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

VOL. XXI. TUESDAY, FEBRUARY 20, 1945 No. 3

THE NEW LAW OF DESCENT OF INTESTATE ESTATES.

I.

IN our study and practice of the law, we have learnt and become familiar in our daily work with the statutory rules governing the descent and distribution of the estates of persons who have died intestate. These rules, embodied in Part III of the Administration Act, 1908, were based, in the main, on the Statute of Distributions (22 and 23 Car. 2, c. 10). But we now have to study this branch of the law afresh. Those rules have been swept away; the statutory provisions referred to have been repealed except in so far as they affect the estates of intestates dying before January 1, 1945; and the Administration Amendment Act, 1944, has entirely remodelled the statutory control of the distribution of the estates of intestates. A completely fresh start must be made in learning the new canons of descent and distribution in respect of the estates of all persons dying intestate or partially intestate after December 31, 1944.

It is not possible in the space here available to us to do more than indicate the nature of the statutory changes effected by last year's statute. We hope, however, to provide our readers with a general working knowledge of what it sets out to achieve in bringing this branch of the law into line with modern conceptions. But, at the same time, we shall endeavour to indicate the differences between the changes effected in New Zealand in 1944 from the new rules of descent created in England and Wales by the Administration of Estates Act, 1925, which, to some degree, has been followed in the drafting of the new statute. Moreover, we shall endeavour to indicate some lacunae in the new Act, and the possible pitfalls to which its provisions may accordingly lead in certain circumstances.

It is not proposed at this stage to give in detail the alterations made in the law of descent and distribution of intestate estates, as we know it. It may suffice, here and now, to summarize the changes in the broadest way, so as to give a preliminary "bird's-eye view" of the new enactment.

The Administration Amendment Act, 1944, confines the persons who can take in the case of intestacy or partial intestacy, apart from the new provisions regarding a surviving spouse, to a comparatively narrow class of relatives—namely, those who are within the degrees of grandparents or descendants of grandparents. The other main line of alteration is this: the persons who take do not necessarily take absolutely, as under the Statute of Distributions, defined in the former Part III of the Administration Act, 1908, now inapplicable as to the intestacy of any person dying since December 31, 1944; but, as regards such of them as are unmarried infants, they take subject to certain contingencies and upon trusts set out in s. 7 that have come to be known, or will be known, as "the statutory trusts."

Commencement and Application.

The new statute came into force on January 1, 1945; and it applies to the estate of any person who dies intestate or partially intestate *on and after* that date: s. 1 (2) (3). Part III of the Administration Act, 1908, remains in force in respect of all other intestate estates: s. 12.

The term "intestate" includes not only a person who dies without leaving a valid testamentary disposition of his property; but also a person who leaves a will (which term, where used, includes a codicil), but who dies intestate as to some beneficial interest in his real or personal estate: s. 2.

The word "estate" where used in the course of the Amendment Act, 1944, means real and personal property of every kind, including choses in action; and such property vesting in an administrator of the estate of an intestate person is limited to the estate in New Zealand left by him: Administration Act, 1908, ss. 2 (1), 3. It is immaterial whether or not the deceased intestate was, at the time of his death, domiciled or resident in New Zealand: *In re Aldis*, (1898) 16 N.Z.L.R. 577.

It is specifically declared that the Administration Act, 1908, as a whole, binds the Crown, thus removing a doubt hitherto existing as to whether that enactment, and, in particular, Part IV (relating to the administration of insolvent estates, of deceased testate or intestate persons) was binding on the Crown: s. 3.

New Rules as to Succession.

The new rules of succession in the case of a person who dies after December 31, 1944, intestate as to any real or personal estate, provide for the distribution of the residue of such estate, after the payment of debts, &c., on the trusts set out in s. 6 (1) (*a*) to (*e*) of the new statute.

These rules may conveniently be summarized as follows:—

TABLE OF STATUTORY DESCENT AND DISTRIBUTION.

POSITION AS TO NEXT-OF-KIN.	SUCCESSION.
1. If Intestate survived by a Spouse:	
(*a*) If intestate also survived by issue of any degree who becomes indefeasibly entitled under the statutory trusts:*	**Surviving Spouse:** (i) Personal chattels absolutely. (ii) £1,000 (with interest at 4 per cent. per annum from date of death) charged on residue. (iii) One-third of residue absolutely (s. 6 (1) (*a*) (i)). **Issue:** 2/3rds One-third of residue absolutely (s. 6 (1) (*a*) (i)).
(*b*) If intestate also survived by a parent (or parents) but no issue who becomes indefeasibly entitled under the statutory trusts:	**Surviving Spouse:** (i) Personal chattels absolutely. (ii) £1,000 (with interest at 4 per cent. per annum from date of death) charged on residue. (iii) Two-thirds of residue absolutely (s. 6 (1) (*a*) (ii)). **Both Parents surviving:** One-third of residue in equal shares absolutely (s. 6 (1) (*a*) (ii)). **One Parent surviving:** One-third of residue absolutely (s. 6 (1) (*a*) (ii)).
(*c*) If intestate not survived by a parent; and no issue becomes indefeasibly entitled under the statutory trusts:	**Surviving Spouse:** Whole of estate (after payment of debts, &c.) absolutely (s. 6 (1) (*a*) (iii)).
2. If Intestate not survived by Spouse:	
(*a*) If intestate is survived by issue of any degree:	**Issue:** Upon the statutory trusts; but if no issue becomes indefeasibly entitled thereunder, the distribution is the same as if no issue survived the intestate (s. 6 (1) (*b*)).
(*b*) If intestate is survived by a parent (or parents), but not by any issue; or if none of the surviving issue becomes indefeasibly entitled under the statutory trusts:	**Both Parents surviving:** Whole residuary estate in equal shares absolutely (s. 6 (1) (*c*)). **One Parent Surviving:** Whole residuary estate to surviving father or mother absolutely (s. 6 (1) (*d*)).
3. Intestate not survived by a Spouse, or Parent; and is either not survived by any Issue, or none of the Issue surviving him becomes indefeasibly entitled under the statutory trusts:	
(*a*) If intestate survived by a brother (or brothers), sister (or sisters), or issue of any degree, of a brother or sister:	**Brothers and Sisters** (of full or of half blood) and their issue taking by substitution: Whole residuary estate on the statutory trusts (s. 6 (1) (*e*)).
(*b*) If intestate is survived by grandparents (or grandparent), but is not survived by any of the persons mentioned in (*a*) above; or, if though so survived, none of them becomes indefeasibly entitled under the statutory trusts:	**Grandparents:** Whole residuary estate in equal shares absolutely (s. 6 (1) (*e*)). **One Grandparent surviving:** Whole residuary estate absolutely (s. 6 (1) (*e*)).
(*c*) If no person becomes indefeasibly entitled under (*a*) or (*b*), above, and if intestate is survived by uncles (or an uncle) or aunts (or an aunt), or issue of a deceased uncle or aunt:	**Uncles and aunts** (of full or half blood), and their issue taking by substitution: Whole residuary estate on the statutory trusts (s. 6 (1) (*e*)).
4. If no person mentioned in 1, 2, or 3, above, becomes entitled to an absolute interest, and no interest of any kind as above indicated under the statutory trusts indefeasibly vests in any such person:	**The Crown:** The whole residuary estate vests in the Crown as *bona vacantia* (s. 6 (1) (*f*)).

NOTE.—(*a*) A husband and wife are for all purposes of distribution, to be treated as two persons: s. 6 (2).

(*b*) The illegitimate child of a woman is to be deemed to be her legitimate child, whether or not legitimated; exception, where the child has been adopted. The illegitimate relationship is to be deemed legitimate relationship, for purposes of the above classes of successors: s. 8.*

* To be considered later.

The statutory trusts will be considered in more detail in our next article; but a short statement of their effect can usefully be inserted here.

Statutory trusts apply as regards three classes, or primary stocks, of relatives of the intestate, namely,—

(*a*) Issue;
(*b*) Brothers and sisters; and
(*c*) Uncles and aunts.

No person takes under the statutory trusts unless he or she attains the age of twenty-one years, or sooner marries. As between themselves, the members of a primary stock take equally *per capita*. If a member of a primary stock predeceases the intestate, his or her issue through all degrees (on attaining the age of twenty-one years, or sooner marrying) represent such deceased member; "but so that no issue shall take whose parent is living at the death of the intestate, and so capable of taking." The quoted words refer to a "parent" who is alive and married at the intestate's death, and so immediately takes an indefeasibly vested interest. The marriage of a "parent" is inferred from the fact of his or her having issue who might, but for the quoted words, compete with the parent.

"Personal Chattels."

It will have been seen that "personal chattels" descend to the surviving spouse absolutely. These are defined in s. 2 as follows:—

> "Personal chattles" means carriages, horses, stable furniture and effects, motor-cars and accessories, garden effects, domestic animals, plate, plated articles, linen, china, glass, books, pictures, prints, furniture, jewellery, articles of household or personal use or ornament, musical and scientific instruments and apparatus, wines, liquors, and consumable stores; but does not include any chattels used exclusively or principally at the death of the intestate for business purposes nor money or securities for money [including stocks, funds, or shares.]

A distinction is made between business chattels, and those of personal or domestic use. It must be a question of construction in some cases whether items of personal estate fall within one or the other category; and, in such cases the construction must necessarily turn upon the facts. Thus, in *In re Ogilby, Ogilby* v. *Wentworth-Stanley*, [1942] 1 All E.R. 525, the question was whether certain cows in a breeding herd of shorthorn cattle, were domestic animals kept by the widow of the intestate owner as a hobby and not for business purposes, and so came within the definition of "personal chattels." The result depended entirely on the facts. To this case, the learned Editor of the *All England Law Reports* gives the following useful note regarding the drafting of wills, having in mind the definition of "personal chattels" made effective as regards intestate estates by the new statute, which reproduces the definition in the statute that is named in his note:

> This matter, however, has an importance beyond its own facts. The question of what are personal chattels within the definition of the Administration of Estates Act, 1925, may occur in any case of intestacy, and, since wills are often drawn on similar lines, the decision may also be a guide in the construction of many wills. The necessity of having wills construed by the Court for the decision of relatively small matters has been the subject of comment for some years and has led to the introduction of clauses forfeiting the interests of beneficiaries disputing the will on the one hand, and, on the other, clauses making the opinion of counsel binding upon the parties. There are objections to both these courses. It may be that some relief may be found in the use by draftsmen of statutory definitions and the statutory will forms, for it is possible that, in the course of a few years, sufficient authority on the meaning of these definitions and forms may be available to resolve any ordinary case of doubt.

