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SOCIAL SECURITY: DESERTED WIFE'S BENEFIT.

THE projected social security legislation in Great Britain is expected to have its effect in changes in the law, no less than in the everyday lives of the people. For example, workers' compensation claims, upon which a wealth of case-law has been heaped, are expected to vanish from the Courts. Our own Social Security Act, 1938, though a pioneer in the field, has not actually had much effect on the work of the Courts. It is apparent from several judgments that it will affect, to some extent, the quantum of further provision made under the Family Protection Act, 1908. Its most considerable repercussion, however, has been found in the work of practitioners whose duty it becomes to obtain maintenance for wives whose husbands, having deserted them, have failed to provide for them.

Originally, by s. 22, the Social Security Act, 1938, made provision for widows' benefits; and these, by subs. (2) (*a*), were extended to any married woman (not being a widow) who had been deserted by her husband, provided she was the mother of one or more children under sixteen years of age, and also that she had taken proceedings against her husband for maintenance under the Destitute Persons Act, 1910, and had either failed to obtain an order or had not succeeded, if she had obtained one, in having it complied with; and, in addition, she had to show that the whereabouts of her husband were not known.

By s. 13 (1) of the Social Security Amendment Act, 1943, the qualification of deserted wives in s. 22 (2) (*a*) of the principal Act was repealed. At the present time a married woman, not a widow, is entitled to receive a widow's benefits under the principal Act, provided that she comes within s. 13 (1) (*a*), which is as follows:—

> Any married woman (being the mother of one or more children under sixteen years of age) who satisfies the Commission that she has been deserted by her husband and that she has taken proceedings against her husband for a maintenance order under the Destitute Persons Act, 1910.

From this paragraph it will be observed that it is unnecessary that such a deserted wife, if otherwise qualified, should have a maintenance order before she can obtain a benefit from the Social Security Department. But she must first swear a complaint for a maintenance order under s. 17 of the Destitute Persons Act, 1910, whether or not the summons issuing thereon is served or not.

Consequently, there are two classes of deserted wife (with a child or children under sixteen years of age) who come within the qualification for the benefit: (*a*) A wife who has already obtained a maintenance order, under which no payment has been made, or payments are in arrears; and (*b*) a wife who qualifies by laying a complaint and instituting proceedings for a maintenance order, whether or not the husband is served. Once either qualification is established, the wife may, at once, on satisfying the Social Security Department, receive instalments of the annual amount allowed her by the Social Security Commission.

Now the principal change in the law made by s. 13 of the Amendment Act, 1943, must be clearly understood. Before its passing, there was no statutory provision whereby the moneys payable to a wife under a maintenance order could be diverted from her. Thus, payments to be made under a summary order for a wife's maintenance have been held to be inalienable: *Paquine* v. *Snary*, [1909] 1 K.B. 688. Under s. 6 of the Destitute Persons Act, 1910, no agreement can be made to affect the operation of any maintenance order, or the right of any Magistrate to make any such order. As Hosking, J., said in *Parish* v. *Parish*, [1924] N.Z.L.R. 307, 319, "It is regarded as a personal allowance of such a nature that a power of alienation would be inconsistent with it and defeat its purpose." However, s. 13 of the Social Security Amendment Act, 1943, by express enactment, suspends a deserted wife's rights under a maintenance order, and renders the moneys ordered to be paid to her thereunder payable to the Social Security Fund in the circumstances detailed in that section.

At first glance, it would appear that the purpose of s. 13 is merely to provide a means of facilitating the maintenance of deserted wives. It does this; but the amendment goes far in protecting the Social Security Fund until it has been repaid by the husband the amount of the benefits paid to the deserted wife. As appears from a recent judgment of Mr. Justice

Finlay, *Smith* v. *Southee* (to be reported), s. 13 is of considerable general interest, requiring careful interpretation. In fact, His Honour dealt with the question at an unusual length, because, he said, it had been represented to him as one of importance to the public and to the Social Security Department. He accordingly set out to show what the section means, and the effect it produces. It is axiomatic, he added, that it is as well to keep in mind that, whilst full effect must be given to clear statutory language, yet the language must be clear to sustain an interpretation that interference with vested rights—the rights of a wife under a maintenance order in her favour—was intended.

Before considering the effect of s. 13, subss. (4) and (5) must be made clear. They are as follows :—

> (4) Where any moneys are payable under a maintenance order to the Clerk of any Magistrate's Court in respect of the maintenance of any beneficiary or of any child or children of a beneficiary, the Commission may give notice to the Clerk of the granting of the benefit to the beneficiary, and in any such case all moneys (including arrears) received under the order by the Clerk of that or any other Magistrate's Court after the receipt of the notice shall, without further authority than this section, be paid into the Social Security Fund.
>
> (5) Upon the determination of any benefit in respect of which a notice has been given as aforesaid the Commission shall give notice of the determination to the Clerk of the Magistrate's Court to whom the moneys payable under the order are for the time being payable, and in any such case no moneys received under the order after the date of the receipt of the notice of determination shall be paid into the Social Security Fund unless they were due and payable before that date.

Up to this point, the meaning and effect of s. 13 is clear. His Honour said :

> Under it a deserted wife does not qualify for the receipt of a benefit under the Social Security Act until she has taken proceedings against her husband for a maintenance order. Where any moneys are payable under an order the Commission is entitled, if it so elects, to divert the payment of all moneys payable under the order, including arrears, from the deserted wife to the Social Security Fund. Upon the deserted wife's ceasing to be a beneficiary, the Commission is bound, peremptorily required in fact, to give notice of determination to the Clerk of Court. The result which accrues from the giving of notice of determination remains for consideration, but it is necessary at this point to comment that, in appropriate circumstances, the notice must be given by the Commission, and it can claim no rights in virtue of its failure to perform its statutory duty.

Having considered subss. (4) and (5), as above set out, the learned Judge comes to subs. (6) :

> (6) Where any moneys received or payable under any maintenance order are payable into the Social Security Fund as aforesaid, the Commission shall for the purposes of the Destitute Persons Act, 1910, or any other enactment be deemed to be the person for whose benefit the moneys are payable in pursuance of the order, and may take any proceedings accordingly.

This, said His Honour, is of cardinal importance ; and it affects a radical change :

> It effects a substitution of the Social Security Commission for the deserted wife as the person for whose benefit moneys are payable under the order, and clothes the Commission with the right—and I cannot escape from the conclusion that it is an exclusive right—to take all such proceedings as a deserted wife might previously have taken.

The learned Judge concluded that, reading subss. (4), (5), and (6) of s. 13 together, the *rights of the Social Security Commission are limited to moneys, including arrears, payable during the period from the date when notice is given under subs.* (4) to the Clerk of Court of the grant of a benefit, *and the date upon which the Commission gives him notice under subs.* (5), that the benefit has been determined. The rights of the Commission, therefore, do not extend beyond a right to have those particular moneys paid into the Social Security Fund ; but these rights enure in respect to moneys payable during the above period despite determination of the benefit. To this extent, and only to this extent, are the rights of the deserted wife affected by subss. (1) to (5), inclusive. But the effect of subs. (6), as we have seen, is to determine all rights of the wife under the order in all respects, during the above-stated period, subject to the revival of her rights upon a notice of determination given to the Clerk of Court under subs. (5), when the circumstances envisaged by that subsection arise.

We next come to s. 13 (7), which is as follows :—

> (7) Any officer of the Social Security Department, without special appointment,—
>
> (*a*) May, as if he were a duly appointed Maintenance Officer, institute, or appear personally or by agent in, any proceedings under the Destitute Persons Act, 1910, for or in relation to a maintenance order in respect of the maintenance of any beneficiary or of any child of a beneficiary :
>
> (*b*) May, on behalf of the Commission, appear personally or by agent in any such proceedings, whether or not any Maintenance Officer has instituted or appears in the proceedings.

Before considering the effect of the two parts of this subsection we must remember that the wife may have already had a maintenance order, before she went to the Social Security Department for a deserted wife's benefit ; in which case, after giving notice to the Clerk of the Court under s. 13 (4), the Department could enforce the order, if it elected so to do, in the usual way under s. 61, or under Part VI, of the Destitute Persons Act, 1910. Or, if, when the wife first approached the Department, she had no maintenance order, she would have been told to see a Maintenance Officer and take proceedings against her husband for a maintenance order—this being one of her qualifications for obtaining a benefit ; on her having done so, the Social Security Department could, if it so elected, proceed to the obtaining of an order, with consequent notice under subs. 4 to the Clerk of Court, and, failing payment, to the obtaining of an order for committal under s. 61 or other order under Part VI of the Destitute Persons Act, 1910.

