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THE NEW LAW OF DESCENT OF INTESTATE ESTATES.

III.

IN our last issue, after explaining the purpose and effect of the statutory trusts, we dealt with the succession of illegitimates to the estates of intestates dying after 1944. We there considered, *inter alia*, possible illegitimate successors who had not been adopted at the date of the intestate's death. We now propose to carry the consideration further, and discuss the effect of an illegitimate's adoption in relation to succession, and, more particularly, in relation to the operation of the statutory trusts.

THE EFFECT OF THE ADOPTION OF AN ILLEGITIMATE.

In considering the descent of the estate of an intestate under s. 6 of the Administration Amendment Act, 1944, the effect of an adoption order must not be overlooked. Section 21 of the Infants Act, 1908, gives to an adopted child all the rights of a natural child of the adopting parents, and the adopted child is deemed to be the child born in lawful wedlock of the adopting parents. By such adoption, however, the adopted child is not entitled to take property from the lineal or collateral kindred of the adopting parent by right of representation, or to acquire any property vested or to become vested in any child of lawful wedlock of the adopting parent in the case of the intestacy of such last-mentioned child, or otherwise than "directly through" such adopting parent. The order of adoption terminates all the rights existing between the child and his natural parents, except the right of the child to take property as heir or next-of-kin of his natural parents directly or by right of representation.

The purpose of s. 8 of the Administration Amendment Act, 1944 (which is set out on p. 45, *ante*) is to treat an unadopted illegitimate child in all respects, in relation to the descent and distribution of the estate of an intestate person who dies after 1944, as if he or she were the legitimate child of his or her mother; and such a child shares accordingly under the statutory trusts of any person's estate in which, if legitimate, such child could have shared. In brief, if an illegitimate child is living at the death of an intestate, then, for the purposes of the distribution of his estate, *qua* its mother it is treated as a legitimate child of its mother, if it is unadopted.

The effect of the proviso to s. 8 is to debar any adopted illegitimate child from taking any share in the estate of an intestate person dying after 1944 by reason of its relationship to its natural parent (its mother), who, if she had survived the intestate and married or attained the age of twenty-one years, would have taken as a relative of the intestate. In brief, an illegitimate child, who has been adopted by a third person, remains, for the purpose of the Administration Amendment Act, 1944, for the rest of its life the illegitimate child of its natural mother; but it cannot succeed to any interest in her intestate estate, or, by reason of relationship to her, to any interest in the estate of an intestate person dying since 1944.

(The intention of the framers of the proviso, which is not to be found in any other statute relating to the descent and distribution of intestate estates was apparently that, when an illegitimate child is adopted by a stranger, the child passes out of the life of its natural mother; and, as the learned Attorney-General has explained, the child's interests and environment are different from those of people whose family relationship is contained in one home, and who have that relationship in life that is implied by the blood connection: *1944 Hansard*, First Sess., 289, 290.)

Nothing akin to the proviso to s. 8 is to be found in any other legislation relating to the descent and distribution of intestate estates. The intention of its framers was to provide for the actuality that an illegitimate child, when adopted by a stranger, usually passes out of its mother's life. The clause is said to accord with a relationship that is found maintained as a reality in the lives of the parties. As the learned Attorney-General has explained, one might expect people that have relationship to be in the one home, and to have actually that relationship in life that is implied by the blood connection: *Ibid.*

The effect of s. 8 may be illustrated by cases interpreting the provisions of the Infants Act, 1908, relating to adoption. In *In re Carter*, (1905) 25 N.Z.L.R. 278, Sir Robert Stout, C.J., considered the section that is now reproduced as s. 21 in the circumstances where a married woman, who had a son of her own by a former marriage, adopted, with her husband's consent, the illegitimate son of another woman; both of the adopting parents died, and the son afterwards died intestate. The learned Chief Justice held that the effect of the adoption order was to terminate the right of the natural mother to succeed to the intestate's estate, and to make

the son of his adopted mother his half-brother, with the right to succeed, under the Administration Act, 1879, to his estate as next-of-kin. The surviving son would, under s. 8 of the new statute, still take, on attaining the age of twenty-one years or marriage under that age, the adopted child's estate under the statutory trusts in favour of brothers and sisters, if the intestate was not survived by a spouse or parent, and no issue of the intestate survived him and attained the age of twenty-one years or sooner married.

In *In re Taylor*, *Public Trustee* v. *Lambert*, [1932] N.Z.L.R. 1077, Blair, J., held that an adoption order does not operate to take away the adopted child's right to take on intestacy the estate of the adopted child's natural brother or sister. In that case, the children were legitimate, and the law has not been altered by the Administration Amendment Act, 1944. But that statute has altered the legal position in a case where either child is illegitimate, and has been adopted. If the illegitimate child dies intestate, the natural mother's relationship to the child, is by virtue of the proviso to s. 8, still an illegitimate relationship; and neither the mother nor her legitimate child or her lineal or collateral relations can share in the estate. And, if no spouse, issue, adopting parent, or lineal or collateral relative of an adopting parent can take, the Crown must take the estate as *bona vacantia*. Moreover, if the legitimate child dies intestate, his illegitimate half-brother or half-sister, who has been adopted, cannot share in the estate, because, by virtue of the proviso to s. 8, the mother's relationship to her illegitimate child is still an illegitimate relationship for the purposes of the statute.

In *In re Carter*, *Carter* v. *Carter*, [1941] N.Z.L.R. 33, Blair, J., held that an adopted child is left in undisturbed possession of his rights by virtue of his blood relationship to his natural parents, and thus is made up to him the corresponding right, which, as s. 21 of the Infants Act, 1908, expressly provides, he does not acquire by adoption in relation to his adopting parents. Section 8 of the new statute does not affect this judgment, unless the adopted child be illegitimate. The statute does not elsewhere give an illegitimate child, who has been adopted, the right to share in his or her mother's intestate estate or in any intestate estate of a lineal or collateral relative of the mother; and, accordingly, the adopted child cannot share in any such estate. If the child had not been illegitimate, he could so share.

Claims under the Family Protection Act, 1908.

Section 12 of the Administration Amendment Act, 1944, provides that nothing in that statute is to affect or derogate from the provisions of s. 22 of the Statutes Amendment Act, 1939, which is as follows:—

> 22. (1) Notwithstanding anything to the contrary, in Part III of the Administration Act, 1908, or in the Statute of Distributions, as defined in section fifty-three of that Act, the provisions of Part II of the Family Protection Act, 1908, shall, with the necessary modifications, apply with respect to every person who dies without leaving a will, in the same manner as if he had died leaving a will providing for the distribution of his estate as on an intestacy, and as if the grant of administration of his estate were the grant of probate of his will.
>
> (2) Where any person dies leaving a will but intestate as to any part of his estate, an order may be made by the Court under Part II of the Family Protection Act, 1908, affecting that part of his estate in the same manner as if the will had provided for distribution of that part as on an intestacy.
>
> (3) This section shall apply with respect to the estates of persons dying after the passing of this Act.

The position regarding claims under the Family Protection Act, 1908, in respect of intestate or partially intestate estates, now appears to be—

(*a*) Where the intestate died before October 7, 1939, no claim may be maintained.

(*b*) Where the intestate died after October 7, 1939, and before January 1, 1945, his estate is available for the satisfaction of claims, on the basis that he notionally left a will effectively providing for the distribution of his estate as on an intestacy in terms of Part III of the Administration Act, 1908, and the Statute of Distributions, as defined in s. 53 of that Act.

(*c*) Where an intestate has died after October 7, 1939, but before January 1, 1945, leaving a will effectively disposing of part only of his estate, that part is available for the satisfaction of claims under the Family Protection Act, 1908; and the remainder as to which he died intestate is available for the satisfaction of such claims as if the will had provided that such remainder was to descend and be distributed among the same persons and in the same shares as if such remainder had been distributed as on an intestacy in accordance with Part III of the Administration Act, 1908, and the Statute of Distributions as therein defined.

(*d*) Where a person dies after December 31, 1944, intestate as to the whole or part of his estate, then, for the purposes of claims under the Family Protection Act, 1908, he is deemed to have left a will disposing of his undisposed estate in terms of the Administration Amendment Act, 1944.

As already pointed out, interests in an intestate or partially intestate estate may arise at any time during a period not exceeding twenty-one years following the death of the intestate. There is provision in s. 33 (9) of the Family Protection Act, 1908, as amended and extended that an application for relief claiming the benefit of the statute must be made within twelve months after the grant of administration, but the time for making application may be extended for a further period by the Court or a Judge, although the time for applying has expired. In all such cases the application for extension of time must be made before the final distribution of the estate. It is further provided that no distribution of any part of the estate made before the application may be disturbed by reason of the application or of an order made thereon.

Section 23 of the Statutes Amendment Act, 1939, is as follows:—

> 23. (1) For the purposes of Part II of the Family Protection Act, 1908, no real or personal property that is held upon trust for any of the beneficiaries in the estate of any deceased person shall be deemed to have been distributed or to have ceased to be part of the estate of the deceased by reason of the fact that it is held by the executors or administrators after they have ceased to be executors or administrators in respect of that property and have become trustees thereof, or by reason of the fact that it is held by any other trustees.
>
> (2) This section shall apply with respect to the estates of persons dying after the passing of this Act.

This section has a distinct bearing on property held under the statutory trusts. Where a person considers he has a claim under the Family Protection Act, 1908, on the death of an intestate, he should—in view of the provisions of ss. 6 and 7 of the Administration Amendment Act, 1944—apply within a year after the grant of administration in order that his interest in the estate may be defined.

BONA VACANTIA.

