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

VOL. XXI. TUESDAY, MAY 1, 1945 No. 8

WORKERS' COMPENSATION: ACUTE CORONARY DISEASE.

ON reading an abbreviated Press notice of the recent judgment of the Court of Compensation in *Charlton* v. *Makara County* (to be reported), it might have been thought that a revolutionary change in the law had been achieved. Lawyers, on considering the judgment itself, will realize that it merely creates a new refinement in evidence in claims for compensation where the injury is due to what is popularly (though inadequately) termed "heart disease," by distinguishing "coronary occlusion" from "coronary insufficiency."

To understand the effect of the judgment in *Charlton's* case, it may be well to consider some of the earlier judgments of the Courts determining claims for workers' compensation. We propose to consider only the legal results following from the Court's balancing of the medical evidence given in these cases; and to leave it to our readers to peruse for themselves and apply the detailed medical evidence, as set out in such judgments, that led to the legal results with which we are concerned.

It is almost unnecessary to quote s. 3 (1) of the Worker's Compensation Act, 1922, which provides—

> If in any employment to which this Act applies personal injury by accident arising out of and in the course of the employment is caused to a worker, his employer shall be liable to pay compensation in accordance with the provisions of this Act.

Well-known authority shows that the term "*accident*" is used in its popular or ordinary sense, and means a mishap or untoward event not expected or designed; the injury must be directly attributable to the accident; and it must be shown, before an accident can be said to "arise out of and in the course of the employment," that there was some causal connection between the accident and the employment. In other words, once the "accident" is established, there must be some relation of cause and effect between the employment and the accident, as well as between the accident and the injury. In every case where death or disablement due to heart disease is the "accident," the question arises whether or not it "arose out of the employment." It did if the evidence or the preponderance of evidence shows that the required exertion producing the accident was too great for the man undertaking the work, whatever the degree of exertion or the condition of health (so that it would have happened whatever the worker had been doing), or whether his employment contributed to it.

Consequently, in each such case, it must be determined whether the worker died or was disabled from the disease alone, or, as Lord Loreburn, L.C., put it, "from the disease and the employment taken together, looking at it broadly." The last-mentioned principle is no different from that of the common law as enunciated in *Dulieu* v. *White and Sons, Ltd.*, [1901] 2 K.B. 669, 679—namely, "It is no answer to the sufferer's claim for damages that he would have suffered less injury, or no injury at all, if he had not had an unusually thin skull or an unusually weak heart"; but, of course, there must be a causal connection between the accident and the injury.

In *Oates* v. *Earl Fitzwilliam's Collieries Co.*, [1939] 2 All E.R. 498, 502, 32 B.W.C.C. 82, it was held by the Court of Appeal (Lord Greene, M.R., and Clauson and du Parcq, L.JJ.):

> A physiological injury or change occurring in the course of a man's employment by reason of the work on which he is engaged at or about that moment is an injury by accident arising out of and in the course of his employment, and this is so even though the injury or change be occasioned partly, or even mainly, by the progress or development of an existing disease if the work he is doing at or about the moment of the occurrence of the physiological injury or change contributes in any material degree to its occurrence. Moreover, this is none the less true though there may be no evidence of any strain or similar cause other than that arising out of the man's ordinary work.

This pronouncement emphasizes the difficulties in heart disease cases of determining whether (*a*) the death or injury is due to the disease alone, in which case its occurrence during a worker's employment may have been fortuitous, or (*b*) whether it is due to some effort or exertion of the worker in the course of his work. In the former class of case, compensation would not be recoverable, the death or injury not arising "out of the employment"; while, in the latter class, it arose "out of and in the course of the employment."

In all these "heart" cases, medical evidence is of great importance, but their very nature usually gives rise to considerable differences of opinion between the medical witnesses, and the Court has to balance the probabilities arising from their evidence, or from the inferences arising therefrom. The principles to be applied were stated by Lord Birkenhead, L.C., in *Lancaster* v. *Blackwell Colliery Co., Ltd.*, (1919) 12 B.W.C.C. 400, 406, as follows:—

> If the facts which are proved give rise to conflicting inferences of equal degrees of probability so that the choice between them is a mere matter of conjecture, then, of course, the applicant fails to prove his case, because it is plain that the onus is upon the applicant. But where the known facts are not equally consistent, where there is ground for comparing and balancing probabilities as to their respective value, and where a reasonable man might hold that the more probable conclusion is that for which the applicant contends, then the arbitrator is justified in drawing an inference in his favour. That view of the law has been stated by the House repeatedly, and it is not open to challenge to-day.

The principle of the New Zealand judgments to which we propose to refer is derived from two decisions of the House of Lords: *Fenton* v. *J. Thorley and Co., Ltd.*, [1903] A.C. 443, 5 W.C.C. 1, and *Clover, Clayton, and Co., Ltd.* v. *Hughes*, [1910] A.C. 243, 3 B.W.C.C. 275. In the former case a worker employed to turn a wheel of a machine, ruptured himself by an act of over-exertion, and it was held that he suffered an "injury by accident," and was entitled to compensation. This case was followed by Sim, J., in *Gibbs* v. *Thompson and Hills, Ltd.*, (1907) 10 G.L.R. 150, and in *Whiteford* v. *The King*, (1908) 10 G.L.R. 315 (which anticipated the later House of Lords decisions). The subsequent leading English decision in cases where heart disease was a factor was *Mc Ardle* v. *Swansea Harbour Trust*, (1915) 85 L.J.K.B. 733, 8 B.W.C.C. 489. The three House of Lords judgments were considered in *McFarlane* v. *Hutton Bros. (Stevedores), Ltd.*, (1926) 96 L.J.K.B. 357, 20 B.W.C.C. 222; and in *Falmouth Docks and Engineering Co.* v. *Treloar*, [1933] A.C. 481, 26 B.W.C.C. 214; and all these cases are reviewed in the judgment of O'Regan, J., in *Miller* v. *Residential Construction Co., Ltd.*, [1941] N.Z.L.R. 251. The broad principle underlying all these decisions is that it is not necessary to prove any specific strain, but it is sufficient if the evidence shows that the continued general strain was so heavy as to lead to a physiological change or injury contributing to death or disablement. That is not to say that every man who dies or is disabled from heart disease while at work dies from a cause arising out of his employment. It is worthy of note, as O'Regan, J., pointed out in *Hooper* v. *The King*, [1940] N.Z.L.R. 213, 217, that in none of the English cases cited was the defence raised that death or injury was due to coronary thrombosis.

Where, as in *Clover, Clayton, and Co., Ltd.* v. *Hughes* (*supra*), a worker suffering from serious aneurism of the heart was employed in tightening a nut by a spanner when he suddenly fell down dead, it was found, on the evidence, that the death was caused by a strain arising out of the worker's ordinary work operating upon a bodily condition that was such as to render the strain fatal. The House of Lords, by a majority, held that it was a case of "personal injury by accident arising out of and in the course of the employment." In *Leask* v. *Palmerston North River Board*, [1941] G.L.R. 554, there was an interval of five days between an effort by the deceased to start an engine, and his collapse and death. O'Regan, J., said, at p. 555, that, had he collapsed and died immediately, the case would have been governed by *Clover, Clayton, and Co., Ltd.* v. *Hughes*, unless a *post mortem* examination had shown that the cause of death was coronary thrombosis.

It is now our purpose to show why coronary thrombosis, as such, has hitherto been deemed in the New Zealand cases where it has been raised as a defence to a claim, an exception to take an accident arising in the course of the employment and causing death or injury to a worker out of the ambit of s. 3 (1) of the statute because it did not arise "out of the employment."

The first New Zealand case in which coronary thrombosis was set up as a defence to a claim for compensation appears to be *Long* v. *Union Steam Ship Co., Ltd.*, [1929] G.L.R. 300, where there was medical evidence by Dr. D'Ath, Professor of Pathology in the University of Otago, based on the *post mortem* examination, that the deceased was suffering from coronary sclerosis and thrombosis, and that heart failure was due to that condition. This evidence also showed that coronary thrombosis is not dependent on exertion, and the deceased may have died in bed or while walking. Frazer, J., said that if the medical evidence had shown that the strain of work was responsible for the man's death, the Court would, of course, have given judgment for the plaintiff; but the weight of evidence was that the deceased had died from something which was altogether independent of exertion.

The distinction between death or injury from coronary thrombosis and other forms of heart condition is authoritatively stated, in the course of an extensive report by Dr. Frank Fitchett, Professor of Clinical Medicine at the University of Otago, set out in the judgment in *Harvey* v. *E. and H. Craig, Ltd.*, [1933] N.Z.L.R. s. 102, 104, where Frazer, J., at p. 103, expressed the Court's view as to the evidence necessary in cases of heart disease to establish that the injury arose out of the employment, as follows:—

> In view of several recent judgments of the Courts in Great Britain and New Zealand, it is unnecessary for a claimant to prove any special momentary strain. It is sufficient, in order to establish a claim, to prove that the work that the deceased was doing contributed in some material degree to his death. The deceased, in the present case, was suffering from advanced disease of the coronary arteries, and might have died at any time; but, nevertheless, if there were proof that his death was in fact accelerated by the work he was doing, or by any special strain incurred in the performance of that work, the claimant would be entitled to judgment. It cannot be stated too definitely and emphatically that the mere fact that a man dies at his work is not in itself sufficient proof that his death is due to accident arising out of and in the course of his employment. Before a claimant can succeed, there must be evidence from which the Court can properly infer that the work upon which the deceased was engaged before his death contributed to his death. If the weight of evidence is that the deceased died from the disease alone, irrespective of the work he was doing, or if the evidence balances, a claim for compensation cannot succeed. If, however, to paraphrase Lord *Loreburn's* well-known words, the evidence leads to the conclusion that, broadly speaking, death was due to the disease and the work taken together, the claim will succeed; and the Court, in such a case, is not concerned to ascertain the precise length of time that the deceased might have survived if he had not gone to work on the day of his death.

