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THE NEW MINIMUM WEEKLY WAGE ORDER.

ON p. 821 of the *New Zealand Gazette*, in the number issued on June 21, there appears the Minimum Weekly Wage (Essential Undertakings) Order, 1945.* This Order revokes and replaces the Minimum Weekly Wage (Essential Undertakings) Order, 1942 (No. 2) (Serial No. 1942/320), which was the subject of much judicial discussion last year. This is not the place in which to work out in detail, in terms of the new Order, the incidence of minimum weekly wage payable to various kinds of workers in essential undertakings subject to the Industrial Man-power Emergency Regulations, 1944. But the Order that has now been revoked caused such interest owing to the various interpretations put upon it in three successive Courts, that we feel that consideration of the new Order, in the light of the interpretations placed upon its predecessor, may be of interest.

After the now-revoked Order came into operation on November 11, 1942, it seems that the general interpretation given it by some workers' organizations and by some employers was that, in calculating the minimum weekly wage to be paid, it was to be computed to the exclusion of any overtime, bonus, or other special payments, which included any amount earned on any day in excess of the daily proportion of the worker's ordinary weekly earnings. Thus, if, in a forty-hour week, a worker worked in ordinary time for twenty hours, the employer was bound to make up the sum so earned to the amount of the appropriate minimum weekly wage specified by the workers' contract of employment; *and*, they also thought, the worker was to receive all money earned in overtime hours. Accordingly, a worker whose work, by the necessities of the employer's business, was done outside of clock hours on several days of the week, but who, though he was available for work on all days during that week, but who could be employed, and worked, on, say only two of the days in ordinary-time hours, would according to this view receive the full minimum weekly wage plus all his earnings as overtime outside those hours. This, as we shall show later, was not the intention of the draftsman; and whatever that intention might have been, it was not the interpretation given to the Order in the Courts.

* Since published as Serial No. 1945/77 in the *Statutory Regulations*.

The former order came up for interpretation in June, 1943, in *Harwood* v. *Westfield Freezing Co., Ltd.*, (1943) 3 M.C.D. 147, before Mr. J. H. Luxford, S.M. In a written judgment, that learned Magistrate interpreted the Order, and the regulations under which it had been made. The effect of his judgment may be gathered from the illustration he gave at p. 150, as to the manner in which, he considered, the minimum weekly wage should be calculated. He said:

> First, the daily proportion of the ordinary weekly earning must be ascertained. If the ordinary weekly earnings in respect of work done on six days in a week is £6 12s., the appropriate daily proportion is £1 2s. Secondly, the actual amount earned each day must be ascertained, whether at ordinary rates of pay or at overtime rates. To the extent only by which the £1 2s. is exceeded is there overtime within the meaning of cl. 4 (*a*), and the employer may not apply the amount of such excess towards discharging his obligation to pay the worker a minimum weekly wage of £5 10s. Each day of each week must be treated in the same way. The result may be that a worker may receive an extra payment under the Minimum Weekly Wage Order, although his actual earnings during that week exceed £5 10s., but no one disputes his right to that.

On appeal by the worker from this judgment, the matter came before Mr. Justice Callan in *Harwood* v. *Westfield Freezing Co., Ltd.*, [1943] N.Z.L.R. 681. His Honour's interpretation was different from that of the learned Magistrate and he allowed the appeal. In the course of his judgment, His Honour said, at p. 682, l. 60:

> The appellant contended that in calculating the amount of the minimum weekly wage (if any) payable to a worker in terms of the Order, all payments made for hours worked outside ordinary weekly hours of the industry must be disregarded, and, if, in ordinary working-hours, the minimum weekly wage is not fully earned, then the difference between that amount and the actual amount earned during ordinary hours must be paid.

Respecting the respondent company's argument, His Honour, at p. 684, said:

> I understood that argument to be that all money earned during any part of any day may be brought into account against the worker to the extent that it does not exceed the amount he would have earned by working full ordinary clock hours at ordinary rates during that day.