Sections 5 and 6 (1) (*f*) of the Administration Amendment Act, 1944, are as follows :—

5. *Escheat to the Crown for want of heirs or successors shall be abolished.*

6. (*1*) (*f*) *In default of any person taking an absolute interest under the foregoing provisions, the estate shall belong to the Crown as* bona vacantia, *and in lieu of any right to escheat. The Crown may (without prejudice to any other powers), out of the whole or any part of the property devolving on it, provide for dependants, whether kindred or not, of the intestate, and other persons for whom the intestate might reasonably have been expected to make provision.*

Section 6 (1) (*f*) applies both to the real estate and personal estate of any person dying on or after January 1, 1945. It follows that the common law remains applicable to the estates of all intestates who have died before that date, except in so far as it has been affected by Part III of the Administration Act, 1908.

It is a rule of the common law that ownership can never be in abeyance*: All property which the Sovereign alone can claim, and which would otherwise be ownerless including the personal estate of deceased persons dying wholly or partially intestate leaving no known kin as successor, is termed "*bona vacantia*," with the exception that real property was not included in the term and is still not understood as being within it.

Now, by virtue of the above provision, s. 6 (1) (*f*) an exception is made to include real property of persons dying since 1944, without leaving a husband or wife or persons within the classes of relationship specified in s. 6 (1) (*a*)–(*e*), and without having effectually disposed of the whole of their property by will.

Section 5 of the Administration Amendment Act, 1944, abolishes escheat to the Crown for want of heirs. Hitherto, strictly speaking the real estate of a person dying intestate and leaving no heir was, the subject-matter of escheat. The distinction is historical; because, while English law recognizes the absolute right of a subject to objects of personal property other than chattels real, all land is treated as having belonged at one time to the Crown, and all land is held mediately or immediately from the Crown. Consequently, since land can never be ownerless, an estate in fee simple comes to an end when the sole person in whom it is vested dies intestate without a definable successor. If the land were in New Zealand and if the death occurred before January 1, 1945, the land was said to escheat, that is, it reverted to the Crown, as the owner of the interest out of which the estate was originally carved.

Now, by virtue of the statutory right created by s. 6 (1) (*f*), and since escheat has been abolished by s. 5, the Crown acquires the ownership of all the real and personal property of an intestate dying without statutory next-of-kin—a convenient form of words to indicate the persons designated as successors by s. 6 (1) (*a*)–(*e*)—as *bona vacantia*. From the creation of that statutory right, it follows that, wherever the right to *bona vacantia* accrues in respect of a person's undisposed personal estate, it also accrues in respect of his undisposed real estate.

The Crown's right under the Administration Amendment Act, 1944, depends on either of two circumstances arising : where an intestate person dies after December 31, 1944 : (*a*) on the total failure of kin specified in s. 6 (1) (*a*)–(*e*) ; and (*b*) on failure of a vested interest being taken by any of the persons otherwise entitled under the statutory trusts set out in s. 7. The Crown's right in respect of the property in issue dates from the date of the intestate's death. It may not, however, arise for a considerable time thereafter. For instance, if an intestate dies without a spouse surviving and leaves no relative other than a first cousin, born before or *en ventre sa mère* (s. 2) at the intestate's death, it may be nearly twenty-one years or more than twenty-one years if the addition of the period for gestation has to be included.

As a matter of practice, when a claim is made by the Crown for an estate or part of an estate as *bona vacantia*, it would appear that it will be for the Public Trustee to apply for administration under s. 14 of the Public Trust Office Act, 1908, as to which see *Garrow's Wills and Administration*, 604, though in most cases where the statutory trusts have operated and failed, application would be made for administral *de bonis non*.

The proviso making tentative provision for dependants of the deceased, whether kin of a class not specified in s. 6 (1) (*a*)–(*e*), or not, merely gives statutory authority and recognition to an already established practice. The provision is permissive, not mandatory; and the *ex gratia* nature of the gifts which may be made by the Crown out of estates falling as *bona vacantia* is still maintained.

A claim for recovery on the part of such dependants would take the form of a petition of right under the provisions of s. 2 (*b*) of the Crown Suits Act, 1910 (*cf.*, *In re Blake, Re Minahan's Petition of Right*, [1932] 1 Ch. 54, 59) ; with some analogy to a claim under the Family Protection Act, 1908.

UNDISPOSED REALTY AS INTESTATE PERSONALTY.

Section 11 (*b*) of the Administration Act, 1908, provides that the administrator must hold the real estate of any person who dies intestate as to such real estate upon trust for the person or persons, who, if such real estate were personal estate, would have the same shares, estates, powers, and interests in and over such real estate as he or they would have if the same had been personal estate.

As the Administration Amendment Act, 1944, contains comprehensive rules as to the distribution and descent of intestate or partially intestate estates, s. 11 (*b*) has been consequentially amended by s. 12 (1) of the recent statute, by wholly repealing it in so far as it may refer to the estates of intestates dying *after* 1944. It remains in full force as regards the intestate or partially intestate persons who died before 1945.

The effect of the amendment is that the real estate not disposed of by will is distributable as if it were *intestate* personal estate ; and, accordingly, the intestate realty will, after 1944, no longer be available for application under the trusts of the intestate's will for the purposes to which it could be applied if it were personal estate.

The foreign immovable estate of an intestate, whether or not his death occurs before or after January 1, 1945, is distributable according to the *lex situs*, and is un-

* It is of remote antiquity : see *Bracton*, Lib. 1, c. 12, s. 10 ; 1 *Bl. Comm.* 229 ; and, so far as it deals with the only matter here considered, was left unaffected by the statute law, until s. 46 (i) (vi) of the Administration of Estates Act, 1925 (Eng.), adopted in New Zealand by s. 6 (1) (*f*) of the 1944 statute. As to *bona vacantia* generally, see *Enever's Bona Vacantia under the Law of England* (1927).

affected by the New Zealand law of distribution of intestate estates. The result may well be that a surviving spouse may doubly benefit, by receiving preferential payments according to the relevant statutes in force in the country where such immovable property is situate, in addition to the preferential advantages given by s. 6 (1) (*a*) of the Administration Amendment Act, 1944.

Administrator's Power of Sale.

Apart from the power of sale conferred on an administrator by s. 5 of the Administration Act, 1908, for the payment of debts, he had no power of sale of realty, unless he had an enabling order of the Court for its exercise. As the statutory provision stood on his obtaining the consent of the Court, he had an absolute power to sell realty: s. 7. If an administrator, has become *functus officio* as administrator, and has become a trustee, he cannot invoke s. 7 in order to sell the realty: *In re Anderson*, [1921] N.Z.L.R. 770.

The limited nature of s. 7, and its doubtful draftsmanship have now been jettisoned; and s. 4 of the Administration Amendment Act, 1944, gives a wide and unrestricted power to an administrator to sell realty. The section is as follows:—

> "4. (*1*) *On the death of a person intestate as to any real or personal estate, his administrator shall have power to sell the real estate and to call in, sell, and convert into money such part of the personal estate as may not consist of money, with power to postpone such sale and conversion for such a period as the administrator, without being liable to account, may think proper, and so that any reversionary interest be not sold until it falls into possession, unless the administrator sees special reason for sale, and so also that, unless required for purposes of administration owing to want of other assets, personal chattels be not sold except for special reason.*
>
> "(*2*) *This section shall have effect notwithstanding that the administrator has ceased to hold the real or personal estate as administrator and holds it as trustee.*
>
> "(*3*) *Where the deceased leaves a will this section shall have effect subject to the provisions contained in the will.*"

Powers of Advancement and Maintenance.

Section 7 (1) (*b*) of the Administration Amendment Act, 1944, is a curious piece of legislation. It provides:—

> "(b) *The statutory power of advancement, and the statutory provisions which relate to maintenance and accumulation of surplus income, shall apply, but when an infant marries such infant shall be entitled to give valid receipts for the income of the infant's share or interest.*"

In his speech in introducing the Bill in the Legislative Council last year, the Hon. A. McLaglan, M.L.C., said:

> The statutory power of advancement mentioned in para. (*b*) of subclause 1 refers in England to section 32 of the Trustee Act, 1925, which gives wide powers including power to advance in respect of a contingent interest. There is no corresponding provision in our law, and it is proposed to insert a clause in the Statutes Amendment Bill this year making similar provision here.

He was referring to what is now, in identical words, s. 7 (1) (*b*) of the Act as passed. A careful perusal of the Statutes Amendment Act, 1944, does not disclose any inclusion of the provisions contained in the English Trustee Act, 1925 (see *20 Halsbury's Statutes of England*, 122, 125), to which the corresponding English provision refers; or to any other provision giving a power of advancement to an administrator. Accordingly, we cannot take the matter further at this stage, except to say that a trustee in New Zealand lacks any proper statutory power of advancement and has only limited powers of maintenance. In our final article, suggestions as to the form the necessary legislation should take will be discussed.

We next propose to show the difficulties arising in consequence of the differences between the English legislation on the descent and distribution of intestate estates, and our recent legislation, and to consider certain anomalies and omissions from the latter statute.

SUMMARY OF RECENT JUDGMENTS.

LEVY v. KESRY.

Supreme Court. Wellington. 1944. November 17, December 15. Blair, J.

Landlord and Tenant—Notice to Quit—So-called "Waiver of notice to quit"—Notice to Quit given—Receipts subsequently given by Landlord for "Rent" for Stated Periods "without prejudice to notice to quit"—Later Receipts expressed to be for "Use and occupation" and no Period stated for which Money accepted—Whether Existence of Fresh Tenancy connoted by Practice of receiving "Rent"—Whether Notice to Quit required.

If after the expiry of the notice to quit receipts are given by the landlord for "rent" for a stated number of weeks to stated dates, although the words "without prejudice to notice" are added, that connotes the existence of a tenancy. A subsequent change in the form of the receipts expressing them "to be for use and occupation" and naming no period for which the money was accepted could not convert into something else that tenancy which could only be determined by agreement or a fresh notice to quit.

Counsel: *Leicester*, for the plaintiff; *Heine*, for the defendant.

Solicitors: *Ongley, O'Donovan, and Arndt*, Wellington, for the plaintiff; *Holdsworth, Gault, and Mitchell*, Wellington, for the defendant.

THE KING v. ADAMS AND BATT.

Supreme Court. Wellington. 1945. February 6. Myers, C.J.