The medical evidence concluded that the deceased died from sudden heart failure arising in disease of the heart and coronary arteries, which exposed him to

sudden death at any time, irrespective of strain and effort at work. As the exciting cause of his death was hidden, it was impossible to attribute it to the work upon which he was engaged. The plaintiff's case accordingly failed.

The next case of interest was *Wynyard* v. *Daily Telegraph Co., Ltd.*, [1934] N.Z.L.R. s. 137, where reliance was placed for the defendant company on *Harvey's* case, since the deceased worker had been the subject of coronary sclerosis, and had sustained an attack of coronary thrombosis on the night before the day of his death. It is useful in showing the medical distinction between the two cases, as set out in Dr. Fitchett's report on p. s. 149. The plaintiff's claim was successful as the report showed that the deceased worker's death was due not to coronary thrombosis, but was materially caused or contributed to by the work he had performed on the day on which he died.

In *Gwyer* v. *Auckland Harbour Board*, [1937] N.Z.L.R. 808, 810, 811, a non-fatal case, in distinguishing the heart condition known as coronary thrombosis from the condition known as angina of effort, O'Regan, J., said:

> It appears to be agreed by medical authorities that coronary thrombosis is a form of heart disease that is not induced by effort . . . the question accordingly in this case is whether in fact plaintiff's disabled condition is the result of angina or coronary thrombosis . . . Angina pectoris, when the attack is not fatal, passes off in a comparatively short time, after which the patient remains as he was before. Coronary thrombosis, on the other hand, for the reason that it cuts off the blood supply and permanently from a portion of the heart-muscle, causes permanent, and may be, serious damage.

The evidence having established coronary thrombosis as the cause of the plaintiff's disablement, the claim for compensation failed. This case was followed by Hunter, J., in *Eliott* v. *Eliott*, [1938] G.L.R. 155.

In *Eagle* v. *Leonard and Dingley, Ltd.*, [1938] N.Z.L.R. 219, the terms "coronary occlusion" and "coronary insufficiency" appear in the report of the medical referee, Dr. Fitchett, at pp. 230, and 233, and, in view of the decision in *Charlton's* case (*supra*), this report is of great interest to the lawyer; but here, as stated earlier, no attempt is made to refer to the medical aspect of the cases, which are fully set out in the several judgments cited. The finding of the medical referee, that the plaintiff had failed to show that the work he was doing affected in any way the coronary disease from which he was suffering, concluded the case in favour of the defendant company.

In *Forbes* v. *Southland County*, [1939] G.L.R. 550, where the condition of thrombosis was set up for the defence, the Court held that it was more probable that effort was a contributing cause to the worker's death, than that it was caused by thrombosis or that nothing done at work on the day of death had caused it. The plaintiff accordingly succeeded.

In *Hooper* v. *The King*, [1940] N.Z.L.R. 213, the Court (O'Regan, J.) showed that by this time it had become incontestable law that coronary thrombosis could not be an injury by accident arising out of the employment because, to use the words of the learned Judge, of "the unquestioned fact that coronary thrombosis is not due to effort." And in *Jarvis* v. *One Tree Hill Borough*, [1940] N.Z.L.R. 281, it was held that, save in the case of coronary thrombosis, effort is prejudicial in every form of heart disease. In concluding his judgment O'Regan, J., says:

> It is now well settled that coronary thrombosis, in that effort is not the cause of the onset, cannot be an injury by accident. It appears no less clear that effort is danger in every other kind of heart disease, and so nothing, but the most convincing evidence would justify me in restricting further the ambit of liability.

In an unusual case, *Blackman* v. *Auckland Gas Co., Ltd.*, [1941] G.L.R. 621, admittedly a case of coronary thrombosis, it was stated by the plaintiff that he had received a glancing blow on the left chest, which left no marks of violence, while at work two days before the onset of the heart attack. O'Regan, J., held, on the medical evidence, that, though the heart may be damaged by external violence, a resulting occurrence of coronary thrombosis is rare, even when the heart is already sclerosed. The plaintiff's disability was at least equally consistent with an ordinary attack of coronary thrombosis and injury by external violence, and it was further held that the evidence was insufficiently convincing to displace that of an ordinary attack of coronary thrombosis, and, accordingly, the plaintiff's case failed.

In *New Zealand Shipping Co., Ltd.* v. *McDougall*, [1941] G.L.R. 602, the plaintiff, after a severe accident and recovery, with compensation, was found to be suffering from congestive heart failure, marking the onset of auricular fibrillation. On the evidence, it was held that, though this condition would have occurred sooner or later, it had been precipitated by the accidental injury, and, acting on a heart already diseased, it had produced congestive failure. The worker was, on that account, entitled to further compensation.

In *Healey* v. *Stronach Morris and Co., Ltd.*, [1943] G.L.R. 431, the *post mortem* examination conducted by Dr. D'Ath, Professor of Pathology at the University of Otago, showed that the deceased worker "was suffering from advanced heart disease, the coronary arteries being almost completely occluded. . . . There had been no coronary thrombosis, but the immediate cause of death evidently was ischemia, or a lack of blood supply to the heart with consequent ventricular fibrillation." Professor D'Ath had no hesitation in concluding that the cause of death was failure of the heart due to the effort involved in the work that the deceased had been doing up to ten minutes before his death, that work being heavy work for a man with a heart so diseased, though immediately before his death he was doing lighter work. This view was supported by Dr. Iverach, Lecturer in Medicine, at the same University. The learned Judge held, following *Oates* v. *Earl Fitzwilliam's Collieries Co.*, [1939] 2 All E.R. 498, 32 B.W.C.C. 82, that death had been accelerated by the worker's normal work, despite the fact that he had finished the more strenuous part of his labour when death occurred.

Last year, the settled state of the law in New Zealand as regards proof as to death or accident arising out of a disease of the heart was stated briefly by O'Regan, J. in *Morgan* v. *Westport-Stockton Coal Co., Ltd.*, [1944] N.Z.L.R. 859, 867. He said that if the death or disablement occurs during the employment the onus is on the defence to show that the accident would have occurred at or about the time that it did in fact occur. Generally speaking, the onus is on the plaintiff to prove his case, but the onus is shifted where the disablement

occurred while the worker was actually exerting himself. Thus, His Honour added, if a man dies while actually at work, that is *prima facie* evidence of death by accident, but, as the law had been settled in New Zealand, the onus is satisfied if the defence proves that death was due to coronary thrombosis.

In the recent judgment in *Charlton* v. *Makara County*, this "settled" view has undergone considerable modification, and has resulted in a further refinement by distinguishing, in cases of what was generally termed "coronary thrombosis," the cases arising from "coronary occlusion" from those in which there is proof of "coronary insufficiency."

Two recent cases finally decided by the High Court of Australia are of interest, particularly as the expert evidence is set out at length in the judgment. In *Hetherington* v. *Amalgamated Collieries of Western Australia*, (1939) 62 C.L.R. 317, the deceased was a collier who was found dead in the mine wherein he was employed, having collapsed after he had left the coal-face. *Post mortem* examination showed that the immediate cause of death was coronary thrombosis. It was common ground that death might have occurred at any time, "work or no work," and in fact two of the three doctors called in the Court of first instance—the Magistrates' Court—described the deceased as "a candidate for sudden death." The two medical witnesses called in support of the widow's claim, however, were satisfied that exertion had hastened death, and one of them expressed the view that *the fatal test comes after exertion when there is an immediate fall in blood pressure.* The deceased had just climbed a series of steep steps about 60 yards in length when the end came, and this they regarded as important. The expert evidence for the defence was that that effort can never play any part in coronary thrombosis. The Magistrate, however, held that the widow had proved her case, and he gave judgment accordingly. On appeal to the Supreme Court of Western Australia, which had jurisdiction to rehear the whole case, the decision was reversed, the appelate tribunal holding that the evidence did not justify the Magistrate's conclusion. The widow then appealed to the Commonwealth High Court, and that tribunal held unanimously that the Magistrate's decision should be restored. Though each of the five Judges gave a separate judgment, they all agreed, and Latham, C.J., regarded the case as on all fours with the English case, *Moore* v. *Tredegar Iron and Coal Co., Ltd.*, (1938) 31 B.W.C.C. 359.

In *Forst* v. *Adelaide Stevedoring Co., Ltd.*, (1940) 64 C.L.R. 538, the professional evidence is set out in detail (and is reproduced by O'Regan, J., in the judgment in *Charlton's* case). That also was a fatal case, and it was found that the cause of death was coronary occlusion. The deceased, a waterside worker, aged sixty-three, a man of powerful build, collapsed during strenuous effort in the course of his employment. He was assisting a fellow-worker in pulling on a wire cable, stretching his hands above his head, and, the pulling having concluded, he was walking away when he collapsed and died shortly afterwards. The arbitrator who heard the widow's claim for compensation in the first instance held, though the medical evidence was conflicting, that, as coronary thrombosis could not generally be related to exertion, death was not due to injury by accident arising out of and in the course of the employment. On appeal, the Supreme Court of South Australia held that, though the professional evidence was not conclusive, it showed that exertion was commonly, but not invariably, the inciting cause of coronary thrombosis, and hence that the proper conclusion was that exertion was the cause of death in the case before it, and accordingly the arbitrator's finding was reversed. The defendant company thereupon appealed to the High Court which, Dixon, J., dissenting, upheld the judgment of the Supreme Court. The report in *Forst's* case (*supra*) reproduces the professional evidence at unusual length.