Partial Intestacy.

The provisions of s. 9 of the Administration Amendment Act, 1944, relate to the case of a testator, who dies after December 31, 1944, leaving a will, which effectively disposes of part of his estate, but fails to make effective disposition of some other part of it. In such a case the new statute is to have effect in respect of the part of his estate not so disposed of, and "subject to the provisions contained in the will." This section may cause difficulties, as its counterpart has done in England, where it has been suggested that the intention would have been better expressed by the words "subject to such provisions as remain operative and effective." When, for instance, the purpose or object of a testamentary disposition entirely fails, there is no effective disposition at all. As Maugham, J., as he then was, said in *In re Sullivan, Dunkley* v. *Sullivan*, [1930] 1 Ch. 84, 87:—

> The phrase "subject to the provisions contained in the will" is intended to show that the provisions of the Act relating to property not disposed of by will must take effect subject to all the provisions of the will which remain operative and effective.

This construction was approved by the Court of Appeal in *In re Thornber, Crabtree* v. *Thornber*, [1936] 2 All E.R. 1594.

The provisions of s. 9 also apply (*a*) where a testator has failed to dispose of some particular item of his property, and, (*b*) as was held in *In re McKee, Public Trustee* v. *McKee*, [1931] 2 Ch. 145, where the testator has disposed of the whole of his property, but has failed to make effective disposition of an interest in that property so that such interest passes as on an intestacy; in such a case, the section has the same effect as though into the will one were to read the disposition set out in s. 6 of the Amendment Act, 1944. But, as Romer, L.J., said in *Thornber's* case, at p. 1599, it is not true to say that that is the result of (our) s. 9 in all cases.

Except to alter the class constituting the next-of-kin to succeed on an intestacy, the law as to vesting in an executor or administrator has not been altered. Thus, in *In re Skeats, Thain* v. *Gibbs*, [1936] 2 All E.R. 298, where there was a partial intestacy, the wife having been appointed executrix, but the will containing no disposition of property, Clauson, J., as he then was, though with reluctance, held that the effect of the will was to make her executrix with the obligation of distributing the estate, after payment of debts, &c., among those who are (as His Lordship said) "popularly, but not quite accurately, spoken of as the next-of-kin," within s. 6 of our statute. The effect, it was held, was not to vest the personal property in the wife beneficially, but to charge her, as executrix, with the obligation of distributing the estate in accordance with the statutory provisions regarding an intestacy.

Where a testator, after giving certain legacies, concluded his will with the words "the residue to be disposed of as my executors shall think fit," it was held that the executors did not take the residue beneficially, but took it in trust for such persons as were, under a section similar to our s. 9 in the new statute, entitled to it upon a partial intestacy—that is to say, according to the canons of descent above set forth. In *In re Carville, Shone* v. *Walthamstow Borough Council*, [1937] 4 All E.R. 464, Clauson, J., said that the words quoted from the will seemed to mean that the testator left the executors to carry out their duties as they should

think fit, without the testator defining the manner in which the distribution was to take place, or the object of the share. In other words, he had failed to make any effective gift of his residue.

We shall consider s. 10 in our next issue. This section relates to the construction of documents *inter vivos* (such as settlements) made, or wills coming into operation, *after* December 31, 1944; or trusts declared in similar instruments made, or in wills coming into operation, *before* December 31, 1944. But before leaving s. 9, it must again be emphasized that the relation of the new statute to partial intestacy is confined to the wills of testators who die after December 31, 1944, leaving a will that effectively disposes of part only of his estate and omitting the effective disposition of some other part of it. Part III of the Administration Act, 1908, remains in full force and effect in respect of the intestacies or partial intestacies of persons dying before January 1, 1945.

The new statute will be further considered in our next issue, when attention will be given to the newly-constituted statutory trusts; the effect of illegitimacy; the meaning of *bona vacantia* and their distribution; and the powers conferred on the administrator.

SUMMARY OF RECENT JUDGMENTS.

HUTT GOLF COURSE ESTATE COMPANY, LIMITED v. LOWER HUTT CITY CORPORATION.

SUPREME COURT. Wellington. 1943. February 15, 16. BLAIR, J.

COURT OF APPEAL. Wellington. 1944. June 26, 27, September 8. MYERS, C.J.; SMITH, J.; JOHNSTON, J.; FAIR, J.; NORTHCROFT, J.

Municipal Corporation — Crown — Government Department Fee for Water Connection and Drainage Connection—Collection on Issue of Building Permit—Liability of Government (Housing Construction Department) in Respect of House built in Borough—Whether Borough Council may refuse Supply of Water until Payment of Water-connection Fee—Municipal Corporations Act, 1933, ss. 248, 346 (1), 392.

The appellant company acquired an area of land in the Borough of Lower Hutt (subsequently designated a city), and subdivided it into allotments for the purpose of sale. Pursuant to s. 116 of the Public Works Act, 1908 (later, with amendments, replaced by s. 125 of the Public Works Act, 1926), the appellant submitted to the respondent for its approval a plan showing the particulars required by s. 125 (5) aforesaid. Disputes arose between the parties as to the provision made by the appellant company for water supply and drainage to the satisfaction of the local authority, the respondent. An agreement made between the company and the Corporation on March 15, 1927, settling disputes between the two parties contained the following clauses:—

"2. In respect of household drainage the company shall cause to be laid 4-inch sewer drains so that one of such drains shall serve every two building allotments in the said subdivision and all of such drains shall be laid with such junctions as shall be necessary from the grassed verges within the road lines to the boundaries of the building allotments abutting on such grassed verges All of such drains shall be laid by the company but at the cost and expense of the Council Provided however that in respect of the drainage of each building allotment as hereby provided the Council shall not be liable to the company in a larger sum than four pounds ten shillings (£4 10s.) nor shall the sum actually due by the Council to the company in respect of the drainage of any such allotment be payable by the Council to the company until the Council shall have received such sum from the owner or purchaser of the building allotment so provided with means of drainage Provided further and the Council hereby agrees that the Council will not issue any building permit for a building to be erected on any such allotment until the applicant for such permit shall have paid to the Council the said sum of four pounds ten shillings (£4 10s.).

"3. In respect of water service the company shall lay water-service pipes of a diameter of three-quarters of an inch from the Council's water-main to the road boundary of each building allotment and with regard to the cost and expense thereof the like arrangement set out in the last preceding paragraph shall apply save that in respect of the water-service pipes to any building allotment the Council shall not be liable to the company in a larger sum than three pounds (£3) Provided however that the Council will not suffer the owner or purchaser of any building allotment so connected with water service pipes to have the actual use and enjoyment of the Council's water service until such owner or purchaser shall have paid to the Council the said sum of three pounds (£3)."

The agreement contemplated that every purchaser or owner of an allotment of the subdivision would be a person who was bound to apply for a building permit, and, therefore, a person from whom the Council would be entitled to demand payment on the issue of such building permit. No difficulty in carrying on the agreement appears to have arisen in such cases. The company, however, sold some ninety-five allotments to the State Housing Department. The Crown could not be required to apply for building permits; it was not bound by the City by-laws; and it could erect buildings without obtaining or applying for building permits. The Corporation did not, because it could not, obtain from the Crown payment of the sums specified in the agreement for provision of the means of drainage as provided by para. 2 of the said agreement, and for water-service connections as provided by para. 3 thereof.

The company, therefore, sued the Corporation for the sums payable in respect of water and sewerage connections, to State houses, and alleged that the Corporation had suffered the New Zealand Government to have the use and enjoyment of the Corporation's water services without obtaining payment of the sum specified in the agreement in respect of each allotment purchased by it. The Corporation submitted that through no default of its own it had been unable to collect the said fees, which had not been received, and the amounts therefore were payable; and that the company had put it out of the power of the Corporation to collect the fees because of the sale to the Crown.

Blair, J. (who heard the action), nonsuited the company in respect of that portion of the claim which concerned the drainage fees, but gave judgment in its favour for the water-connection fees, holding on the authority of *Dominion of Canada* v. *City of Levis*, [1919] A.C. 505, that the Crown was liable by virtue of the common law to pay to a local authority, in whose borough the Government Housing Construction Department had built a house, the usual and reasonable fee for connecting the house with the borough water supply, and that, unless and until such fee is paid, the Council has a right to refuse to supply the said Department with water for such building.

The company appealed from the nonsuit, and the Corporation cross-appealed from the judgment in respect of plaintiff's claim in respect of the water connections.

Held, per totem Curiam, That on the the interpretation of the agreement, the appeal from the nonsuit should be dismissed.

Held also, by the Court of Appeal (*Myers*, C.J., *Smith*, *Johnston*, *Northcroft*, JJ., *Fair*, J., dissenting), That the cross-appeal should be allowed as in the case of the water connections as well as of the drainage connections, the respondent Corporation was not liable to pay moneys that it had not received.

Per *Fair*, J. (dissenting) That the principle of *Dominion of Canada* v. *City of Levis*, [1919] A.C. 505, applied with respect to the water connections; and that the respondent Corporation had the right to require payment for the water connections which were the Corporation's own property if the Crown desired to make use of them, as it did, before supplying any water.

Held, further, by the Court of Appeal (*Myers*, C.J., and *Johnston* and *Northcroft*, JJ.), That the judgment in *Dominion of Canada* v. *City of Levis* had no application to the circumstances of this case.

