordinary right-hand rule could create a deadlock when four vehicles approach an intersection from different directions at the same time. This, however, is a rare occurrence and, as stated by Mr. Justice Blair, imperfection can be found no matter what rule is adopted. Where, however, a rule produces a deadlock in circumstances which are commonplace occurrences in ordinary traffic, there is good reason for saying that the rule is wrong. That comment is, with respect, applicable to the *obiter* opinion of the Full Court.

Lastly, I will refer to the danger created by the Full Court's interpretation. It is a well-established practice of motorists to stop and give way when turning across the track of approaching vehicles. Motorists do this as a matter of habit and do not expect the oncoming vehicle to slow or stop. The interpretation of the Full Court will completely upset this habit, which, from the safety point of view, is highly undesirable.

One of the reasons given by Mr. Justice Blair for overruling the Magistrate was that great confusion and danger would result from the Magistrate's ruling. This comment was made on the ruling in the lower Court, that a vehicle by turning right *lost* the right of way. How much more confusing and dangerous is a rule that, by turning right, a vehicle can *acquire* the right of way.

Consider the case of two approaching vehicles on a country road at night, each driver substantially dazzled by the other's lights. The Full Court says that if one of those drivers intends to turn across the track of the other, he is entitled to do so, *and thereby acquire the benefit of the right-hand rule.* A more dangerous interpretation of the rule is difficult to conceive.

It is submitted, with respect, that the doubt expressed by the learned Chief Justice was fully justified, and that the Court in its *obiter dicta* has misinterpreted the rule. The confusion and danger which will arise from this dicta calls for an immediate amendment to the Regulations expressly restoring the common-law rule.

DEBTORS EMERGENCY REGULATIONS, 1940, AMENDED.

Regulation 4 of the Debtors Emergency Regulations, 1940 (Serial No. 1940/176), provides that, except with the leave of the Court, it is not lawful for any person to do any of the acts specified in cl. 2 of the regulation in respect of any other person, or of any other person's property, if that other person (the debtor) is a member of the Forces or a dependant of a member of the Forces, or has filed a notice that he requires the leave of the Court to be obtained before the creditor does one or more of those acts.

The first amendment of these regulations, which have been in force since August 2, 1940, was made by an amending regulation (Serial No. 1943/68) on April 28, and it affects two of the acts referred to above. The first effect of the amendment is to alter Reg. 2 (*a*) to read as follows:—

> "(*a*) To issue or proceed with any writ or warrant for the possession, seizure, or sale of any property, or any writ of attachment, in pursuance of any judgment or order obtained against the debtor (whether before or after the commencement of these regulations) in any Court in its civil jurisdiction, other than *an order for the possession of a dwellinghouse to which the Fair Rents Act, 1936, for the time being applies, or for the ejectment of the tenant therefrom,* or any order made under the Destitute Persons Act, 1910,"

The words in italics are new, and replace the words originally in the clause, "a judgment or order for possession of any tenement obtained against any person on the ground that he is a trespasser or that his tenancy has expired."

Regulation 4 (2) (i) has also been amended. It now reads as follows:

> "(i) To exercise any power of re-entry conferred by any lease or any power of determining any lease, whether granted before or after the commencement of these regulations, *not being a lease of a dwellinghouse to which the Fair Rents Act, 1936, for the time being applies.*"

The words in italics have been added to the clause.

This amendment should be carefully studied by reference to the definition of "dwellinghouse" in the Fair Rents Act, 1936, as amended. It may have a far-reaching effect, such as to extend tenancies (exclusive of those affecting any such "dwellinghouse") to which the procedure under ss. 180 and 183 of the Magistrates' Courts Act, 1928, applies. The protection of dwellinghouses is removed from the regulations and relegated to the Fair Rents legislation, but protection is now given by the regulations against the enforcement of any judgment or order for possession of any other tenement (including business premises) against any person on the ground that he is a trespasser or that his tenancy has expired.

LONDON LETTER.

Somewhere in England,
February 20, 1943.