As O'Regan, J., observes in *Charlton's* case, the evidence in *Forst's* and in *Hetherington's* case shows conclusively that in this connection expert opinion is acutely divided. In the circumstances, he thought the opening paragraphs in the judgment of Rich, A.C.J., were worth quoting:—

> The learned Judges of the Full Court considered the whole of the medical evidence, as, under the Act, they are entitled to do, and, having described the duty of the Court to arrive at some conclusion on an issue of fact, however "difficult or invidious" it might be made by the state of scientific knowledge and opinion, their Honours proceeded, by a course of reasoning which combined common sense with the application of logic to physiological facts, to infer "on the preponderance of probabilities" that the thrombus was precipitated as the result, in part, of some unusual exertion undertaken by the workman before his collapse.
>
> In my opinion the conclusion of the Full Court is correct. I am greatly impressed by the sequence of events. The deceased, who had arrived at an age when arterio-sclerosis and atheroma afflict mankind, was a stevedore's labourer. On the day of his death he climbed up the jib of the crane and lay prone on the crane with his arms outstretched, trying to replace a wire which had come off the gin. He failed to do so, returned to the deck and for some time, with his arms in a position raised over his head, helped in holding up a wire rope. Immediately after performing this task he collapsed. What weighs so much with me is the fact that he was brought to a standstill, as an ordinary lay observer would think, by the exertion he had undergone.

In *Charlton's* case, O'Regan, J., said that questions arising out of injury from coronary disease were among those with which medical knowledge is in a progressive or developmental stage. The best evidence of this was furnished by some of the textbooks on the heart which he had perused. He said *Recent Advances in Cardiology* is the title of a work by East and Bain, the second edition of which was published in 1931. Here the title itself indicates progress in knowledge. A well-known book is that of Sir Thomas Lewis, *Diseases of the Heart*, first published in 1933, and he had before him a copy of the second edition of 1937. In the brief preface to the latter edition the learned author refers to "recent and relevant advances in our knowledge." He continued: "Lewis's work appears to have been published without any reference to the controversy about the effect of effort, but the author states incidentally that 'coronary thrombosis usually occurs when the subject is at rest, sitting in a chair, lying in bed, or naturally during sleep,' but he adds that it also occurs at other times. Hereinbefore I have made reference to an article appearing in the *American Heart Journal* for June last, the heading of which is *Coronary Occlusion, Coronary Insufficiency, and Angina Pectoris.* The authors are Arthur M. Master, M.D., Harry J. Jaffe, M.D., Simon Dack, M.D., and Arthur Grishman, M.D. Master is a consulting cardiologist to the American Navy, and the article may fairly be taken as the latest word on the subject under consideration. The authors state that, although 'coronary occlusion'.

and 'coronary thrombosis' may be used interchangeably, they prefer for the latter to substitute 'coronary insufficiency,'

> because it has been shown in recent years that the commonest mechanism of occlusion is intimal haemorrhage which may result in damage to the overlying endothelium and coronary thrombosis, or may even occlude the lumen without thrombosis.

"The article is so startling that the initial paragraph may be quoted:

> The frequency of disease of the coronary arteries has lent great impetus in recent years to the study of this disease, both clinically and pathologically. It is now known to be the most important disease of all, considering all age groups. In large part this is due to the increase in the span of life, enabling many more persons to reach the age at which coronary artery disease is prevalent. The subject is of critical importance to-day, when a large army is being formed, for it has been shown that coronary artery disease is common among military personnel over the age of forty years. It is, therefore, essential that correct terminology be used in discussing coronary disease, but considerable confusion exists at the present time with respect of the use of the terms "coronary occlusion" and "coronary insufficiency."

"Briefly, the authors argue that acute coronary disease should be divided into coronary occlusion and coronary insufficiency. Coronary occlusion is produced by complete obstruction of a coronary artery, and usually results in a confluent infarction extending from the endocardium to the pericardium. It is not related to external factors. That is to say, effort plays no part in causing it. Coronary insufficiency, on the other hand, is usually precipitated by some factor which increases the work of the heart or reduces the coronary blood flow. 'Although both conditions occasionally result in similar clinical entities, coronary occlusion usually presents a well-defined syndrome which is readily distinguished from coronary insufficiency, and both conditions differ in their causal relationship to severe exertion and trauma. It is thus obvious that a correct terminology of coronary disease is essential, and that it is important to distinguish coronary occlusion clearly from coronary insufficiency.' The authors state that the views they express have been firmly established both in Germany and in the United States. 'It has been demonstrated conclusively that pain and necrosis or infarction of the myocardium may be produced by severe or prolonged diminution in the coronary flow in the absence of coronary occlusion.' In other words, the authors maintain that coronary insufficiency may be precipitated by effort or emotion, indeed, having read the article carefully, it seems to me that the condition is usually so associated. Their statement that coronary insufficiency may produce, and often does produce, infarction may be compared with Dr. Mackay's confident assertion that infarction without occlusion is a pathological rarity. Further, the authors declare that coronary occlusion and coronary insufficiency may be determined by diagnosis. The greater part of the article is rather technical for the uninitiated, and is not suitable for the quotation here, but the conclusions at which the authors have arrived are set out in paragraphs at the end, of which the first is that the clinical electrocardiographic and *post mortem* observations have been evaluated in 100 consecutive cases in which the diagnosis of coronary occlusion has been ascertained clinically. Secondly, acute coronary disease should be divided into coronary occlusion and coronary insufficiency, each of which is associated with a characteristic electrocardiographic pattern, and coronary occlusion usually presents a typical clinical picture. In forty-nine cases there was an electrocardiographic pattern which was regarded as characteristic of coronary occlusion, and that condition was found *post mortem* in forty-eight of these. In addition, the electrocardiogram correctly indicated whether the infarction was anterior or posterior."

The learned Judge added that such an article appearing in a journal of such standing could not be ignored; it throws decidedly new light on the problem under consideration, and it indicates that heretofore cases which have been described as coronary thrombosis or coronary occlusion should henceforth be divided into two classes, coronary occlusion and coronary insufficiency, the latter of which may be precipitated by effort or emotion and the clinical picture of which is different from that of coronary occlusion.

In view of the weight he attached to the article under notice, His Honour, after reviewing the evidence, found in favour of the plaintiff.

(Earlier, we referred to *Gibbs* v. *Thompson and Hills, Ltd.*, (1907) 10 G.L.R. 150, in which Sim, J., followed *Fenton* v. *J. Thorley and Co., Ltd.* (*supra*); and he said that the defendant, to succeed, would have to show not merely that the accident could have happened at any time, but that it would have happened to the worker at or about the time he suffered the injury. There was no evidence of that kind; and, from the evidence generally, the reasonable conclusion was that, if the worker had been able to avoid any severe exertion, he might have gone through the rest of his life without suffering from a seizure. In *Charlton's* case, O'Regan, J., said he could have found for the plaintiff—apart from the ground stated above in detail—on the ground that, following *Gibbs's* case, as the pain and disablement followed immediately on an effort of abnormal severity, the onus was thrown on the defendant to show that, had there been no effort, the crisis would have occurred at or about the same time.)

The evidence in *Charlton's* case and in the two Australian cases cited by the learned Judge indicates that there is no magic in the term "coronary thrombosis," and that that term is and has been frequently used in a wide sense to express more than one type of heart disease and in particular to indicate coronary insufficiency as well as coronary occlusion. The sequence of external events may render it difficult for a medical witness to accept the view that the cause of the worker's incapacity or death is coronary occlusion; but, if the weight of the medical evidence necessitates or justifies the conclusion that the cause of the incapacity or death is coronary occlusion, then the probablities are that the Court will in the light of present medical knowledge conclude as a fact that any presumption in favour of the worker which the facts would otherwise justify is rebutted. If, on the other hand, the weight of the medical evidence justifies the conclusion that the cause of the incapacity or death is coronary insufficiency, then, so far from rebutting any presumption which the external sequence of events might create, it may reinforce such presumption.

The authorities appear to indicate that in this matter the Courts will not reject a conclusion which common sense suggests, unless there are strong medical grounds for concluding that the work which the injured or deceased worker was doing did not contribute in any material degree to his injury.

SUMMARY OF RECENT JUDGMENTS.

THE KING v. WEBSTER.

COURT OF APPEAL. Wellington. 1945. April 11, 16. JOHNSTON, J.; FAIR, J.; NORTHCROFT, J.

Criminal Law—Appeal—Application for Leave to Appeal on Ground of Misdirection—Previous Appeal on Case stated by Trial Judge on Question of Law dismissed—Whether Successive Appeals lie—Crimes Act, 1908, ss. 442, 443, 445 (1).

If an accused person, or the Crown, is dissatisfied upon different matters arising in the course of a trial, and the opinion of the Court of Appeal is intended to be taken upon any one of them, all matters thought to be of substance should be presented at the same time. It is not open to a prisoner to appeal upon one ground, and, failing in that appeal, to go before the Court of Appeal upon an entirely different ground.