After considering the construction of the various clauses in the Order, His Honour said:

Clause 5 (*d*) fairly and naturally construed does not restrict the meaning of "overtime." What it does, in my opinion, is to ensure that certain payments, as to which argument might arise, shall for the purpose of the order, be deemed "overtime, bonus, or other special payments," and, consequently, shall not be brought into account against a worker in calculating what rights, if any, he has under the order. For example, if in respect of special exertions during an eight-hour day between 7.30 a.m. and 5 p.m. a worker is paid more than the ordinary rate, cl. 5 (*d*), as I construe it, ensures that such excess shall not count against him in determining his rights under the order. This appears to me in conformity with what is admitted to be the natural meaning of cl. 4 (1) (*a*). It is conceded that if that clause be given its natural meaning, payment for work done after 5 p.m. cannot be brought into the calculation, even though the worker has done no work before 5 p.m. It seems to me only a natural corollary to that to provide that special payment for unusually hard work or for an unusual quantum of work performed during an eight-hour day between 7.30 a.m. and 5 p.m. shall not be brought into the calculation.

From this judgment, which should be read in full, the employers, by leave, appealed to the Court of Appeal: see [1944] N.Z.L.R. 542. In June, 1944, by a majority, the Court of Appeal (Blair, Kennedy, and Northcroft, JJ., Sir Michael Myers, C.J., dissenting) allowed the appeal. The result was that a third interpretation was given the Order. The learned Chief Justice considered that under the Order the worker was entitled, as a minimum weekly wage to the amount fixed by the Order as the minimum which he or she was entitled to be paid, plus overtime (and other special payments), if any; and, in coming to that conclusion, he agreed with the result reached by Mr. Justice Callan, though on different grounds. Mr. Justice Blair, at pp. 555, 556, concluded his judgment as follows:—

I consider that the correct way to determine whether a worker is entitled to payment in lieu of the prescribed minimum allotment of work is first to ascertain what is the value of that guaranteed minimum on the basis that no work has been allotted to the worker during that week. It is not disputed that in the plaintiff's case this value is £5 10s. per week which, on the basis of an eight-hour day with half a day on Saturday—in all a forty-four hour week—would be 20s. a day. If the total value of the work provided (*including overtime work at overtime rates*) is less than £5 10s. for a week, then to the extent that the work provided is worth less than £5 10s. the employer must make up to the worker that shortage in cash.

Mr. Justice Kennedy was of the opinion that the order secured to the worker merely a minimum weekly wage equivalent to his ordinary weekly earnings; and that the Minister of Labour was not empowered by the Industrial Man-power Emergency Regulations, 1942 (No. 2), to make a fixed addition to a varying wage the total of which might vary from time to time. The power given was to fix a true minimum to which, if the worker's earnings fell below, it was by addition to be made up. But if the worker's earnings exceeded the minimum, then the worker was not entitled to a further payment.

The result of the Court of Appeal judgment was to confine the operation of the order to a fixed minimum weekly wage, so that, in calculating that wage payable in any week, sums actually received by the worker for work done by him in that week, whether earned inside or outside the ordinary working-hours, were to be taken into account as part payment of the minimum weekly wage; or, if the total earned by a worker in ordinary time and overtime during the week exceeded the prescribed minimum weekly wage, that total represented the worker's earnings for the week, and replaced the minimum weekly wage prescribed by the Order, (or by the award, industrial agreement, or contract of service under which he worked if such latter wage exceeded the minimum weekly wage specified in the Order).

Shortly put, the effect of the Court of Appeal judgment was to disregard any differentiation between ordinary-time work and overtime work; but to look to the total earned in either category. If the total did not reach the amount of the minimum weekly wage, then the employer had to make it up to that amount; if that total equalled or exceeded it, the amount so ascertained was payable. As will have been observed, the interpretation of the Order differed in all three Courts. It was considered that Mr. Luxford's judgment did not give the worker enough; that Mr. Justice Callan's judgment erred on the side of generosity; and that the result reached by the majority of the Court of Appeal was impracticable, and it was unacceptable to employers and workers alike.

After the decision of the Court of Appeal there were differences in several industries as to the possible practical application of the Order, and so the matter rested from July, 1944, until June 18, 1945, when the new Order was gazetted. Employers' organizations generally preferred to make no change in the manner in which they calculated the minimum weekly wage for their employees before the Court of Appeal's interpretation; although the Court of Appeal's judgment was authority for paying less.

The new Order, which has effect as from May 1, 1945, is drafted so as to adopt none of the interpretations placed judicially upon the former Order. In effect, it provides for an increased minimum weekly wage, with the same restrictive conditions upon workers with which there must be compliance before a worker is entitled to claim the minimum weekly wage for any work. In its general application—that is to say, in the manner of computing the minimum weekly wage—it is different.