The learned Judge said that subs. (7) must be considered in relation to the position created by subs. (6), as above outlined. He continued :

> The crucial features of that position are that once a notice of the grant of a benefit has been given under subs. 4, and until the notice of determination of the benefit has been or ought to have been given under subs. (5), the deserted wife ceases to be the person for whose benefit moneys are payable under the maintenance order ; and all the rights attaching to such a person wholly and completely vested in the Commission. This may well be interpreted as the creation by statute of a new order. In the light of such a position, subs. (7) appears clear, both as to its meaning and effect ; and the utility and appropriateness of the provisions are beyond question.

His Honour then said that, so far as subs. (7) (*a*) is concerned, not only is the officer of the Social Security Department, who purports to act under it, acting merely as representative of the deserted wife ; but he is subject to directions by the wife as to what, if any, steps he is to take by way of enforcement of the order. This is made clear by the representative character of a Maintenance Officer as disclosed by s. 9 (4) and (5), and

by the proviso to s. 9 (3) of the Destitute Persons Amendment Act, 1926, that proviso being in itself a statutory recognition of the right of the person for whose benefit moneys are payable under the order to compel observance of her wishes with respect to the enforcement of the order.

Subsection (7) (*b*) is limited to representation of the Social Security Commission: (i) after the giving of the notice under subs. (4) on behalf of the Commission in any proceedings initiated or prosecuted by or on behalf of a wife (as by a solicitor or Maintenance Officer) under subs.(7) (*a*) before the giving by the Commission of the notice under subs. (4) terminates the wife's interest in such proceedings; and (ii) on behalf of the Commission in any proceedings which the Commission itself may initiate pursuant to the authority expressly conferred on it by subs. (6). His Honour summed up these views as follows:—

> Each of the phases of subs. (7) has application to, and utility in, the various circumstances which may arise under the preceding parts of the section. This justifies the view of the learned Magistrate that subs. (7) is an enabling or machinery provision. That it does not extend to creating any rights beyond such rights as are necessary to carry the preceding portions of the section into effect, I entirely agree.

From this judgment it is clear:

(*a*) Where a wife (by the Maintenance Officer or otherwise) commences proceedings for a maintenance order or for enforcement of a maintenance order, those proceedings are between the husband and wife, the only parties to them; and there is no provision anywhere for the Social Security Commission becoming a party to them, so as to enforce an order thereby obtained, or otherwise.

(*b*) Although not a party to such proceedings, the Social Security Department may, before a notice is given to the Clerk of the Court under subs. (4)—

> (i) Up to the making of a maintenance order: Appear not on behalf of the Commission, but as representative of the wife in any proceedings initiated by the wife or on her behalf: s. 13 (7) (*a*).
>
> (ii) From the making of an order until notice under s. 13 (4) is given: Take directions from the wife as to what steps, if any, an officer of the Department is to take by way of enforcement of the order, as the wife's representative: s. 13 (7) (*a*).

(*c*) The position of the wife (as of the Department) remains as outlined in (*a*) and (*b*) *supra*, *until*, after a maintenance order is made, the Social Security Commission gives notice to the Clerk of the Court under s. 13 (4), whereupon—

> (i) The wife ceases to have any rights under the maintenance order, either of collection from the Clerk of Court of moneys paid by the husband under the order, or of enforcement in respect of non-payment by him under the order: s. 13 (6).
>
> (ii) The Social Security Department steps into the wife's shoes in respect both of collection of maintenance moneys, and arrears, paid into Court under the order; and of enforcement of the order in the event of non-payment by the husband: s. 13 (4) (6).
>
> (iii) Neither a solicitor, nor a Maintenance Officer, as such, nor an officer of the Social Security Department can claim to act under the authority of the wife, because she is without any rights capable of delegation: s. 13 (6).

(*d*) Upon the determination of any benefit in respect of which a notice has been given under s. 13 (4), and receipt by the Clerk of Court of a notice of determination, the wife's position under (*a*) (*supra*), and the Department's position under (*b*) (*supra*), revive; and the Department's rights under (*c*) (*supra*) terminate in respect of any maintenance moneys afterwards to become due and payable thereunder.

The foregoing follows from what the learned Judge in *Smith* v. *Southee* pointed out when he said:

> The effect of s. 13 (6) is to create a new order in favour of the Social Security Commission, by the substitution of the Commission for the wife as the person to whom the moneys payable under the order are payable. While this new order is in force, the original order in favour of the wife is suspended.

His Honour doubted whether, if the wife has commenced proceedings for enforcement of the order, before the Commission has given the notice under s. 13 (4), she can validly continue to such proceedings, as, though they were valid when initiated, they became exhausted by the operation of s. 13 (4) consequent on the giving of the notice thereunder.

In order to complete consideration of the section, it may be as well to point out that, after notice has been given under s. 13 (4), the Commission may receive, through the Clerk of the Court the payment of arrears as well as current maintenance moneys. Under s. 13 (8) those moneys, when paid into the Social Security Fund, in pursuance of that notice, are to be applied, first, in payment of legal and other expenses incident to the recovery of those moneys; secondly, in reimbursing the Social Security Fund for the amount of every benefit or instalment of a benefit paid to the wife; and, lastly, in payment of the balance to the wife: *cf.* s. 9 (8) of the Destitute Persons Amendment Act, 1926.

SUMMARY OF RECENT JUDGMENTS.

DUNEDIN CITY CORPORATION v. COMMISSIONER OF STAMP DUTIES.

SUPREME COURT. Dunedin. 1944. February 17; May 24. KENNEDY, J.

Vendor and Purchaser—Land Sales—Glasgow Lease—Renewal—Whether a Transaction of Renewal a "Renewal of a lease . . . pursuant to a provision in that behalf contained in the lease"—Servicemen's Settlement and Land Sales Act, 1943, ss. 43 (2) (a) (c), 65.

Each of the Glasgow leases granted by the Dunedin City Corporation to tenants for terms of twenty-one years expiring in December, 1943, contained a provision for renewal in the terms therein set out. Valuations were made and new leases were offered at auction on November 26, 1943, and in each case the existing tenant bid the amount of the upset annual rental and signed an agreement to lease. Upon presentation for stamping each agreement to lease was refused on the ground that the consent of the Land Sales Court had not first been obtained.

Held, That such agreement was a "renewal of a lease . . . pursuant to a provision in that behalf contained in the lease," within the meaning of those words in s. 43 (2) of the Servicemen's Settlement and Land Sales Act, 1943; and that the transaction of renewal was accordingly not affected by Part III of the statute.

Attorney-General v. *Great Yarmouth Corporation*, (1855) 21 Beav. 625, 52 E.R. 1001, applied.

Fitzsimmons v. *Lord Mostyn*, [1904] A.C. 46, referred to.

Counsel: *Robertson*, for the plaintiff; *Adams*, for the defendant.

Solicitors: *Ramsay, Haggitt, and Robertson*, Dunedin, for the plaintiff; *Adams Bros.*, Dunedin, for the defendant.

PUBLIC TRUSTEE v. AUCKLAND ELECTRIC-POWER BOARD AND JOHN BURNS AND COMPANY, LIMITED.

AUCKLAND ELECTRIC-POWER BOARD v. PUBLIC TRUSTEE AND JOHN BURNS AND COMPANY, LIMITED.

SUPREME COURT. Auckland. 1943. February 15, 19, 23, 24; March 1, 2, 3, 4; April 21. FAIR, J.

COURT OF APPEAL. Wellington. 1944. March 14, 15, 16, 17, 20, 21, 22; September 12. SIR MICHAEL MYERS, C.J.; BLAIR, J.; CALLAN, J.; KENNEDY, J.; NORTHCROFT, J.