Counsel: *W. H. Cunningham*, for the Crown; *C. A. L. Treadwell*, for the prisoner.

Solicitors: *Crown Law Office*, Wellington.

In re TUCKER (DECEASED), TUCKER AND OTHERS v. WEST.

COURT OF APPEAL. Wellington. 1945. March 9; April 16. MYERS, C.J.; FAIR, J.; NORTHCROFT, J.; CORNISH, J.

Will—Construction—Direction to pay Net Resulting Income of Residue of Estate to Widow—Daughter A. to be paid out of Income of Estate specified Weekly Sum—Daughter B. to be paid out of Estate specified Weekly Sum as first Charge on Estate subject to and after providing said Payments to Wife and Daughter A.—No Income earned by Estate—Whether Widow or either of Daughters entitled to resort to Capital.

A will contained the following provisions:—

"4. To pay the net resulting income of the residue of my estate (not exceeding the sum of seven pounds (£7) per week) to my wife Caroline Tucker payable every four (4) weeks during her life and if the said net income shall be less than seven pounds (£7) per week then to pay the whole of such net income to my said wife during her lifetime.

"5. Subject to the provisions of the last preceding clause to pay to my daughter Mabel Tucker out of the income of my estate the weekly sum of three pounds (£3) payable every four (4) weeks during the lifetime of my said daughter Mabel or until she shall marry.

"6. Subject to the bequests hereinbefore given to divide the whole of my estate amongst my children in the shares following."

A codicil to the will contained a further provision for the testator's daughter, Maud (Mrs. Passmore) by a bequest of the sum of £1 10s. per week, in the following terms:—

"Out of my estate after payment thereout of the sum of seven pounds (£7) per week to my wife and the sum of three pounds (£3) per week to my daughter Mabel Tucker and I declare that the said payment of one pound ten shillings (£1 10s.) per week to my said daughter Maud shall be subject to and after providing the payments to my wife and my daughter Mabel as aforesaid a first charge on my estate and shall be payable to her the said Maud Passmore on the Monday of each and every week during which she shall be entitled thereto the first of such payments to be made to her on the Monday which shall occur first one calendar month after my death." In all other respects the testator confirmed his said will.

On an appeal from the order of Johnston, J., in accordance with his judgment reported [1944] N.Z.L.R. 670,

Held, by the Court of Appeal, 1. That, where a question arises as to the extent to which a codicil affects the disposition of a will, which question is commonly occasioned by the person framing the codicil not having an accurate knowledge or recollection of the contents of the prior testamentary paper, the established rule is not to disturb the dispositions of the will further than is absolutely necessary for the purpose of giving effect to the codicil.

2. That the provision made for deceased's widow was payable out of income only.

Re Boulcott's Settlement, Wood v. *Boulcott*, (1911) 104 L.T. 205, applied.

3. That an inaccurate reference to the wife's bequest in the codicil did not make it an annuity.

Re Arnold's Estate, (1863) 33 Beav. 163, 55 E.R. 329, applied.

MacKenzie v. *Bradbury*, (1865) 35 Beav. 617, 55 E.R. 1036, referred to.

4. That the bequest to the daughter, Mabel Tucker, was of the same nature as that of the widow.

5. That the bequest to Mrs. Maud Passmore was payable out of capital and income, as it was an annuity payable "out of my estate" and expressly made "a first charge on my estate."

The appeal from the order of Johnston, J., [1944] N.Z.L.R. 670, was accordingly allowed.

Counsel: *J. L. Hanna*, for the appellants; *A. M. Ongley*, for the respondent; *G. I. McGregor*, for H. B. Tucker, V. E. Tucker, and E. D. P. Tucker; *J. A. Grant*, for Maud Passmore; and *J. M. Gordon*, for Mabel Wright.

Solicitors: *Cooper, Rapley, and Rutherfurd*, Palmerston North, for the appellants; *A. M. Ongley*, Palmerston North, for the respondent.

KING v. FRAZER (No. 2).

SUPREME COURT. Wellington. 1945. March 15. MYERS, C.J.

Practice—Jurisdiction—Case removed into Court of Appeal—Special Case stated—Nature—Special Cases referred to—Judicature Act, 1908, s. 64 (d)*—Code of Civil Procedure RR. 245–248, 291—Statutes Amendment Act, 1941, s. 85—Commissions of Inquiry Act, 1908, ss. 10, 13.*

The words "special case stated" in s. 64 (*d*) of the Judicature Act, 1908, must be given the same meaning as in the Code of Civil Procedure and refer to such special cases as those authorized in RR. 245–248 and 291. They cannot be extended to special cases stated under the authority of s. 10 of the Commissions of Inquiry Act, 1908.

A motion for removal into the Court of Appeal of case stated by the Transport Appeal Authority under s. 85 of the Statutes Amendment Act, 1941, and s. 10 of the Commissions of Inquiry Act, 1908, was therefore dismissed for lack of jurisdiction.

Counsel: *A. E. Currie*, for the Transport Appeal Authority, in support of motion for removal into the Court of Appeal of Case Stated by that authority; *A. E. Hurley*, for King; *Stewart Hardy*, for six successful applicants; and *J. O'Shea*, for the Wellington Metropolitan Licensing Authority.

Solicitors: *Crown Law Office*, Wellington, for the Transport Appeal Authority.

HILL v. THOMPSON TIMBERS, LIMITED.

COMPENSATION COURT. Greymouth. 1944. December 1. 1945. February 7, 16. O'REGAN, J.

Workers' Compensation—Liability for Compensation—Hysteria—Accident arising out of and in the Course of Employment—Injury to Limb healed but Hysteria preventing its functioning freely—Whether Compensatable—Onus of Proof that Hysteria unconnected with Accident—Quantum of Compensation—Workers' Compensation Act, 1922, s. 3.

Where a psychic disability, such as hysteria, supervenes on, and results from, an accident to a worker arising out of and in the course of his employment, he is entitled to compensation while that condition lasts, or, preferably to payment of a lump sum for compensation to date and for future incapacity, so that an immediate settlement may facilitate a recovery.

A worker had received a compensatable injury to a limb, and the medical evidence showed that the injury had cleared up entirely and the worker could resume work, but that hysteria which could not have occurred but for the accident had affected the injured limb and prevented it from functioning freely.

Held, 1. That, in the circumstances of the case, the onus of proof was on the defendant to prove that the hysterical condition could be dissociated from the injury caused by the accident.

Joy v. *Morton*, (1922) 15 B.W.C.C. 33, not followed.

Cassidy v. *Brunner Collieries, Ltd.*, [1943] N.Z.L.R. 379, G.L.R. 230, and *Fretwell Heating Co., Ltd.* v. *Price*, (1939) 32 B.W.C.C. 75, referred to.

2. That, as psychosis is a more profound condition than the usual result of accident, the term of thirteen weeks usually allowed as for future incapacity, should be increased by three months at half compensation.

Observations as to the caution with which the earlier cases on neurasthenia and hysteria or psychosis, as many have ceased to be authoritative.

Counsel: *W. D. Taylor*, for the plaintiff; *E. S. Bowie*, for the defendant.

Solicitors: *Joyce and Taylor*, Greymouth, for the plaintiff; *Bowie and Bowie*, Christchurch, for the defendant.

AN INVITATION TO KENYA.

New Zealand Lawyers required.

It is a compliment to New Zealanders generally, and to members of the profession in particular, that the Governor of Kenya, Major-General Sir Phillip Mitchell, K.C.M.G., M.C., has invited applications for vacancies in the legal service of Kenya Colony.

Sir Phillip has had every opportunity of estimating the worth of New Zealanders. For some years before his recent entering into his present office, he was Governor of Fiji, where New Zealand troops have been stationed, and where many New Zealanders have held administrative appointments. Mr. R. Diedrich, whose death in action in Italy was announced last Tuesday, was Assistant Attorney-General for some years, and was afterwards appointed to judicial office. Several others have held, while some are still holding, legal appointments under the Government of Fiji or under the High Commissioner for the Western Pacific (who is the Governor of Fiji in another capacity). It is understood that this is a result of Sir Phillip Mitchell's appreciation of the work of young New Zealand lawyers. These include Captain E. M. Pritchard, Crown Solicitor in Fiji, and recently Administrator of one of the recaptured islands in the Pacific; Captain L. G. H. Sinclair, Acting Chief Magistrate for the Western Pacific Commission, and sometime Chief Judge in Tonga; and Major J. L. McDuff, M.C., Assistant Legal Adviser in Fiji.

When the war ends, there will be scores of young New Zealanders retained to police foreign countries. Others, after experience of service appointments, will naturally seek a real job with the desire to shoulder real responsibility in the post-war world. Kenya is a progressive British colony. After the last War, many New Zealanders went to the newer British lands, one in particular, Mr. Eric Temple Perkins, making a great success of his career in Uganda. Mr. Ralph Grey, a former Judge's Associate, is a Judge in Nigeria, and another, Major B. A. Abbott is in a legal position in the Government of Uganda.

In paying this compliment to young New Zealanders, Sir Phillip Mitchell has taken time by the forelock in the hope that Kenya will be as fortunate as Fiji has been. Preference will be given to applicants who have served with the New Zealand forces. The vacancies are for Crown Counsel positions, and the type of appointee desired is one with legal qualifications, and substantial legal experience of a practical nature. The particulars of service, salary, &c., may be ascertained from the office of the Public Service Commissioner, Wellington.