The Minimum Weekly Wage Order, 1945, was preceded by an amendment of s. 13 (1) (*j*) and (*k*) of the Industrial Man-power Emergency Regulations, 1944 (which, in the meantime had replaced the similarly-worded regulations under which *Harwood's* case had been commenced). The amendment to these clauses respectively prescribing the minimum weekly wage, and empowering the Minister of Labour to fix by order a minimum weekly wage in respect of the workers for the time being employed in any essential undertaking, took the form of striking out the word "wage" and replacing it by the word "payment": Amendment No. 1 (Serial No. 1944/141), Reg. 3 (1) (*b*). This amendment overcame the effect of the judgment of the Court of Appeal in so far as it had held that the Minister's power was to fix a minimum weekly wage, and no more.

Now, by a redrafting of the principal clauses of the former Order, the Minimum Weekly Wage Order, 1945, endeavours to give in appropriate language the intention with which the former Order was drafted. Briefly, the new Order differentiates between ordinary rates of pay earned in clock hours, and overtime rates of pay earned in overtime hours. The worker receives full credit for work done by him during the week and payment for such work at the prescribed rates fixed by the award, industrial agreement, or contract of employment under which he is working in an essential undertaking. But, in calculating the minimum weekly

payment to which he is entitled, each day of the week is taken as a separate entity, and the work done on that day (up to the number of prescribed ordinary hours) is counted at ordinary-time rates, and credited against the amount of minimum weekly payment, as increased by the new Order. It is immaterial whether that number of hours in one day is performed in clock hours or outside clock hours: they all count at ordinary-time rate when worked within one day, subject only to the limitation to the daily extent of ordinary working hours. If the total amount so ascertained is less than the prescribed minimum weekly wage, the employer must make it up to that sum. In addition, however, the worker receives, as "overtime, bonus, or other special payments" the difference between the ordinary-time rate (which is credited against the minimum weekly wage, as stated) and the overtime rate for each hour during the week in which he has performed work outside clock hours.

It seems to us that the new Order, which has the effect that was intended by the draftsman of the original Order, is eminently fair to worker and employer alike; and it is to be hoped that the draftsmanship of the new Order will survive the vicissitudes of interpretation to which its predecessor was subject. The amendment of the Industrial Man-power Emergency Regulations, 1944, to empower the Minister of Labour to fix "a minimum weekly payment" should be a material factor in overcoming the difficulty pointed out by Mr. Justice Blair and Mr. Justice Kennedy in *Harwood's* case.

SUMMARY OF RECENT JUDGMENTS.

BOUNDY AND ANOTHER v. BENNETT AND OTHERS.

SUPREME COURT. Nelson. 1945. March 14, April 17. KENNEDY, J.

Practice—Striking-out Pleadings and Proceedings—Statement of Claim—Grounds—No reasonable Cause of Action disclosed—Frivolous and vexatious and an Abuse of the Process of the Court—Question of Law in issue—Order.

When the Court is asked to strike out a statement of claim and, on the material before it, cannot dispose of the matter without further consideration, as there might be something worthy of discussion, it will not dispose of the action at that stage by striking out pleadings.

Fitzherbert v. *Acheson*, [1921] N.Z.L.R. 265, [1920] G.L.R. 526, *Soler* v. *Public Trustee*, [1923] N.Z.L.R. 869, G.L.R. 135, *Dyson* v. *Attorney-General*, [1911] 1 K.B. 410, *Mere Roihi* v. *Assets Co., Ltd.*, (1902) 21 N.Z.L.R. 449, 4 G.L.R. 251, and *Hurlstone* v. *Steadman* (*No. 2*), [1936] N.Z.L.R. 590, G.L.R. 450, referred to.

Counsel: *Brodie*, for the plaintiffs; *Cheek*, for the first and second defendants.

Solicitors: *Fell and Harley*, Nelson, for the plaintiff; *Sladden and Stuart*, Wellington, for the first and second defendants.

SPEED v. HORNE.

SUPREME COURT. Auckland. 1944. November 20, 21, 22, 23, 24. 1945. March 19, 20, 21; April 11. CALLAN, J.

Negligence — Occupier of Premises — Invitee — Fire-escape — Dangerous Condition of Hotel Fire-escape—Contract for painting Hotel—Employee of Contractor injured owing to Defect in Fire-escape—Liability of Proprietor—Duty owed Invitee.