Electric-power Board—Electrical Supply Regulations—Electrical Wiring Regulations—Validity—"Use . . . of lines . . . conveying electricity"—"Safety of the consumers or employees *and of the* public *from personal injury by reason of such use"—Obligation of Power Board under Regulations to make Every Five-years Periodical Inspections of Consumers' Installations in Search for Electrical Hazard and to discontinue Supply of Electricity if Consumer's Installation in Dangerous Condition—Death of Employee of Consumer as result of Fire caused by Defects in Consumer's Installation (supplied with Electricity from Power Board's main) unknown to Power Board created by Servant of Consumer—Failure of Board to make Overdue Reinspection before Fire—Action and Judgment for Damages against Power Board—Whether such Employee within either Term "Employees" or "Public"—Whether Jury entitled to conclude Failure to reinspect Proximate Cause of Fire—Whether Power Board liable under Statute or at Common Law—Whether Electricity in Consumer's Installation a Thing Dangerous in itself—Public Works Act, 1928, s. 319 (2) (b)—Electrical Wiring Regulations, 1935, Reg. 12–03—Electrical Supply Regulations, 1935, Regs. 48–03, 51–41, 51–42, 51–43, 52–03.*

The power of regulation and control conferred by s. 319 (2) (*b*) of the Public Works Act, 1928, is of the use and management of the licensee's line and does not extend to the consumer's installations (which have neither been supplied, erected, nor maintained by the licensee, but are in all respects the property of the consumer and are under the consumer's control).

So held by the Court of Appeal on an appeal from the judgment of *Fair*, J.

This, however, does not invalidate regulations that provide that such lines shall not be used to electrify installations of consumers which are *for the time being found to be* in a dangerous state, such as Regs. 51–41, 51–42, and 51–43 of the Electrical Supply Regulations, 1935, by which the supply authority is required to make it a condition of supply in every case that the consumer shall allow it to inspect, and that it is to make periodical inspections of consumer's installations in the search for electrical hazard not less than once every five years, and Reg. 52–03 of those regulations that requires the licensee, if the consumer's installation is in a dangerous condition, forthwith to discontinue supply from its lines. These regulations, so interpreted, do not go beyond a power to control by regulations the way in which a supplier's lines shall be used so as to secure the safety of consumers.

So held by the Court of Appeal, *Kennedy*, *Callan*, and *Northcroft*, JJ., *Myers*, C.J., doubting the validity of the regulations generally, but expressing no concluded opinion thereon; and *Blair*, J., holding that Reg. 12–03 of the Electrical Wiring Regulations, 1935, and Reg. 48–03 of the Electrical Supply Regulations, 1935, are *ultra vires* and, therefore, that there had been no statutory negligence on the part of the Power Board.

Held also by the Court of Appeal (*Kennedy*, *Callan*, and *Northcroft*, JJ., *Myers*, C.J., and *Blair*, J., dissenting), That the term "employees" in s. 319 (2) (*b*) of the Public Works Act, 1928, includes the employees of consumers.

Scobie v. *Inglewood Borough*, [1926] N.Z.L.R. 769, G.L.R. 526, referred to.

Per *Callan*, J., *Semble*, the subsection should be read as manifesting the Legislature's concern for the personal safety of all persons who going about their lawful business may be brought into danger from electricity. If an employee of a consumer injured by electricity on the consumer's premises is not within the protection of subs. 2 (*b*) as an "employee," he would come within it as a member of the "public."

Per *Myers*, C.J. (dissenting), That the term "employees" means the employees of the licensee and that the language of the paragraph is not apt to include a member of the public who happens to be on the premises of a consumer and who suffers injury by reason of the use of the consumer's installation.

Per *Blair*, J. (dissenting), That the use of the words "consumers," "employees," and "of the public" has not the effect of enlarging the ambit of the regulations to cover ordinary domestic consumers of electricity and their employees.

A Power Board had failed to make a periodical reinspection of a consumer's installation in July, 1940, when five years from the previous inspection expired. The death of an employee of the consumer was caused directly by a fire on August 19, 1941, which was the result of defects created by the wrongful volitional act of a servant of the consumer, which were not known by the Power Board supplying electricity to such installations, but which, according to a finding of a jury in the trial hereafter mentioned, could have been discovered by the Board had it performed just before the fire its neglected duty of the inspection, and the fire prevented by the Board's discontinuing the supply of electricity as was its duty under the said Reg. 52–03.

On appeal by the Board from a judgment against both the consumer and the Board in an action by Public Trustee as executor of the said deceased employee against the consumer and the Board, for negligence, in which the jury found both negligent, and found also that the Power Board was negligent in continuing the supply of electrical energy in the absence of knowledge of such defects, and that its acts and omissions were a cause or material contributing cause of the fire.

Held by the Court of Appeal (*Kennedy*, *Callan*, and *Northcroft*, JJ., *Myers*, C.J., and *Blair*, J., dissenting), dismissing the appeal, 1. That, on the evidence, the jury were entitled to find that the duty of reinspection should have been discharged at least immediately prior to the fire, that such inspection would have revealed the said defects and that the fire might have been prevented by the discontinuance of the supply of electricity to the installation when found to be not reasonably free from electrical hazard, as would be the duty of the Board under the said Reg. 52–03.

Butler (*or Black*) v. *Fife Coal Co., Ltd.*, [1912] A.C. 149, applied.

2. That when the jury found, as they were entitled to find, that both the wrongful act of the servant of the consumer and the fault or omission of the Board caused or materially contributed to the fire, they could not avoid finding that the fault of the Board was later in date than the servant's wrongful act and was, therefore, the proximate cause of the fire.

Per *Myers*, C.J., and *Blair*, J., dissenting. 1. That the Board's appeal should be allowed.

2. That there was no statutory negligence by the Board, for the following reasons respectively:—

Per *Myers*, C.J., That, assuming the regulation as to inspection to be *intra vires*, and a breach of it to confer a private action [which he considered not to be the case] and such breach to have been committed by the Board's failure to reinspect, there was no nexus between the statutory negligence and the fire, as there was no evidence to show that the defects existed at the time when it was alleged that the Board's inspection should have been made pursuant to the regulation.

Per *Blair*, J., That there was no statutory negligence because the regulations were *ultra vires*.

Per *Myers*, C.J., and *Blair*, J., 1. That there was no negligence at common law for while electricity carried on the supplier's mains is a thing dangerous in itself, in a consumer's installation it is not so within the principle stated in *Dominion Natural Gas Co., Ltd.* v. *Collins and Perkins*, [1909] A.C. 640, but dangerous *sub modo*.

2. That at common law the supplier of electricity is entitled to assume that the consumer's installation will be properly maintained by the consumer and that there will be no interference with the installation such as is prohibited by statutory provisions contained in such acts as the Electrical Wiremen's Registration Acts. There is no common-law duty on the supplier to inspect in the absence of knowledge or notice of an electrical hazard in the installation.

3. That, even if such a duty existed, there was no evidence to show that the breach of that duty was the cause of the fire and the death of the employee. The proximate cause of the accident was not the negligence of the Board, but the conscious act of volition of a servant of the company.

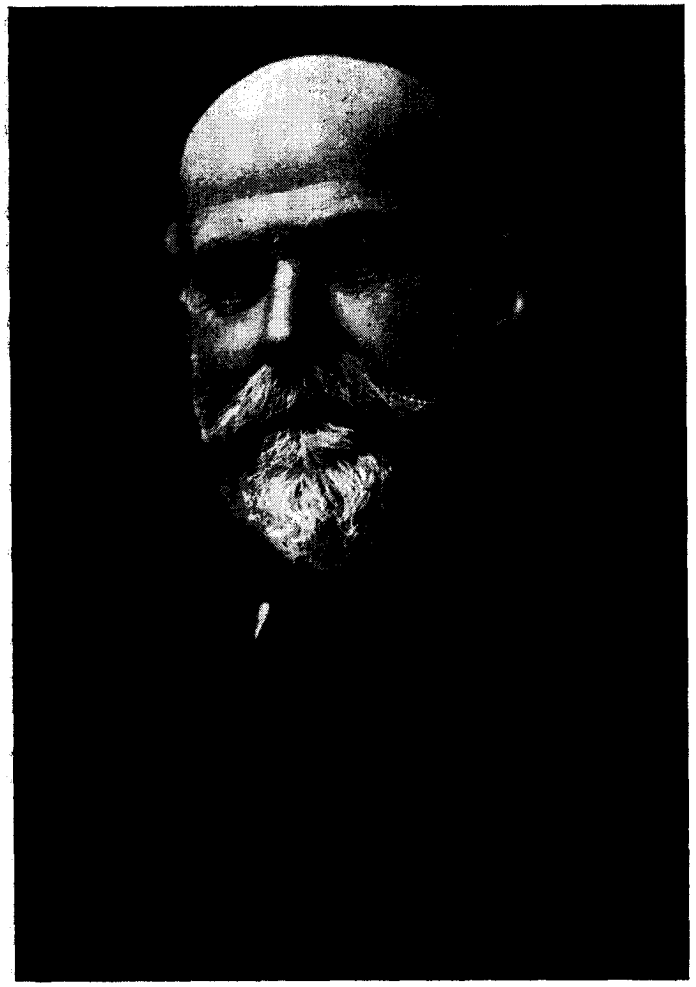
Counsel: *Richmond* and *Rogerson*, for the appellant; *North*, for the Public Trustee; *Johnstone*, K.C., and *Cleary*, for John Burns and Co., Ltd.