My dear EnZ-ers,

We here are mourning the death of Mr. Stanley Shaw Bond, the Chairman and Governing Director of the Butterworth group of Companies, and Chairman of Coke Press, Ltd., who died on Sunday last, after a short illness. Mr. Bond, by the exercise of the qualities of vision and energy, which were two of his outstanding characteristics, brought Butterworths to the foremost place which it has for many years occupied in the publishing world. The idea which came to fruition in *Halsbury's Laws of England* was his: he was the man who took the heavy risks involved in undertaking the preparation and publication of so great a work; and his pride and pleasure in it and in the other major publications of the House of Butterworth were shared by all who had the privilege of working with him. His business interests by no means exhausted Mr. Bond's activity. He was the Honorary Treasurer of the Royal Association in Aid of the Deaf and Dumb, and he was a Governor of Queen Alexandra's Hospital for Soldiers, Chairman of the Financial Commission of the Church Assembly, and Vice-Chairman of the Central Board of Finance of the Church of England. His death leaves a gap which, for those who knew him, can never be filled, and every member of the organizations which he controlled mourns the loss of one who, whether as colleague or employer, was, in all circumstances, a friend.

Spoken English.—One result of the paper shortage and consequent curtailment of the number of pages of our daily papers has necessarily been that the reports of Parliamentary proceedings are "cut" very drastically; and many of my readers must have missed altogether, and very few can have read in full, a report of the delightful speech made by Lord Simon, the Lord Chancellor, in the House of Lords on January 19 on a motion by Lord Brabazon of Tara calling attention to the importance of phonetics in connection with democratic education. Lord Brabazon —better known to most of us as Colonel Moore-Brabazon—was anxious, as he said, to stop uncouth, badly pronounced English, a most worthy aspiration, and he suggested that there was "loathing of the public school because the public school produces that form of speech which is not produced in the other schools and which could be produced. . . . Let us suppose that two of our most distinguished members here were dressed up suitably in corduroys and sweaters—for instance, the Lord Chancellor and the Leader of the House—and entered into conversation with ordinary people in a public-house in Wapping. Just picture that for a moment. Is it not quite true to say that after three minutes they would be calling the Lord Chancellor 'Sir'—not because he knew more about racing or knew more about football, but because his voice is different, he has a cultivated voice. It is not that the two noble Viscounts speak alike—not at all. The Lord Chancellor has a most musical, lovely voice, but he has got all the tricks of the lawyer—he cannot possibly say 'Thank you,' he has got to say 'I am much obliged.' Of course, the Leader of the House [Lord Cranborne] speaks what can only be described as the Cecilian dialect—very acceptable and very agreeable, but there is an enormous difference between them."

Having paid a tribute to the news announcers of the B.B.C., Lord Brabazon expressed the hope that the Board of Education would do what was possible to produce an English diction which would not show class distinctions.

The Lord Chancellor on "Hot Rhythm."—Lord Simon, in his reply, defended "well-established local methods of speech," but agreed with Lord Brabazon as to the importance "not of deliberately cultivating some nice standardized form of speech which takes away half the vitality of human conversation, but of avoiding slip-shod, dogs'-eared, down-trodden, mouthy, mumbling speech, which does not do credit either to the local dialect or anything else." Lord Brabazon had purported to give an example of the "Oxford accent," and the Lord Chancellor, who is, of course, one of Oxford's most distinguished sons, observed that "the Oxford accent has no more to do with Oxford than the Oxford Group has"—a quip which should delight the heart of Mr. A. P. Herbert. With regard to the B.B.C., the Lord Chancellor said: " . . . the announcers do most admirably. Their work must be a constant strain to them, and we are all greatly obliged to them. I must admit, however, that my own experience is that when I turn on the wireless so as to be sure that I am not late for the news, I am sometimes compelled to listen to back-chat between performers who, I understand, are professionally known as 'comics,' in which the English tongue is debased almost beyond recognition. I do not quite understand why those who want to listen to the news should be sentenced to listen to this sort of thing just before it. Similarly, as I think my noble friend hinted, sometimes, when waiting for the news, one has to endure noises produced, I suppose, by the human voice, which certainly are neither music nor even in tune. I am told that the technical name for these things is 'hot rhythm.' I cannot see why we should have to endure that either, and I think that there ought to be a close time for such things. But perhaps, after all, these excruciating disturbances are introduced in order that we may admire the more the admirable clearness and the high level of pronunciation of the veritable official announcers." And, after referring to, and warmly commending, the American handbook, *A Short Guide to Great Britain*, which is given to every American soldier who comes to this country, and which deals with the question of difference of accent, Lord Simon agreed that it is "one of the functions of a well-devised system of education to press the appreciation of this magnificent tongue of ours by reading aloud, by recitation of the passages that children are really interested in—and there are plenty of them—by the learning of poetry, which you can do more easily in your early years than you can perhaps when you are older, and by everything that tends to raise the breadth and the purity of the method of communication, without being standardized or formal or moulded according to a very special pattern," and so brought to an end a most entertaining and instructive debate.