Smith, J., reserved his opinion whether, when the Crown seeks drainage and water supply from a municipal Corporation the principle of that case should be extended to require the

Crown to pay the capital cost of cross-drains and cross-pipes from the Corporation's sewer or water-main to the drainage or pipes on the Crown's land.

Counsel: *Spratt* and *Hurley*, for the appellant; *O'Leary*, K.C., and *Gillespie*, for the respondent; *C. H. Taylor*, for the Crown as *amicus curiae*.

Solicitors: *Croker, Sutherland, and Tuckwell*, Wellington, for the appellant; *Bunny and Gillespie*, Wellington, for the respondent.

In re HANNA.

SUPREME COURT. Auckland. 1944. October 4; December 18. NORTHCROFT, J.

By-law—Municipal Corporation—Construction and Repair of Buildings at estimated Cost exceeding £2,000—Supervision and Preparation of Plans by Registered Architect or Registered Civil or Structural Engineer—Limitation to such Registered Architect or Engineer, "who is in the opinion of City Engineer properly qualified to prepare the plans for and supervise the execution" of such Work—Validity—Reasonableness—By-law amended by striking out Limitation—Municipal Corporations Act, 1933, ss. 364, 367—By-laws Act, 1910, ss. 12, 13.

Section 367 of the Municipal Corporations Act, 1933, which provides—

"With respect to by-laws under this Act the following provisions shall apply:— . . .

(c) A by-law may provide for the licensing of persons and property and for the payment of reasonable license fees, and may require sanitary and other works to be executed only by qualified and licensed persons . . ."—

is intended to authorize a municipal Corporation to make by-laws ensuring that persons doing work over which the Corporation has power of control should be competent to do that work.

Mayor, &c., of Dunedin v. *Baird*, (1913) 33 N.Z.L.R. 149, 16 G.L.R. 269, referred to.

An Auckland City By-law was, in part, as follows:—

"(*a*) No person shall erect any new building or structure or make any addition, alteration or repair to, or renewal of, any building or part of a building already erected or hereafter erected, where the estimated cost of the work exceeds £2,000 except under the supervision of and in accordance with plans prepared by a registered architect, and/or registered civil or structural engineer, *who is in the opinion of the City Engineer properly qualified to prepare the plans for and supervise the execution of the said building or structural work*, provided that, in exceptional circumstances, the City Engineer may authorize the proposed work without requiring the employment of a registered architect or registered civil or structural engineer, when, in his opinion, such special qualifications for the preparation of plans for the said building or structure or such special supervision are not necessary."

On a motion under s. 12 of the By-laws Act, 1910, for an order to quash the said by-law on the ground of invalidity,

Held, 1. That s. 367 of the Municipal Corporations Act, 1933, was express statutory authority for a by-law prescribing that only registered architects or engineers should supervise work of a certain importance; and that the by-law down to the words "structural engineer," where they first occur, was valid.

2. That the following words of the by-law, "who is in the opinion of the City Engineer properly qualified to prepare the plans for and supervise the execution of the said building or structural work," placed an unreasonable power in the hands of the City Engineer, and to that extent the by-law was invalid.

Pursuant to s. 12 (5) of the By-laws Act, 1910, the Court ordered the amendment of the by-law by the deletion of the said words, as above set out in italics; but otherwise sustained the by-law.

Counsel: *Henry* and *W. W. King*, in support; *Stanton*, for the Auckland City Corporation, to oppose.

Solicitors: *Henry and McCarthy*, Auckland, for the applicant; *Earl, Kent, Stanton, Massey, North, and Palmer*, Auckland, for the Auckland City Corporation.

THE KING v. ORMSBY.

SUPREME COURT. Auckland. 1944. November 9. FAIR, J.

Road Traffic—Motor-vehicles—Offences—Drunk in Charge—"State of intoxication"—Motor-vehicles Act, 1924, s. 27.

A person is in "a state of intoxication," within the meaning of those words in s. 27 of the Motor-vehicles Act, 1924, when, as a result of his consumption of intoxicating liquor, his physical or mental faculties, or his judgment, are appreciably and materially impaired in the conduct of the ordinary affairs or acts of daily life.

Counsel: *V. R. S. Meredith*, for the Crown; *Johnstone*, K.C., and *G. H. Skelton*, for the accused.

Solicitors: *V. R. S. Meredith*, Auckland, for the Crown; *Skelton and Skelton*, Auckland, for the accused.

BROWN v. ROWORTH.

SUPREME COURT. Palmerston North. 1944. November 3; December 21. BLAIR, J.

War Emergency Legislation—Oil Fuel Emergency Regulations—Oil Fuel Control—Oil Fuel (Horse Transport) Control Notice—Race-horses transported for Total Distance of Ninety Miles—Three Laps of Thirty Miles each—Horses walking Part of Journey between Transport Laps—Whether Offence committed—"Any distance or distances not exceeding thirty miles in all"—Oil Fuel Emergency Regulations, 1939 (Serial No. 1939/133), Reg. 1 (2)—Supply Control Emergency Regulations, 1939 (Serial Nos. 1939/131, 1940/121, and 1943/66), Reg. 10—Oil Fuel (Horse Transport) Control Notice, 1944 (No. 2) (Serial No. 1944/41), cls. 4, 5.

The transport of race-horses in one day in motor-vehicles using oil fuel for a total distance of ninety miles in three laps of thirty miles each, with two breaks between such transport of the horses walking a few miles, is an infringement of cl. 4 of the Oil Fuel (Horse Transport) Control Notice, 1944 (No. 2), and is not exempted from the operation of that order by cl. 5 thereof.

Counsel: *Gordon*, for the appellant; *H. R. Cooper*, for the respondent.

Solicitors: *J. M. Gordon*, Palmerston North, for the appellant; *Cooper, Rapley, and Rutherfurd*, Palmerston North, for the respondent.

GOLLAN v. WESTFIELD FREEZING COMPANY, LIMITED.

COMPENSATION COURT. Auckland. 1944. October 5, 17. O'REGAN, J.

Workers' Compensation—Liability for Compensation—Transport of Workers to and from Work—Employee permitted to sell on Employer's Premises Travel Tickets for Means of Transport—Whether Employer had "expressly or impliedly authorized its "use for such purpose"—Workers' Compensation Act, 1922, s. 2, 3—Workers' Compensation Amendment Act, 1943, s. 7.

In order to make an employer liable under s. 7 of the Workers' Compensation Amendment Act, 1943, where he has not provided the means of transport for the purpose of the worker's travelling to or from his work, there must be either express authorization of the use of the means of transport provided by another, or equally unambiguous evidence of authorization.

The fact that the employer has permitted the issue on his premises of travel tickets for a means of transport of his employees does not amount to his authorization of the use of such means of transport within the meaning of s. 7.

Cavanagh v. *Black*, (1907) 10 G.L.R. 55; *Kirkton* v. *Ellis*, (1913) 15 G.L.R. 406; and *Chalmers* v. *Gibbs and Co., Ltd.*, (1913) 15 G.L.R. 396, referred to.

Hewitson v. *St. Helens Colliery Co., Ltd.*, [1924] A.C. 59, 16 B.W.C.C. 230, distinguished.

Counsel: *W. R. Tuck*, for the plaintiff; *A. K. North* and *R. G. Sellar*, for the defendant.

Solicitors: *Tuck and Bond*, Auckland, for the plaintiff; *Sellar, Bone, and Cowell*, Auckland, for the defendant.

THE HON. MR. JUSTICE CORNISH.

It used to be said that the greatest of our Judges came from South of the Waitaki River. Included among them were Sir Robert Stout, Sir William Sim, Sir Frederick Chapman, Sir John Hosking, and Sir John Salmond. The recent elevation of the Solicitor-General, Mr. H. H. Cornish, K.C., to the Bench brings the present number of Supreme Court Judges to ten, seven of whom were born in the South Island. Of these seven, half of the total Supreme Court Bench—*viz.*, Blair, Smith, Kennedy, Callan, and Cornish, JJ., first saw the light in Dunedin, or south of it.

S. P. Andrew, Photo

Mr. Justice Cornish.

The new Judge was born at Kaitangata, fifty-seven years ago. After attending the primary school there, he went to the Otago Boys' High School, where he won a Junior University Scholarship. At the Otago University he gained further distinction by winning Senior Scholarships in both English and Philosophy, and in 1909 he graduated M.A. with Double First-class Honours in English and Latin and in Mental and Moral Philosophy. For a few years subsequent to that he taught in secondary schools at Gisborne and Wellington. Although he had great gifts as a teacher, the law made a greater appeal to him and he was admitted to the Bar in 1916. For a while he followed the customary course of practising both as a barrister and a solicitor; but, in 1930, he cut himself adrift from solicitor's work by accepting appointment to a Chair of Law at Victoria College. During the next four years he both taught law and practised it, for he had made it a condition of his appointment that he should be free to practise as a barrister. His students thus had the advantage of discussing his cases with him. On his part, the actual teaching of law enabled him to refresh his mind with legal principles, and to acquire an extensive knowledge of many cases which might otherwise not have been noted.

In 1934, he resigned this professorship on being appointed His Majesty's Solicitor-General in New Zealand. Shortly afterwards he received the patent of King's Counsel.

In its issue of May 22, 1934, the NEW ZEALAND LAW JOURNAL referred to "the glad unanimity and complete unselfishness with which Professor Cornish's professional brethren welcomed his appointment as Solicitor-General." It recorded the fact that he had been for some years a member of the Council of the Wellington District Law Society and its President in 1927, a member of the Council of the New Zealand Law Society, a member of the Rules Committee. Since then he has been a member of the New Zealand Council of Law Reporting, and he was also a member of the Law Revision Committee. After referring to his activities and interest in football, boxing, cricket, tennis, and swimming, the article concluded with this paragraph:—

"Any reference to Professor Cornish which failed to lay stress on his character and the affectionate esteem in which he is held by his friends would be far from complete. He has a high sense of honour, and skill without cunning; he has never been known to do a mean thing. His broad outlook makes him impatient of technicality; he is chiefly mindful of 'the merits.' He is naturally disposed to be frank and open in expressing his sentiments, but his habit is to talk kindly and not critically of his fellow-men. He sees the best in his fellow-practitioners and speaks ill of none. He is interested in all current cases and is ever ready both to discuss difficulties and make valuable suggestions. The younger men particularly have reason to be grateful to him for helpful information and advice. He is quick to congratulate the winner, and immediately at the side of a friend who is in any sort of trouble. In addition, he has a just and reasonable modesty which sets off the talents of which he is possessed and heightens the virtues which it accompanies."