Solicitors: *Nicholson, Gribbin, Rogerson, and Nicholson*, Wellington, for the Auckland Electric-power Board; *Earl, Kent, Stanton, Massey, North, and Palmer*, Auckland, for the Public Trustee; *M. R. Reed*, Auckland, for John Burns and Co., Ltd.

THE LATE MR. ERNEST BELL.

"An Exemplary Practitioner and a Model Citizen."

To have been in active practice as a principal for over fifty years; to have become an acknowledged master of a difficult branch of the law; to have been one of those instrumental in bringing about the formation of the New Zealand Law Society, as we know it to-day—these facts, together with the qualities of mind and heart that won and retained the regard, respect, and affection of his brother practitioners, rendered Ernest Tancred Dillon Bell one of the outstanding personalities of the profession in New Zealand. He died on October 10.



The Late Mr. E. T. D. Bell.

His was a long life, throughout which, in his own sphere, he played his part in the expansion of the life of New Zealand from its early colonial days. Each of the major provinces shared in his personal development. He was born in Auckland, in the year 1857, into a family that was already making history, since his father, later Sir Dillon Bell, had been for some years a member of the Legislature. In 1864, the seven Bell children moved with their parents to Otago.

Ernest Bell completed his education at the Otago Boys' High School, Dunedin, and at Christ's College, Christchurch. He then had some experience of sheep-farming on his father's station in Central Otago. But the country life was not for him, and, his father having retired from the Speakership of the House of Representatives, being then in the Legislative Council, he went to Wellington in the year 1880.

He joined the clerical staff of the House of Representatives, and soon he attracted the notice of the Hon. Sir William Fox, who had been four times Premier, but whose active political career had drawn to a close At the time of the Te Whiti troubles, his father, Sir Dillon Bell, and Sir William Fox had been the West Coast Commissioners to report on the position of affairs in Taranaki. On the former's appointment as Agent General, after the report had been presented, Sir William Fox became sole Commissioner and his task was to investigate Native land claims and make awards. Ernest Bell served Sir William Fox for the next four years, mostly in Taranaki. On completion of this work, Sir William presented him with a gold watch in special recognition of his services.

In 1884 Mr. Bell went back to the House of Representatives as a Bill Reader; and he then commenced the study of law. Apart from the practical experience gained in investigating complicated Native titles, Mr. Bell had had four years' close relationship with Sir William Fox, who had been trained for the law and called by the Inner Temple, though he never practised in New Zealand. Mr. Bell was admitted to practice as a barrister and solicitor in 1889. He then joined the firm of Bell, Gully, and Izard, of which his brother, later Sir Francis Bell, K.C., was senior partner. Well equipped with a knowledge of Native land law and practice, consequent on his experience in Taranaki, he attended to all the Native land work of the firm. This led him to advise on the titles of the European owners of the large sheep-stations in the Wairarapa.

Conveyancing generally was coming into its own at this time, as the Colony was emerging from the depression that had continued through the 'eighties and into the 'nineties of last century. Mr. Bell thus became experienced in advising on deeds titles, and, by a natural transition, in probate and administration law. This inevitably led him to trustee law and practice, in which branch of the law he specialized for the remainder of his active life.

During the earlier years in which practice occupied his daily attention, Mr. Bell found time to take an active part in the Wellington Naval Volunteers, in which for many years he was a senior officer. He was also a member of the Victoria University College Council. The improvement of education and the advancement of scientific knowledge were always subjects of special interest to him.

Mr. Bell became a member of the Council of the Wellington Law Society in August, 1896, on the appointment of the then President, Mr. W. B. Edwards, to the Supreme Court Bench. In May, 1898, he was elected President of the Society. It was a time of great executive activity. Mr. Bell was assisted by an able Council, its members during his period of office being the Hon. T. W. Hislop, and Messrs. J. C. Andrew, J. P. Campbell,

M. Chapman, E. H. Dean, P. Levi, C. B. Morison, F. M. Ollivier, and W. S. Reid (Solicitor-General). This Council actively promoted improvements in the administration of justice, such as the appointment of additional Supreme Court Judges, the abolition of District Courts, and the fixing of periodical sittings of the Court of Appeal. In all these matters, one of Mr. Bell's duties was to confer with the Government of the day.

A noteworthy feature of the Wellington Law Society's work during Mr. Bell's term of office was the amendment of the Law Practitioners and New Zealand Law Society's Acts, with the view of improving the constitution of the parent body, in order to increase its practical efficiency. Up to that time it had met as a conference of delegates. Largely through Mr. Bell's active interest and promotion, provision was made for the election of a properly constituted Council of the New Zealand Law Society representative of the District Societies, as it is to-day. Its first meeting was held early in 1898, with Mr. F. H. D. Bell and Mr. W. S. Reid as the delegates of the Wellington Society. Mr. Ernest Bell retired from the Society's Council in 1900.

It was a happy incident in Mr. Bell's career that he lived to experience a public profession of the esteem and affection in which he was held by his brother practitioners. The occasion was the dinner given in 1942 to enable Mr. Bell and three other members of the Wellington District Law Society to receive the congratulations of the profession on their completion of more than fifty years in active practice. Mr. Bell was unable through illness to attend, but a very feeling letter from him was read to the gathering; and to him, later, was conveyed the appreciation of his worth and work as expressed during the evening.

Mr. Bell was at his office daily until he had passed his 85th year. Even in his earlier days he did not often appear in the Courts. In fact, his work kept him almost entirely to his office during the whole of his long career. Though he was not in the close association with his fellow-practitioners that counsel usually are, his retiring nature and close attention to his office desk did not dim the regard in which his brethren held him always. He was one of the old school, and his generosity and easiness of approach, together with all those human qualities which together make up what we call "personality," retained for him their respect and affection until the end of his days.

To the example given by men of high character, among them Sir Francis Bell and Ernest Bell, we owe to-day's fine standard of professional conduct. We must ever remind ourselves that, on the fruits of such example, depends the maintenance of that standard in the years to come.

Tributes from Bench and Bar.

On the morning of October 12, there was a large attendance of members of the profession in the Supreme Court. His Honour the Chief Justice, Rt. Hon. Sir Michael Myers, presided. With him on the Bench were their Honours Mr. Justice Blair, Mr. Justice Johnston, and Mr. Justice Smith. The Attorney-General, Hon. H. G. R. Mason, and the Solicitor-General, Mr. H. H. Cornish, K.C., were present, as were the members of the local Magistracy.

Wellington Law Society.

Addressing their Honours, Mr. A. M. Cousins, President of the Wellington District Law Society, said that the members of the Society desired to pay tribute to the memory of the late Ernest Tancred Dillon Bell, who had been a member of their Society for over fifty years; and at all times he had enjoyed the trust, respect and affection of his fellow practitioners.

The President continued: "Mr. Bell was born in New Zealand eighty-seven years ago. He was admitted as a barrister and solicitor on December 6, 1889, and he joined the firm of Bell, Gully, and Izard of which his elder brother, the late Sir Francis Bell, was the senior partner. He did not, however, aspire to eminence at the Bar. He chose the work of solicitor rather than that of barrister. And in his chosen sphere he proved himself one of the ablest lawyers that this country has produced. He was expert in every branch of trustee and commercial law. On many occasions his services were sought in the drafting of new legislation. His name will long be remembered as draftsman in conjunction with the late Sir Charles Skerrett of the Chattels Transfer Act, 1924.