Criminal Law—Practice—Evidence—Photograph admissible—Likely to horrify or prejudice Jury against Accused—Course taken by Court.

Where a photograph, although admissible in evidence was likely to horrify or prejudice a jury against an accused person, the learned Judge directed that it should not be shown to the jury unless it became necessary as evidence to support the case for the Crown on some material issue, which appeared to be contested or doubtful.

Counsel: *W. H. Cunningham*, for the Crown; *Joseph*, for the accused, Batt; *C. A. L. Treadwell*, for the accused, Adams.

Solicitors: *W. H. Cunningham*, Crown Solicitor, for the Crown; *Herd, Olphert, and Joseph*, Wellington, for the accused, Batt; *Treadwells*, Wellington, for the accused, Adams.

FRAENKEL v. MINISTER IN CHARGE OF ALIENS.

SUPREME COURT. Wellington. 1944. November 15; December 21. BLAIR, J.

War Emergency Legislation—Aliens Emergency Regulations—Order by Minister in Charge of Aliens that Enemy Alien should refrain from making Attempt to market or sell or interest any Person in any Patent—Construction of Order—Validity—"Thing"—"Matter"—Whether such Terms include Patent Rights—Aliens Emergency Regulation, 1940 (Serial No. 1940/273), Reg. 50.

Regulation 50 of the Aliens Emergency Regulations, 1940, authorizes the imposition of restrictions on aliens, *inter alia*, as to "occupation, employment, the use or possession of any thing or matter, as the Minister deems to be necessary in the public interest."

Under that regulation the Minister in Charge of Aliens has power to order that an enemy alien shall refrain from making any attempt to market or sell or interest any person in any patent, invention or device, and from seeking to obtain employment other than that to which he is directed by the Controller of Man-power.

Patent rights are covered by the word "thing" and also by the word "matter," as used in the regulation, which, accordingly, forbids not only the selling of the patent rights, but also the selling of examples of the patented article.

Liversidge v. *Anderson*, [1942] A.C. 206, [1941] 3 All E.R. 338, applied.

Jensen v. *Wellington Woollen Manufacturing Co., Ltd.*, [1942] N.Z.L.R. 395, referred to.

Counsel: *Leicester*, for the plaintiff; *A. E. Currie*, for the defendant.

Solicitors; *Leicester, Rainey, and McCarthy*, Wellington, for the plaintiff; *Crown Law Office*, Wellington, for the defendant.

In re LOCKIE (DECEASED), GUARDIAN, TRUST, AND EXECUTORS COMPANY OF NEW ZEALAND, LIMITED, AND OTHERS v. GRAY AND OTHERS.

SUPREME COURT. Wellington. 1944. August 24, 25, 26; September 26. SMITH, J.

Will—Devisees and Legatees—Condition as to Religion—Forfeiture—Uncertainty—"Educated in the Protestant faith"—"Adhering to the Protestant faith"—"Adhered to the Protestant religion."

Where a testator by means of a clause, forfeiting by a condition subsequent benefits given by his will, seeks to compel the beneficiary to whom they are given to act or refrain from acting in matters concerned with religion, not in accordance with the dictates of his own conscience, but in accordance with the religious convictions of the testator himself, it behoves him to define with greatest precision and in the clearest language the events on which the forfeiture of the interest given to the beneficiary is to take place, if the forfeiture is to be valid.

Clayton v. *Ramsden*, [1943] A.C. 320, [1943] 1 All E.R. 16, applied.

When a testator who intends to declare that a gift shall be divested unless the legatee adheres to a prescribed form of religious faith, makes one statement of the events upon which the forfeiture shall take place and the gift over shall operate, and then, later in his will, purports to restate that condition of forfeiture but does so in inconsistent language, and the reconciliation is not clearly apparent, the Court should hold that the event or events upon which the gift is to be forfeited have not been expressed with the precision which is required by the law, and, consequently, that the condition or conditions of forfeiture are void for uncertainty.

A testator by a codicil to his will directed that the share of his grandson, J., should vest in him on attaining the age of twenty-five years; and he declared "That it is my desire that the said James Patrick William Gray, should be educated and brought up in the Protestant faith and should at all times remain a Protestant and the gifts in this codicil declared in favour of the said James Patrick William Gray shall be subject to the provisions hereinafter mentioned with reference to his being so brought up and being at the time of his attaining the age of twenty-five years a Protestant And that in the event of his not being brought up and educated in the Protestant faith and not adhering to the Protestant faith at the time of his attaining the age of twenty-five years the income hereinafter directed to be accumulated in his favour and the capital of the share hereinbefore devised and bequeathed to him shall pass to the other persons who would be entitled to the residue of my real and personal estate under the terms of my said will."

After directing the accumulation of the said share, he declared that no part of the income of the said share should be paid over to J.P.W.G.—"or applied for his maintenance education or advancement in life it being my intention that when he arrives at the age of twenty-five years he shall be entitled to receive the said share hereinbefore devised and bequeathed to him and all accumulations and income thereon provided he shall have up to and at that time adhered to the Protestant religion."

On an originating summons for the determination of the questions whether the said conditions were valid,

Held, applying the above principles enunciated by the learned Judge, 1. That the two conditions of forfeiture in the said codicil were conditions subsequent and therefore required to be expressed with the utmost precision; that they were inconsistently expressed and irreconcileable, and that, therefore, they were void for uncertainty.

2. That, assuming the said conditions were severable and intelligible if viewed as separate conditions, then the first condition was not contrary to public policy.

Clayton v. *Ramsden*, [1943] A.C. 320, [1943] 1 All E.R. 16, and *Clavering* v. *Ellison*, (1859) 7 H.L. Cas. 707, 11 E.R. 282, applied.

3. That the said conditions were void for the uncertainty of the expressions "the Protestant faith," "the Protestant religion," "educated," and "adhered to" respectively.

Re Tegg, Public Trustee v. *Bryant*, [1936] 2 All E.R. 878, applied.

Public Trustee v. *Gower*, [1924] N.Z.L.R. 1233, G.L.R. 426, distinguished.

Clavering v. *Ellison*, (1859) 7 H.L. Cas. 707, 11 E.R. 282, considered.

Counsel: *C. A. L. Treadwell*, for the plaintiffs; *Weston*, K.C., and *Beere*, for the first defendant; *Watson* and *Christie*, for all the defendants other than the first.

Solicitors: *Treadwells*, Wellington, for the plaintiffs; *O. and R. Beere and Co.*, Wellington, for the first defendants; *Chapman, Tripp, Watson, James and Co.*, Wellington, for the defendants other than the first.

MENNER v. COLSON.

COMPENSATION COURT. Hamilton. 1944. March 31, August 3. O'REGAN, J.

Workers' Compensation—Liability for Compensation—Share-milker—Independent Contractor made eligible to receive Compensation—Compensation payable to Share-milkers—Whether includes Cost-of-living Bonus allowed by Court of Arbitration—"Share-farmers"—"Share-milkers"—Workers' Compensation Act, 1922, s. 13—Workers' Compensation Amendment Act, 1936, ss. 3, 7.

Section 13 of the Workers' Compensation Act, 1922, does not apply to a "share-farmer" because of the proviso to s. 2 (2) of the Workers' Compensation Amendment Act, 1936.

A share-milker injured by accident in the course of his employment is entitled, by virtue of s. 3 of the Workers' Compensation Amendment Act, 1936, to compensation for accidental injury, as well as to his share of the profits under the agreement. The basic wage referred to in s. 7 (4) of that statute does not include the two cost-of-living bonuses allowed by the Court of Arbitration, because such bonuses are payable only where the basic wage has been ordained by award or industrial agreement.

Simpson v. *Geary*, [1921] N.Z.L.R. 285, G.L.R. 50, applied.
Davidson v. *Daysh*, [1932] N.Z.L.R. 1122, G.L.R. 160, not followed.

Counsel: *W. J. King*, for the plaintiff; *North*, for the defendant.

Solicitors: *King and McCaw*, Hamilton, for the plaintiff; *Earl, Kent, Stanton, Massey, North, and Palmer*, Auckland, for the defendant.

INTERNATIONAL SECURITY THROUGH THE EVOLUTION OF LAW.

By R. O. McGechan, B.A., LL.B., Professor of Jurisprudence and International Law, Victoria University College.

It may be as well to open up this discussion with a reminder that law, an operative system of law, does not spell security. In fact the legal significance of revolution is that it is an extra-legal agency of legal change. And an existing system of law which gets out of step with political realities is apt to create the insecurity of extra-legal change rather than security. War resembles revolution as an extra-legal means of effecting change in international legal relations. If international law is to establish security, it must not merely exist, but have a content conducive to security.

It is the more important to keep this aspect of security in mind because the public and lawyers too often forget that there is a system of international law in existence which can in fact, even if in a way far from satisfactory, give its answer to any dispute arising between States, and also because lawyers as such are not and in their nature cannot be effective agents of legal change. They may more effectively bring about a change in the law, by putting it into better form, than their unassisted lay-brothers, but they can only do so where such changes are politically possible. They are not, as lawyers, politically powerful.

I would suggest that our real problem is not the creation of a legal system, but comprehensive change in international law both by way of institutional (or constitutional) development and by the creation of a body of law to further the internationalism of this century. Let us first, however, consider the narrow limitation under which we lawyers operate as agents of legal change.

The Permanent Court of International Justice, set up after the last war, was an eminently successful institution—it succeeded beyond the dreams even of the idealists who worked so hard to get it under way. But it has not developed international law in its twenty years of activity to any really significant extent. When I speak of development of international law, I mean, of course, of the content of international law: the very existence of the Court undoubtedly contributed in its own quiet way to an increase in the authority and prestige of the rule of law. But its work was largely devoted to the interpretation of particular treaties, settling legal difficulties arising out of treaties for the States involved, but making no substantial change in the content of international law generally. It had an occasional case before it where principles of customary international law were involved. Its work on these was invaluable, but invaluable only in settling a law which had been somewhat lacking in authoritative precision. It seems quite clear that the Court, by interpreting treaties and by elucidating the rules of customary international law, can neither create nor develop an international law which will give us security.