That reputation which he had acquired as a professor and a private practitioner was enhanced during the ten years in which he held the position of chief Law Officer of the Crown, and, *virtute officii*, a Leader of the Bar. He was always easily approachable by members of the profession and the senior departmental officers in the

Civil Service, and ever ready to discuss their difficulties, to make suggestions, and to give advice. When it appeared possible that the Crown might escape liability by pleading something in bar of a suppliant's claims, it was his habit to remark that "His Majesty is a Gentleman," and to act accordingly. He, therefore, preferred to settle on a fair basis, rather than to extract duties or penalties, or to stand on the legal rights of the Crown.

It is not always safe to say in advance what manner of Judge a man may become; but it may fairly be assumed that Mr. Justice Cornish will continue to be courteous, kind, and generous to practitioners, impatient of technical objections, and anxious to get quickly to the real merits. In his written judgments, he will not dim the reputation for scholarship and culture which has been one of the outstanding characteristics of the Judges of New Zealand: the outstanding brilliance of his University career and his later wide reading in economics, classics, biography, and history is sure proof of that.

The new Judge has not been given any time to adjust himself to an altered outlook. A few hours after he took the oath of office on February 5, he left Wellington to take the sittings at Palmerston North, and on his return from there he will serve for some weeks as a member of the Second Division of the Court of Appeal.

BENEFICIAL OWNERSHIP OF LIFE INSURANCE POLICIES.

Effected ostensibly in favour of Nominees: Contracts for Benefit of Third Parties.

By E. C. ADAMS, LL.M.

In (1942) 18 NEW ZEALAND LAW JOURNAL 126 will be found an article by the writer, concerning the beneficial ownership of life insurance policies effected ostensibly in favour of nominees. Relying mainly on the English leading case of *Englebach's Estate, Tibbetts* v. *Englebach*, [1942] 2 Ch.D. 348, I pointed out that, as a general rule, life-insurance policies effected by parents and others not on their own lives and ostensibly in favour of children, beneficially belonged to the parent or other person who made the contract with the insurance company and not to the child nominee, unless the former had made a valid declaration of trust in favour of the latter. This principle was well illustrated by the unreported judgment of His Honour Mr. Justice Blair, *In re Wilson, Alexander* v. *Wilson*. These English life insurance cases have now been explained by the English High Court and Court of Appeal respectively in *In re Stapleton-Bretherton, Weld Blundell* v. *Stapleton-Bretherton*, [1941] Ch. 482, [1941] 3 All E.R. 5, and *Re Schebsman, Ex parte Official Receiver*, [1943] 2 All E.R. 768.

The latter case deals exhaustively with the important and interesting topic of contracts made for the benefit of third parties and is a real contribution to English jurisprudence: it really illustrates the inherent characteristic of all live legal systems to adapt themselves to new and changed conditions. In these cases there is discussed Professor Corbin's interesting article, *46 Law Quarterly Review* 12, *Contracts for the Benefit of Third Persons*. To take only two very common manifestations of modern civilization, payments of moneys to third parties, under superannuation schemes, and in accordance with the rules of friendly societies, there has been much conflict of able opinion as to whether these are based on *contract* or on the fiction of a *trust*. Thus to take such payments on the death of a member of a friendly society, readers of the LAW JOURNAL will find it interesting and, I venture to say, profitable, to compare the English case, *In re Hamilton-Gordon, Lloyds Bank, Ltd.* v. *Lloyd*, (1940) 56 T.L.R. 950, with the New Zealand case *In re Gough, Gough* v. *Gough*, [1939] N.Z.L.R. 594, G.L.R. 457.

In the English case, *In re Hamilton*, testator was a member of a friendly society, and on his death his widow became entitled under the rules to the payment of a certain capital sum and to a pension so long as she remained his widow. It was held by Simonds, J. (distinguishing the insurance cases, *Cleaver* v. *Mutual Reserve Fund Life Association*, [1892] 1 Q.B. 147; *In re Englebach's Estate* (*supra*); *Sinclair's Life Policy*, [1938] Ch. 799) that under the rules of the society a *valid trust had been created* in favour of the widow and that she was entitled to retain for her benefit the sums payable to her by the rules.

In the New Zealand case Sir Michael Myers, C.J., had to deal with a precisely similar point; certain funeral and death benefits payable by the Druids Lodge, pursuant to the rules of the society, to the widow of the deceased, were held to belong to deceased's widow *qua* widow, and consequently they did not form part of deceased's estate. But Sir Michael Myers (unlike the English Judge) based his ruling not on an implied trust, but on *contract*. It is respectfully submitted that the *ratio decidendi* of the two English cases *In re Stapleton-Bretherton* (*supra*) and *Re Schebsman* (*supra*) supports the reasoning in the New Zealand case.

The modern tendency is to treat these cases as *contracts* made for the benefit of third parties and not as trusts. Thus, in the Court of first instance in the already-cited case, *Re Schebsman*, [1943] 2 All E.R. 387, 390, Uthwatt, J., said:

> In my opinion S. [the debtor] was not in any way a trustee for his wife or daughter. Trusts can arise only from the intention to create a trust expressed by, or imputed to, the person to be considered its founder, or from the acts—generally the wrongful acts—of the party to be charged as a trustee. There must be either an intention duly carried into effect, or facts which create an estoppel precluding the denial of trusteeship. There is not, I think, any other way of creating a trust. In this conection I was referred to Professor Corbin's interesting article in the *Law Quarterly Review*

(Vol. 46) on "Contracts for the Benefit of Third Persons," and have considered the cases to which he refers, but I am unable to see that they justify the conclusion at which he arrived that, in some cases of the class now under consideration, a fiction has been resorted to in order to raise a trust. The cases, no doubt, are hard to reconcile, but, to my mind, the explanation of them is that different minds may reach differing conclusions on the question whether the circumstances sufficiently show an intention to create a trust—and inferences as to intent may vary, as the cases on general charitable intent well show.

In thus rejecting the conception of an implied trust the English Courts expressly follow one of the principles of the leading insurance case, *Re Englebach's Estate* (*supra*); the reason for the rejection of a trust appears to be that in a trust there would be implicit an enforceable obligation on the contracting party contributing the payments to keep the payments up for the benefit of the *cestui que trust*. The Courts do not think it is reasonable to suppose that in life insurance contracts, friendly society and superannuation schemes the persons who make the contributions, intend such consequences. The existence of a trust would also pre-suppose that the terms thereof would be unalterable.

In *Re Stapleton-Bretherton* (*supra*), two brothers, Frederick and Edmund, executed a deed of covenant under which (1) Frederick covenanted with Edmund that if he, Frederick, succeeded as tenant for life to certain settled property he would during his life pay to Edmund and after the death of Edmund to his widow the annual sum of £1,000; (2) Edmund covenanted with Frederick that in certain events if Edmund should succeed to the settled property as tenant for life he would pay certain annual sums during his life to the widow and daughters of Frederick. The events mentioned in Edmund's covenant took place and he succeeded to the settled property. The executors of Frederick claimed that the sums payable by Edmund were payable to the estate of Frederick. The widow and daughters claimed payment to themselves. Simonds, J., held that no *trust* was created in favour of the widow and daughters of Frederick. He answered the question by declaring that the executors of Frederick were not entitled to direct Edmund to pay the covenanted sum to them instead of to the persons named in the deed. This decision is explained by the Master of the Rolls in *Re Schebsman* as meaning that the payments received by the widow and daughters would belong to them beneficially.

In *Re Schebsman*, [1943] 3 All E.R. 387, aff. on app. *ibid.*, 768, A. was for many years in the employment of a Swiss company and its subsidiary, an English company. His service ended on March 31, 1940, and, arising out of the end of his connection with the companies, an agreement, dated September 20, 1940, was made between him and them. It provided for certain payments being made by the English company to him and, after his death within a certain period (which happened) to his widow, and, in an event which may or may not happen to his daughter. A. was adjudicated bankrupt on March 5, 1942. He died on May 12, 1942, with the result that according to the terms of the agreement, certain sums became payable to his widow and, should she die before a certain date, to his daughter. The trustee in bankruptcy claimed that all future payments belonged to the estate of A., the debtor bankrupt. Both the High Court and Court of Appeal, however, held that the future payments would belong beneficially to the widow and the daughter in accordance with the literal terms of the said agreement.

Where in a contract between A. and B. for valuable consideration moving from B. to A., A. agrees to pay a certain sum to C., it is a question of *construction* whether or not C., the payee, is to receive the money beneficially, and the Court will take into consideration the surrounding circumstances. Where in such a contract, C., the payee, is to become benefically entitled to the money the following legal consequences appear to ensue.

1. C. is not a party to the contract and cannot at any stage sue on the contract. B. alone can sue for damages on a breach of the contract.

2. A. and B. may agree to *vary* the contract.

3. B. can at any time before the time for performance release A. from the contract. Presumably unless there is valuable consideration moving from A. to B., such release in order to be effective according to New Zealand law must be *deed*.

4. It would be a breach of contract for A. to pay B., and if B., whilst the contract is in force, does anything by which the money is diverted from C., he commits a tort and perhaps a crime.

5. During the subsistence of the contract C. has a mere expectancy that may or may not mature into actual payment to him and this expectancy is subject always to the possibility that A. and B. or their legal representatives may determine the contract by mutual consent and the possibility that B. may release A. from his obligation.