"For several years Mr. Bell was a member of the Council of the Wellington Law Society. In 1898 he was President.

"But Mr. Bell did not restrict his activities to the law. For many years he was a leading figure in the Wellington Naval Artillery Volunteers. He took an interest, and an active interest, in music, art, and science. Indeed it has been said that he was a member and in many cases a foundation member, of practically every society established in the City of Wellington for the advancement of education or science.

"We honour and admire him for his attainments as a lawyer, for his learning in the arts and sciences. But even more, we respect and esteem him for his qualities as a man, for his unassuming and unselfish nature, for his many acts of kindness and generosity. Whatever work his hand found to do, he did it with all his might, without thought of reward, without desire for advancement.

"His life of faithful and unselfish service is an example to us all."

Mr. Cousins concluded by extending to Mr. Bell's relatives the Society's respectful sympathy.

The Chief Justice.

His Honour the Chief Justice, speaking to both branches of the profession, said: "Although it is many years since Ernest Bell actually appeared in Court as counsel, and he then appeared only on rare occasions, it is very fitting that reference to his passing should be made in Court, not merely because of his long career as a member of the legal profession, not because of his having been a President of the Wellington District Law Society and for many years a member of the Council—though those things are factors—but because of his eminence in a very important and difficult branch of the law.

"From the time of his entry into the profession over fifty years ago he specialized in the law of trusts and trustees and in course of time his knowledge of that subject became encyclopaedic. That knowledge coupled with his fine character, his strict integrity, his scrupulous sense of honour and his sturdy common sense, soon earned for him amongst trustees and *cestuis que trustent* within and beyond this provincial district a sound reputation as an adviser in matters relating to trust estates: and in truth no lawyer ever more deservedly earned the reputation of a safe and sound adviser in such matters.

"It may interest you to know that he was one of the last survivors, possibly the very last, of those who as boys were taught by a certain young man later to become the distinguished lawyer, statesman, and Chief Justice whom we knew and loved as Sir Robert Stout. I have myself heard Sir Robert speak of Bell's fine character as a boy, and it was that same fine character that ensured for him our admiration of the man. I was myself closely associated with him for many years, and I can speak from my own knowledge of his selflessness, his helpfulness to others, particularly junior men in the profession, his charity, essential kindness, and unbounded generosity.

"He was in truth of all the men I have ever known, the most generous, the most loyal in his friendships. Many were his acts of generosity that came in our old days of association under my personal notice, though he endeavoured to conceal them for, whether his gifts were to private or public objects, they were almost invariably given anonymously.

"When Sir Francis Bell died in 1936, I said with the approval of you all that we should never look upon his like again. I say the same now with equal truth, and with the same assurance of your unanimous concurrence, of his brother Ernest. The profession has lost an exemplary practitioner, the Dominion a model citizen. My brother Judges and I join with you gentlemen in your expression of sympathy to his relatives."

REHABILITATION.

What the New Zealand Law Society is doing.

By C. A. L. TREADWELL, O.B.E.

That clumsy compound, rehabilitation, is as good as any other word to indicate the scheme of restoring servicemen on active service to their proper condition in society after the war is won. Yet it is not enough to be concerned with efforts after the war to achieve that end. That is especially so with the professions, and the New Zealand Law Society has recognized that, in order to discharge its duty, much must be done during the war. The work will last long after the conflict is over if justice is to be done, and a proper recognition given to the sacrifice made by those of our brethren who return.

Two years ago the New Zealand Law Society decided that the time had come to organize a scheme to preserve and protect the rights of our fellow-lawyers on active service. It was considered not enough to restore the qualified lawyer or the law student in *statu quo ante bellum*, but that in so far as it was possible to do so, the Society should endeavour to see that, in returning to civil life, the minimum of hardship was suffered.

The problems arising in the rehabilitation of professional men are much more difficult and complex than in the case of unskilled workers, for, to maintain one's position in law, one has to be continually in its service. It is, therefore, inevitable that those of us who were denied the right and privilege of going on active service should be prepared to extend the hand of fellowship for many years to those who are faced with the problems of rehabilitation.

Early in 1942 the Law Society set up a committee to advise on the steps that should be taken to meet the obligations of the Society towards the lawyer on active service. The Committee was inevitably drawn from members at Wellington, though close touch has been maintained with the other District Societies. Even so, it is difficult for many of the profession to appreciate what has been done and what has still to be done. The Post War Aid Committee, therefore, thought it would be of interest to the profession to set out what has been achieved so far and what is contemplated for the future.

The aims of the Society in setting up this Committee were—

1. To help lawyers and clerks on return to find positions.
2. To help those who had still some examinations to pass to receive all possible concessions and privileges in those regards.
3. To provide refresher courses in the practical subjects.
4. To act as an advisory committee in all respects to applicants.
5. To get in touch with lawyers and clerks overseas and keep them *au jour* with legal happenings in New Zealand and to ascertain if they need advice or help.
6. To co-ordinate the efforts of District Societies and to work in conjunction with the New Zealand University and the Government.

Something may be said of each of these duties to show what has been attempted. Already much has been done to help solicitors and clerks who have returned and have been discharged from active service.

It is becoming usual for solicitors and clerks to seek out the Secretary for information and advice; and in some cases it has been possible to refer them to firms requiring assistance. The Committee is now urging all District Societies to keep a register of suitable vacancies for clerks and partnerships and has suggested that a list compiled from these particulars should be furnished to each Society. Of this scheme, more will be said.

The University is anxious to help the student to complete his examinations and has already taken practical steps in this regard. In 1940 examination papers were forwarded to Egypt. The aid of the British Council was secured and some of the law students who had recently left New Zealand and whose examinations had been interrupted by military duties were able to sit them in Egypt.

Leave was granted for this purpose by General Freyberg, an opportunity which was seized by many of the law students and the papers were finally returned to New Zealand.

Among the war concessions granted by the University to students on demobilization are—

1. Up to four complete exemptions in the less essential professional subjects from either Division 1 or Division 4.
2. A reasonable reduction in pass marks may be made where a student has previously failed in a subject whilst in military camp.

In addition, the University has conducted examinations in the Pacific, Middle East, Naval Vessels, and in Great Britain.

The Committee, for the purpose of helping the returned man to brush up his law, obtained the voluntary services of prominent lawyers to give lectures to those who were desirous of attending, the main purpose being to remind the returned lawyer of the matters of practical importance and to freshen his memory generally on matters about which in ordinary practice he would be most likely to encounter. Those who have attended those lectures have expressed their deep appreciation for this service. These lectures have undoubtedly done much to bridge the gap between the time of enlistment and the time of discharge.

At the moment, the lecturers are preparing a digest on their subjects of the statutory changes and of the principal legal decisions that have been given during the war in England and in New Zealand. Each digest is being prepared by the lecturer who will then refer it

for revision to two other members of the committee. When completed the notes will be handed to Professor McGechan, the Dean of the Law Faculty at Wellington, who will then hand the whole to the Officer in Charge of the Government Rehabilitation Department for printing. It is then proposed by the Army Education and Welfare Service to send sufficient copies overseas for our lawyers and students and to distribute copies to men already returned. This scheme should be a great help, not only to bring the serviceman up to date but also to stimulate his interest in his chosen profession. It is not out of place to mention here that although the work is arduous, especially in these days where help is sparse, the lecturers have enthusiastically co-operated with the Committee. Their action is an unmistakable indication that the legal profession is determined to minimize, as much as it can, the disabilities necessarily associated with going abroad on active service. The greater test will, of course, come when the war is over and the vividness of the fighting becomes somewhat blurred.

Shortly after the formation of the Committee, it was decided to send a collection of law text books to the base camps in Egypt and in the Pacific. Practitioners were asked to donate these and the response was most generous. Several cases of textbooks on all the practical subjects were duly despatched. The British Council undertook to house the books and to make them available to troops in Egypt, but later it was decided that they would be more accessible if housed in the camp itself and this was duly arranged. It is believed that the books were frequently used for the purposes of students preparing for their forthcoming examinations.

Of the donors of textbooks special mention ought to be made of Messrs. Butterworth and Co., who donated a number of the latest editions of New Zealand books especially useful to the law student. The firm, too, has also been very ready to give publicity in the JOURNAL to any information affecting our activities on behalf of the servicemen.