If an occupier of premises that are dangerous does not know, but ought to know, of danger in such premises and invites some one to work thereon who, while working there, is injured because of what was dangerous, the occupier is liable for negligence if the danger of which he ought to have known is not reasonably discoverable by the person whom he invites to work, even although the danger be in the very part of the premises which is the subject-matter of the contract, and, as such, has for the time being been put in the occupation and control of those who have undertaken to do the work.

Having regard to the purpose of an hotel fire-escape, it is open to a jury, without any evidence as to what is right and proper, to say it is not proper for an hotel-keeper to be for many months in premises in an hotel, and to fail to acquaint himself at all with the state of one of his fire-escapes.

Indermaur v. *Dames*, (1866) L.R. 1 C.P., 274 aff. on app. (1867) L.R. 2 C.P. 311, and *Membery* v. *Great Western Railway Co.*, (1889) 14 App. Cas. 179, applied.

Canter v. *J. Gardner and Co., Ltd.*, [1940] 1 All E.R. 325, *Clelland* v. *Edward Lloyd Ltd.*, [1938] 1 K.B. 272, [1937] 2 All E.R. 605, *Wilkinson* v. *Rea Ltd.*, [1941] 1 K.B. 688, [1941] 2 All E.R. 50, *Robbins* v. *Jones*, (1863) 15 C.B. (N.S.) 221, 143 E.R. 768, *MacCarthy* v. *Young*, (1861) 6 H. & N. 329, 158 E.R. 136, *Lane* v. *Cox*, [1897] 1 Q.B. 415, *Thorn* v. *London Corporation*, (1876) 1 App. Cas. 120, and *Slowey* v. *Lodder*, (1900) 20 N.Z.L.R. 321, distinguished.

Marney v. *Scott*, [1899] 1 Q.B. 986, *Pritchard* v. *Peto*, [1917] 2 K.B. 173, and *Cole* v. *De Trafford* (*No. 2*), [1917] 1 K.B. 911, referred to.

Counsel: *Gould*, for the plaintiff; *North*, for the defendant.

Solicitors: *Morpeth, Gould, Wilson, and Dyson*, Auckland, for the plaintiff; *E. W. Inder*, Auckland, for the defendant.

In re ANIELA ADACH AND OTHERS (INFANTS).

SUPREME COURT. Wellington. In Chambers. 1945. May 25. BLAIR, A.C.J.

Infants and Children—Guardianship—Appointment of Guardians—Polish Infants (644 in number) temporarily resident in New Zealand as Guests of New Zealand Government—Guardianship during Respective Minorities—Order.

In 1944 the New Zealand Government with the consent of the Polish Government in London provided hospitality for 644 Polish children, who, with Polish doctors, nurses, teachers, and other adults accompanying them, were accommodated in an encampment near Pahiatua, wherein a church and modern school were provided. The ages of such infant children varied from five to twenty years: many of them were orphans, others had been separated from their parents and did not know whether they were alive or dead, the fathers of others were with the Polish or other allied armed forces, and the mothers were either dead, in Poland, in Russia, or their whereabouts were unknown.

An application by petition was made by eight suitable persons approved by the Consul-General in New Zealand for Poland, whose duty was the protection of all Polish minors for the time being residing outside Poland and the assurance to them of proper guardianship, for their appointment as a Board of Guardians of the said infant children. The formal consent in writing to such appointment was read over to all of such children who were of the age of sixteen years and upwards; ninety-two of these signed, but forty-one of them refrained from signing on account of letters received from their fathers serving with the allied armed forces in Europe requesting them to refrain from signing any documents.

It appeared, however, from the affidavit of the said Consul-General that such request was of a general nature, and that the said parents had not been aware of the guardianship proceedings or of the protection afforded thereby to the said children.

In pursuance of an order of the Court the petition was served upon the Attorney-General and upon a named solicitor residing at Pahiatua, who was appointed to represent all of the said children of the age of sixteen years and upwards and had not consented in writing to the appointment of the said Board of Guardians. On the hearing of the petition, the solicitor intimated that all the said latter class of children had indicated that they wished to come under the guardianship of the Court.

After hearing argument, the Court made an order appointing the petitioners joint guardians of all the said infants during their

respective minorities or until further order of the Court; that the giving of security by members of the Board of Guardians be dispensed with; that any five of the said guardians acting jointly and unanimously might decide any question arising in the course of such Guardianship except matters wherein guardians are required by law to act together; and that the guardians might make rules of procedure for the conduct of business of the guardianship, subject in both cases to the right of any one of the petitioners to apply to the Court for directions, with general liberty reserved to all parties to apply as to any matter arising in connection with the order.