6. On payment by A. to C., C. gets a good title to the money against all the world.

7. If the contract runs its course, the performance thereof is achieved by payment to C. and to C. alone or his legal representatives. B. has no right to direct payment to B. himself or to any person other than C.

Where, on the other hand, in a contract between A. and B. for valuable consideration moving from B. to A., A. agrees to pay a certain sum to C., and, on the true construction of the contract, C. is not to take the money beneficially, the Courts regard A. as the mere *mandatory* of B. It is on these grounds that the English Courts now explain *In re Englebach* and the line of insurance cases following that decision. Payment to C. is regarded as one of several permissible methods of performance of A.'s obligation, which in substance is an obligation to pay to B. Thus Luxmoore, L.J., in *Re Schebsman* (*supra*) at p. 777 says:

> The basis of this decision [*Re Englebach's Estates*] appears to be that, on the true construction of the policy, the insurance company was nothing more than the mandatory of the father in making the payment to the daughter, and on this footing the decision has no application to the present case.

It is apprehended that a mandate is determined by the death of the person who conferred it. And, as the Master of the Rolls says, at p. 772:

> If A. instructs an agent to carry a present to B., the agent's authority is in its nature revocable and A. can revoke his instruction at any time before the present is delivered.

It was held in *Re Stapleton-Bretherton* (*supra*) by Simonds, J. (and this is expressly approved by the Judge of first instances and by the Master of the Rolls in *Re Schebsman* (*supra*)), that in the insurance cases which have hitherto come before the English Courts there must be deemed to be inserted, after the word of the payee (the child nominee), the words, "or as the covenantee (*i.e.*, the person effecting the insurance) may direct."

Readers will no doubt recollect the decision of Farwell, J., in *Re Webb, Barclay's Bank, Ltd.* v. *Webb*, [1941] 1 All E.R. 321. The policy recited that the father was desirous of effecting the assurance for and on behalf of his son, then aged one year. That provision was not *per se* sufficient to create a trust in favour of the infant. But there was another rather unusual provision which turned the scales the other way. This was to the effect that on the son attaining twenty-one all rights and powers of the father, his personal representatives and assigns, were to cease and the son was to be solely interested in the policy. The Court held that this provision read *in conjunction* with the other provisions in the policy created a trust in favour of the son. It was the *combination* of these circumstances which constrained Farwell, J., to decide that a valid trust had been created in favour of the child nominee. Now in New Zealand there are in existence many life-insurance policies where there is no such *combination* of circumstances from which the Court could hold there was a valid trust without expressly overruling or declining to follow many of the cases previously cited in this article, but which contain two important provisions: (1) that until the child nominee attains the age of twenty-one years, the person effecting the insurance can surrender the policy and receive a refund of the premiums paid; (2) on the child nominee attaining twenty-one years of age, the said nominee shall be the sole person beneficially interested in the policy. Applying the reasoning in the two English cases, *Re Stapleton-Bretherton* and *Re Schebsman* (*supra*), we can surely say that in such contracts when the child nominee attains the age of twenty-one years (no matter who pays the premiums thereafter) the child nominee is put in the position of C. in the seven propositions which I have deduced from an analysis of *Re Schebsman*—that is to say, that thereafter it is a contract between A. (the insurance company) and B. (the proposer), for the benefit of C., the nominee. It is a matter of *construction* of the contract, and it appears to be absolutely opposed to the wording of the policy to hold as the Court held in *Re Englebach* (where there was no such provision as to the changing of the beneficial ownership on the child attaining his majority) that the person effecting the policy is to remain the beneficiary thereunder. It is submitted that if B. in the above example dies before C. reaches the age of twenty-one years, it is the duty of his legal personal representative to accept a return of the premiums: if he does not so surrender the policy will he not be committing a *devastavit*? Whether this is so or not, it appears clear that the insurance policy in such circumstances is an asset in B.'s estate for death-duty purposes, and should be valued and returned accordingly.

NEW ZEALAND LAW SOCIETY.

Meeting of Council.

A meeting of the Council of the New Zealand Law Society was held at the Supreme Court Library, Wellington, on December 1, 1944.

The following societies were represented: Auckland, by Messrs. A. H. Johnstone, K.C., and J. Stanton; Canterbury, Messrs. R. L. Ronaldson and A. W. Brown; Gisborne, Mr. D. E. Chrisp; Hamilton, Mr. A. L. Tompkins; Nelson, Mr. M. C. H. Cheek; Otago, Mr. J. C. Rutherford; Southland, Mr. T. V. Mahoney; Taranaki, Mr. N. F. Little; Wanganui, Mr. A. B. Wilson; Westland, Mr. W. D. Taylor; and Wellington, Messrs. A. M. Cousins, H. R. Biss (proxy), and N. H. Mather (*proxy*).

The Vice-President (Mr. A. H. Johnstone, K.C.) occupied the chair. Mr. A. T. Young, Treasurer, was present.

Apologies for absence were received from Messrs. H. F. O'Leary, K.C., and G. G. G. Watson (who were engaged in Court), J. B. Johnston, A. Milliken, E. J. W. Hallett, and G. M. Spence.

Before commencing the ordinary business the chairman referred to a letter received from His Honour the Chief Justice acknowledging the resolution of the Society concerning his election as a Master of the Bench of the Inner Temple.

Wills of Members of the Air Force and Navy.—The Air Secretary advised that instructions had been issued to include as part of the mobilization order to recruits a section adequately covering the facilities approved by the Society for the making of airmen's wills. The Air Secretary expressed the Department's appreciation of the assistance of the Society in this matter. It was decided to thank the Department for its co-operation.

The Secretary reported that the Navy Department were favourably considering a similar scheme and it was hoped to shortly finalize the arrangements.

Death Duties: Rate of Interest and Delay in Obtaining Revaluations.—The following letter was received from the Commissioner of Stamp Duties:—

"With reference to the various matters discussed with me by Messrs G. G. G. Watson and A. M. Cousins and yourself at the interview on the 26th ultimo, I desire to make the following comments:—

"(1) It is regretted that in dealing with some of the estates in the various offices of the Department delays have occurred before the accounts have been finally certified. Many of the delays have been due to acute shortage of staff, but with the improvement in the war situation it is hoped that there will soon be sufficient trained officers available and that the work will be expedited. I can assure you that every endeavour will be made to obviate delays.

"(2) Regarding the requisitions made by the District Offices, when death-duty accounts are being investigated, it is necessary that Assistant Commissioners should have the right to obtain any information that has a bearing on the deceased's affairs. The requisitions are, however, not made without due consideration and every endeavour is made to confine the inquiries to matters incompletely recorded in the accounts, or which the examination of the accounts has rendered necessary because of the possibility of further assets. If the accounts are accompanied by a covering letter giving full information regarding the deceased's affairs, then many requisitions would be unnecessary, and you can be assured that where general requisitions are made they are confined to assets which the deceased could reasonably be expected to own, having regard to his business or his position. When the accounts have been passed by an Assistant Commissioner very few further requisitions are made as a result of examination in Head Office, and these are usually due to information not available to the District Offices or because of questions referred to Head Office for determination.

"(3) As to the certification of accounts for debts due by the deceased and set out in the 22nd Schedule, I am prepared in certain cases to relax the general rule that all these should be certified 'as due and owing as at date of death.'

"If the accounts are for medical and nursing services obviously rendered before death, or tradesmen's accounts rendered after date of death which contain sufficient detail to indicate that the service for which the debt was due was rendered prior to date of death, then no certification will be insisted on. It is to be understood, however, that Assistant Commissioners retain the right to require the certification of accounts in doubtful cases or where the nature of the account or its size demands some explanation.

"(4) Consideration has been given to the question of the release of bonds—given in terms of s. 36 (2) of the Death Duties Act—after the final certification of accounts and the payment of all duty assessed and payable. I am prepared to allow these bonds to be returned to the administrators or to the solicitors.

"(5) Where the delays in obtaining revaluations of land—referred to in the letter from the Otago District Law Society—are due to departmental procedure, then I can only express regret that these have occurred. If, however, solicitors will make a practice of supplying particulars of a deceased's land in dutiable estates as soon after death as possible, then requests for revaluations—if considered necessary—can be made without delay and the reason for the complaint will be removed.

"(6) The simplification of the procedure for appeals against assessments by making provision for certain appeals to go before a Magistrate is a matter for the Legislature, and it may be that some alteration on these lines will be made.

"(7) The question of the rate of interest to be charged on unpaid duties is also a matter for the Government, and any representations for the reduction of the present rate should be addressed accordingly.

"Consideration has been given to the possibility of simplifying the procedure in the filing of accounts where the estate is of small value and is non-dutiable because the only beneficiary is the widow of the deceased or because the estate is that of a soldier and receives the benefit of s. 84 of the Death Duties Act, 1921, as amended.

"It has therefore been decided that in estates of this nature—where the final balance is under £3,000—instead of filing complete accounts, administrators may file statement L supported by a statement (in duplicate) of the assets and liabilities. This statement would need to give full description of the assets and their approximate value, and where there are secured liabilities the names of the mortgagees and the date of the advances must also be given. Valuation certificates to support the values of freehold and leasehold lands and also bank pass-books must be supplied.

"It is to be understood that Assistant Commissioners may if necessary require complete accounts where the circumstances of the case seem to justify this course.

"Although the information given in the last two paragraphs deals with a matter not discussed at the recent interview, it appears to me that this is a suitable opportunity to give notice of the proposed alteration in practice."

It was decided to write to the Commissioner expressing appreciation of the co-operation shown by him in this matter. It was further decided to thank Mr. Cousins and Mr. Watson for the work done by them in this connection.

Justices of the Peace Act, 1927: General Appeal.—It was reported that following the last meeting a letter was received from the Taranaki Society suggesting that there should be a general right of appeal in cases of convictions with orders to come up for sentence later.

The further recommendation had been forwarded to the Under-Secretary of Justice, who advised that the recommendations made by the Society would be considered at the next meeting of the Law Revision Committee.