So much should have been obvious. I rather think it was to those who shaped and created the Permanent Court. The Court was only expected to deal with justiciable disputes, it was not to deal with political disputes. That is to say, the Court's function was to be that of all Courts, to determine and state the existing legal relations of the parties. With disputes between States as to what their legal relations should be the Court had in the nature of things, because it was a Court, no concern at all. But this has never been thoroughly appreciated by the public. In municipal law they have seen Courts of compulsory jurisdiction able to settle any dispute arising between members of the community. But strangely enough though the lay-public has municipal law constantly in mind when it thinks of international law, it does not realize in drawing this analogy that disputes within a community are not all settled by the Courts, not even all settled according to existing law; the more important of them are settled by Parliament, by the Legislature, as a legal agent of the development of law. In the analogy it drew to the municipal system the public tended on the contrary to expect of international law, in a system possessing a Court, but not a Legislature, all the security it found in law in the municipal system.

Legislation is a legal means of effecting legal change with a range, speed, and adaptability beyond that of other methods of legal change, in particular beyond the slow evolution of law by custom and by a Court. At some stage it becomes necessary to the development, even to the survival, of a legal system. And it has become necessary to the survival of international law. But as lawyers do not make the changes in municipal law—to more than a minor extent—so they will not determine the content of legislated international law. What they can do and should do is inform public opinion on the necessity for an international law which is adequate for the needs of States in this century. What lawyers have only too often done is to bury their ostrich heads (with apologies to that clear-sighted bird) in the obscurity of Austinian legal theory and deny that international law is law at all. Austin's verbalism which excuses lawyers from bothering about international law, and the layman's failure to appreciate the key role of legislation in the settlement of disputes, especially of disputes likely to lead to war, have each contributed considerably to the failure of the system of the 'twenties and 'thirties.

Nothing could better demonstrate the misconceived role of the lawyer in the development of international law than the abortive efforts at codification made for a decade or more. Lawyer delegates of different States were asked to codify branches of international law. The plan grew out of the view frequently expressed that the rule of law in international law could be better grounded if there were a complete or more complete set of rules for a Court to apply. Gaps in international law were admitted: fill them and all would be well. The very basis of this view was that additions to the law were necessary. The need was for legislation. But lawyers were set to codify the law. By codification lawyers understand the bringing of rules of already existing law within the four corners of a

statute, an Act of Parliament. Lawyers were asked to do the impossible, to fill gaps by codifying the law. They were the right persons to codify, but the term had been misapplied. One or two changes resulted, but the scheme failed. It could not do otherwise. What were needed were conventions of statesmen to make new law.

The real defect of our international legal system is that it is trying to solve the problems of this century with a law evolved and in many ways admirably suited to settle the difficulties likely to arise between States under the conditions of the sixteenth, seventeenth, and eighteenth centuries. International law as we know it is very largely the product of an era of expansion in production, in trade, in culture, in the settlement of Western Europeans over the face of the earth. Unlimited competition, a "free-for-all," meant steadily, even rapidly, rising living standards. Any one could go seek and secure his raw materials from an undeveloped and unappropriated world of plenty. There was no need to secure by international law access to raw materials for all States, great and small. Now we need an international law to secure not the conditions for instance under which we can expand State territory, but to secure international co-operation—economic and otherwise.

The content of international law as we know it is incapable of expansion by judicial techniques of legal development to a system which can secure by law the conditions of international society as we need to secure it to-day. It is grounded on entirely different bases—economic, political and philosophic. Hence the clear need for an organ of comprehensive and conscious legal change—a Legislature.

Our basic need is for constitutional international machinery. In fact the need for legislation involves institutions to legislate.

I do not believe that we will achieve anything worthwhile by enacting—in whatever way it is enacted—laws guaranteeing security. What we want is not laws guaranteeing security, but laws setting up conditions which will bring security. You can enact a law guaranteeing international security perhaps overnight, just as you can pass a law that men shall not drink alcohol, or shall wear neck-to-knee bathing-costumes; your enactment would be just one more silly law. The Kellogg Pact was such a law. And one defect of the League of Nations was that it provided guarantees without providing anything like adequate means for developing international law.

What I am advocating is a positive and not a negative approach to the problem of international security. Realization of the maximum degree of co-operative effort by and among States, rather than proscription of aggression by one on the other. The former will tend to result in the latter: the latter can never itself achieve security.

Now we have had a considerable amount of co-operation between States during the last half century and more, co-operation realized in terms of international law. Most of this has been achieved by convention followed by multilateral treaty. No specific constitutional machinery has been involved in these developments. Conventions called *ad hoc* to achieve limited purposes have achieved a great deal. The man in the street who denies the existence of international law, and the lawyer who does the same, could be pertinently reminded that he can send a letter to his friend in, say, Spitzbergen, cheaply, quickly, and with certainty that it will arrive, and this because of international law. This development has come about without constitutional machinery at all. Beyond giving others a useful reminder of this kind—and I agree some more attention should be given to it in our teaching—this positive but piecemeal achievement which is going on is not one we lawyers can greatly assist in, unless we chance to be specialists in the matter being reduced to legal form.

No doubt a good deal more will be achieved by future *ad hoc* treaty. And its success, however limited, suggests that more permanent international bodies may well be set up for limited international law-making purposes. Above these, however, we must have some permanent and more general law-making agency, providing by its regular meetings a forum for discussion of matters of international moment, and the opportunity to initiate and enact legal change. It is in the creation and constitution and powers of this body that we lawyers should say our say.

We have now a concrete semi-official draft proposal for an international constitution in the form of the Dumbarton Oaks proposals. These have come to hand since this series first appeared, and this is not the place to subject them to detailed examination or criticism. But lawyers should inform themselves on the proposals and the main lines of criticism emerging in this and other countries.

As I have stressed the need for legislation as the crux of the problem of security through law, it follows that those parts of the constitution of an international organization which deal with unanimous or majority vote, initiation and veto of new laws are its crucial features. These parts will largely determine what is to be the content of international law. They should, if they are to further security through law, reflect forces which tend to base laws solidly.

If laws are to contribute to security, we must needs have laws which will be enforced. In municipal law very frequently skilful exploitation of their political power by a minority can get a law on the statute-books, but cannot get it enforced when it is there. The result is not security through law, but insecurity through law. Insecurity may just as surely result from not altering the law. If a minority, in other words, can exploit its power to keep a law in being, it may well succeed in doing so, but it may well at the same time undermine the whole legal system.

The particular difficulty of securing any legislative change in international law is the so-called "unanimity rule." This rule means that there can be no change in the law binding on any State unless that State agrees to it. The unanimity rule is based in theory on the sovereignty of States. But only in a very narrow and unsatisfactory sense can even this be urged in its favour. Let us take the extreme case, the case where one State alone will not consent to a proposed change, and so vetoes a new law sought by all the others. This means that one State has law in accordance with its will, and sixty-odd have law not consonant with their will. Unanimity certainly does not further their sovereignty for the sixty-odd. The unanimity rule in fact defeats its own purpose. It does not further State sovereignty, on the contrary it defeats it. What is more it ignores the fact that laws should be such that States are prepared to enforce them. If the law is not to be changed, it must be

because States are more likely to enforce the law as it is; if it is to be changed, it must be because States are more likely to back the new law. Unanimity is in truth a veto, and unless it is the veto of a power necessary to secure enforcement it can only lead to insecurity.

The chance of a law being observed tends to vary both directly as it is consented to and directly as the power which can be counted on to enforce its observance. Consent and power may not be the only factors to be taken into consideration in determining whether a law will be put into operation, but they are vital. The unanimity rule is at variance with both and can only spell insecurity for all. This does not mean that some powers might not by their power of veto contribute to security. If we are to rely on the Great Powers to enforce the law, we will lessen the strain on the system by not having laws which the Great Powers are loath to enforce and by not having an international constitution so framed that it results in such laws. It should not be forgotten, however, that laws which a large number of small States are loath to obey also puts a strain on the system. Our international constitution and our laws should reflect the two poles of power and consent.

Admittedly it is quite true that without a constitution framed specifically to produce laws tending to security we may get many changes in international law as beneficial as the Postal Union. But the right sort of law-making body will achieve more, and that more more quickly; and speed of legal change may well be essential to security.

ROAD TRAFFIC AND THE WAR EMERGENCY REGULATIONS.

XIV.—Recent Regulations.

By R. T. Dixon.

As there have been a number of regulations issued since the last article in this series ((1944) 20 New Zealand Law Journal, 192), this article is in two divisions, the first dealing with road traffic generally, and the second relating to oil fuel and char control.

1.—Road Traffic.

Lighting Restrictions (Revocation) Emergency Regulations, 1944 (Serial No. 1944/108).—These regulations may be regarded as having historic interest for they mark the first important abeyance of war-time controls. All "black-out" lighting restrictions are removed, including the former obligation to retain the headlights of a motor-vehicle in adjustment so that "black-out" requirements could readily be fulfilled.

Motor-vehicles Emergency Regulations, 1940, Amendment No. 2 (Serial No. 1944/152).—The short effect of these regulations is to revoke any driver's license issued (free of charge) by the Commissioner of Transport to members of the Armed Services (whose duties require them to drive) when the holder is discharged or placed on indefinite leave without pay. The fact that the holder of such license is in civilian clothes is *prima facie* evidence under the regulations that the license has thus become inoperative.

Warrant of Fitness Emergency Order, 1944 (No. 2) (Serial No. 1944/168).—This order replaces the order Serial No. 1944/143, which in turn replaced the order, Serial No. 1943/182. Both this order and the ones replaced had to do principally with variations in the duration of warrants of fitness for different types of motor-vehicle, and the present position may briefly be described as follows:—

For private cars not insured in the business class—*i.e.*, having a "Car" and not a "B–C" license label—and for trailers and motor-cycles the warrant lasts for twelve months. The provision for termination of the private-car warrant of fitness if the vehicle exceeds 2,000 miles in the first six months has been revoked. For all other motor-vehicles the warrant of fitness lasts for six months only.