Counsel: *Sim*, K.C., and *E. A. R. Jones*, for the petitioners; *A. E. Currie*, for the Attorney-General.

Solicitor: *E. A. R. Jones*, Wellington, for the petitioners.

BIDOIS v. ROBINSON AND KNAPP.

COMPENSATION COURT. Auckland. 1945. May 18, 23. O'REGAN, J.

Workers' Compensation—Liability for Compensation—Illegal Contract—Whether such Contract can support Claim for Compensation—Whether s. 61 of the Statutes Amendment Act, 1940, applies to Illegal Contracts—Workers' Compensation Act, 1922, s. 3 (5)—Statutes Amendment Act, 1940, s. 61—Industrial Man-power Emergency Regulations, 1944 (Serial No. 1944/8), Reg. 28 (14), 33 (5), 46 (1) (a).

An illegal contract cannot support a claim for compensation under the Workers' Compensation Act, 1922.

As subs. (5) of s. 3 of the Workers' Compensation Act, 1922 (added by s. 61 of the Statutes Amendment Act, 1940), presupposes a valid contract of service, it does not apply to illegal contracts.

The plaintiff, who had been directed by a Man-power Officer under the authority of the Industrial Man-power Emergency Regulations, 1944, to work for V. Ltd., disobeyed the direction, and was engaged by the defendants, with knowledge of such disobedience, to cut timber. When he had felled two trees, the defendants applied to the Man-power Officer for permission to employ the plaintiff, but permission to ratify continuance of the new employment was refused. Thereafter the plaintiff, with the defendants' concurrence, went on splitting the two trees that he had already felled and cut into log lengths. On the fourth day of such work, he sustained personal injury by accident arising out of and in the course of his employment. On a claim for compensation for such injury,

Held, That the contract of service, being in contravention of regulations made pursuant to the Emergency Regulations Act, 1939, was illegal and void; and that the plaintiff was therefore disentitled to recover compensation.

Kemp v. *Lewis*, [1914] 3 K.B. 543, 7 B.W.C.C. 422, and *Pounteney* v. *Turton*, (1917) 10 B.W.C.C. 601, applied.

M'Lelland v. *Hutchinson*, [1919] S.C. (Ct. Sess.) 68, 12 B.W.C.C. 428, distinguished.

Taylor v. *Onehunga Woollen Mills, Ltd.*, [1940] N.Z.L.R. 403, G.L.R. 236, and *Barnet Glass Rubber Co., Ltd.* v. *McDonald*, [1922] N.Z.L.R. 767, G.L.R. 213, referred to.

Counsel: *C. G. Lennard*, Auckland, for the plaintiff; *North*, Auckland, for the defendants.

Solicitors: *G. G. Bell and Larkin*, Matamata, for the plaintiff; *Earl, Kent, Stanton, Massey, North, and Palmer*, Auckland, for the defendants.

WELCOME HOME TO THE CHIEF JUSTICE.

The Bar's Appreciation of his Work.

On June 19, at the first sitting of the Court of Appeal after the return from San Francisco of His Honour the Chief Justice, the Rt. Hon. Sir Michael Myers, the Court was filled by members of the profession who had come to welcome him. It was the largest gathering of members of the Bar yet seen in Wellington.

On the Bench, in addition to the Chief Justice, were Mr. Justice Kennedy, Mr. Justice Callan, and Mr. Justice Finlay.

THE ATTORNEY-GENERAL.

Being unable to be present, the Attorney-General, the Hon. H. G. R. Mason, asked the Solicitor-General to read the following letter:—

> "Upon the return of the Right Honourable the Chief Justice after his recent journey overseas upon work of unique importance it would have given me especial pleasure to be present personally with brother practitioners to welcome him back to New Zealand. This being impracticable, I should be glad if you would express my apology for my not being present, and also the assurance of my participation in the cordial feelings of welcome shared by the whole profession upon His Honour's return."

THE SOLICITOR-GENERAL.

The Solicitor-General, Mr. H. E. Evans, asked, before the Court proceeded to the business of the day, the indulgence of their Honours to say a few words, on behalf of the New Zealand Bar, by way of welcome to His Honour the Chief Justice on his return to New Zealand after taking part in two tasks of supreme importance to the ordering of international affairs and to the future peace of the world. The first was undertaken as a member of the United Nations Committee of Jurists at Washington engaged in drafting the Statute of the International Court of Justice; and the second as the New Zealand representative on Commission IV of the United Nations Conference at San Francisco, dealing with that statute and with various other legal problems.