Administration Amendment Bill.—Since the Council last met, a report on the proposed amendment was prepared by the sub-committee consisting of Messrs. C. H. Weston, K.C., P. B. Cooke, K.C., A. M. Cousins, and H. E. Evans. A copy of the report had been circulated to each of the District Societies and to the Law Draftsman and the Under-Secretary of Justice.

The Under-Secretary of Justice wrote as follows:—

"I have to thank you for your letter of the 10th October, enclosing a copy of the report of the special committee appointed by your Council to consider the Bill, together with copies of letters from District Law Societies and of the report of the Conveyancing Committee.

"The Hon. Minister has requested me to convey, through you, his thanks and appreciation, both personally and on behalf of the Law Revision Committee, to the Societies, the Conveyancing Committee, and in particular to Messrs. C. H. Weston, K.C., P. B. Cooke, K.C., A. M. Cousins, and H. E. Evans for the work entailed in their comprehensive report on the Bill."

On the motion of the chairman, it was resolved that the report be adopted and that the sub-committee be thanked for their services.

Refund of Stamp Duties: Death Duty Paid Overseas.—The following reply was received from the Minister in Charge of Stabilization:—

"Further to the Hon. Mr. Mason's letter of the 28th ultimo, I have considered the submissions made in support of an extension of the time within which to obtain a refund of death duty paid overseas, and having regard to the difficulties that have been brought about by the war, I have decided to recommend that an amendment be made to s. 32 of the Death Duties Act, 1921, to give the Commissioner of Stamp Duties power to extend the time for a period not exceeding one additional year, provided an application is made by the administrator before the expiration of the statutory period of three years.

"This amendment will enable the Commissioner to consider each case on its merits and to grant a limited extension according to the circumstances."

The letter had been referred to the Auckland Society, who thought that the extension of one year would probably meet the position, although the solicitor concerned was of opinion that the Commissioner should be given a discretionary power of unlimited extension, as was done under s. 26 of the Act. The Auckland Society was, however, of the opinion that the proposal of the Minister should be accepted.

It was decided that the letter from the Minister should be received.

Approval for Increases for Rent.—The following letter was received from the Minister in Charge of Stabilization:—

"I acknowledge receipt of your letter of the 4th instant.

"The question of conflict between the Economic Stabilization Emergency Regulations, 1942, and the Servicemen's Settlement and Land Sales Act, 1943, and otherwise, is at the present time under consideration. I have to thank you for referring to me the recommendations of the Council of your Society concerning two aspects of this question. These will be borne in mind when considering the matter."

War Regulations Continuance Act, 1920.—The following letter, received by the Wanganui Society from one of its members, was supported by the Hawke's Bay Society:—

"We have recently been acting in sales of land where the vendor has been a mortgagee selling in exercise of his power of sale under a mortgage. In each case, in order to obtain registration of a transfer, a declaration by the vendor under the Soldiers' Protection Regulations, 1919, has had to be filed with the District Land Registrar. So that the vendor can make this declaration it is necessary to make inquiry from the State Advances Corporation and Treasury as to the status of the mortgagor. These inquiries and the necessity for a declaration all involve additional trouble and expense.

"The regulations in question were made in 1919 and apply only to soldiers discharged from the war of 1914-18. They are continued in force by virtue of the War Regulations Continuance Act, 1920, and are reproduced as Item (22) in the Second Schedule to that Act. Under cl. 3 (*d*) of the regulations the exercise of his power of sale by a mortgagee who had obtained the leave of the Supreme Court under the Mortgages Extension Act, 1919, was exempted from the application of the regulations. This latter Act has been repealed, so that now the declaration must be furnished by the vendor-mortgagee in all cases, notwithstanding that leave to exercise his powers must be obtained under the Mortgages Extension Emergency Regulations, 1940.

"It is now many years since we have had a case of a mortgagor who came under the protection of the regulations, and it appears to us that there is now no justification for the continuance in force of the Soldiers' Protection Regulations, 1919.

"Will you please bring the matter before the next meeting of the Council and if the Council approves refer the same to the New Zealand Law Society with a request that representations be made to have these regulations revoked."

It was pointed out that at present there appeared to be no consistency in practice, the District Land Registrars only occasionally requiring the declaration.

It was decided that steps should be taken to have the regulations revoked.

(To be concluded.)

IN YOUR ARMCHAIR—AND MINE.

By SCRIBLEX.

The New Judge.—When H. H. Cornish was appointed Solicitor-General in 1934 his subsequent promotion to the Supreme Court Bench was recognized as being one of those things that must inevitably happen in due course. Salmond, J., MacGregor, J., and Fair, J.—his three immediate predecessors in office—had all reached the Bench; and, quite apart from the precedents thus set, it was apparent that the new Solicitor-General possessed in ample measure the necessary qualities for the holding of judicial office. As Solicitor-General he conducted the business of the Crown Law Office in a way which gave a high degree of satisfaction to the profession, for it was soon found that he was little disposed to rely upon bare technicalities or to crave in aid unduly the prerogatives of the Crown. Cornish, J., is more than an able lawyer. He is a man of deep and broad culture, widely-read in fields other than law, and, in addition to his cheerful and friendly manner and his unfailing courtesy, he possesses at least one attribute without which no Judge can be a really great Judge—a large heart.

Infanticide.—In 1922 the first Infanticide Act was passed in England. It created the statutory crime of infanticide where a woman, the balance of whose mind was disturbed through her not having fully recovered from the effect of childbirth, wilfully caused the death of her newly-born child. So far as punishment was concerned, the crime was differentiated from murder and put on the same basis as manslaughter. In 1927 it was held by the Court of Criminal Appeal that a child one month and two days old was not a "newly-born" child within the meaning of the statute. Nine years later the Act of 1922 was repealed and the more liberal Infanticide Act, 1938, enacted. The Act of 1938 created the crime of infanticide where the child is under the age of twelve months and the balance of mind of the mother when wilfully causing the child's death, is disturbed through the effect of giving birth to the child, or by reason of the effect of lactation consequent upon its birth. As before, the crime was differentiated from murder and placed on the same punishment basis as manslaughter. At the current sittings of the Supreme Court at Wellington a man and woman were jointly charged with the murder of the woman's newly-born child and Myers, C.J., when charging the grand jury, and again when summing-up to the common jury, very properly drew attention to the English Acts, first of 1922, and then of 1938, pointing out that we have no such humane provision in our criminal law. But the learned Chief Justice may have entered upon more debatable ground when he went somewhat further. Addressing the grand jury, Myers, C.J., told them how, on a similar case coming before him at New Plymouth, in February, 1938, he had referred in his charge to the grand jury to the more humane provision of the English law—then the Act of 1922—with the result that that jury had made a presentment expressing the opinion that legislation on the lines of the English Act of 1922 should be enacted in New Zealand and had requested that that recommendation be forwarded to the proper authorities. According to the *Evening Post* (Wellington) His Honour proceeded:

> That had been in February, 1938, and still the law on the subject in New Zealand remained unaltered. His Honour said that he had some reason to believe that recently the matter had been considered in certain quarters and a Bill drafted, but nothing had yet been done. One would have thought that a matter of that kind would be readily dealt with and appropriate legislation passed. In 1938 the law in England had been made even more humane than the original Act, but still nothing had been done in this country.

And, according to the same newspaper, the learned Chief Justice in his summing-up to the common jury, said, after drawing attention to the English law,

> We have never passed a similar Act in New Zealand—I do not know why—although, as I said the other day, I personally brought the matter under the notice of the Minister of Justice as far back as 1938. The matter may still be under consideration so far as I know, but nothing has been done.

It is obviously proper and desirable for a Judge to draw public attention to any respect in which our law may be less humane than the law of England. But is it any part of the duty of a Judge to go further, and, in effect, to criticize the Legislature for seven years' inactivity in the matter? That the criticism is well merited few will be disposed to deny; but should that criticism come from the Supreme Court Bench?

Vacancy in the Solicitor-Generalship.—Like other people, publishers and printers have their wartime difficulties, and the result is that this page must be written considerably in advance of publication date. At the time of writing, the vacancy in the office of Solicitor-General has not been filled and, accordingly, Scriblex would venture a few comments, hoping that they may see the light of day before an appointment is made. There are undoubtedly lawyers of ability on the staff of the Crown Law Office, and in other Government Departments, but, in Scriblex's view, and he has no doubt that the same view will be taken by most members of the profession who give the matter serious thought, the office of Solicitor-General should never be filled by promotion from the staff of the Crown Law Office or of any other Government Department, but should always be filled by appointment from the ranks of those actively engaged in private practice. Further, in making a selection from those actively engaged in practice, it should all the time be borne in mind, first, that, subject only to the Attorney-General (who may often be little more than a figure-head) the Solicitor-General is *ex officio* the leader of the Bar, and, secondly, that there is considerable precedent for his subsequent promotion to the Supreme Court Bench. It is imperative that every possible care should be taken to ensure that the position be filled by the appointment of the best available man.

Citing the Reports.—Lord Esher, M.R., believing most cases to be determinable upon their facts, was always impatient of the unnecessary citation of authorities. But he was more impatient still when the references to cases were not properly given. Counsel, who referred to a volume of the reports of the Queen's Bench Division as "Q.B.D." brought down upon himself the following retort from Lord Esher: "You Be D———! Give the book its proper name."

LAND SALES COURT.

Summary of Judgments.

The summarized judgments of the Lands Sales Court, which appear as under, are published for the general information and assistance of practitioners. They are not intended to be treated as reports of judgments binding on the Court in future applications, each one of which must be considered on its own particular facts. The reasons for the Court's conclusions in any one appeal may, however, be found to be of use as a guide to the presentation of a future appeal, and as an indication of the Court's method of considering and determining values.

No. 33.—L. to T.

Jurisdiction—Committee's Consent to Sale revoked—Purchaser in Possession when Revocation Proceedings commenced—Registration of Transfer not effected—Whether Committee had Jurisdiction to revoke—Servicemen's Settlement and Land Sales Act, 1943, ss. 43, 52.