2.—Control of Oil Fuel and Char.

Revocation Notice in 1945 New Zealand Gazette, *214.*—This notice revokes as from March 1, 1945, the notice whereby the delivery of coupon petrol into containers, other than motor-vehicle tanks, was prohibited, and whereby it was made necessary to sign the coupon and endorse on it the registration number of the respective vehicle when exchanging it for motor-spirit. The revoked notice was published in *1944 New Zealand Gazette*, 954.

Oil Fuel Emergency Regulations, 1939, Amendment No. 8 (Serial No. 1944/153).—This amendment relates solely to offences pertaining to the forgery or counterfeiting of petrol coupons or licenses. Alternative penalties are provided to those available under the Crimes Act, 1908, and the Police Offences Act, 1927. It is stated to be a defence if the defendant proves lack of *mens rea* (see in this connection *Power* v. *Potterton*, (1945) 4 M.C.D. 9). Special provisions are included dealing with the possession of dies and plates for counterfeiting or forging, and it is made an obligation for any person in possession of them or in possession of forged or counterfeited coupons or licenses to deliver the articles to a constable or the Oil Fuel Controller.

Oil Fuel Emergency Regulations, 1939, Amendment No. 9 (Serial No. 1944/170).—This removes char (for gas producers) from the rationing control imposed by the Oil Fuel Emergency Regulations, 1939, Amendment No. 6 (Serial No. 1943/15), and the latter are consequentially revoked.

Nevertheless it was held by Mr. W. H. Woodward, S.M., in *Richards* v. *Butler* (not reported), a defended case at New Plymouth, on February 12, 1945, that, in spite of this Amendment No. 9, the *Oil Fuel (Horse Transport) Control Notice, 1944 (No. 2) (Serial No. 1944/41)*, still applies to motor-vehicles driven by the use of char, as the latter notice has its authority also under the Supply Control Emergency Regulations, 1939 (Serial No. 1939/131), which, with the amendments thereto, contain the necessary powers.

This latter notice for control of horse transport was recently the subject of an interesting judgment by Blair, J.—*i.e.*, *Brown* v. *Roworth*, [1945] N.Z.L.R. 7, which decided that the transport by motor-vehicle of race-horses in stages, the total motor-vehicle distance of which exceeds thirty miles, is a breach of the order even if each individual stage is less than thirty miles, this distance being the maximum of motor-vehicle transport permitted under the order for race-horses. It seems also from the judgment that it is sufficient for the prosecution to prove the matters set out in cl. 4 of the order, and it is for the defendant to prove, if he can, that the exceptions provided in cl. 5 apply as a defence in his favour. The learned Judge also considered that all three of the parties who performed the various stages of the journey, were equally liable to conviction—*e.g.*, even the first carrier who made the initial stage of less than thirty miles.

SETTLEMENT OF INTEREST IN DECEASED PERSON'S ESTATE.

Reservation to Settlor of Life Interest and Power of Appointment by Will.

By E. C. Adams, LL.M.

Explanatory Note.

This is an excellent form of settlement for the modern Micawbers, the spendthrifts, the *prodigi*, as Cicero and other Roman lawyers would have designated them. The practical effect of the settlement is that, as it is irrevocable (as to which see *Naas* v. *Westminster Bank, Ltd.*, [1940] A.C. 366, [1940] 1 All E.R. 485) the settlor has deprived himself of the power to dispose of the corpus *inter vivos*, but the trustee at his discretion may from time to time pay out of the corpus sums for the maintenance and benefit of the settlor; probably the settlor could demand a re-transfer of the corpus, if he surrendered his general power of appointment.

Its liability to taxation, however, in these days of terrific taxation, demands our closest attention.

First as to gift duty, one will search in vain for any reported case in point. The following example is given, however, in a modern textbook: "A. transfers property to trustees, in trust for himself for life and after his death in trust for such persons as the settlor shall by will appoint, and in default of appointment in trust for his widow for life with remainder to his children. The instrument contains a power of revocation during the lifetime of the settlor. The interests (excepting donor's life interest) taken under the instrument are liable to be divested by the settlor making his will. The Commissioner, in the first instance, will probably assume under this section (s. 47) that the settlor will make a will. Therefore, the value of the gift is nil": *Adams's Law of Death and Gift Duties in New Zealand*, 165. If this is so, then *a fortiori* a settlement in the form of the following precedent is also exempt from gift duty. The difference between the example just cited and this case is, that, in the example, there is a gift over of the corpus in default of appointment: here there is no gift over in default, and therefore, if the settlor does not appoint by will, the corpus reverts to his estate by way of resulting trust.

Secondly, as to liability for death duty, so much of the corpus as remains subject to the trust at the settlor's death will be exigible as to estate duty under s. 5 (1) (*a*) or (*h*), and as to succession duty, under s. 16 (1) (*a*) (*b*) or (*c*), of the Death Duties Act, 1921.

Finally, as to stamp duty, the property comprised in the trust instrument will be liable at one-half conveyance rates as a declaration of trust, under s. 101 of the Stamp Duties Act, 1923. It is therefore liable to duty of £2 1s. 3d., the subject-matter of the instrument being a chose in action or an interest in a trust fund.

Precedent.

THIS DEED made the day of one thousand nine hundred and forty- BETWEEN A.B. of Hastings in the Provincial District of Hawke's Bay in the Dominion of New Zealand, land agent (hereinafter referred to as "the settlor") of the one part AND C.D. of Hastings aforesaid solicitor (hereinafter referred to as "the trustee") of the other part WHEREAS E.F. (hereinafter referred to as "the said deceased") of Wellington, cycle dealer died on or about the day of AND WHEREAS probate of the will of the said deceased was granted to the trustee by the Supreme Court of New Zealand at Wellington on the day of AND WHEREAS the settlor is entitled in terms of the said will of the said deceased to the whole of the estate of the said deceased AND WHEREAS the settlor is desirous that all the sum of one thousand five hundred pounds (£1,500) part of the moneys due and owing to her by the trustee in respect of the estate of the said deceased (hereinafter referred to as "the trust fund") shall be held by the trustee upon the trusts and for the purposes hereinafter appearing NOW THIS DEED WITNESSETH and it is hereby agreed and declared as follows:—

THE TRUSTEE shall stand possessed of the trust fund UPON TRUST—

(*a*) To invest the same in securities authorized by the Trustee Act, 1908, and to pay the income arising therefrom to the settlor during his lifetime.

(*b*) At any time and from time to time to pay to the settlor for his maintenance and benefit such sums from the capital of the trust fund as he shall in his absolute discretion think fit.

(*c*) From and after the death of the settlor as to the corpus of the trust fund or so much thereof as then remains for such person or persons in such shares at such times for such interests and generally in such manner as the settlor shall by will appoint.

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

SIGNED by the said A.B. in the presence of— A.B.

G.H.,
Accountant,
Hastings.

SIGNED by the said C.D. in the presence of— C.D.

I.J.,
Public Servant,
Hastings.

LAND AND INCOME TAX PRACTICE.

Husband and Wife: Aggregation of Incomes.

The following is not intended to be a full explanation of the various provisions of s. 13 of the Land and Income Tax Amendment Act, 1939, with which practitioners, by now, will be thoroughly conversant, but is merely an indication of what the practice of the Income Tax Department would probably be in applying the Act in certain circumstances.

1. Life Insurance Exemption.—Where both the husband and wife pay life insurance premiums in respect of life policies effected on their own lives, the special exemption which will be allowable in an aggregate assessment in respect of life insurance premiums, &c., is the actual amount paid, limited in accordance with s. 12 of the Land and Income Tax Amendment Act, 1939, in each case to £150 each or 15 per cent. of their respective assessable incomes which ever amount is the less. This is so even though no tax would have been payable by the wife (or the husband, as the case may be) by reason of the fact that the special exemptions to which she may be entitled exceed her assessable income. Where those special exemptions do actually exceed her assessable income, the balance of the special exemption is allowable to the other party firstly against the *earned* income of the other party (s. 73 (3), Land and Income Tax Act, 1923) even although it would have been allowable against the unearned income of the taxpayer who was—primarily entitled to it, had he or she had sufficient assessable income.

Example:

Husband pays life insurance premium, £50, and wife pays life insurance premium, £30.

	Non-assessable.	Earned.	Unearned.
	£	£	£
Husband's income ..	.. 1,500	600	200
Wife's income ..	.. 1,000	..	220
	£2,500	600	420
Special exemptions:	£		£
Husband ..	200		
Wife	..	.. ..	200
Husband's life insurance ..	50		
Wife's life insurance	..	.. ..	20
Balance of wife's life insurance allowable to husband (against earned)	10	.. 260	220
	£2,500	340	200

Section 77 (1) of the Land and Income Tax Act, 1923, provides that "Every person . . . shall be *entitled* to a deduction by way of special exemption . . . " The taxpayer remains *entitled* to exemption for life insurance (computed by reference to assessable income) notwithstanding a sufficiency of other classes of special exemptions to extinguish the assessable income.

The word "entitled" in the latter part of s. 13 (5) of the Land and Income Tax Amendment Act, 1939, would appear to mean the exemption to which the taxpayer is *entitled* in accordance with s. 77 (1) of the principal Act.

2. Upon the Death of either Husband or Wife.—(*a*) Where a wife dies, the income derived by her to the date of her death must be aggregated with the income derived by her husband during *the whole income year* (not with the income derived by her husband to the date of her death), provided that each of such incomes exceed £200.

(*b*) In the case of the husband dying, the income derived by his wife up to the date of his death must be aggregated with the income derived by the husband *up to such date*, provided, again, that each of such incomes exceed £200. It will be necessary in such cases to furnish a return of the income derived by the wife up to the date of her husband's death, and from the date of death to the end of the income year. Where, however, the wife's income is from farming or some other business source, the Department may accept a return for the full year, and the Commissioner will then apportion the income for the full year between the two periods on a time basis or on such other basis as he considers equitable.