"These tasks called for the exercise of gifts of a very special character, far exceeding those of clear and unmistakable expression which are the usual primary requirement of all drafting," Mr. Evans proceeded. "It was necessary to consider many important questions of principle and policy, as for example the sources from which the law to be administered by the Court is to be drawn, the compulsory or voluntary character of submission to the jurisdiction of the Court, the means by which disputes may be brought to the Court, and the advisory jurisdiction to be exercised at the instance of the General Assembly of the Security Council.

"It was necessary to possess vision and imagination to foresee the nature of the problems with which the Court will have to deal, and to make such provision as will ensure that when this instrument of justice comes to be used, its work will proceed smoothly and efficiently, and that it will gain the confidence of the whole world.

"The jurisdiction of the Court will no doubt at first be limited, but, as that confidence grows, the provision for advisory jurisdiction at the instance of the General Assembly or the Security Council may well lead to early judicial consideration and settlement of important questions which might otherwise drift into an intractable or even an acute condition, again endangering the peace of the world.

"Your Honour, the New Zealand Bar is proud that the Dominion has been able to send to the Conference a representative who is so fitted by his gifts and his experience for the tasks set before him, and who has so willingly and unsparingly devoted himself to them.

"We rejoice to hear that your Honour's work has received instant recognition, and we trust that Your Honour may live long to see the International Court of Justice working efficiently and successfully as part of an Organization designed to ensure that never again will peace and order among the nations have to be purchased at so great a price, in sacrifice, in suffering, and in sorrow, as has in these last years been paid."

THE LAW SOCIETIES.

Mr. H. R. Biss, President of the Wellington District Law Society, said that he deemed it a privilege and an honour to be able to add to what has been so ably said by the learned Solicitor-General, the congratulations and good wishes of the New Zealand Law Society and of the members of the Bar in Wellington. He apologised for the absence of Mr. H. F. O'Leary, K.C., the President of the New Zealand Law Society, who was out of Wellington at the moment, but who desired to be associated in all respects with the good wishes that are being tendered to Your Honour the Chief Justice by his legal brethren in Wellington.

The speaker, addressing His Honour the Chief Justice, went on to say: "When it was announced that you had been appointed to the Committee of Jurists, which had been charged with the very great responsibility of drafting the constitution of the World Court of Justice and to the Committee dealing with legal problems arising out of the San Francisco Conference, immediate and complete satisfaction was felt by the profession throughout New Zealand; and with that satisfaction there went a feeling of pride that this signal honour should have been conferred upon the leader and head of the New Zealand Judicial system under which we live and in which we have our being. Your work in that sphere now, at any rate for the time being, completed, Sir, you have returned to resume your duties in this Court, and we of the Bar are glad to have this opportunity of welcoming you back.

"That the duties entrusted to your Honour called for rare gifts, such as have been mentioned by the Solicitor-General, was apparent to us; and we are confident that your Honour will have applied to the complicated and intricate task that confronted you, a breadth of vision and a clarity of expression that will be found to have played no small part in inspiring that confidence in the Court that is an essential to the exercise by it of its jurisdiction.

"Your Honour, the members of the Bar take pride in the fact that you were entrusted with this task, and we trust that you may be spared to see the World Court functioning as a powerful force for the settlement of international disputes and the maintenance of world peace.

"And in conclusion, your Honour, we respectfully congratulate you on your safe return to New Zealand, after what must have been an exacting and arduous journey."

THE CHIEF JUSTICE.

His Honour the Chief Justice, in reply said that he appreciated very much, and thanked the speakers and the members of the Bar for their words of welcome to him on his return from his mission abroad. The learned Chief Justice continued: "Your presence here to-day and your words of welcome are, after all, simply further evidence of the kindness, the courtesy, and the generosity which I myself and other members of the Bench have always received at the hands of members of the profession.

"The Committees in Washington and San Francisco of which I was a member dealt not only with the preparation of the statute of the new International Court, but also with various legal problems affecting treaties and other international questions. It was all very interesting, as were the various personalities that one met.

"You would probably be interested, as lawyers, in the happenings at Washington and San Francisco, and particularly in the discussions of the committees, especially in regard to the new Court. But you would not expect me to speak of these matters now. This is not the time or place for such a discussion; but some other opportunity may be made for that, if that should be your wish. Meantime I can only again thank you for your welcome and for the courtesy and kindness which that welcome evidences."