White Gloves.—Hitlerism has been responsible for the suspension (at least only temporarily, let us hope) of many pleasant old customs even within the purlieus of the law. An illustration of this was provided at the recent Northampton Borough Quarter Sessions where, on the arrival of the learned Recorder, there were neither prisoners nor white gloves for his attention. Commenting upon this combination of the fortunate and unfortunate, the learned Recorder very properly remarked that he was prepared to regard the absence of white gloves as a concession to the national appeal for economy, but he sincerely trusted that, when the war was over, the old custom would be revived. So far as one can judge by a perusal of the Assize and Sessions Calendars displayed on the file at the Royal Courts of Justice the experience of the learned Recorder of Northampton must have been unique. The lists of offenders seem now to be unusually large, and we notice calendars of a number of the smaller boroughs, where Recorders are available to administer justice, which are providing work this time though they appear very rarely on the file at normal times. The ordinary practice, as we understand, is for each Recorder to fix a quarterly date and sign the necessary precept for the holding of his sessions and the summoning of jurors: but when no commitals for trial have taken place the sitting is cancelled in sufficient time to avoid the necessity for the attendance of those concerned. Possibly expectation failed at Northampton—hence neither prisoners nor white gloves. Occasionally it happens that an appeal or appeals may have to be heard, but there are no prisoners for trial. In such event, it is the practice to present white gloves—these being in the nature of a congratulatory memorial of the freedom of the borough from crime.

Yours ever,

APTERYX.

MORTGAGES OF BENEFICIAL INTERESTS IN DECEASED PERSON'S ESTATES.

By E. C. ADAMS, LL.M.

EXPLANATORY NOTE.

As in practice long delays often ensue before a deceased person's estate is wound up, beneficiaries sometimes find it convenient to mortgage their interests before a distribution can be made to them. From a mortgagee's point of view such a mortgage is a good investment, if he is prepared to wait some time for the repayment of the principal sum.

A suitable form of mortgage is given in Vol. 12, (1936), NEW ZEALAND LAW JOURNAL, at p. 302, although in practice there is usually embodied in the mortgage a power of attorney clause something like this:—

> AND for the considerations aforesaid the mortgagor DOTH HEREBY IRREVOCABLY NOMINATE CONSTITUTE AND APPOINT the mortgagee (including thereby his executors administrators and assigns) to be the true and lawful attorney of him the mortgagor for the purpose of enabling the mortgagee to demand sue for recover and receive of and from the trustees for the time being of the said in part recited will the moneys payable to him the mortgagor thereunder and to give good and effectual receipts releases discharges and acquittances therefor and with full power to execute any release assignment transfer or other document that may be necessary for any of such purposes.

Such a mortgage is also usually accompanied by a statutory declaration (on which the stamp duty is 3s.) by the mortgagor, in the form set out in the precedent hereunder.

The liability of the mortgage to stamp duty depends on whether the mortgagor's beneficial interest in the estate is exclusively pure personalty or on the contrary consists or partly consists of an estate or interest in land. If the former, the instrument, if by deed, is exempt from stamp duty by virtue of s. 168 of the Stamp Duties Act, 1923, if not by deed, it is liable to 1s. 3d. under s. 154, *ibid.* If, on the other hand, the mortgage affects an estate or interest in land, it is liable to a mortgage duty of 5s. and a mortgage indemnity fee of 1s.

It is not always easy to determine under which category for stamp-duty purposes such a mortgage comes. In the example given in the following precedent (which affects one-sixth share in the *residue* of an estate), the mortgage would not be of an interest in land, unless at the date of the mortgage all the debts of C.D. (the deceased) and the legacies had been paid, the *residue* thus ascertained, and unless such residue included land or an interest therein: *Guardian, Trust, and Executors Co. of New Zealand, Ltd.* v. *Hall*, [1938] N.Z.L.R. 1020, G.L.R. 516; citing, *inter alia*, *Corbett* v. *Inland Revenue Commissioners*, [1937] 3 All E.R. 808. Similarly, where a testator directs a conversion of his estate into money—whether or not the executors or trustees have a discretionary right to postpone conversion, the interest of a beneficiary is personalty and not realty—*Attorney-General* v. *Johnson*, [1907] 2 K.B. 885—unless all the debts and legacies have been paid and the executors have been requested by the beneficiaries not to convert. On the other hand, if A. has devised a specific estate or interest in *land* to B., then B.'s interest in A.'s estate is land, although presumably A.'s debts may have not been paid and B.'s land be liable to be sold to satisfy such debts: *In re Bielfield*, (1894) 12 N.Z.L.R. 596, as explained in *Hall's* case (*supra*).