LAND SALES COMMITTEES.

Revocation of Orders.

By C. C. CHALMERS.

The recent case, *In re A Sale, Lee to Taylor*, [1945] N.Z.L.R. 217, dealt with the power of revocation by a Land Sales Committee under s. 52 of the Servicemen's Settlement and Land Sales Act, 1943. Neither report shows whether the original order of the Committee, granting consent under s. 50, had been filed in, and sealed by, the Court, under s. 20. I assume, however, for the purposes of this letter, that such filing and sealing had taken place, because, from the reports of the case, it appears that the transaction (a sale) had been completed by the passing of money and documennts, only registration remaining to be effected; and because, by the concluding words of s. 45 of the Act, a transaction has no "effect" (this must mean legal effect) unless the *Court* consents to it.

On that assumption, has a Committee any jurisdiction, under s. 52, to revoke its order made under s. 50 and sealed under s. 20? It is submitted it has not, for the following reasons:—

(*a*) The Court is a Court of record, with the inherent powers of such a Court: s. 3.

(*b*) A Committee is deemed to be only a Commission under the Commissions of Inquiry Act, 1908, and, under s. 2 of that Act, a Commission is appointed only to "inquire and report."

(*c*) The Servicemen's Settlement and Land Sales Act, 1943, throughout, distinguishes between an "order" of the Committee, and an "order" of the Court, although in the case of a Committee the word "report" would have been more appropriate than the word "order."

(*d*) No transaction (sale, lease, &c.) has any legal effect unless the *Court* (not Committee) consents to it: s. 45.

(*e*) The first "order" consenting to the transaction is the *Committee's* order: s. 50.

It is then signed by the Chairman, &c., of the Committee and filed in the Court, where it remains unsealed until the period for appealing has expired under s. 21, as now amended by s. 11 of the Land Laws Amendment Act, 1944.

(*f*) *If* there is no appeal lodged under s. 21, "the order" (Committee's order) "may be *sealed* by the Court and *thereupon*" (not before) "*it* shall be *deemed to be an order of the Court.*" That is to say, the Committee's order then merges in and becomes the Court's order. Where there is an appeal, the Court itself makes its own order: s. 21 (3).

(*g*) Assuming there is no appeal, however, from the Committee's original order, then, when filed and sealed by the Court under s. 20 (2), it *ceases* to be a Committee's order, and becomes a Court order, and the latter portion of s. 45 operates. The transaction can then be completed, with safety and certainty.

(*h*) Once the Committee's order merges in and becomes a Court order, the Committee, it is submitted, has no jurisdiction, under s. 52 to revoke what has become a Court order, that Court, alone, having control over its own order.

(*i*) When the Court, in *Lee's* case, said, "Although s. 52 . . . does not specifically limit any period beyond which a Committee cannot revoke *its* consent," &c., it recognised, it is submitted, that s. 52 relates to the consent granted by the Committee—*i.e.*, under s. 50.

(*j*) The power of revocation conferred on a Committee by s. 52 is therefore limited, it is submitted, only up until the sealing of its order under s. 20 (2).

(*k*) Thereafter, if there has been misrepresentation in the hearing before the Committee, (i) the Court, under its inherent powers as a Court of record, could, of its own motion, or on application, review and cancel it, but, it is considered, would not do this, if the transaction had been completed, and the purchaser, lessee, &c., was an innocent party; or (ii) the guilty party could be prosecuted under s. 68.

TRANSMISSION OF SHARES OR DEBENTURES.

Without Grant of Administration.

By E. C. Adams, LL.M.

Explanatory Note.

Directors and secretaries of limited companies registered under the Companies Act, 1933, will find s. 6 of the Statutes Amendment Act, 1941, most useful in practice. Where the total amount paid up on shares or owing on debentures does not exceed £100, and the registered holder thereof has died and no grant of administration has been taken out, the directors may in their discretion register any person as the holder thereof who establishes to their satisfaction that he is beneficially entitled thereto under the will or intestacy of the deceased. The section reads as follows:—

6. (1) This section shall be read together with and deemed part of the Companies Act, 1933.

(2) Where the registered holder of any shares in or debentures of a company has died, whether before or after the passing of this Act, and the total amount paid up on the shares or owing under the debentures does not exceed one hundred pounds, the directors of the company may in their discretion and without requiring the production of probate or letters of administration, resolve that any person be registered as the holder of the shares or debentures who proves to the satisfaction of the directors—

(*a*) That he is entitled thereto under the will or on the intestacy of the deceased member or debenture-holder; or

(*b*) That he is entitled to obtain probate of the will of the deceased member or debenture-holder, or letters of administration of his estate; and

(*c*) That in neither case has any grant been made of any such probate or letters of administration.

(3) After the passing of any resolution as aforesaid the company shall upon production of the share certificate or debentures (if any have been issued to the deceased member or debenture-holder) register the person referred to in the resolution as the holder of the shares or debentures, as the case may be, and thereupon that person shall become entitled thereto, subject to all outstanding interests or equities affecting the same.

(4) Notice of any exercise of the powers conferred by this section shall within fourteen days thereafter be given by the company to the Commissioner of Stamp Duties.

(5) If the company fails to comply with the last preceding subsection, the company and every officer of the company who is in default shall be liable to a default fine.

It will be observed that when the directors exercise these powers notice thereof must be given to the Commissioner of Stamp Duties, for death duty may be payable: see ss. 27, 35, and 61 of the Death Duties Act, 1921.

It will also be observed that registration under this section is *subject to all outstanding interests or equities affecting the same.* Therefore, if the person who procures himself to be registered under this section is not the real beneficial owner, he must transfer the shares to such owner or account to him for the proceeds thereof; indeed, this is the general rule where the Legislature permits dealings with the assets of a deceased person without grant of administration: see article by Mr. G. R. Powles, LL.B., in (1934) 10 N.Z.L.J. 303. As, however, a company cannot enter any notice of trust on its Register, it is submitted that a purchaser for value from a person registered under this section would get a good title to the shares or debentures against all the world, unless he was otherwise affected with notice of the true owner's claim.

Precedent No. 1 is a form of declaration which has been used in practice to support an application under this section. Probably the directors would also require production of the death certificate of deceased.

It often happens that a shareholder in a company loses his share certificate; most companies require a statutory declaration and a letter of indemnity before issuing a new certificate. Precedents 2 and 3 deal with this.

The stamp duty on each declaration (Precedents 1 and 2) is 3s., and on the Letter of Indemnity (Precedent No. 3), 1s. 3d.

PRECEDENTS.

No. 1.

IN THE MATTER OF the Estate of Robert Smith deceased
AND
IN THE MATTER OF Section 6 of the Statutes Amendment Act, 1941.

I THOMAS SMITH of Wairoa sheepfarmer do hereby solemnly and sincerely declare as follows:—

1. THAT my son Robert Smith died at Napier on the twenty-first day of June one thousand nine hundred and forty-four.

2. THAT my said son was at the date of his death a widower and that he had no children of his marriage.

3. THAT my said son did not leave a will and I am advised that I am his lawful next-of-kin and as such am entitled to the whole of his estate.

4. THAT in view of the nature and small value of the estate I do not intend to apply for letters of administration.

5. THAT my said son was at the date of his death registered as the owner of four shares in The Company Limited and I claim the ownership of such shares as his next-of-kin.

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

DECLARED at Wairoa by the said THOMAS SMITH the day of one thousand nine hundred and forty-four before me— } T. SMITH (Sen.).

A. B.,
A solicitor of the Supreme Court of New Zealand.

No. 2.

IN THE MATTER OF The Company Limited
AND
IN THE MATTER OF an application for a new share certificate by the next-of-kin and sole successor in the estate of Robert Smith deceased late of Napier in the Provincial District of Hawke's Bay in the Dominion of New Zealand.

I THOMAS SMITH (SEN.) of Wairoa in the Provincial District of Hawke's Bay in the Dominion of New Zealand sheepfarmer do solemnly and sincerely declare as follows:—

1. THAT I am the next-of-kin and sole successor in the estate of Robert Smith deceased who was the registered proprietor in the books of the above company of four (4) shares of five pounds (£5) each of which has been paid up three pounds (£3) numbered to [*Insert here numbers of shares.*]

2. THAT I believe that the said Robert Smith received from the above company certificate of title to the above shares.

3. THAT I have searched for but cannot find the certificate of title to the above shares and am of the opinion that it has been accidentally destroyed or irrecoverably lost.

4. THAT I the next-of-kin and sole successor in the estate of Robert Smith deceased have applied for a transmission of the said shares in favour of myself.

5. THAT I have not previously executed made or granted nor to the best of my knowledge and belief did the late Robert Smith execute make or grant any transfer assignment mortgage pledge or charge of or over the said shares and that I the said Thomas Smith (sen.) to whom the said shares are to be transmitted as aforesaid is entitled to hold the same as full legal and equitable owner thereof.

AND I MAKE THIS SOLEMN DECLARATION conscientiously believing the same to be true and under and by virtue of an Act of the General Assembly of New Zealand intituled the Justices of the Peace Act 1927.

DECLARED at Wairoa this day of 1944 before me— } T. SMITH (SEN.)

A.B.,
A solicitor of the Supreme Court of New Zealand.

No. 3.

To The Directors of The Company, Limited,
Napier.

SIRS,—

Estate of Robert Smith, deceased.