LAND AND INCOME TAX DEPARTMENT.

DECENTRALIZATION.

Auckland.

In conformity with the recently announced policy for decentralization of the Land and Income Tax Department, the Commissioner of Taxes now announces that his Department is opening a Branch Office in the Jean Batten Building, Fort Street, Auckland.

To commence with, the company files only (land-tax and income-tax) will be forwarded to Auckland. These will comprise the files of all limited companies whose registered offices are situated North of Auckland, in Auckland City, and South of Auckland as far south and including the counties of Waitomo, Ohura, Taumarunui, Kaitieke, Taupo, Whakatane, and Opotiki.

The taxation affairs of all other taxpayers residing in the above districts will, until further notice, continue to be dealt with by the office of the Commissioner of Taxes, in Wellington.

The Auckland Branch of the Department will be open for business on July 3, and any communications relating to the limited companies referred to above should be addressed to: "The Superintendent, Land and Income Tax Department, Auckland C.1."

Wanganui.

This branch will be open for public business on July 11, at the Trafalgar Buildings, Ridgway Street, Wanganui, and will deal with all matters relating to income-tax, excess profits tax, social security charge and national security tax (but not land-tax) of individual taxpayers residing in the following counties: Patea, Rangitikei, Waimarino, Waitotara, and Wanganui.

Communications should be addressed to: "The Superintendent, Land and Income Tax Department, Wanganui."

It should be noted that all matters relating to land-tax and to the taxation of limited liability companies in the latter counties will continue to be dealt with by the Commissioner of Taxes, Wellington C. 3, and not by the Superintendent at Wanganui.

THE STATUS OF STIPENDIARY MAGISTRATES IN NEW ZEALAND.

An Historical Summary.

By S. L. Paterson, LL.B.

The present jurisdiction of Stipendiary Magistrates is twofold: (*a*) A summary criminal jurisdiction, broadly equivalent to, but more extensive than, that of Petty Sessions; and (*b*) a civil jurisdiction as Judges of a Court of Record equivalent to that of the County Court in England.

The term "Magistrate" is a misnomer having reference historically to the days when Justices of the Peace were executive and administrative officers: see *6 Oxford English Dictionary*, Pt. II, 27.

The Earliest Courts.

In the early history of New Zealand provision was made for the administration of justice by the setting-up of a Supreme Court, and also Courts of Petty Sessions and Civil Courts for the summary recovery of small debts. To bridge the gap between these summary Courts and the Supreme Court, as well as to facilitate the administration of justice in a scattered community, Courts of Quarter Sessions were set up, and then County Courts having both civil and criminal jurisdiction. They were not described as Courts of record. Judges were to be barristers or solicitors, and were appointed at the pleasure of the Crown. Their jurisdiction was local.

In 1844, by reason of the appointment of an additional Supreme Court Judge, it was deemed practicable for all crimes and offences to be tried before the Supreme Court, and the County Courts were abolished. The Court of Requests was re-established to provide for the easier and more speedy recovery of small debts. Its jurisdiction was summary, and was limited to recovery of debts not exceeding £20. Commissioners were required to be barristers or solicitors, and held office at the pleasure of the Crown.

The first Resident Magistrate's Court was established in 1846. It was a Court of summary jurisdiction having both civil and criminal jurisdiction, with special provisions relating to claims between Natives and Europeans and between Natives themselves. The limit of jurisdiction was £20, except where Natives were involved, in which case the Magistrate sat with two Justices of the Peace and the jurisdiction extended to £100. The Magistrates were to be appointed from "fit and proper persons being Justices of the Peace." Their jurisdiction was exercised in equity and good conscience, and they held office at pleasure. The jurisdiction was later extended to £100; and either party could claim a jury, if the claim was over £5.

The District Courts.

The extended jurisdiction of the Resident Magistrates' Court was taken away by the District Courts Act, 1858, which set up Courts of Record called District Courts, possessing both civil and criminal jurisdiction similar to that of the abolished County Courts. Judges were required to be barristers or solicitors; but any fit and proper person might be appointed a Judge with a limited civil jurisdiction only. Judges held office at pleasure, and might hold any office not deemed incompatible with their office. These Courts had certain equitable jurisdiction and also an appellate jurisdiction from the Resident Magistrates' Court and Courts of summary jurisdiction; but a District Court Judge could not determine an appeal from himself when sitting as a Resident Magistrate or Justice of the Peace. This Act with sundry amendments was consolidated in the Consolidated Magistrates' Courts Act, 1908. These Courts, however, fell into disuse largely owing to the encroachment of the increasing jurisdiction of the Magistrates' Court, and to better facilities for access to the Supreme Court.