PRECEDENT.

DECLARATION BY A MORTGAGOR OF HIS INTEREST IN A DECEASED PERSON'S ESTATE.

IN THE MATTER of the estate of C.D. deceased

AND

IN THE MATTER of a deed of mortgage dated the day of 1941 from A.B. to E.F.

I A.B. of &c. do solemnly and sincerely declare as follows:—

1. I am the son of C.D. deceased and the A.B. mentioned in the will of the said C.D. deceased dated and as such am entitled to an undivided sixth part or share of and in the residuary estate of the said testator.

2. I am of the full age of twenty-one years.

3. That I have not at any time assigned charged encumbered or parted with my estate or interest in the estate aforesaid of the said C.D. deceased or any part thereof and no other person company or corporation has any estate or interest in such share or interest as aforesaid or any part thereof nor has any receiver of my share and interest been appointed by any Court in New Zealand or elsewhere and I have now absolute right to convey assign transfer or mortgage the whole of such share and interest to the said E.F.

4. That I am not an undischarged bankrupt.

AND I MAKE THIS SOLEMN DECLARATION conscientiously believing the same to be true and by virtue of the Justices of the Peace Act 1927.

DECLARED &c.

NEW ZEALAND LAW SOCIETY.

Annual Meeting of Council.

The Annual Meeting of the Council of the New Zealand Law Society was held at Wellington, on March 12, 1943.

The following Societies were represented: Auckland, by Messrs. A. H. Johnstone, K.C., J. Stanton, J. B. Johnston, and A. Milliken; Canterbury, Messrs. A. W. Brown and R. L. Ronaldson; Hamilton, Mr. H. M. Hammond; Hawke's Bay, Mr. H. B. Lusk; Marlborough, Mr. A. M. Gascoigne (proxy); Nelson, Mr. M. C. H. Cheek; Otago, Messrs. C. J. L. White and G. T. Baylee; Southland, Mr. T. V. Mahoney (proxy); Taranaki, Mr. F. W. Horner; Wanganui, Mr. A. B. Wilson; Westland, Mr. W. D. Taylor; and Wellington, Messrs. H. F. O'Leary, K.C., T. P. Cleary, and G. G. G. Watson.

The President, Mr. H. F. O'Leary, K.C., occupied the chair, and he welcomed those members who were attending the meeting of the Council for the first time.

Sir Hubert Ostler.—Before proceeding with the ordinary business the President referred to the recent retirement from the Bench of Sir Hubert Ostler, Kt., and proposed the following resolution:

"On the retirement of Sir Hubert Ostler the New Zealand Law Society places on record its deep appreciation of the valuable services rendered by him to the Dominion as a Judge of the Supreme Court. Furthermore it expresses to Sir Hubert its sincere thanks for the guidance and assistance given by him to the members of the profession during his term of office and for the courtesy extended to them at all times. The members of the Society deeply regret his premature retirement from active work and they express the hope that he and Lady Ostler will remain amongst us for many years."

Mr. Lusk seconded the proposal. Mr. A. H. Johnstone, K.C. who had been closely associated with Sir Hubert for many years, referred to his unfailing courtesy to all, to his manliness and to the many admirable qualities which he possessed which had won from the profession their respect and admiration.

The resolution was carried with acclamation.

Annual Report and Balance-sheet.—In moving the formal adoption of the report and balance-sheet, the President stated that the year had been a particularly busy one and he was indebted to the Secretary and staff for their co-operation and also to the members of the Society for their help and encouragement. He was especially indebted to Mr. Watson who had always been ready to share the work and responsibility.