The problem of helping the prisoners of war was a more complicated matter. As a result of inquiry from the Law Society in England it was learned that textbooks were forwarded to camps in Germany under the aegis of the Joint Committee of the Order of St. John and the Red Cross. The English Law Society conducts law examinations in those Prisoner of War Camps and though no definite information is yet available it is hoped that our own law students in those camps may have sat the English papers.

Some time ago, letters were sent to those who were known to be in Prisoner of War Camps urging them to continue their studies and offering to help in any way. The address of the agent of the New Zealand University in London was also forwarded to them and they were asked to advise the agent or the Society of any assistance they required.

As previously stated, members of all District Societies have been urged to furnish to their Secretaries such information as they may possess in respect to vacancies for partnerships and clerks. It was suggested that members seeking partnerships, clerks seeking positions, or firms seeking partners or clerks, should advise their local Secretary who would keep a note of their requirements and put each in touch with the other. It was further suggested that a list should be compiled and the other Societies should be supplied with a copy thereof. The Secretary of the New Zealand Society has already been approached for this kind of information by many of the returned members.

It must be recognized that although the law requires employers to reinstate their clerks, the law has not been able to require the principals to go on living or to remain in practice. This difficulty has been experienced in every business. Moreover, many of the returned servicemen do not want to return to their old position; some hope to go North to a warmer climate, some would recommence in the country instead of continuing in the city. If the District Societies co-operate in this matter, it is not difficult to realize that not only for the war period, but afterwards, there will be a means established by which practitioners and clerks may readily ascertain whether there are vacancies or personnel of the type they seek. It ought, perhaps, be mentioned that these inquiries will of course, be treated confidentially, and when the circulars are distributed between Societies there would be no identification of the persons seeking change of employment. The duty of the Secretary of the District Society would be only to put a member in touch with some employer or prospective partner.

Finally, let it be said, that this Committee is breaking new ground and its system is always open to improvement. It is hoped that members of the profession will take a personal interest in its activities and will not hesitate to make any suggestions for its greater efficiency. The Committee consists of prominent members of the profession and their concern is to serve their fellow practitioners who have done, and are doing, so much for them, their profession, and their country.

RULES AND REGULATIONS.

Trout-fishing (Nelson) Regulations, 1937, Amendment No. 3. (Fisheries Act, 1908.) No. 1944/137.

Trout-fishing (North-Canterbury) Regulations, 1937, Amendment No. 6. (Fisheries Act, 1908.) No. 1944/138.

Trout-fishing (South-Canterbury) Regulations, 1936, Amendment No. 4. (Fisheries Act, 1908.) No. 1944/139.

Trout-fishing (Wellington) Regulations, 1941, Amendment No. 1. (Fisheries Act, 1908.) No. 1944/140.

Industrial Man-power Emergency Regulations, 1944, Amendment No. 1. (Emergency Regulations Act, 1939.) No. 1944/141.

Cook Islands Patriotic Purposes Regulations, 1940, Amendment No. 1. (Cook Islands Act, 1915.) No. 1944/142.

Warrant of Fitness Emergency Order, 1944. (Transport Legislation Emergency Regulations, 1940.) No. 1944/143.

Hairdressers (Health) Regulations Extension Notice, 1944, No. 3. (Health Act, 1920.) No. 1944/144.

Agricultural Workers Wage-fixation Order (No. 2), 1944. (Agricultural Workers Act, 1936, and Marketing Act, 1936.) No. 1944/145.

Share-milking Agreements Order, 1944. (Share-milking Agreements Act, 1937.) No. 1944/146.

Board of Trade (Meat Grading) Regulations, 1943, Application Notice, 1944. (Board of Trade (Meat Grading) Regulations, 1943.) No. 1944/147.

A DISSENTING JUDGMENT AND ITS SEQUEL.

Lord Atkin's Dissent in Liversidge v. Anderson: Lord Maugham's Letter to "The Times."

By SCRIBLEX.

The recent death of Lord Atkin must have recalled to most lawyers his famous dissenting judgment in *Liversidge* v. *Anderson*, [1942] A.C. 206, [1941] 3 All E.R. 338. The Judge in Chambers (Tucker, J.) and the Court of Appeal (MacKinnon, Luxmoore, and du Parcq, L.JJ.) had decided against the appellant, and their view was upheld by the majority of the House of Lords—Viscount Maugham and Lords Macmillan, Wright, and Romer. Lord Atkin's lone dissent was thus the opinion of one Judge against that of eight other Judges; but the logic of the reasoning of the dissent and the clarity and power of its expression were such that many lawyers regarded it as being really the sounder view.

The case concerned the powers of the Secretary of State for Home Affairs as to the imprisonment without trial of persons of hostile associations, and it resolved itself, in the main, into a matter of the true interpretation of Reg. 18B of the Defence (General) Regulations, 1939. The regulation was in the following terms:—

> If the Secretary of State *has reasonable cause to believe* any person to be of hostile origin or associations or to have been recently concerned in acts prejudicial to the public safety or the defence of the realm or in the preparation or instigation of such acts and that by reason thereof it is necessary to exercise control over him, he may make an order against that person directing that he be detained.

Did the words "has reasonable cause to believe" mean that the Secretary of State must have such cause of belief as a Court of law would hold sufficient? Or did the words simply require that the Secretary of State should have such cause of belief as he himself deemed to be reasonable? On the *former* interpretation the Secretary of State's reasons would be examinable in the Courts. On the *latter* interpretation the reasons of the Secretary of State, acting in good faith, could not be called in question in any Court. Lord Atkin took the former view, and the eight other Judges the latter.

The purpose of this present note is not to attempt any review of the grounds of the divergent opinions, but simply to set out, and to venture a comment or two upon, first, some observations that appear towards the end of Lord Atkin's judgment; and, secondly, upon the sequel to which these observations led. Observations and sequel were both unusual and they caused a considerable flutter in the English legal dovecot.

Lord Atkin's observations appear towards the end of his judgment in three consecutive paragraphs which it is convenient to treat here as two separate passages. Here is the first passage:

> *I view with apprehension the attitude of Judges who on a mere question of construction when face to face with claims involving the liberty of the subject show themselves more executive-minded than the executive.* Their function is to give words their natural meaning, not, perhaps, in war time leaning towards liberty, but following the dictum of Pollock, C.B., in *Bowditch* v. *Balchin* ((1850) 5 Ex. 378), cited with approval by my noble and learned friend Lord Wright in *Barnard* v. *Gorman* ([1941] A.C. 378, 393; [1941] 3 All E.R. 45, 55): "In a case in which the liberty of the subject is concerned, we cannot go beyond the natural construction of the statute." In this country, amid the clash of arms, the laws are not silent. They may be changed, but they speak the same language in war as in peace. *It has always been one of the pillars of freedom, one of the principles of liberty for which on recent authority we are now fighting, that the Judges are no respecters of persons and stand between the subject and any encroachments on his liberty by the executive, alert to see that any coercive action is justified in law. In this case I have listened to arguments which might have been addressed acceptably to the Court of King's Bench in the time of Charles I.*

The sentence first italicized is probably one of the most remarkable that has appeared in any judgment delivered in the House of Lords in modern times. A Law Lord suggests that four of his colleagues and four Judges below have been more executive-minded than the Executive! And the two sentences italicized at the end of the above-quoted passage are nearly as remarkable. They seem to imply that the majority Judges have failed in their duty to stand between the subject and encroachments on his liberty by the Executive, and, instead, have accepted arguments of a kind that would have been willingly seized upon by the Judges of the King's Bench in the time of Charles I.

The second passage in Lord Atkin's judgment is remarkable for different reasons. It reads:

> *I protest, even if I do it alone, against a strained construction put on words with the effect of giving an uncontrolled power of imprisonment to the minister.* To recapitulate: The words have only one meaning. They are used with that meaning in statements of the common law and in statutes. They have never been used in the sense now imputed to them. They are used in the Defence Regulations in the natural meaning, and when it is intended to express the meaning now imputed to them, different and apt words are used in the regulations generally and in this regulation in particular. Even if it were relevant, which it is not, there is no absurdity or no such degree of public mischief as would lead to a non-natural construction.
>
> *I know of only one authority which might justify the suggested method of construction*: "'*When I use a word,' Humpty Dumpty said in rather a scornful tone, 'it means just what I choose it to mean, neither more nor less.' 'The question is,' said Alice, 'whether you can make words mean so many different things.' 'The question is,' said Humpty Dumpty, 'which is to be master—that's all.'*" (*Through the Looking Glass*, c. vi.). After all this long discussion the question is whether the words "If a man has" can mean "If a man thinks he has." I am of opinion that they cannot, and that the case should be decided accordingly.