The Certificate of Title No. issued on the day of 193 relating to four (4) shares numbered to in the name of Robert Smith has been lost and I request that you will issue to me Thomas Smith (sen.), who has applied for transmission of the said shares by application attached hereto, a new certificate of title to such shares, and in consideration of your doing so I undertake to indemnify you against any loss that you may sustain thereby or in consequence thereof.

T. SMITH (SEN.)
Next-of-kin and sole successor in the estate of Robert Smith, deceased.

AUCTIONEERS' LICENSES.

The Licensing of Partnership and Companies.

An interesting and important question arising under the Auctioneers Act, 1928, is the correct method of licensing partnerships and companies.

Section 3 (1) of the statute forbids the carrying on of the business of auctioneering by any person "unless he is the holder of an auctioneer's license under this Act." Then follow provisions relating to partnerships and companies. The first of these provisions is subs. (2) which is as follows:

> Where two or more persons carry on business as auctioneers in partnership it shall be sufficient compliance with this section if one of those persons is the holder of a license applied for and issued on behalf of the partnership firm as provided by this Act.

The next subsection, subs. (3), relates to companies, and is expressed in the following terms:

> Where a company carries on the business of an auctioneer it shall be sufficient compliance with this section if some person appointed in writing by the general manager or pursuant to a resolution of the directors is the holder of a license under this Act.

The question that arises concerning the licensing of partnerships and companies is this: Must partnerships or companies obtain a license in the manner set out in the subsections quoted, or can they hold and obtain licenses in their own names?

To take partnerships first: It is first necessary to consider a partnership from the legal point of view. To do this reference is made to the recent case of *Income Tax Commissioners* v. *Gibbs*, [1942] 1 All E.R. 415, 422, Viscount Simon, L.C., says:

> As a strict proposition of English law there is no doubt at all that a partnership is not, as such, a single juristic person. As Farwell, L.J., said in *Sadler* v. *Whiteman*, [1910] 1 K.B. 868, 889, "In English law a firm, as such, has no existence; partners carry on business both as principals and as agents for each other within the scope of the partnership business; the firm name is a mere expression, not a legal entity, although for convenience . . . it may be used for the sake of suing and being sued. . . . It is not correct to say that a firm carries on business; the members of a firm carry on business in partnership under the name or style of the firm.

And in the same case, Lord Russell of Killowen, at p. 423, says:

> Businesses carried on in partnership are carried on by the individuals who are in partnership, and not by the partnership firm as a separate conception. The firm name is a mere expression to denote the individuals.

Enough has been said to show that a partnership, as such, is not a legal entity. Of course the Legislature can if it so wishes, treat a partnership as though it were so. As was said by Romer, L.J., in *Watson and Everitt* v. *Blunden*, (1933) 18 Tax Cas. 402, 409: for taxing purposes "a partnership firm is treated as an entity distinct from the persons who constitute the firm." As examples, see the Sharebrokers Act, 1908, s. 2 (definition of "sharebroker," as amended); and also s. 2 of the Money-lenders Act, 1908. But the language of the Auctioneers Act clearly negatives such a view: in the words of Lord Russell, just quoted, the Act regards the business as "carried on by the individuals who are in the partnership, and not by the partnership firm as a separate conception." In fact, it could not have employed plainer terms to indicate its intention.

It seems, therefore, to be established beyond debate that a partnership (not being a legal entity) cannot be licensed in the partnership name, but must be licensed in the manner provided by the Act. It is clearly unthinkable that a non-entity can hold a license: see *Smith* v. *Johnson*, (1914) 33 N.Z.L.R. 1412.

While on this question of partnership it may be mentioned too that if there is any alteration in the constitution of a firm by the addition or withdrawal of partners, a new firm comes into existence: *Brace* v. *Calder*, (1895) 64 L.J. Q.B. 582 p. 584; and, accordingly, the new firm must obtain a new license.

We now come to the question of licensing companies as auctioneers. A company is, of course, a legal entity and, in this respect, it differs from a partnership. Section 3 (3) recognizes this distinction, for while it speaks of "two or more persons" in the case of partnerships, it refers to a company thus: "Where a company carries on business." Does this factor so operate as to make a company entitled to hold a license in its own name?

Now, it seems that "the question must be determined by the words used in the section, and not from what might reasonably be expected in the actual circumstances of a case such as this. The Legislature has, on grounds which may seem good or seem bad, employed certain language. With the special grounds which influenced it we have nothing to do. The only question is whether the words are clear": per Viscount Haldane in *S.S. "Ruapehu" (Owners)* v. *R. and H. Green and Silley Weir, Ltd.*, [1927] A.C. 523, 528.

With regard to the language of the subsection, to quote the same learned Viscount: "I cannot find any ambiguity." We are not concerned with the reasons for this particular legislation, and the language is abundantly clear.

Had it been the intention of the Legislature to license a company in the company's name, then it could not have used more misleading language. It is plain that, if a company could obtain a license in its own name, it would certainly not resort to the method of appointing a person to apply on its behalf. The effect would be to render the specific language of the statute nugatory. Why, it may well be asked, did the Legislature enact such provisions, if it did not intend them to be acted upon, but seemingly, to be ignored at will? We should construe every word of a statute as having some effect or as being of some use; but if the express language of a statute can be ignored at will—as in this case by the licensing of a company in the company's name—then we obviously offend against this canon of construction. It is clear that if the Legislature intended companies to hold licenses in their own names, it would have been a very simple matter to have done so, as it has done in the cases of sharebrokers and money-lenders: why has it not done so? The obvious answer is that it intended companies carrying on business as auctioneers to appoint some person to hold the license on behalf of any company.

It seems that the Legislature has adopted the alternative method referred to in *The King* v. *County Cork Justices*, [1906] 2 I.R. 422—*namely*, that the license be held on behalf of the company by a person authorized in the manner prescribed. Moreover, both subss. (2) and (3) use the term "compliance"—surely this manifests the intention of the Legislature beyond any question. Accordingly, a partnership or company to comply with s. 3 must conform to its requirements; that is how it conforms to the statutory obligation.

We may notice, too, the adjective "sufficient" appearing in both subsections. This term indicates that a partnership or company licensed in the manner provided, fully, adequately, and unquestionably conforms to the statutory requirements regarding the necessity for licenses to carry on the business of auctioneering. In these cases, it may be noted, the statute could have required every partner to hold a license, or for every person acting for the company to hold a license, as does the Sharebrokers Act, 1908, as amended. It has not done so; but, on the contrary, has specifically declared that it shall be a "sufficient compliance" with the Act if one partner, in the case of partnerships, or the person appointed in the case of a company, holds the license on behalf of the partnership or company, as the case may be. Furthermore, the whole structure of the Act is erected on this basis: *cf.* ss. 7 and 19; and also, the prescribed forms.

The one exception seems to be in the case of ss. 12 and 16, where reference is made to applications "by or on behalf of a partnership or company." Here there is a definite conflict, but we must reconcile the inconsistent provisions if we can. The word that gives rise to the inconsistency is "by"; and it would appear from the use of such word that a partnership or company could hold a license in its own name. In this connection, attention is drawn to the following passage from the judgment of Viscount Dunedin in *Minister of Health* v. *The King, Ex parte Yaffe*, [1931] A.C. 494, 503:

> I think the real clue to the solution of the problem is to be found in the opinion of Herschell, L.C., [in *Institute of Patent Agents* v. *Lockwood*, [1894] A.C. 347, 360], who says this: "No doubt there might be some conflict between a rule and the provisions of an Act. Well, there is a conflict sometimes between two sections to be found in the same Act. You have to try and reconcile them as best you may. If you cannot, you have to determine which is the leading provision and which the subordinate provision, and which must give way to the other . . ."

As they stand, the provisions seem irreconciliable; and so we must now determine which is the leading and which the subordinate provision. It is submitted that the former is clearly s. 3 (3). There, the Legislature has addressed itself expressly and particularly to the mode of licensing partnership and auctioneers, and has declared that compliance with such provisions is sufficient compliance with the Act. The references in the other sections mentioned are, it seems, of a more

or less casual and incidental nature. It seems to be inconceivable that by the mere use of a preposition the Legislature intended to overthrow what it had previously laid down in such explicit and positive terms. In a word, the position appears to be this: when the Legislature laid down a definite procedure, adherence to which it definitely and expressly declared to be a sufficient compliance with the statutory requirement of subs. (1) of s. 3, it meant precisely what it said; and did not by the subsequent (perhaps inadvertent) use of a word intend to render useless what it had with great care and at such pains laid down.

There is, too, s. 22, providing for the transfer of licenses, which in subs. (1) mentions "the liquidator of a company being a licensee." This phrase might *prima facie* indicate that a company is regarded as holding a license in its own name; but plainly the literal construction cannot prevail. If a license were held by a person on behalf of a company that subsequently went into liquidation, there would not be on the strict literal construction a right of transfer. Section 3 (3) does recognize that it is the company that carries on the business, and different other sections (*e.g.*, s. 19 (*d*)) speak of a person as "representative of a company." After all it is the company's business, and the mere fact that a license is held on its behalf cannot detract from that fact. It may be in this sense the word "by" is used in the sections quoted: it is, after all, the application of the company through its nominee duly appointed.