One of the principal functions of the Society, the President stated, was to consider and to propose desirable changes and improvements in the law as suggested from time to time by the District Societies and members of the profession. It was a matter of some discouragement that little or no notice was taken of representations put forward by the Society to those whose duty it was to consider legislation and its amendments. Such suggestions were not prompted by political considerations the Society being a non-political body, but their practical experience as lawyers enabled them to know what changes or amendments were desirable and they were well qualified to make representations. Nevertheless, despite the disappointment, it was the duty of the Society to persevere in its efforts and to assist by putting forward from time to time as the necessity arose practical suggestions for the improvement of the laws of the Dominion.

So far as the contribution being made by the members of the profession in the struggle for liberty, in which all the Empire was engaged was concerned, the records of the Society showed that 550 principals and clerks were serving with the Forces either in New Zealand or overseas. On the return of these men to the Dominion, the Society hoped to give to them all the help and encouragement that they were entitled to expect. Committees in all the centres had already been set up whose function it was to advise and assist its members in their rehabilitation. Sympathy was expressed with the profession in England in its continued losses from enemy operations and it was the earnest hope of the New Zealand Society that the war would soon be brought to an end and that peace might restore to their brethren the prosperity of the pre-war era.

Mr. A. H. Johnstone, K.C., seconded the President's motion.

Mr. A. W. Brown (Christchurch) expressed the appreciation and thanks of the District Societies to the Wellington members—Mr. H. F. O'Leary, K.C., Mr. G. G. G. Watson, and Mr. A. B. Buxton—who had assumed responsibility for a large portion of the work of the Society which, of necessity, had to be carried out by local members; and also to the members of the various Committees, including the Disciplinary Committee and Management Committee of the Solicitors' Fidelity Guarantee Fund, for the time given by them which, in these difficult days, must amount during the year to a considerable sacrifice.

Election of Officers.—(*a*) *President*: Mr. H. F. O'Leary, K.C. the only nominee, was re-elected. (*b*) *Vice-President*: Mr. A. H. Johnstone, K.C., the only nominee, was re-elected. (*c*) *Hon. Treasurer*: Mr. A. T. Young, the only nominee, was re-elected. (*d*) *Management Committee of Solicitors' Fidelity Guarantee Fund*: Messrs. H. F. O'Leary, K.C., A. H. Johnstone, K.C., E. P. Hay, D. Perry, and A. T. Young were re-elected. (*e*) *Joint Audit Committee*: Messrs. H. E. Anderson and J. R. E. Bennett were re-elected. (*f*) *Library Committee.—Judges' Library*: Messrs. T. P. Cleary and G. G. G. Watson were re-elected. (*g*) *Disciplinary Committee*: Messrs. H. F. O'Leary, K.C., A. H. Johnstone, K.C., C. H. Weston, K.C., A. N. Haggitt, J. D. Hutchison, J. B. Johnston, H. B. Lusk, and G. G. G. Watson were re-elected. (*h*) *New Zealand Council of Law Reporting*: The Secretary pointed out that it was resolved by the New Zealand Law Society in pursuance of the Council of Law Reporting Act, 1938, that the five ordinary members of the Council should retire as follows—Mr. Calvert in 1940, Messrs. W. Perry and H. P. Richmond in 1941, and Messrs. P. B. Cooke, K.C., and K. M. Gresson in 1942. Section 8 (2) of the Act provided that the term for which the appointment was made should not exceed a period of four years. These five members had been, in due course, reappointed, but the term of office was not defined. It was resolved that the term of appointment should be four years, and that members should retire as follows: Mr. C. L. Calvert, 1st Monday in March, 1944; Messrs. W. Perry and H. P. Richmond, 1st Monday in March, 1945; Messrs. P. B. Cooke, K.C., and K. M Gresson, 1st Monday in March, 1946. (*i*) *Rules Committee*: Messrs. P. B. Cooke, K.C., W. J. Sim, K.C., and T. P. Cleary were nominated as members of the Rules Committee.

Legal Education.—The following letter from the Registrar of the University of New Zealand was received:—

"The Senate at its recent meeting gave consideration to your letter of the 11th December as to the revised course for solicitors.

"I am now able to advise that the Senate agreed to delete the subject Roman Law from the course for Solicitors but did not agree to the deletion of Constitutional Law. In other respects the proposed Statutes were passed practically in the form in which they were earlier submitted to you. The principal exception was that Clause XVI of the draft regulations be referred back to the Council of Legal Education in the hope that the Council might devise a better arrangement under which a person who has qualified as solicitor may proceed to take further examinations and thus qualify as a barrister."