Appeal against the decision of the Taranaki Land Sales Committee revoking consent to the sale of two properties near Urenui, one a farm of 101 acres owned by Mr. S. L. and the other an area of 9 acres owned by Mr. T. L. The consents were revoked upon the grounds that they were procured by false and misleading statements made by the purchaser, Mr. T., and by the suppression by him of material facts. In the light of the conclusion to which the Court has found itself driven on the crucial legal question involved, it is unnecessary to review the facts. It is sufficient to say that the opinion of the Court as to the facts and as to the proper inferences to be drawn from those facts did not materially differ from the findings of the Committee as expressed in the written report of its chairman.

The Court said: "The crucial question is, however, as to whether the Committee had jurisdiction to revoke the consents at the point of time at which it did so. The facts relevant in this relation can be briefly stated. At the date of the proceedings for revocation the purchaser had already had possession of the properties for some six weeks. The milking herd and, indeed, almost all the stock of the vendor, S. L., had been sold by the purchaser, he having acquired it under the sale contract. The purchase-money for the properties had been paid and the mortgage which had been charged against S. L.'s property during the latter's period of ownership had been paid off and a formal discharge executed; a new mortgage over that property had been executed to a bank to secure advances made to the purchaser in order to provide him with sufficient funds to complete. The vendors had in short, then already sometime before executed and delivered every document and everything had been done necessary to enable the purchaser to obtain a registered title under the Land Transfer Act. Registration would, in fact, have been effected had not the bank's solicitors who, in the normal course of conveyancing practice, held the documents for registraton delayed a little in lodging them with the District Land Registrar.

"Although s. 52 of the Servicemen's Settlement and Land Sales Act, 1943, does not specifically limit any period beyond which a Committee cannot revoke its consent, it is obvious that there must be some limit or perpetual uncertainty will be attendant upon all sales effected during the currency of the Act. It probably would not be contended that any revocation is possible after registration under the Land Transfer Act has been effected. That, however, marks the latest point of time at which consent to a sale can be revoked and is by no means necessarily definitive of the possibility of the existence of an earlier date marking the point of time beyond which jurisdiction to revoke does not extend.

"The true intention of the Act can, it is thought, best be gathered by an examination of all the relevant provisions of the enactment. It is not without significance in this relation that s. 43 discloses that the word 'transaction' is employed in the Act in a generic sense so as to include all those particular kinds of transactions which are comprehended in s. 43 (1). Where, therefore, the word 'transaction' appears in s. 52 (2) it must be interpreted as relating to the particular form of transaction under consideration. It may be a sale or transfer of freehold land or a leasing of land or any of those specific forms of transaction which are mentioned in s. 43 (1).

"This aspect of the matter is material because, in terms of s. 52 (2), it is 'the transaction to which the consent relates' which is not to be entered into, completed, or proceeded with. From this point of view, the conclusion is inescapable that in this instance the prohibition contained in s. 52 (2) related exclusively to transactions by way of sale of freehold estates. In this case the sale was however already completed when the Committee embarked upon the consideration of the question whether it should revoke the consents or not. That is, unless effecting registration is to be regarded as an act implicit in the phrase 'complete or proceed with.' This the Court is unable to hold. The act of registration is not either a completion of a sale or a proceeding with a sale, but is merely a proceeding by which, the sale being completed, the purchaser invests himself with a registered title.

"The prohibition in s. 52 (2) has therefore relation to a state of affairs already carried to finality at the point of time when the consents were revoked. There being no other indication in the Act as to when the jurisdiction to revoke is exhausted, the Court cannot but conclude that the intention of the Legislature in that regard must be taken as expressed in s. 52 (2). Such an interpretation is consistent with good sense, for otherwise a very disquieting feature would be introduced into conveyancing practice. No purchaser would feel secure in paying over his purchase-money and no mortgagee would contemplate making any advances except at the very moment when registration could be immediately effected. This would make the conclusion of transactions difficult in centres where District Land Registry Offices are established, but almost impossible in all other localities.

"There is therefore every justification for an interpretation that the power of revocation under s. 52 does not extend beyond the point of time where a sale is completed as between vendor and purchaser and nothing more remains to be done but for registration of the relevant documents to be effected. That position pertained in respect of the consents the revocation of which is the subject of this appeal. The Court feels constrained, in consequence, to allow the appeal on this ground."

No. 34.—R. to F. and B.

Urban Land—Business Site—"Corner influence"—Systems of Estimating Value.

Appeal relating to the basic value of a property at the corner of High Street and Queen's Road in the City of Hutt. The land had a frontage of 66 ft. to High Street and, for the full extent of its depth of 90 ft., had a frontage to Queen's Road. Upon the land a block of single-story shops had been erected The property was sold for £11,700. Consent to the sale was given on condition that the sale price should be reduced to £11,000. It was against the imposition of this condition that the appeal was brought.

The difference between the values attributed by the witnesses for the respective parties to the High Street frontage was not by any means as considerable as is usual in cases of this type. The appellant's two witnesses testified to a value of £110 per foot and £118 per foot respectively, whilst the principal witness for the Crown deposed to a value of £100 a foot.

There was practically no difference as to the value of the buildings. The witnesses for the appellant valued them at £3,345 and £3,450 respectively, whilst the Crown's principal witness valued them at £3,445.

The principal and, in the circumstances, the only material point of difference was as to the value to be attributed to the property by reason of its having, in addition to its frontage to High Street, a frontage in respect of its whole depth to Queen's Road. In other words, the value to be attributed to what has

been called "corner influence" was the principal subject of difference and debate.

The Court said: "Mr. H., a witness for the appellant, on this account added 20 per cent. to his value of the High Street frontage. The latter he valued at £7,260—that is, 66 ft. at £110 a foot: so by adding the 20 per cent.—a sum of £1,452—he got a total value of £8,712. Mr. G., another witness for the appellant, basing his High Street value upon a price of £9/8 a foot paid for a property some distance away from the appellant's property, added 20 per cent. to that price as a percentage fairly representing, in his opinion, the difference in value between the two properties. This gave him a value of approximately £118 a foot. To this he added 15 per cent. for corner influence, giving him £8,730 as the total value of the land now in question.

"The vendor will not, it was said at the Bar, sell at less than £11,700. The determination by the Court of the value to be attributed to corner influence may therefore, in the circumstances, well prove crucial so far as the fate of the sale is concerned. Immediate consideration of that question is, in consequence, indicated as desirable. In the interests of a clear understanding of the factual position, however, it is not immaterial first to note that if Mr. H.'s assessment of value of the High Street frontage and of the buildings is accepted a sum of not less than £1,095 must be added for corner influence to justify the price of £11,700 at which consent to the sale is asked.

"It is obvious that the Court would not attribute a higher value to the High Street frontage than that for which Mr. H. contends. The Crown's witnesses testify to a lesser value, and only Mr. G. supported a somewhat higher assessment. The latter has no supporting data for the percentage of 20 per cent. which he adds to the price realized for land some distance away, and to that extent his evidence is dependent solely upon the value to be attached to his uncorroborated personal opinion. This being the intrinsic character of his assessment of the value of the High Street frontage, it clearly could not be accepted when opposed by the evidence of Mr. H., who was called in the same interest, as well as by the evidence of the Crown witnesses.

"For present purposes, therefore, Mr. H.'s assessment of the value of the High Street frontage must be regarded as the highest value of that frontage which the Court could properly adopt. The question evolves, therefore, should a sum of not less than £1,095 be added in respect of corner influence?

"On that topic the evidence of the two witnesses called by the appellant differed materially. Mr. H. added 20 per cent. to his valuation of the main frontage for corner influence. Mr. G. added 15 per cent. Mr. A., for the Crown, added a lump sum of £100 only. The Committee accepted 15 per cent. as the proper basis.

"The question of the value to be attributed to corner influence is not without difficulty and has given rise to wide differences of opinion amongst highly qualified experts. Zangerle, in his *Principles of Real Estate Appraising*, comments that no subject of appraisal is so undeveloped as the matter of valuing corner lots. He, in common with all authorities, appreciates to the full the factors which add value to a corner site. In his recital of the advantages accruing to such a site, he says: 'The entire lot can be utilised where the inside lots will not be so used. It has light, air, access for display purposes, and is therefore worth more than the inside lot even though the side street may be only an alley 12 ft. wide. Where there is a live street, involving added display facilities, sidewalk traffic and more buying, it is evident that side corner lots become more valuable than alley corners.'

"As to the basis for the calculation of the increased value, there is no difference of opinion between the experts. For example, Zangerle says of it that the additional value is in proportion to the width and relative value of the side street frontage. *The Valuer*, in its issue of April 1, 1936, comments that corner location 'adds to the main street value according to the base value of the cross street and the respective frontages.' The same conception is expressed in its summary of the basis of corner value at p. 108 of Volume 4 of the same publication.

"To the principle thus enunciated, the Court readily subscribes. When, however, the authorities embark upon the practical application of the principle, they differ somewhat widely. Each endeavours to evolve a uniform rule or formula and no two seem to agree. Zangerle, for instance, comments that the method frequently adopted of adding 20 per cent. for corner value is unscientific and stupid, and he points out that corner lots sometimes vary from 18 per cent. to 126 per cent. increase over inside lots where the lots are 50 ft. by 100 ft. in depth. Zangerle has evolved a curve under which he determines the value by the ultimate adoption of a formula based on the curve.

"The New York Pleydell Rule prescribes that 15 per cent. should be added to the main street unit, plus 50 per cent. of the value of the side street unit.

"Somers and the authors of the Baltimore system adopt other and different formulae. Then, again, some authorities attach the additional value to the actual corner, irrespective of width. Such a method can scarcely be said to be scientific: It certainly involves obvious inequalities.

"Two factors in relation to the methods and the formulae propounded by the recognized authorities must be kept in mind. The first is that they are all of them designed to establish what a willing purchaser would pay for any given property, and to that end have been evolved from experience of actual sales. The second is that they are all founded upon sales effected in cities of great magnitude, such as New York, Baltimore, and Philadelphia, and are designed to apply primarily to values in cities of that type. They are necessarily based on the existence of two frontages of unequal value, but both of major value for business purposes.