Another point on procedure under the Act concerns the place of filing applications. Section 7 (4) deals with this point. It provides that every application is to be filed in the Magistrates' Court nearest to (*a*) the place of business "named in the application as the place of business," or (*b*) the principal place of business of the applicant. It is clear that in regard to the former there is only one place of business in contemplation; but, as regards the latter, plurality of places of business is indicated. In such latter case, the words of the subsection would read: "Every application . . . shall be filed in the Magistrate's Court nearest by the most convenient route to . . . the principal place of business of the applicant." Therefore any applicant having several places of business must file all applications at the Magistrate's Court nearest to his principal place of business, and at no other.

To recapitulate: Partnerships must be licensed in the manner set out in subs. (2) of s. 3 of the Auctioneers Act; companies likewise must be licensed as provided in subs. (3) of s. 3 of that Act. Where there are several applications by the same applicant, they must all be filed in the Magistrates' Court nearest to the principal place of business of the applicant.

Finally, some very interesting remarks on the purposes of the Auctioneers Act, 1908, are contained in *Doyle* v. *Townsend and Paul, Ltd.*, [1922] N.Z.L.R., 633, 634.

LAND AND INCOME TAX PRACTICE.

Land and Income Tax Amendment Act, 1944.

The purpose of this article is to explain the provisions of the Land and Income Tax Amendment Act, 1944. *

Section 4.—This section in effect repeals s. 2 of the principal Act in so far as it relates to the definition of "charity" and "charitable" and applies to income derived during the year ended March 31, 1941, and subsequent years.

For the purposes of the Land and Income Tax Act, 1923, and amendments, the expression "charitable purpose" now includes every charitable purpose, whether it relates to—

(*a*) The relief of poverty;
(*b*) The advancement of education or religion; or
(*c*) Any other matter beneficial to the community.

The principal sections affected by the definition of "charitable purposes" are as follows:—

(1) Subsection 2 (*b*) substitutes "charitable purposes" in s. 69 (1) (*i*) of the principal Act which deals with the exemption from land-tax of certain classes of land, for the words "charitable, educational, religious, or scientific purposes of a public nature."
(2) Subsection 2 (*c*) substitutes "charitable purposes" in s. 70 (2) of the principal Act which deals with the reduction of land-tax in respect of land held by religious societies, for the words "religious, charitable, or educational purposes."
(3) Subsection 2 (*d*) substitutes "charitable purposes" for the words "charitable, religious, educational, or scientific purposes of a public nature" in s. 78 (*jj*) of the principal Act (as inserted by s. 5 (2) of the Land and Income Tax Amendment Act, 1940)—s. 78 enumerating the various classes of income wholly exempt from taxation.
(4) Subsection 2 (*e*) substitutes "charitable purposes" for the words "charitable, religious, educational, or scientific purposes of a public nature" in s. 78 (*k*) of the principal Act (as amended by s. 5 (1) (*a*) and (*b*) of the Land and Income Tax Amendment Act, 1940)—s. 78 enumerating the various classes of income wholly exempt from taxation.

Section 5.—For income-tax purposes, absentees are now entitled to enjoy the same personal exemption as residents. The personal exemption of £200 is allowable whether or not the absentee is personally present in New Zealand for the purpose of earning income.

This section first applies to income derived by absentees during the year ended March 31, 1945.

It should be noted, however, that the special provision as to the allowance of £100 in s. 13 (5) of the Land and Income Tax Amendment Act, 1939, has not been amended and still applies. Section 13 of the 1939 Amendment Act deals with the aggregation of a husband's and wife's incomes in certain cases, and the relevant part of subs. (5) reads as follows: "In computing for the purposes of an aggregate assessment the taxable income of an absentee, the Commissioner shall allow, instead of the special exemption provided for by section seventy-four of the principal Act (as amended by section seven of the Land and Income Tax Amendment Act, 1939) a special exemption of *one hundred pounds* . . . ."

Section 6.—Deferred Maintenance. In (1944) 20 NEW ZEALAND LAW JOURNAL, p. 94, an article appeared under the heading of "Deferred Maintenance Expenditure" and the concluding paragraph stated that legislative authority for allowing deductions of deferred maintenance would be provided later.

Section 6 of the Land and Income Tax Amendment Act, 1944, provides this authority, and for the convenience and information of practitioners this important section is explained fully.

As a result of war-conditions and consequent shortage of labour and materials, farmers and businessmen (including, of

* *Correction*:—In "Arrears of Sales Tax" *ante*, p. 83, it was stated that the years for which assessments would be reopened in the circumstances outlined would be limited by the provisions of s. 168 of the Land and Income Tax Act, 1923. This should, of course, read s. 8 of the Land and Income Tax Amendment Act, 1944, which section repeals s. 168 and in effect gives the Commissioner power to reopen an assessment resulting in an overpayment for four years instead of three.

course, limited companies) have been unable to effect repairs and maintenance which in normal times would have executed as and when they were required, and consequently are, to some extent, being assessed for taxation on fictitious profits and at a time when rates of tax are abnormally high.

Subsection (1) defines the expression " deferred maintenance " as " such maintenance of assets used by the taxpayer in the production of his assessable income as is necessary by reason of the fact that the taxpayer has been prevented from maintaining those assets in a proper and reasonable manner by conditions arising out of the present war, whether arising before or after the termination of the war."

In the case of farmers, maintenance includes repairs to farm buildings and machinery, repairs to fences, scrub-cutting, drain-clearing, renewal of pastures, top-dressing and other normal farm maintenance. In the case of other businesses, it would include normal repairs to buildings, plant and machinery, motor-vehicles, and other business assets.

Subsection (2) limits a deduction under this section to amounts of not less than £100.

If a taxpayer considers that deferred maintenance in his case would amount to not less than £100, he may lodge with the Commissioner as a non-interest-bearing deposit a sum equivalent to the amount of his estimated deferred maintenance. The Commissioner on being satisfied that the amount is reasonable, will then allow the deduction for both income-tax and social security charge and national security tax purposes.

Subsection (3) is self-explanatory.

Subsection (4) provides for applications to be made on or before the end of the income year or such extended time as the Commissioner may allow. The Commissioner has advised that he has decided that, in general, for the income year ended March 31, 1945, and future years, applications should be made not later than June 1 each year or, in the case of taxpayers with balance dates other than March 31, within two months of that balance date.

Subsection (5).—The amount applied for as a deduction is to be deposited with the Commissioner of Taxes.

Subsection (6).—If the application is refused by the Commissioner or the amount allowed as a deduction is less than the amount deposited, then the amount of the deposit or any balance over and above the amount allowed as a deduction is to be refunded forthwith without interest.

Subsection (7).—Refunds of deposits.—Refunds without interest may be made at any time upon application in that behalf after the expiration of one year from the date of making the deposit, but such refunds are limited to amounts of not less than £50 or to the balance of the deposit, whichever is the less.

Provision is also made for refunds to be made of lesser amounts than stipulated above, or at an earlier date than twelve months from the date of making the deposit, *subject to the approval of the Minister of Finance.*

Although the Act provides for application to be made to the Secretary to the Treasury, as a matter of practice, applications will be accepted by the Income Tax Department.

Subsection (8).—Any amount refunded in accordance with the previous subsection is deemed to be assessable income of the taxpayer in the year in which the refund is made.

An exception is provided for where application for a refund is made by trustees of a deceased taxpayer within six months of the granting of probate, or such extended time as the Commissioner of Taxes may allow, if when making the application for a refund the trustee intimates his desire to have the amount assessed as income derived immediately prior to the date of death, then the amount refunded shall be assessed accordingly.

Subsection 9 prescribes the basis of assessment of any amounts refunded—*i.e.*, whether as earned or unearned income.

Subsection 10 is self-explanatory.

Subsection 11.—This subsection is to enable companies and other bodies which have no authority under their articles to make such deposits and trustees who are debarred by statute or by the trust deed under which they are appointed from making deposits to take advantage of the scheme.

Subsection 12.—Interest on money borrowed for the purpose of making these deposits would not normally be permitted as a deduction as no assessable income is derived therefrom. Subsection (12) makes provision for a deduction which would otherwise be debarred by the provisions of the principal Act. Such deduction will be allowed so long as the amount borrowed remains on deposit.

Procedure.—The application form which is to accompany the deposit may be obtained on applying to the Commissioner of Taxes, P.O. Box 1703, Wellington C. 1. (note that it is imperative that the Post Office box number be included in the address). When applying for the form, the taxpayer *must state the amount of deferred maintenance which he intends to deposit and to claim as a deduction.* An application form and an account for the amount of the deposit will then be forwarded to the taxpayer. On completion of the form, it should be presented together with the account and a cheque for the amount of the deposit, at a money-order post-office when the receiving officer will issue a receipt in the usual manner.

If payment of the amount of the deposit is made at any branch of the Bank of New Zealand to the credit of the Public Account, the small Ty. 30A portion of the Bank Receipt *must* be forwarded to the Commissioner of Taxes immediately.

In reply to an inquiry as to what evidence would be available for audit purposes, in the case where a client has deposited money with the Department under the deferred maintenance scheme, in order that the auditor may satisfy himself that the deposit still exists, the Commissioner of Taxes advised that he was prepared to issue to the taxpayer, or to the auditor, *with the authority of the taxpayer*, upon application, a certificate of the amount of deferred-maintenance deposit held at any given date.

Section 7.—Interest on income-tax paid in advance.

This subsection provides that all such amounts whether paid as interest or allowed as discounts (income-tax certificates) are assessable as income of the year in which the amounts are credited as tax paid, and merely confirms the existing practice of the Department.