For a Judge to protest that his colleagues are giving a strained construction to words in a regulation is, no doubt, perfectly proper. But it is unusual, to say the least, for a Judge to say that Humpty Dumpty is the only authority justifying his colleagues' view. The *Law Journal* (London) commented as follows on this aspect of the matter:—

> It is to be regretted that he (Lord Atkin) should have referred to *Alice Through the Looking Glass* in order to stigmatize the reasoning which appealed to the majority. A point of view adopted by all the Judges, save one, who have considered the case deserves serious treatment in a serious issue affecting liberty.

The House of Lords delivered its judgment in *Liversidge* v. *Anderson* on November 3, 1941. On the following day *The Times* (London) published a leading article, entitled "War and Habeas Corpus." The article summarized the effect of the decision and expressed the view that the safety of the realm could

not be preserved if the law allowed an appeal from the Home Secretary to the Courts. Then followed the remarkable sequel. Lord Maugham, who had presided at the hearing of the appeal in the House of Lords, wrote a letter to *The Times* which was published in its issue of November 6 :

> SIR,—
>
> Those who took part in the decision of the House of Lords in the case of *Liversidge* v. *Anderson* could wish for no better statement of the reasons which guided the House in affirming the views of so many eminent Judges, than is to be found in your leading article of November 4, but there is one thing which I should like to add.
>
> Lord Atkin, in his dissentient speech, stated that he had listened "to arguments which might have been addressed acceptably to the Court of King's Bench in the time of Charles I." Counsel, according to the traditions of the Bar, cannot reply even to so grave an animadversion as this. I think it only fair to the Attorney-General and Mr. Valentine Holmes, who appeared for the respondents, to say that I presided at the hearing and listened to every word of their argument, and that I did not hear from them or any one else anything which could justify such a remark.
>
> Yours truly,
>
> MAUGHAM.

Legal circles were astonished at the course adopted by Lord Maugham and the matter was the subject of discussion in some of the legal journals. *The Solicitors' Journal* (London) said that Lord Maugham had departed from tradition, and the journal went on to express the hope that Lord Maugham's letter would not establish a precedent for other Judges to follow. The *Law Journal* (London) described the letter as a new departure, and added :

> We are not used to the spectacle of the president of a Court writing to the public Press to rebuke another member of the Court.

It is somewhat curious, perhaps, that Lord Maugham should have chosen to regard Lord Atkin's comment as to arguments which might have been addressed acceptably to the Court of King's Bench in the time of Charles I, not as being part of Lord Atkin's observations about Judges and the Executive, but as being a "grave animadversion" on counsel for the Crown—the Attorney-General (Sir Donald Somervell, K.C.) and his junior, Mr. Valentine Homes. It seems reasonably clear that Lord Atkin's comment cannot properly be regarded as a "grave animadversion" on the Crown's counsel ; for counsel's arguments are not their personal opinions, and a condemnation of those arguments involves no reflection on counsel. Further, even if Lord Maugham was correct in stating that counsel, according to the traditions of the Bar, could not reply to Lord Atkin's "animadversion," it does not follow from this that they were without redress if they had really been wronged. The Bar Council could properly take up the matter. And, as the *Law Journal* pointed out, there were even other means of redress :

> Even if the Attorney-General as the head of the Bar, should consider that he ought not to pronounce his own cause, the Bar is not without other means of expressing its views, and those means have been used in recent years. There is always the opportunity of a question in the House of Commons and of a discussion in the House of Lords. In these cases the matter can be discussed without the intervention of principals in the matter, and it is unfortunate that the differences in question should have been ventilated by one member of the Court against another, however disinterested his motives.

There is one further, though minor, comment that can be made upon Lord Maugham's letter. It is unusual for a Judge to commend a newspaper for its editorial statement of the reasons for a judgment to which he was party.

NEW ZEALAND LAW SOCIETY.

Council Meeting.

(*Concluded from p. 232*).

Brochure : Solicitors' Audit Regulations.—A copy of the proposed section of the brochure, dealing with the duties of a solicitor in respect to the keeping of his trust account, was set out in full in the order paper.

The Secretary reported that the section dealing with an auditor's duties was being completed by the accountant members of the Committee.

It was decided to leave the final completion of the brochure to the Joint Audit Committee and Management Committee of the Solicitors' Fidelity Guarantee Fund with power to act.

Assistance to District Law Societies.—The President reported that the sum of £450 grant from the New Zealand Council of Law Reporting had been distributed as follows : Hawke's Bay, £45 ; Wanganui, £45 ; Wellington (Palmerston North Branch), £45 ; Taranaki, £45 ; Westland, £40 ; Southland, £40 ; Marlborough, £40 ; Nelson, £40 ; Gisborne, £30 ; Hamilton, £30 ; Canterbury (Timaru Branch), £25 ; Otago (Oamaru Branch), £25.

The allocation was approved, members expressing appreciation to the Council of Law Reporting for the assistance given to their Societies.

Trust Account of a Deceased Solicitor.—The Wellington Society wrote as follows :—

> "My Council desires to draw the attention of your Society to the fact that there does not appear to be any provision in the Audit Regulations for dealing with the trust account of a deceased practitioner who has no partners.
>
> "An instance has occurred in this district where the trust account, which was still current at the date of death of the practitioner had been up to that time operated on by his managing clerk under an authority (which terminated at date of death) from the practitioner. Since the practitioner's death several payments have been received and paid into the trust account.
>
> "In the meantime, the Society has arranged that the sole executrix and beneficiary of the will should, after probate has been granted, and the bank notified, make arrangements with the bank that future cheques on the trust account should be signed by the executrix and countersigned by the Auditor of the trust account.
>
> "The Council of this Society, however, suggests that provision should be made that in such cases the Council of a District Society concerned might be empowered to take over and administer the trust account of a deceased solicitor."

A further letter, received from the Wellington District Law Society, was as follows :—

> "I am instructed by the Council of the Wellington District Law Society to submit the further following report in this matter.
>
> "Since the date of the previous letter this Society has lost another member who was at the time of his death in active practice without any partner. At the date of death this practitioner had a large sum in his trust account belonging to a considerable number of clients, and immediately notice of his death appeared in the papers there were many inquiries at the Society's office by clients and from the Justice Department, to whom some of the clients had referred.

"In the earlier case mentioned the amount in the trust account was small, none of it was urgently required by clients, and a grant of probate to the deceased's widow entitling her to operate on the account was quickly obtained. In the latter case some of the money in the account was urgently required, no will could be found, and it seemed likely that an application for leave to presume death would be necessary. The bank concerned was willing to hand over the trust account to the Society on an indemnity being given by the Society and with the concurrence of the widow of the practitioner, who was the daughter of a solicitor and who on her father's advice agreed to the arrangement. The Council then opened a new account in the name of the solicitor on which cheques were drawn by the solicitor who was appointed to take charge of the practice and countersigned by a member of a sub-committee of the Council. The deceased's practice was sold and orders sent to his clients asking them either to withdraw their balances or to authorize a transfer of their balances to the account of the new firm.

"In both these cases the Council had the assistance of the executrix or the relatives most nearly concerned, but it feels that cases may easily occur where this assistance may not be immediately forthcoming and where no expeditious arrangement could be made that would satisfy the clients of the deceased solicitor and safeguard the Guarantee Fund.

"The Council is of opinion that it would be an advantage to the profession to have an amendment or addition to s. 27 of the Law Practitioners Amendment Act, 1935, whereby if the Council of the New Zealand Society were satisfied that any moneys entrusted to a solicitor were standing to the credit of the trust account of that solicitor with any banker in New Zealand and that either through the death or incapacity of the solicitor there is no one immediately entitled by law to operate on such trust account or that the person so entitled was not operating on such account in accordance with the audit regulations, the Council may serve upon such banker a notice signed by two members of the Council requiring the banker to pay to the Council all moneys held by the banker in any trust account or accounts of the solicitor. As such a provision would be authorizing the banker to hand the Council the money of its customer, a provision similar to the provisions of s. 27 would have to be added enabling any person claiming interest as executor, administrator, or representative of the solicitor or otherwise adversely affected, to apply to Court within a specified time for an order directing the repayment of such money."