3. Marriage during the Year.—Where a woman is married during the income year, she is entitled to £200 personal exemption in respect of the period up to the date of her marriage. An exemption of £200 or the amount of the wife's assessable income from the date of marriage (whichever is the less) is also allowable in an aggregate assessment from the date of her marriage to the end of the income year. "Aggregable income" is defined as "the income . . . derived by a married woman while living with her husband." Further provision is made by subs. (11) for the assessment of the balance of a married woman's income which is not aggregable income.

In the case of a male taxpayer being married during the income year, the position is different and the aggregate assessment made under the provisions of s. 13 must include the whole of the assessable income derived by him during the income year and not merely that portion derived by him since the date of his marriage. Section 13 is an assessment section and the reference made therein to the "assessable income derived by a married man" refers to the assessable income of a man who is married at the commencement of the *assessment* year—*i.e.*, the commencement of the year immediately following the income year.

In these connections, it should be noted, however, that aggregation is not applied in any case where the total tax which would be payable under separate assessments if s. 13 of the Land and Income Tax Amendment Act, 1939, had not been passed is reduced.

While overseas, a taxpayer was married and shortly afterwards he and his wife came to New Zealand with the intention of residing permanently here. The taxpayer had a substantial income from New Zealand and his wife was in receipt of a substantial income from England. For the purposes of s. 13 of the Land and Income Tax Amendment Act, 1939, income derived by her *from date of arrival in New Zealand* would be aggregable income if her income from that date to the end of the income year was in excess of £200.

Although s. 13 defines aggregable income as income derived by a married woman *while living with her husband* and her income from the date of marriage would be aggregable income, such income would not be aggregable *assessable* income until she became a resident of New Zealand—*i.e.*, until her arrival in this country.

4. Husband and Wife living apart.—Section 13 (2) of the Land and Income Tax Amendment Act, 1939, states: "For the purposes of this section, a married woman shall be deemed to be living with her husband unless the Commissioner is satisfied that she is in fact separated and apart from him, whether pursuant to a decree, order, or judgment of any Court, or pursuant to an agreement for separation, or by reason of the desertion of one of the parties by the other of them or otherwise."

The question of whether a husband and wife are living apart with the result that the aggregate section cannot be applied is wholly one of fact and must be considered on the particular circumstances of each case. Generally speaking, a husband and wife are not deemed to be separated within the meaning of the section until they have ceased to have a common home—*e.g.*, mere temporary absence from one another for business purposes or on account of illness or other reasons, even although such absence extends to a prolonged period does not in itself put an end to the common home or residence and the provisions of s. 13 would still apply.

5. Losses incurred and carried forward.—A. Where either husband or wife incurs a business loss and is entitled to have that loss carried forward under the provisions of s. 81 of the Land and Income Tax Act, 1923, the loss must be carried forward against the income of the person who actually suffered it. The balance of any such loss cannot be allowed against the assessable income of the husband or wife as the case may be. In such a case, if *ordinary* assessments had been made, the allowance to the person suffering the loss would have been limited to the amount of his or her assessable income and any balance would have been non-deductible in that year.

Although the provisions of s. 13 are mandatory and must be applied where the aggregable incomes of husband and wife both exceed £200, it seems to follow from the language of s. 13 (5) that the husband's business loss may in an aggregate assessment be allowed only to the extent of the assessable income derived by him (excluding the aggregable income of his wife). In separate assessments under subs. (6) the losses may similarly be allowed only to the extent that they are allowable in an aggregate assessment. (NOTE.—Subsection (6) merely

authorizes the Commissioner to apportion the losses allowable in an aggregate assessment between husband and wife. It does not authorize him to disallow any losses which would have been allowable in an aggregate assessment.)

The provisions of subs. (8) cannot be relied on as indicating that the husband's losses must in an aggregate assessment be allowed against the aggregable income of the wife, and may therefore reduce the tax below the amount payable in an ordinary assessment. It is true that by reason of the allowance of losses under s. 81, the *rate* of tax in an aggregate assessment may be lower than in an ordinary assessment, but this is not because such losses are allowed in excess of the assessable income of the husband or wife (whichever sustains the losses) but because the special exemptions allowable under subs. (5) may reduce the taxable income below the taxable income of the husband or wife in an ordinary assessment and thereby reduce the tax payable. For example, assuming the husband's assessable income to be £1,000, the wife's aggregable assessable income to be £1,200, and the husband has a business loss able to be carried forward under s. 81 of £1,000. The wife's assessment in an ordinary assessment would be on £1,000—*i.e.*, £1,200, less the special exemption of £200—whereas in separate assessments under subs. (6) the wife's assessable income would be on £1,000 at the rate for £800—*i.e.*, £1,200 less special exemption of £200 plus husband's special exemption of £200. This is the type of reduction in taxation which is authorized by the proviso to subs. (8) and is, in fact, the *only* case where the aggregate section can be applied where the tax is reduced below the tax that would be payable under ordinary assessments.

In the following example, no tax would be payable by the wife, as after allowing a deduction, for *rate purposes* of the husband's personal exemption of £200 from the wife's taxable balance, the rate is "Nil."

	£		£
Husband—Income	500	Wife—Income	400
Less loss brought forward ..	500	*Less*—	
		Personal exemption £200	
		Child exemption 50	
			250
	..		£150

B. Where the husband's assessable income for the year is extinguished by past losses and he also derives *non-assessable income*, such non-assessable income is aggregated with the wife's income provided the assessable income before setting off past losses, plus the non-assessable income amounts to or exceeds £200. The non-assessable income itself need not amount to £200.

Example:

Husband's assessable income, £400.
Business loss in *previous year*, £700.
Non-assessable income, £150.

The non-assessable income is aggregated with the wife's income and the balance of the loss is carried forward by the husband.

C. Where the non-assessable income exceeds £200 and a loss from assessable sources is sustained, there can be no aggregation of the non-assessable income unless such income, after deducting the loss from assessable sources, exceeds £200.

Example:

Loss from assessable sources, £100.
Non-assessable income, £250.

There is no aggregation of the non-assessable income in such circumstances. Had the loss from assessable sources been £50 or less so that the non-assessable income was not reduced below £200, the full amount of £250 would be included in an aggregate assessment.

D. Where the husband sustains a loss from an unearned source such loss over and above his unearned income from other sources must be set off against his assessable earned income and not against the assessable unearned income derived by the wife.

Example:

Husband's salary, £1,220.
Loss on rents, £20.
Wife's interest income, £300.

The aggregate assessment will be made on the basis of an assessable income of £1,200 earn d income (£1,220 less £20) and £300 unearned income.

E. Where the wife derives non-assessable income and sustains a loss from unearned sources (the net income still being in excess of £200), provided the tax otherwise payable is not reduced by aggregation, the unearned loss is set off against the husband's unearned income, and in the absence of any unearned income or to the extent that it is insufficient against his earned income. The non-assessable income is carried over in full.

6. Husband Proprietary Shareholder and Wife a Shareholder.—Where a taxpayer is a proprietary shareholder in a proprietary company and his wife is a shareholder in the same company, but is not a proprietary shareholder, any dividends derived by the wife from that company are *not* included in an aggregate assessment which includes the husband's proprietary income.

Note, however, that where the wife's total aggregate income exceeds £200, then any dividends from the proprietary company in which she is not a proprietary shareholder would be taken into account for *the purpose of calculating the tax payable* under an aggregate assessment as if the proprietary provisions had not been passed—*i.e.*, in deciding the credit allowable in the aggregate assessment in respect of the husband's proprietary income.

Where, however, dividends in terms of s. 9 (*e*) of the Land and Income Tax Amendment Act, 1940, are to be included in addition to the proprietary income, the amount so to be included will be increased by that proportion of the excess, which the wife's shares bear to the total shares.

NEW ZEALAND LAW SOCIETY.

Meeting of Council.

(*Concluded from p 38.*)

Law Reform Bill.—At the previous meeting of the Council the provisions of the proposed Bill had been considered and approved with the exception of cl. 8, which concerned the protection of damages awarded to a person for bodily injury, and was thought to require further consideration.

On the motion of the chairman it was decided that this matter should be referred to the District Societies for further consideration and report.

Matrimonial Proceedings: Ex-servicemen.—The Director of Rehabilitation wrote as follows:—

"The Rehabilitation Board is quite frequently approached by ex-servicemen and women for financial assistance to enable them to meet the costs of divorce or separation proceedings, the grounds for which are referable to events during the absence of the applicant from home on war service.

"It would seem that there is in general a very considerable amount of legal work involved in matrimonial proceedings, and that, in the average case a successful petition for divorce involves costs of approximately £35, including disbursements.

"The matter was recently considered in a general way by the Rehabilitation Board, and it was resolved that an approach be made to your Society with a view to obtaining some reduction of costs in proper cases—that is to say, where the grounds on which the petition is filed have arisen as the result of the petitioner's absence from home on military service.

"Your Society was good enough to approve a substantial reduction of legal charges in the conveyancing field, and I shall be very grateful if you will kindly place before it the Board's request that consideration be given to arranging a similar reduction in the case of matrimonial costs. If such a reduction can be arranged, then this Department will be only too pleased to assist practitioners by all means within its power to ascertain in any given case whether the circumstances are such as would justify a remission of part of the costs."

After a lengthy discussion, it was resolved that the Director should be advised that while in conveyancing there was a recognized scale, the fees connected with matrimonial proceedings depended wholly on the work involved. A circular, however, covering the request of the Department would be sent to all Societies and he could rest assured that solicitors could be relied upon to do their best and were in matter of fact doing so.

Houses, Farms, and Businesses: Ex-servicemen.—The Director of Rehabilitation asked that the Society advise its members that wherever possible particulars regarding any properties, businesses, or small farms suitable for ex-servicemen should be supplied to the Department before private offers were sought. It was decided to draw the attention of legal firms to the request and that the Department be advised of the decision.