Section 8 removes what has generally been regarded as an anomaly in the taxation legislation in that whereas the Commissioner is able to reopen assessments to increase the tax payable for four years, readjustments resulting in an overpayment could be made for only three years. Subsection (8) is in substitution for s. 168 of the principal Act, which section is now repealed.

Subsection (1).—Refunds of land-tax or income-tax may now be made, provided written application is made within four years from the end of the year in which the original assessment was made.

Subsection (2).—In any case where an assessment is altered and the tax payable is increased, a refund of the additional amount of tax payable as a result of the alteration may be made provided the application for such refund is made within four years from the end of the year in which the alteration was made.

Subsection (3).—The section applies to any application made for a refund *not earlier* than April 1, 1944. Section 168 of the principal Act is now repealed except in respect of applications made for refunds prior to April 1, 1944, which may still be dealt with under that section.

NOTE.—Refunds may now be made for four years from the *end of the year in which the assessment is made instead* of three years from the *end of the year of assessment.*

RULES AND REGULATIONS.

Public Service Salary Order, 1945. (Appropriation Act, 1920.) No. 1945/28.

Post and Telegraph (Staff) Regulations, 1925, Amendment No. 19. (Post and Telegraph Act, 1928.) No. 1945/29.

Transport Licenses Emergency Regulations, 1942, Amendment No. 3. (Emergency Regulations Act, 1939.) No. 1945/30.

Agricultural Workers Extension Order, 1942, Amendment No. 1. (Agricultural Workers Act, 1936.) No. 1945/31.

Soil Conservation Regulations, 1945. (Soil Conservation and Rivers Control Act, 1941). No. 1945/32.

Poisons (General) Regulations, 1937, Amendment No. 4. (Poisons Act, 1934.) No. 1945/33.

IN YOUR ARMCHAIR—AND MINE.

By SCRIBLEX.

F. K. Hunt.—The late Frederick Knight Hunt, during a period of almost twenty years as Magistrate, displayed qualities of boisterous humanity that were probably unequalled by any other occupant of that office. His methods were informal, and at times rough, although not unsuited to the type of case he often had to try. A fatherly kindness and a large fund of common sense enabled him to deal most successfully with criminal and matrimonial matters, which he would "polish off" at a speed of which he was exceedingly proud. He made no claim to profound legal knowledge, his distinct preference being for the exercise of the sort of justice that was at once tolerant and understood by the "man in the street": indeed, his occasional legal observations were not always fortunate as when, after his several interruptions of E. G. Jellicoe, who was arguing a pak-a-poo charge at considerable length, the latter retorted, "There you are, Your Worship, firing your old blunderbuss and missing on both barrels!" But with young men, nervously feeling their feet in his Court, he was especially understanding and gracious. On one occasion, a junior qualified clerk instructed by his firm to defend an important client on a traffic charge overlooked the date of hearing. A heavy fine was imposed, and a tense situation arose. When a personal explanation was made to him, "F.K." readily agreed to a rehearing at which the summons against the important client was dismissed, despite some convincing evidence for the prosecution. Counsel met "F.K." afterwards, and thanked him for his consideration. "That's all right," he said genially, "we've all been through the mill, and it was the only way I knew to put things right for you."

Coronary Thrombosis.—Until the decision of the Court of Compensation last month in *Charlton* v. *Makara County* it has been constantly decided in New Zealand since the year 1929 that, where incapacity or death is shown to be due to coronary thrombosis, compensation is not payable. Medical evidence has been uniform throughout—that effort does not play any part in the final collapse. In the present case, two doctors for the defendant (one of whom is a leading pathologist in the Dominion) agreed that the facts disclosed a typical case of coronary thrombosis: of the two doctors for the plaintiff, one made a provisional diagnosis to the same effect, although his written statement of a different conclusion was by consent subsequently put in evidence, and the second medical witness for the plaintiff testified that effort *may* have produced the thrombosis. O'Regan, J., in finding for the plaintiff, appears to have been impressed by an article that appeared in the *American Heart Journal* of June, 1944, and that "may fairly be taken as the latest word on the subject under consideration." This article does not seem to have been put in at the trial by any of the doctors, but the judgment says:

> Such an article appearing in a journal of such standing cannot be ignored. It throws decidedly new light on the problem under consideration, and it indicates that heretofore cases which have been described as coronary thrombosis or coronary occlusion should henceforth be divided into two classes, coronary occlusion and coronary insufficiency, the latter of which may be precipitated by effort or emotion and the clinical picture of which is different from that of coronary occlusion.

Five pages of the judgment are devoted to a consideration of the evidence of six doctors given in a South Australian case that went to the High Court, where "by a course of reasoning which combined common sense with the application of logic to physiological facts" it was inferred "on the preponderance of probabilities" that the thrombus was precipitated as the result, in part, of some unusual exertion undertaken by the workman before his collapse. There is even reference in the *Charlton* judgment to what one of these six doctors said about another of his colleagues. May this not add a new terror to case law? May not some student of the future be confronted with some such question as: "Explain why O'Regan, J., in *Charlton* v. *Makara County* said that Professor Hicks, in giving evidence in *Forst* v. *Adelaide Stevedoring Co.* was impolite to Dr. Gartnell?"

Henry Hawkins.—Legal biographers of recent years have shown an unattractive tendency to rehash old cases and even older stories, but Reginald L. Hine in his *Confessions of an Un-Common Attorney*, published this year by J. M. Dent and Sons, Ltd., provides a striking exception. The author of these delightful memoirs of life both in and outside the law was attached for thirty-five years, as a country attorney, to one of the oldest firms in England, Messrs. Hawkins and Co. of Hitchin, established about 1591. He throws new light upon Henry Hawkins, afterwards Lord Brampton, who was articled to his father "Old John" Hawkins, by relating how—

> he forged a letter to the Herts *Mercury* in his father's well-known writing, announcing the sudden and lamentable death of John Curling, chairman of the Hitchin Bench, and I described the subsequent astonishment and rage of the editor who heard, four days after printing a suitable obituary notice that Curling was presiding as usual at Petty Sessions. It did not stop there, however, for Hawkins, as soon as the hunt had died down, procured two other insertions announcing the premature deaths of Miss Beaumont and Miss Christiana Times. He felt that all these people *should* be dead, and that the flutter of even a false alarm might possibly shorten their days.

This mischievous clerk became later in his career a storm figure of controversy. There was his remarkable cross-examination of Arthur Orton, the Tichbourne claimant, and his outstanding advocacy in the St. Leonard's Will case; there was the attack on him in the House when he was accused of adjourning Court to enable him to attend the Newmarket races and the Derby; and there was the suggestion of the sadistic pleasure he derived from sentencing murderers, which led to his being called the "hanging Judge" and to Sir Edward Clarke's declaring him to be the worst Judge he ever knew or heard of, without any notion of what justice meant or of the obligations of truth and fairness. Yet, on the other hand, eminent counsel have urged with equal force that he was a sentimentalist who hated cruelty of any kind. About his success at the Bar there can be no argument. He earned up to £22,000 a year—a tremendous sum at that time. "I am generally so dead beat by the time I kneel down to pray," he once said, "that I begin out of habit: 'Gentlemen of the jury'."

PRACTICAL POINTS.

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1. Executors and Administrators.—*Land Sales—Gift of a Beneficial Interest in an Intestacy—Land subject to a Mortgage—Consent of Land Sales Court.*

QUESTION: A. died intestate in 1943, leaving her surviving her husband (H.) and daughter (D.). The only land A. owned was and is still subject to a mortgage. H., who is also administrator, is desirous that the land shall beneficially belong to D. solely. Is the consent of the Land Sales Court necessary to the proposed transaction?

ANSWER: It is considered that the consent of the Land Sales Court is necessary. There will be valuable consideration moving from D. to H. In equity, D. and H., as between themselves, are each liable (proportionately to their beneficial interests) for the mortgage debt; but, if the intended transaction is effected, D. will assume all liability, thus relieving H. of his liability: see the judgment of Sir Charles Skerrett, C.J., in *Thompson* v. *Commissioner of Stamp Duties*, [1926] N.Z.L.R. 872, 876, 877.

It is considered, therefore, that the intended transaction is not within the exemption in s. 43 (*f*) of the Servicemen's Settlement and Land Sales Act, 1943, for, under the intestacy, D. is not entitled to all the land, only to a share. It will also be observed that s. 43 (1) applies to the sale or transfer of any *freehold* estate or interest in land whether legal or *equitable*.

2. Land Acts.—*Charity—Acquisition of Land by a Charity—Land subject to Legislation against Aggregation of Land.*

QUESTION: I am acting for a charitable institution which has entered into an agreement for sale and purchase of land, which on a search of the Land Transfer Register is found to be subject to Part XIII of the Land Act, 1924 (being provisions against aggregation of land). The proposed purchaser already owns more than 5,000 acres of land in New Zealand. The fact that the land was subject to Part XIII was not disclosed by the vendor in the agreement for sale and purchase.

Can my client repudiate the contract? If so, but it decides not to repudiate, can it obtain title without infringing the law?

ANSWER: The proposed purchaser can repudiate, because there is disclosed a defect in title: *Rayner* v. *The King*, [1930] N.Z.L.R. 441, unless it can be deemed to have waived the defect, as, for example, in *Ferguson* v. *Hansen*, [1931] N.Z.L.R. 1156.

If your client decides not to repudiate, it may, without any infringement of the law, be registered as proprietor on your satisfying the District Land Registrar that the land will be held for a charitable or public purpose: ss. 380 (*c*) and 375 of the Land Act, 1924.