The Wellington Society thought that the provisions should apply not only in cases caused by death or incapacity but also in cases where the solicitor was not operating on the account in accordance with the Solicitors' Audit Regulations.

It was decided that legislation be asked for to give effect to the Wellington proposal, the authority to be vested in the Council of the local Society with powers of delegation.

It was also decided that statutory provision should be asked for to the effect that a solicitor's trust account cheque should remain valid notwithstanding the death of the drawer and that s. 75 of the Bills of Exchange Act, 1908, be amended accordingly.

LAND AND INCOME TAX PRACTICE.

Assessment of Visitors to Australia.

The following extract from the Australian publication, *The Taxpayers' Bulletin*, dated August 15, 1944, should be read in conjunction with the article appearing in the issue of the JOURNAL under the heading of "Assessment of Visitors to New Zealand and Australia":—

"VISITORS TO AUSTRALIA. SECTION 23 (v).

"Section 23 (*v*) of the Income Tax Assessment Act, 1936–1944, exempts—

"'(v) Income derived, by any person visiting Australia, from an occupation carried on by him while in Australia, if in the opinion of the Treasurer, the visit and occupation are primarily and principally directed to assisting the Commonwealth Government in the defence of Australia and the Treasurer is satisfied that the income is not exempt from income tax in the country where the person is ordinarily resident.'

"In many cases overseas companies have sent technical employees to Australia to assist in fulfilling urgent war contracts. In most cases, because the visit to Australia is of a temporary nature liability for income tax in these employees' home country continues.

"It was assumed that the section quoted would operate to prevent the employee's incomes being doubly taxed. This assumption is not, however, upheld by the Commissioner of Taxes.

"In a recent ruling the Commissioner of Taxation states:—

"'Section 23 (c) (vi) of that Act has now been amended and a new section—s. 23 (*v*)—has been added. This latter section is designed to apply only to persons visiting Australia who, in the opinion of the Treasurer are primarily and principally engaged in some governmental or quasi-governmental capacity in the defence of Australia.

"'In the case of the taxpayer, it would appear that he came to Australia as an employee of a company whose operations are primarily and principally directed towards the derivation of profits for its shareholders. Accordingly, it cannot be conceded that the occupation of the taxpayer was primarily and principally directed to assisting the Commonwealth Government, or a State Government, or was of a governmental or quasi-governmental nature.

"'It is pointed out, however, that if tax is properly payable in England on taxpayer's income earned in Australia, on production of documentary evidence that such tax has been paid a rebate under section 159 will be allowed'."

Australian Income Tax Returns.

1. *Interest on Commonwealth and other Loans* (from *The Taxpayers' Bulletin*, August 15, 1944.)—To ensure the allowance of the correct rebates taxpayers should exercise care when preparing 1943–44 income tax returns to show correctly interest derived on Commonwealth Loans and other securities.

The return form calls for the segregation of interest in the following classifications:—

1. Interest on Commonwealth Loans issued prior to January 1, 1940.
2. Interest on Commonwealth Loans issued after January 1, 1940.
3. Interest on State securities issued free of State income tax.
4. Other interest.

2. *Commonwealth Loans.*—The following current loans were issued prior to January 1, 1940:—

3 % .. 1944	3¾% .. 1954	4% .. 1947
3 % .. 1948	3⅞% .. 1947	4% .. 1950
3¼% .. 1948	3⅞% .. 1948	4% .. 1953
3⅜% .. 1949	3⅞% .. 1954	4% .. 1955
3¾% .. 1949	3⅞% .. 1955	4% .. 1957
3¾% .. 1951	4 % .. 1944	4% .. 1959
		4% .. 1961

Interest on these securities carries a tax rebate equivalent to the difference between the rate of tax payable under the Income Tax Act, 1930, and the average rate of tax on the property income in the current assessment.

This rebate is calculated before the tax payable on 1943–44 income is reduced by the transition rebate under the pay-as-you-earn tax system.

The following current loans were issued after January 1, 1940:—

2½% .. 1946	2¾% .. 1945	3¼% .. 1959
2½% .. 1947	3¼% .. 1956	3¼% .. 1960
2½% .. 1948	3¼% .. 1957	3⅜% .. 1945
2½% .. 1948	3¼% .. 1958	3⅜% .. 1956

Interest on these securities carries a tax rebate of 2s. in the pound.

3. *Tax-free Issues.*—The following Commonwealth issues are free of tax:—

£2	6	6 Government Option	£2	6	6 Interminable.
£2	14	3 Government Option	£2	18	1 Government Option.
£2	18	1 Government Option	£3	0	0 Government Option.
£3	2	0 Interminable.			

4. *State Securities.*—Interest on the following securities carries a tax rebate of 2s. in the pound:—

Rural Bank of N.S.W.—Homes Loan No. 2.
Rural Bank of N.S.W.—Conversion Loan No. 3.

Interest on loans raised by the following State authorities is fully taxable:—

Metropolitan Water Board of Sydney.
City of Sydney Debentures.
Sydney County Council.
Brisbane City Council.
State Electricity Commission of Victoria.

5. *Savings Bank Interest.*—Interest on savings bank accounts is taxable and should be included in returns.

6. *War Savings Certificates.*—The interest constituent which accrues on War Savings Certificates is not taxable.

PRACTICAL POINTS.

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1. Fair Rents.—*Basic Rent—"Rent payable as on that date"—Whether then Basic Rent or Rent actually paid—Fair Rents Amendment Act, 1942, s. 4 (1) (a).*

QUESTION: Prior to the passing of the Fair Rents Amendment Act, 1942, the basic rent of a certain dwelling to which the Fair Rents Act, 1936, applied was £1 2s. 6d. per week although the tenant has been paying £1 6s. per week since March, 1940. Section 4 (1) (*a*) of the Fair Rents Amendment Act, 1942, defines the expression "basic rent" as "the rent payable as on that date." What is the basic rent of this dwelling at the present time? Do the words "the rent payable as on that date" mean the rent that was legally payable by the tenant, or the rent in fact paid by the tenant, on September 1, 1942?

ANSWER: The words "the rent payable as on that date" (September 1, 1942) in s. 4 (1) (*a*) of the Fair Rents Amendment Act, 1942, have not been the subject of judicial consideration. It appears, however, that the purpose of repealing the former definition of "basic rent" was to begin afresh with a nearby date owing to the difficulties that had been experienced in ascertaining the true rent payable on May 1, 1936. At first sight, it might appear that the word "legally" should be implied before "payable"; but the word is "payable" and not "recoverable." The Labour Department interprets the words as being the rent *payable* and *paid* (under the contract of letting) as on September 1, 1942, provided that, within the six months following that date, the tenant did not exercise his option under s. 10 of the principal Act of reverting to the basic rent and claiming from the landlord a refund of the amount theretofore paid in excess of the basic rent. If within such six months' period the tenant took no action, he could not recover any excess over the basic rent (here, £1 2s. 6d.) as defined by the principal Act. The rent payable as on September 1, 1942 (here, £1 6s.) would thus become, as from that date, the basic rent under s. 4 of the Amendment Act, 1942; and that sum is the basic rent at the present time.

2. Probate and Administration.—*Grant of Letters of Administration—Not sealed—Will found—Application for Probate—Procedure.*

QUESTION: Letters of administration have been granted, but before sealing same a will has been found. What procedure should be adopted in order to obtain probate of the will?

ANSWER: As letters of administration have not been sealed, an application for probate in the ordinary manner can be made: see *In re Melling* (*No.* 2), [1916] N.Z.L.R. 1180.

3. Action.—*Witness Expenses—Civil Action—Professional Men—Whether paid on Expert or Professional Scale.*

QUESTION: Do architects, surveyors, or civil engineers giving evidence in the Supreme Court on matters within the scope of their respective professions—*i.e.*, evidence in the nature of expert evidence—come under the heading of expert witnesses (Table E, Code of Civil Procedure) for the purpose of calculating witnesses' expenses to be awarded against the unsuccessful party in respect of their attendances at Court to give evidence? or do they come under the heading of professional men?

ANSWER: If they give evidence as experts, they come under the heading of expert witnesses; but, if they give evidence merely as to fact, they come under the ordinary heading of professional men.