Crown Suits Amendment Act, 1910.—The Under-Secretary of Justice wrote as follows:—

"I am directed by the Hon. the Minister of Justice to acknowledge the receipt of your letters of the 8th December and 13th November.

"As previously advised by the Secretary of the Law Revision Committee it was intended to bring this matter before the Committee for consideration at its next meeting, but on account of conditions prevailing as a result of the war, and the impracticability of getting measures, other than those more or less directly related to the war effort, before the House, it was decided to defer convening a meeting of the Committee until a more propitious occasion. It is hoped it will be possible to arrange for the Committee to be called together early in the New Year."

The Secretary was requested to keep in touch with the Under-Secretary with regard to this matter.

(*To be continued.*)

IN YOUR ARMCHAIR—AND MINE.

By SCRIBLEX.

The Right-hand Rule.—Five Judges sitting as a Full Court have, in *Hazledon* v. *Andrews* (April 14), found themselves unanimous as to Reg. 14 (6) of the Traffic Regulations, 1936, and the "right-hand rule" thereby propounded, thus finally settling a conflict of opinion among some Magistrates. In a matter of such everyday importance to the whole motoring public it would have been a pity if the Full Court had found itself divided. Accordingly, all will commend the course taken by Sir Michael Myers, C.J., who, although feeling some doubt on one point, said:

> But I accept without hesitation the view of the other members of the Court because they are better acquainted than I am with the practical aspect of the matter and because I regard it as very important that motorists should be left in no doubt as to the interpretation of the regulations and it would, in my view, be very unfortunate to have any difference of judicial opinion.

The case is noteworthy, too, for the Appendix to Blair, J.'s, judgment. It contains twelve diagrams illustrating the question of the "right-hand rule" in varying circumstances.

A Welcome Appointment.—The reappointment of A. T. Donnelly, C.M.G., as a Government Director of the Bank of New Zealand should give satisfaction to all concerned, and not least to those members of his own profession who believe that lawyers with the necessary capabilities should take their share of responsibility in public affairs. His duties as Chairman of the Bank and as Chairman of the Economic Stabilization Commission must occupy much of his time, and yet, notwithstanding many other duties and interests, he still manages to take a part in the hurly-burly of the law.

Disposal of Actions.—MacGregor, J., in his later years on the Supreme Court Bench, when faced with an action involving accounts or detailed consideration of technical matters, seldom forgot to suggest to counsel that the case was one that might be settled. If that suggestion fell on deaf ears, the Judge was inclined to explore the possibilities of s. 14 of the Arbitration Act, 1908, as to a reference to a special referee for inquiry and report, and the possibilities of s. 15 of that Act as to the Court's power to refer to arbitration the whole case or any question of fact arising therein. Lacking a ready reference to the reported decisions on these sections, it is understood that he suggested to the editor of *Stout and Sim's Supreme Court Code* that he should enlarge his next edition of that work by including a chapter on the Arbitration Act. This was done in the 7th edition (1930) and a paragraph in the editor's preface to that edition was full of humour to those who were in the know:

> The present edition has also been enlarged by including those sections of "the Arbitration Act, 1908," which deal with the Court's power to refer matters to arbitration, and notes thereon. This subject comes properly within the description of "Disposal of Actions," and a valued suggestion that a handy reference on the subject would be appreciated has been given effect to.

"Disposal of Actions" is good—very good!

The Law and Fairness.—The much publicized judgment of Blair, J., in *Williams* v. *Commissioner of Stamp Duties* is now available in the Law Reports: [1943] N.Z.L.R. 88. It makes good reading for those of the profession who, over recent years, have had to contend with the "New Order" in certain revenue-collecting Departments of State. Nevertheless, there is at least one passage in the judgment which goes too far:

> My experience is that when one is faced with what looks like a difficult legal question the answer is *always* to be found by asking oneself what is the decent and honourable course to take, *and it will be found that the answer at common law turns out to be in accordance with what is the fair, just, and honourable thing to do.* Likewise it will be found that if the answer to an apparently simple legal question does not produce a fair, just, and honourable result, then one should look further and it will be found that the true answer turns out to be one that does produce such a result.

If the learned Judge's observations are really meant to be directed to the *common law*, they will not bear the test of analysis. The common law often produces grossly unjust results—many of them have so shocked the public sense of decency and honour as to lead to the enactment of reforming statutes; but there are others which still await statutory remedy. It may be, however, that the learned Judge meant to refer not to the common law proper, but to the whole body of our current law. Even so, few would agree with his observations. Many an example could be given of current laws which produce results which are unfair, unjust, and, indeed, dishonourable.