Post-war Aid: Law Clerks.—The Otago Society wrote as follows:—

"My Council has considered the question of rehabilitation of law clerks and has found the position to be as follows:—

"1. Full-time law students are allowed a bursary by the Rehabilitation Department.

"2. In the case of trades an allowance is made by the Department to supplement the wages of apprentices.

"3. No provision is made in the case of law clerks who desire to obtain practical experience while attending the University.

"Our President and Vice-President interviewed the local Rehabilitation Officer, but found that nothing could be done except by representation to the Department in Wellington.

"We have had here one case of a clerk in full-time employment who is taking lectures at the University, but as from a financial point of view it was not necessary that he should have any assistance no steps have been taken in this case. There are, however, bound to be other cases, both here and elsewhere, of clerks who, although entitled to full wages on account of their period of clerkship through services overseas, are not, in fact, worth to their employer the wages to which they are entitled. It would seem likely that such clerks would probably not be able to obtain employment unless some arrangement could be come to whereby they were permitted to work for less than the rate fixed by the award or agreement and some allowance made to them by the Rehabilitation Department or to their employer to allow the full wages to be paid.

"This will probably be a matter which is within your knowledge, and we shall be pleased to hear whether representations can be made to the Department to do something in the matter, if this has not already been done."

The letter was considered by the Post-war Aid Committee, who suggested that legal employers, in reinstating their employees who had not qualified prior to embarkation, or in appointing a law clerk returning from overseas, should be asked to pay the pre-war service salary plus one year's increment.

At the request of the Committee, Professor McGechan and the Secretary discussed the matter with the officers of the Rehabilitation Department. The view of the Department was that, before putting the matter to the Board, it would be necessary to ascertain what measures the Society was prepared to adopt in meeting the position. It was thought by the Department that the Board would probably assist on reinstatement or appointment by paying the difference between the classified salary and five guineas per week, such grant to continue until the salary due to be paid by the legal office reached five guineas or for a period of three years. In exceptional instances, it was thought that the Board might even agree to an extension of these terms, but each case would require to be considered on its own merits. In addition, the Board would consider an application for a grant to assist the student with University fees and books. In suitable cases, where the clerk desired to attend University, as a full-time law student, the Board would be prepared to allow three guineas per week to a single student and five guineas to a married man, plus an allowance for books and examination fees.

Members considered that the suggestions were very satisfactory, and it was decided to obtain the assurance of District Societies that their members would agree to grant one year's increment to the salary of returned law clerks. When this assurance was obtained the Secretary would be in a position to further communicate with the Rehabilitation Board.

Refresher Courses for Ex-servicemen.—The following letter was received from a practitioner who had attended the refresher course of lectures given in Wellington:—

"As my course is now completed, I wish to record my grateful appreciation of the onerous work undertaken by those gentlemen in Wellington who have prepared and delivered lectures to myself and other returned servicemen.

"One appreciates the time and work which has been volunteered at a time when the profession is so under staffed and under such a heavy strain of work.

"The value of this course has been twofold:

"First, the information acquired as to wartime developments in law and practice.

"Second, and in my opinion most important, the association with legal thought and the 'brush-up' of old forgotten knowledge which comes incidentally with the discussion of each subject. It is perhaps difficult to realize the abysmal ignorance of some of us. In varying degrees we had some knowledge and some experience, but in my case, as I think in others also, it appeared to be all gone. I refer to the most elementary matters. It was necessary to bridge this abyss, and it was disturbing to think that the bridge must be built of experience gained through one's blunders. It is in this respect that the course has been so valuable. I believe and I hope that many of my blunders have been avoided, and have so acquired some degree of confidence.

"It might be useful for you to know the routine followed by myself, which was—

"Under the Education Branch of the Rehabilitation Department I spent three months 'full time' at Victoria College. An allowance of £3 3s. per week was paid to me during this period, at the expiration of which I was obliged to return to my practice.

"I am writing this letter with the thought that some indication of an individual's impressions and experience might be of value in dealing with future cases of rehabilitation. This in addition to my sincere expression of thanks for the kind assistance given to us. I can assure you, from my conversations with others concerned, that this deep appreciation is commonly felt."

Servicemen's Settlement and Land Sales Act.—The Taranaki Society forwarded the following letter received from a New Plymouth firm:—

"We suggest provision should be made for compensating the unsuccessful purchaser to the extent of such expenses as he may have reasonably incurred, where the transaction is not completed owing to the land being taken by the Crown pursuant to s. 51 of the above-mentioned Act.

"A person entering into an agreement to purchase a farm must necessarily and unavoidably incur expenses (without reimbursement where the land is ultimately taken under s. 51) in connection with the application for the consent of the Land Sales Committee, including preparation and filing of the necessary form, hearing before the Committee in an endeavour to show cause why the land should not be recommended as suitable for a discharged serviceman, and possibly an appeal to the Land Sales Court, all of which under ordinary circumstances involve the employment of a solicitor and the calling of witnesses, some of whom—*e.g.*, valuers—have to be paid.

"In such cases the vendor is not concerned provided the purchase price is not reduced, the land agent gets his commission, while the unsuccessful purchaser, but for whom the property would not have been brought to the notice of the Crown, has the mournful privilege of having incurred irrecoverable expenses for the benefit of all the parties concerned other than himself.

"We accordingly shall be glad if the matter could be considered by the Council of the Society with a view to having provision made to meet the hardship which unsuccessful purchasers suffer in the cases mentioned.

"Alternatively, we would suggest that before any vendor of farm-lands offers his land for sale, provision should be made in the Act to enable him to first ascertain from the Land Sales Court whether the land is considered suitable for a discharged serviceman."

It was decided to refer the suggestion to the Wellington Sub-committee.

Rehabilitation: Option before considering an Application for a Loan.—The following letter was received from the Nelson Society:—

"It is the practice of the Rehabilitation Office to require a one month's option before considering an application for a loan and quite frequently a final conclusion is not reached within the month, and a fresh option is asked for.

"An option is subject to the provisions of the Servicemen's Settlement and Land Sales Act, and at a meeting of my Council held on Friday last it was pointed out that much inconvenience, and no good purpose, is caused by having to put short-term options before the Land Sales Court.

"The option is nothing at all until exercised, when it becomes an agreement, and the Council considered that, for short options at any rate, all the purposes of the Act would be served by putting the matter before the Land Sales Committee when it became an agreement on exercise of the option.

"It is therefore suggested to the New Zealand Law Society that representations should be made for the amendment of the Act by making an exception of options which are to be exercised within a period not exceeding six months, or possibly twelve months."

It was stated that the practice appeared to be observed not only in respect to rehabilitation loans, but in all cases of options. It was resolved to refer the matter to the Wellington Sub-committee for consideration.

SHAKESPEARIAN EXPERIENCES OF A VETERAN.

Some Untold Tales.

The many learned friends of the Editor of the *Law Reports* who know him only in the severely legal vein from his headnotes will doubtless be pleased to have some headnotes in lighter vein from him and derive as much entertainment from the following badinage—which as that inveterate punster would say, shows that he is not bad-in-age at all—as did the members of the Canterbury University College Drama Society to whom it was addressed, at their reception by the President (Dr. O. C. Mazengarb) and the executive of the Wellington Shakespeare Society at the Alexander Turnbull Library on February 1. Of special interest to the profession are his references to the part that learned Judges and brethren played upon the stage in the hey-day of their youth.

Taking his cue from the President's introduction of him as one of the Shakespearian pioneers at Canterbury College, "sixty, seventy, or eighty years ago," Mr. von Haast, in addressing the president, producer, presenter, players, play-goers and Press, said:

"The temptation is strong to begin with a statement of fact: 'I played once in the university, and was accounted a good actor'; but, if I commenced with this opening, Hamlet would naturally automatically respond with his rude sarcasm to poor old Polonius. Or, if I said, 'I have news to tell you,' about our first Shakespearian production, *Much Ado About Nothing*, over sixty years ago, Hamlet, I am sure could not refrain from saying in a very audible aside, "Buz, Buz!" Those two openings are therefore barred. In any event, I must watch my step, for if I get into my anecdotage, I shall see you nudging each other and whispering, 'How true to life was Mr. Ainsley's brilliant characterization of an old man (Polonius).'

"Well, shall I try the Queen's Gambit, and tell you that in 1889 (as 'Archie,' a school-boy in an Eton jacket) I played in *A Scrap of Paper* with Miss Marsh's mother (then Miss Rose Seager) of whom my friend and colleague, the late Mr. Justice O. T. J. Alpers, who was stage manager and played a jealous husband, wrote, 'Her beautiful speaking voice, her fine stage-presence, and her great natural gifts combined to create for her a reputation as an amateur actress that few have equalled and none have excelled.' If I do so, I may be thought to be flattering Miss Marsh, who has inherited from both her parents her dramatic ability and to her mother's charm and other qualities has added a vivid and fertile imagination and a power of writing terse and vigorous English.

"Mention of 'O.T.J.' recalls to one an incident that shows how lucky you are to be your own scene-shifters and not run the risk of a catastrophic end to Hamlet such as Charles Warner experienced. That sound but robustious actor, like Polonius and *Jepthah, had 'one fair daughter and no more,'* Gracie. Alpers and I, in the hey-day of our youth, were apt to be both stage-struck and love-struck when a touring company came round with an enchanting young actress, a tendency which no doubt still exists among members of your drama society. Alpers being more temperamental than I was, went on tour with Warner's Company. At Napier, Warner had not used the mechanicians of the local theatre 'according to their deserts' and so made sure that they 'mocked him not.' In consequence, when he lay in the arms of Horatio, gasping out his soul and beginning 'O, I die, Horatio,' down came the curtain. The rest was certainly not silence; from behind the curtain came a loud voice, not at all that of 'a scholar and sweet prince,' 'being round' with the scene-shifters in very extravagant and un-Shakespearian language. After a few minutes up went the 'rag' again—as we used to say, when we were boys. Hamlet, 'the potent poison quite o'er-crowing his spirit,' got as far as his declaration that Fortinbras had his dying voice, when *Thud!* and he disappeared from the view of the audience once more. We might have expected to hear the repetition of a line from his first soliloquy,

'Break my heart, for I must hold my tongue,'

but from behind was muttered in a stage whisper, 'Damn it, I *will* die,' and Hamlet, angry but determined, stalked before the curtain and proceeded to die to the bitter end. By this time the audience was in the condition of that one, about which the schoolboy wrote home,

> Dear Dad, I was sorry you couldn't come to see the school production of *Hamlet*. Lots of fathers and mothers came, and though most of them had seen it before, they laughed just the same.