"The latter consideration demands that all such methods should be treated with caution and discretion at all times, and particularly so when an application of them to such a case as the present is involved. The first factor mentioned invites a realistic and sensible approach adjusted to the facts of every case.

"In the absence, therefore, of any universal or accepted rule or formula the problem can be solved, not by the adoption of any hard and fast rule, but, with the findings of authoritative writers and the limitations of such findings in mind, by approaching the question in a common-sense and realistic way. This will ensure that every factor which creates additional value will be made the subject of a proper assessment. The application of such a procedure in such a case as the present clearly demands a critical examination of the evidence as to the nature and characteristics of the site under consideration and of its vicinity.

"Following such an examination, aided by an inspection, the Court accepts the evidence of Mr. A. that the High Street frontage of this land is at the ultimate limit of the present retail shopping area. It also accepts his evidence that Queen's Road is not 'a business street' in the true sense of that expression. Beyond the limits of the land now in question there is some evidence that a few allotments along Queen's Road are being and some might be used for small workshop purposes; thereafter it becomes, and remains, a residential street. In the main Queen's Road is one of a number of roads giving access from a large residential area to the main shopping area; its particular function is to give access to the upper limit of the shopping area.

"It is not necessary for any present purpose to determine the value of the Queen's Road frontage with any degree of precision. It is sufficient to say that, in the opinion of the Court, that value more nearly approximates the £16 a foot at which Mr. A. valued it than the £30 a foot at which Mr. H. assessed it. In the light of these facts an application of the accepted principle upon which the value of corner influence is based requires that the calculation of that value must, in this instance, be based on a relatively low value so far as the side street is concerned.

"Taking a comprehensive view of the whole position and allowing for every factor which creates value in such a site by reason of its position, the Court has reached the conclusion that an average willing buyer would not pay more than £600 for the property over and above the value of the High Street frontage. This finding, in effect, disposes of the appeal. It could probably not have succeeded in any event because, whilst in this judgment the values to which Mr. H. testified have been used as a basis, there is no doubt but that those values are much in excess of the values on December 15, 1942.

"Mr. H., with his usual candour, said in that relation 'The rise in values has taken place in the last two years. Sales made prior to that were not subject to the influences now operating in the Hutt City. Prices paid to-day are no indication of values eighteen months to two years ago. The disparity between price two years ago and present day is too great.' Nevertheless, the prices paid within those limits of time were freely used throughout to sustain the values to which the various witnesses testified. And this despite the fact that the Court has to determine values as at December 15, 1942.

"For the reasons given, the appeal is dismissed."

PRACTICAL POINTS.

This service is available free to all paid annual subscribers, but the number of questions accepted for reply from subscribers during each subscription year must necessarily be limited, such limit being entirely within the Publishers' discretion. Questions should be as brief as the circumstances will allow; the reply will be in similar form. The questions should be typewritten, and sent in duplicate, the name and address of the subscriber being stated, and a stamped addressed envelope enclosed for reply. They should be addressed to: "NEW ZEALAND LAW JOURNAL" (Practical Points), P.O. Box 472, Wellington.

1. Death Duties.—*Estate Duty—Joint Tenancy of Realty—One Tenant expending Personal Funds on Improvements—Death of Other Joint Tenant—Whether such Expenditure claimable as a Deduction.*

QUESTION: Mrs. A. pays £200 as deposit on a house in the joint names as joint tenants of herself and her husband, who improves the property at his own expense in adding a room, making concrete paths, and so on. After this has been done the wife (Mrs. A.) dies. The Stamp Duties Department assess duty on Mrs. A.'s estate as on a half-interest in the property. Can A. claim for his personal efforts or else that he has a more than half-interest in the property? Are there cases on this point?

ANSWER: A. cannot claim for his personal efforts because, no debt has been created; a debt presupposes a promise to pay. Section 9 of the Death Duties Act, 1921, therefore cannot apply: see *Adams's Law of Gift and Death Duties in New Zealand*, 83–92.

There are cases dealing with investments in joint names of husband and wife, and some of these are cited by *Adams, ibid.* Other authorities which may be cited are *16 Halsbury's Laws of England*, 2nd Ed., para. 1061, and *Ingram* v. *Ingram*, [1941] V.L.R. 95, a most instructive case.

Joint tenancies often cause difficulties for death-duty purposes. It is understood that, in the absence of any evidence to the contrary, the Stamp Duties Department usually assumes that joint property has been contributed by each joint tenant in equal shares—that is, of course, where the joint tenants are not trustees—and assesses duty on one-half of the value accordingly.

In the instant case, the assessment would probably be reduced on a sum of £200, if the full facts were put before the Department. As to the £200, that is clearly liable to death duty, either under s. 5 (1) (*a*), as a resulting trust to Mrs. A., or under s. 5 (1) (*e*), as property which she caused to be transferred to herself jointly with A. The improvements were not contributed to by Mrs. A. but by A.; and, therefore, it is submitted, they are caught neither by s. 5 (1) (*e*) nor by s. 5 (1) (*g*); it is submitted that the presumption would be that these improvements were to be taken beneficially by the survivor, who happens to be A., as at the time the improvements were effected the legal title was in the joint names of the spouses: *Re Eykyn's Trusts*, (1877) 6 Ch.D. 115, cited with approval by Johnston, J., in *Thirkell* v. *Macrae*, [1940] G.L.R. 411, 421.

This method of splitting up the value of the succession for death-duty purposes appears to be supported by the *ratio decidendi* of the Court of Appeal in *Page* v. *Commissioner of Stamp Duties*, [1938] N.Z.L.R. 304, G.L.R. 175. It also appears to accord with natural justice.

2. Executors and Administrators.—*Land subject to Mortgage—Executor of the Original Executor making Gift of Beneficial Interest.*

QUESTION: A. in 1926 mortgaged land under the Land Transfer Act to a lending institution. That mortgage is still unpaid and registered against the title. A. died in 1933, leaving W. executor and sole beneficiary. W. became registered proprietor by way of transmission. W. died in 1943, leaving E. and F. sole executors and beneficiaries. E. and F. have also become registered as proprietors by transmission. All the debts in estates of A. and W. have been paid except above mortgage. There is a substantial equity in the property. F. now desires to transfer by way of gift his beneficial interest in the land (subject to the mortgage) to H., his son. Can this be done by memorandum of transfer to be registered under the Land Transfer Act? If not, how should the gift be evidenced?

ANSWER: It is submitted that the intended gift of the beneficial interest should be effected by deed of gift off the register-book. E. and F. own the registered estate in a representative capacity as representing A.'s estate, which obviously has not been fully administered. In their own right they do not own the registered estate nor are they entitled at present to be so registered. There has been no union or merger of the legal and beneficial estates: *Public Trustee* v. *Registrar-General of Land*, [1927] N.Z.L.R. 839, G.L.R. 529, and *McCormack* v. *Lee*, [1941] N.Z.L.R. 114, G.L.R. 27. If the mortgagee released the executors from liability and accepted in lieu thereof the personal liability of E. and F., then E. and F. could transfer to themselves as beneficiaries and F. could then make a gift of his moiety to H. by way of memorandum of transfer.

3. Land Sales.—*Sale of Land to Charitable Institution—Consent of Land Sales Court not necessary—Stamp Duty payable.*

QUESTION: A. is proposing to sell a piece of land to the Y.M.C.A and the price has been agreed upon. Will the consent of the Land Sales Court be necessary and will *ad valorem* stamp duty be payable?

ANSWER: The consent of the Land Sales Court will not be necessary, because the Y.M.C.A. is a charitable institution, and it is assumed that it is acquiring the land for the proper purposes of the society: s. 43 (2) (*g*) of the Servicemen's Settlement and Land Sales Act, 1943; *Re Wilkinson, Perpetual Trustees, Estate, and Agency Co. of New Zealand, Ltd.* v. *League of Nations Union of New Zealand*, [1941] N.Z.L.R. 1065, G.L.R. 533; *Y.M.C.A.* v. *Federal Commissioner of Taxation*, (1926) 37 C.L.R. 351, 360; and *R. v. Special Commissioners of Income Tax, University College of North Wales*, (1909) 78 L.J.K.B. 576, 25 T.L.R. 368. For a similar reason it will be exempt from *ad valorem* stamp duty and liable to 15s. only.

RULES AND REGULATIONS.

Traffic (Road-crossing) Regulations, 1944. (Motor-vehicles Act, 1924.) No. 1944/181.

Goods-service Tribunal Emergency Regulations, 1943, Amendment No. 2. (Emergency Regulations Act, 1939.) No. 1944/182.

Marine Insurance (War Risks) Emergency Regulations, 1942, Amendment No. 2. (Emergency Regulations Act, 1939.) No. 1944/183.

Slaughter of Pigs Control Order, 1943, Amendment No. 1. (Primary Industries Emergency Regulations, 1939.) No. 1944/184.

Wool Industry Act Commencement Order, 1944. (Wool Industry Act, 1944.) No. 1944/185.

Samoa Land Emergency Regulations, 1944. (Emergency Regulations Act, 1939.) No. 1944/186.

Post and Telegraph (Staff) Regulations, 1925, Amendment No. 18. (The Post and Telegraph Act, 1928.) No. 1944/187.

Organic Fertilizer Control Order, 1945. (Primary Industries Emergency Regulations, 1939.) No. 1945/1.

Fertilizer Control Order, 1944, Amendment No. 2. (Primary Industries Emergency Regulations, 1939.) No. 1945/2.

Small Farms Act Regulations, 1940, Amendment No. 2. (Small Farms Act, 1932–33.) No. 1945/3.

Armed Forces (National Work) Emergency Regulations, 1945. (Emergency Regulations Act, 1939.) No. 1945/4.

Sale of Fruit and Vegetable Containers Emergency Regulations, 1945. (Emergency Regulations Act, 1939.) No. 1945/5.