The Noise of Aircraft.—The Poppy Day Parade in Wellington was accompanied by aircraft flying in formation over the business area of that city. So far as can be gathered from the newspapers, the noise was not the subject of any Magisterial complaint.

War-time Appointments to Vacant Offices.—Sir Herbert Cunliffe, K.C. (Chairman of the General Council of the Bar), addressing the last Annual Meeting of the English Bar, made some observations as to war-time appointments to vacant offices. His observations are by no means without relevance in this Dominion. From time to time, he pointed out, appointments became vacant, by resignation and otherwise, for which members of the Bar were specially qualified and for some of which only members of the Bar were eligible. It was of the greatest importance that such vacancies should not be needlessly created while so many members of the Bar were away. Sir Herbert paid tribute to those who were holding on to offices when, in other circumstances, they would have resigned. And he said that he hoped that, when a vacancy did occur, the authorities would consider whether the appointment could not be kept open till the end of the war and thus permit those who had undergone so much to have an opportunity of applying for the position.

Opinions Not Doubts.—From certain experiences over recent years Scriblex is "probably inclined to think that it may possibly be" that there are some lawyers in this Dominion who are ignorant of the famous dictum of Richard Bethell, later Lord Westbury. When Bethell gave an opinion, he gave it confidently. "I am paid," he would say, "for my opinions—not for my doubts."

PRACTICAL POINTS.

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1. Vendor and Purchaser.—*Lease of Land with Option to Purchase—Covenants for Forfeiture on Default Terms of Lease—Nature of Option Clause.*

QUESTION: We act for the owner of land who has signed an agreement to lease his farm for seven years. The agreement was prepared by a land-agent and contains a clause that the lessee shall at the end of the term or at his option during the term purchase the farm at a stated price. As solicitors for the lessor we have to prepare the lease. The usual covenant in leases for forfeiture, &c., for non-payment of rent or performance of covenants appears inconsistent with the compulsory purchasing clause, and any attempt to enforce it might imperil the right to compel specific performance of the covenant to purchase at the end of the term. The precedents in *Goodall's Conveyancing in New Zealand* and in the *Encyclopaedia of Forms and Precedents* apply so far as we can ascertain only to options to purchase. We are, of course, bound by the terms of the agreement (a short typed one) and shall be glad if you could supply an appropriate clause to cover the points raised.

ANSWER: The use of (*a*) (i) an option to purchase, or (ii) a compulsory purchasing clause in a lease, or (*b*) a long term agreement for sale and purchase of land has been common in New Zealand for more than eighty years apparently: see *Nash* v. *Preece*, (1901) 20 N.Z.L.R. 141, 152–53, per Williams, J. A general discussion of the option of purchase and its strict independence of the law of landlord and tenant, despite the unity for some purposes of the lease and the option, is to be found in *Garrow on Real Property* (*Goodall's Edition*), pp. 553–57. Just as the option of purchase may have an existence independently of the lease or term to which it is annexed (see *Bevan* v. *Dobson* (*No. 2*), (1906) 26 N.Z.L.R. 69), so also the compulsory purchasing clause may have an existence independently of the lease, although both are evidenced by the one document; the one belongs to the law of vendor and purchaser, the other to the law of landlord and tenant. Nonetheless the option is to be distinguished from the compulsory purchasing clause in many respects; essentially the former gives the grantee the right to purchase without the obligation to do so until the exercise of the option, whereas the latter creates at the outset both a right and an obligation to purchase on the part of the grantee: *Nash* v. *Preece* (*supra*). See, for examples, *Plimmer* v. *Wellington Education Board*, (1904) 24 N.Z.L.R. 153, and *Wingfield* v. *Rayne*, [1916] N.Z.L.R. 157.

The precedent books, while generally furnishing suggested forms of option of purchase, do not seem to provide forms of compulsory purchasing clauses for inclusion in leases. The omission seems casual merely. Apart from expressly stipulated terms, those of an open contract for purchase will be opposite supplemented with subclauses defining the mode and time of payment of purchase-money, provision for interest on the purchase-money from the date of expiration or determination of the lease until full payment of the purchase-money. There occurs sometimes a factual difficulty of deciding when the grantee's position has ceased to be that of a lessee and has crystallized into that of a purchaser. That, however, is not so much a draftsman's difficulty.