"It is to your credit that in spite of all the incongruities, the melange of fancy dress and sac-suits of which the critics complain and which, to my mind, handicapped the players, and in spite of the very thin line that in both tragedy and melodrama divides tears and laughter, your *Hamlet* never got a laugh, but held the audience all the time.

"That brings me to another quotation from O.T.J. Writing of our presentation in 1890 at the Theatre Royal, Christchurch (*inter alia*) of the Malvolio scenes from *Twelfth Night* in which Alpers was Malvolio, I the mischievous musical clown Feste, and W. F. Ward, Sir Andrew Aguecheck, Alpers wrote: 'Among the audience there were those who would much rather have seen University students fail lamentably in *Hamlet* than succeed hilariously in *Hot Codlins* [not 'Hot *Comedies*' as the *Evening Post* had it]'.

"Would that O.T.J. had been with us this week to see you not 'fail lamentably' but 'succeed hilariously,' too hilariously according to some critics, in *Hamlet*. Never mind. *Hamlet* was meant by Shakespeare to be acted as a melodrama. You have only to read Kyd's *Spanish Tragedy or Jeronimo*, which, Professor Shelley told us, was much more popular than any of Shakespeare's plays, to realize how the Elizabethans lapped up the wildest and bloodiest melodrama.

"And in spite of all the incongruities I have referred to, you made the play alive, the characters human beings. Hitherto, I had considered the King and Queen, especially the latter as rather colourless, but at your show I understood for the first time how strong an urge Claudius had to assassinate his brother. The critics have complained that Miss Marsh has made the costumes and the play too modern. My complaint against her is that she has not made it modern enough. Laertes is the only up-to-date character, and with his revolver pointed at the King immediately puts on the shelf all Hamlet's sword-play. It is evident that Reynaldo didn't look closely enough after Laertes in Paris according to the directions of Polonius, and that Laertes had taken a jaunt to Chicago. And when the King had 'appeased' him—we must use modern terms and obtained his assent to the 'liquidation'—I believe that is right too—of Hamlet, Laertes would naturally have replied 'O.K. King. You've said a mouthful, we'll sure take this guy, Hamlet, for a ride.' Hamlet's ship should have been sunk by a U-boat, and instead of hearing only the tramp of Fortinbras's infantry we should have seen his planes in the sky and his tanks rolling on to another partition of Poland. Ophelia's funeral should have taken place at the Crematorium. What a thrilling scene it would have made! Hamlet and Laertes struggling at the edge of the furnace, the audience not knowing whether one or both might not be precipitated into the flames!

"Miss Marsh could surely extract a thriller from the motif of the story of Hamlet. Her imagination could find a much cleverer way of discovering the guilt of Claudius than the clumsy device of a play which gave Hamlet away. The title is obvious 'The Envenom'd Stuck or the Poisoned Cup.'

"What gives me special pleasure, and I wish O.T.J. were here to share it, is—to use another modern expression—to witness the 'come-back' of that veteran Dundas Walker, not 'lagging superfluous on the stage,' but, as one of my *colleagues on the executive maintained*, '*the most satisfying* ghost' that she had yet seen in the play.

"It is close on half a century since Dundas Walker and Tom Cane founded the Canterbury College Dramatic Club and produced the burlesque, *Acis and Galatea*.

"The previous year Walker and Cane produced *William Tell*, stage-managed by Alpers, in which, besides themselves Mr. Justice Blair, then known as 'Archie' Blair, John Glasgow and G. T. Weston also took part. They took St. Michael's School-room and got a crowded house, as admission was by invitation *gratis*, and each performer paid for his own 'props.' George Weston was a bear, the skin of which cost him £5. He not only paid the piper but had to dance to the tune of the song sung by the bear-leader, whose professedly Italian refrain still haunts and can be reproduced by the learned Judge, when he gets a fellow Canterbury Collegian into a quiet corner.

"Players, I am proud of you. I hope that you have been 'well bestowed' and that

> Your visitation shall receive such thanks
> As fits a King's remembrance."

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.—*Gift Duty—Voluntary Mortgage by Parent in favour of Child—Liability to Gift and Death Duty.*

QUESTION: A., my client desires to make a present of £1,000 to his daughter B., who will shortly attain the age of twenty-one years. He does not desire to make an immediate payment of the £1,000, but is willing to pay interest at 5 per cent. in the meantime. As security to carry out his promise he desires to mortgage his land to B. on a long-term mortgage. Will the £1,000 be liable to gift duty now and will it be liable to death duty on his death?

ANSWER: The voluntary mortgage will be liable to gift duty now: s. 39 (*c*) of the Death Duties Act, 1921. It will also be liable to death duty if the £1,000 remains unpaid at A.'s death, B. being deemed for succession-duty purposes a successor to the £1,000, which cannot be deducted from the dutiable balance for the purposes of estate duty: *Marshall* v. *Commissioner of Stamp Duties*, [1942] N.Z.L.R. 317, G.L.R. 241.

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2. Trusts and Trustees.—*One Trustee becoming insane—Appointment of another Trustee—Vesting of Trust Property.*

QUESTION: A. and B. are trustees under a settlement. B. has become insane, and A. in pursuance of s. 78 of the Trustee Act, 1908, has by deed appointed C. a trustee to act in B.'s stead. In this deed there is the usual vesting clause. The assets of the settlement consist of Land Transfer mortgages and inscribed stock, all of which are at present registered in the names of A. and B. Can A. and C. become registered proprietors by means of a transmission, or must application be made to the Supreme Court?

ANSWER: Transmission is not applicable because there has been no vesting of the legal title by operation of law in A. and C. jointly: s. 80 (4) of the Trustee Act, 1908, ss. 48 and 49 of the New Zealand Loans Act, 1932.

Application must be made to the Supreme Court under the Trustee Act, 1908, either for an order appointing A. to convey the assets to himself and C.: (*In re Goodwin* [1937] N.Z.L.R. 30), or for a vesting-order vesting the assets of the trust in A. and C.: (*In re H.W.*, [1942] N.Z.L.R. 462).

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3. Justices of the Peace.—*Practice—Remand—Accused on Bail—Length of Remand.*

QUESTION: Does the limit of eight days' period of remand apply when an accused is out on bail?

ANSWER: Apart from consent, the period of remand fixed by s. 147 of the Justices of the Peace Act, 1927, is fixed at eight days. In the Canadian cases of *R.* v. *Solloway*, *R.* v. *Mills*, (1930) 1 W.W.R. 486, it was held that where an accused is out on bail an adjournment of a preliminary inquiry may be for more than eight days; the limitation of eight days imposed by s. 679 (*c*) of the Criminal Code on a "remand" being entirely for the benefit and protection of an accused who is in custody; and in *R.* v. *Garrett*, [1918] 1 K.B. 6, 10, 11, Avory, J., expressed the opinion that the period of eight days applied only when the accused was remanded in custody. It would thus appear that when a person is on bail, the period of limitation of eight days would not apply. However, until the matter is settled more definitely, it would be advisable not to remand for a longer period in any event—bail or otherwise—unless the necessary consent is forthcoming.

OBITUARY.

Mr. J. A. Cook, Dunedin.

Mr. John A. Cook, who died in Dunedin, on February 18, at the age of ninety-two, held the distinction of being the oldest practising member of the legal profession in New Zealand. He was educated at King's College, in England, and arrived in Dunedin in 1873 to join the legal firm founded by his father, Mr. George Cook, who arrived in Dunedin in 1859. The deceased was admitted as a barrister and solicitor in 1876, and became a partner in his father's firm in 1877, the firm being known as Messrs. G. and J. A. Cook. On the death of Mr. Cook's father the name of the firm became Messrs. Cook, Lemon, and Cook, the deceased being the senior member. Mr. Cook was in active practice practically up to the time of his death.

Mr. Cook took no part in public life. He occupied the position of Chancellor of the Diocese of Dunedin for many years up to the time of his death. He had been a member of the Fernhill Club since 1879, and was its oldest member.

Mr. Cook was some years ago keenly interested in horse-racing. He was a member of the committee and a steward of the Dunedin Jockey Coub for a number of years in the early days, and after a retirement lasting a year or two he served again on the committee for a period. He raced under the name of "Mr. J. Brett," and among the horses he owned and raced were three well-known performers — Red Gauntlet, Crichton, and Blackstone, which he purchased from Australia. Blackstone later went back to Australia and left some good stock. The deceased is survived by his wife and two sons—Mr. Spencer Cook, who is in the firm's office, and Captain R. B. G. Cook, a member of the New Zealand Medical Corps.

RULES AND REGULATIONS.

Animals Protection and Game Regulations, 1939, Amendment No. 2. (Animals Protection and Game Act, 1921-22.) No. 1945/15.

Offensive Trades Notice, 1945. (Health Act, 1920.) No. 1945/16.

Transport Licenses Emergency Regulations, 1942, Amendment No. 2. (Emergency Regulations Act, 1939.) No. 1945/17.

Camping-ground Regulations Extension Order, 1945. (Health Act, 1920.) No. 1945/18.

Hairdressers (Health) Regulations Extension Notice, 1945. (Health Act, 1920.) No. 1945/19.

Wheaten Stock Foods Control Notice, 1945. (Supply Control Emergency Regulations, 1939, and the Wheat and Flour Emergency Regulations, 1939.) No. 1945/20.