It may be added that with respect to either the option of purchase or the compulsory purchasing clause, express provision might well be made for the concurrent or simultaneous exercise by the one notice of any rights of re-entry under the lease and rights of rescission under the option or contract of purchase. Both forms of purchasing clauses are subject in respect of exercise to the code of relief against forfeiture contained in the Property Law Act, 1908: see *Goodall's Conveyancing in New Zealand*, p. 37, Note (*d*), and p. 334, Precedent 1; and *Garrow and Goodall*, *op. cit.* p. 577, Note (c). The exercise of the rights of re-entry and rescission are also subject at the present time respectively to the Debtors Emergency Regulations, 1940 (Reg. 4 (1) (i)) and the Mortgages Extension Emergency Regulations, 1940 (Reg. 2 (3)).

The drawing of clauses in documents does not come within the scope of *Practical Points*. It is a matter for counsel to settle the form of documents of the nature indicated in the question.

2. Land Transfer.—*Life Tenant Sole Executrix—New Trustee on her Death vesting of Legal Estate.*

QUESTION: A. died in 1925, appointing W. his wife sole executrix and trustee of his will, with a provision that on her death a trustee company should be the trustee thereof. The only asset now remaining subject to the trusts of A.'s will is a piece of land under the Land Transfer Act, which is settled on A.'s daughters. W. is the registered proprietor as executrix of A. All the debts in A.'s estate have long since been paid. W. recently died intestate, and, as she owned practically no estate beneficially, it is not proposed to take out administration in her estate. Can the trustee company, the present trustee of A.'s will, apply by transmission to be registered as proprietor of the land? If not, how can the trustee company get in the legal estate?

ANSWER: The trustee company cannot apply by transmission, because there has been no vesting of the legal estate in it, by operation of law: see the definition of "transmission" in s. 2 of the Land Transfer Act, 1915, as amended by the Land Transfer Amendment Act, 1925. It is submitted that the correct procedure is to get letters of administration *de bonis non re* A.'s estate: the new administrator would get on to the Register by transmission, and could then transfer to the trustee company. It is submitted that W. did not fully administer A.'s estate, because she did not avail herself (when all the debts had been paid) of s. 87 of the Land Transfer Act: it is thought that, in order to complete administration, she should have transferred the fee-simple to the trustee company reserving to herself a life estate therein: *In re Allan*, [1912] V.L.R. 286. She was registered proprietor in a representative capacity only, and, even if administration is taken out in her estate, the legal estate in A.'s land would not vest in her administrator, for the chain of title would be broken: *Public Trustee* v. *Registrar-General of Land*, [1927] N.Z.L.R. 839; *In re Clover*, [1919] N.Z.L.R. 103, 105; *Burke* v. *Dawes*, (1938) 59 C.L.R. 1, 13, 21; *In re Hepburn*, [1918] N.Z.L.R. 190, [1917] G.L.R. 452.

RULES AND REGULATIONS.

Board of Trade (Raw Tobacco Price) Regulations, 1943. (Board of Trade Act, 1919.) No. 1943/59.

Aliens Emergency Regulations, 1940, Amendment No. 1. (Emergency Regulations Act, 1939.) No. 1943/60.

Industrial Man-power Emergency Regulations, 1942, Amendment No. 1. (Emergency Regulations Act, 1939.) No. 1943/61.

Fertilizer Control Order, 1942, Amendment No. 1. Primary Industries Emergency Regulations, 1939.) No. 1943/62.

Medical Advertisements Regulations, 1943. (Medical Advertisements Act, 1942.) No. 1943/63.

Masters and Mates Examination Rules, 1940, Amendment No. 3. (Shipping and Seamen Act, 1908.) No. 1943/64.

Pig Marketing Emergency Regulations, 1943, Amendment No. 1. (Emergency Regulations Act, 1939.) No. 1943/65.

Supply Control Emergency Regulations, 1939, Amendment No. 2. (Emergency Regulations Act, 1939.) No. 1943/66.

Commercial Gardens Registration Regulations, 1943. (Commercial Gardens Registration Act, 1943.) No. 1943/67.

Debtors Emergency Regulations, 1940, Amendment No. 1. (Emergency Regulations Act, 1939.) No. 1943/68.

Poisons Act Emergency Regulations, 1943. (Emergency Regulations Act, 1939.) No. 1943/69.