The last District Court ceased to exist in 1909. They were finally abolished in 1925. During the latter years of their functioning all Judges were also Stipendiary Magistrates and the Magistrates' jurisdiction was more frequently resorted to—*e.g.*, in 1892 there were four District Court Judges sitting in seventeen towns, while there were twenty-nine Resident Magistrates sitting in 154 places. Seventy-one cases were brought in District Courts; of these nineteen lapsed. The amount claimed totalled £2,225. In the same year, 18,803 cases were tried in the Resident Magistrates' Courts, and the claims amounted to £246,167.

The Magistrates' Courts established.

The year 1893 saw a complete revision of the Resident Magistrates' Courts. The Magistrates' Courts Act, 1893, abolished Resident Magistrates' Courts and in their place created "Courts of record possessing civil jurisdiction to be called Magistrates' Courts." This was a considerable improvement in status. Then the jurisdiction of the Magistrate was no longer local, but extended to the whole colony: see *Graham* v. *Callaghan*, (1903) 22 N.Z.L.R. 950.

The Court was given three jurisdictions: "Ordinary," "Extended," and "Special." The ordinary jurisdiction broadly was in contract and tort up to £100; the extended jurisdiction up to £200; and the special jurisdiction included certain equitable matters. I can find no records of this last jurisdiction being conferred on any Magistrate.

There was also a considerable improvement in the status of the Magistrates. Any fit and proper person could be appointed to exercise the ordinary jurisdiction of the Court, and he held office at the pleasure of the Governor. No person could be appointed to exercise the extended jurisdiction who was not a barrister or solicitor of the Supreme Court, or who had not for a period of five years continuously and competently exercised the extended jurisdiction under the Act repealed or the ordinary jurisdiction under this Act; and no person other than a Magistrate appointed to exercise the extended jurisdiction *and* who was a *barrister* of the Supreme Court could be appointed to exercise the special jurisdiction. But any District

Court Judge could exercise either the extended or special jurisdiction.

This meant that the status of the Stipendiary Magistrates exercising the extended jurisdiction was practically equivalent to that of the District Court Judges before 1893; but the jurisdiction of these Judges was then increased to £500.

The Status of Magistrates.

A better status was also provided for Magistrates exercising the extended jurisdiction in that, although appointed to hold office at the pleasure of the Governor, the Act provided that the Governor could remove them only for (*a*) absence from the Colony without leave; (*b*) incapability, neglect of duty, or misbehaviour; or (*c*) upon the address of both Houses of the Legislature. Also, the Governor could suspend any such Magistrate for good cause.*

This provision in effect gave these Magistrates some degree of independence, because the power of the Governor to remove them was limited; and any attempt to remove a Magistrate for any other cause would be met by prohibition or possibly by Writ of *Quo Warranto* against his successor: see *Reg.* v. *Owen*, (1850) 15 Q.B. 476, 117 E.R. 539.

For some reason which does not appear from the report of the Commissioners, s. 15 of the Act of 1893 was substantially amended in the 1908 consolidation in which it is represented by s. 9; all the later paragraphs relating to the removal from office were omitted. This was a distinct set-back to the Magistrates and was probably due to there being no person or organization to conserve their interests. They have subsequently suffered a similar set-back, which will be referred to later.

The next provision affecting the jurisdiction and status of the Magistrates was the Amendment Act, 1913. This abolished the three jurisdictions and conferred a civil jurisdiction in contract and tort up to £200, and, with consent, up to £500. This also included most of the incidental jurisdiction which the Court now has. Magistrates still held office at pleasure, but had to be barristers or solicitors of not less than five years' *standing*, or be continuously employed as a Clerk of a Magistrates' Court for ten years *and* be a barrister or solicitor.

The most important provision of the amendment was that relating to salaries. Hitherto Magistrates had been regarded as officers of the Civil Service coming under the control of the Public Service Commissioner. Thus, the Civil Service Classification List for 1912 shows the Under-Secretary of Justice who was also Commissioner of Police as having a salary of £700–£900. There were five Stipendiary Magistrates with salaries of £625, rising to £750 by annual increments of £25; and twenty-five Magistrates with salaries of £500, rising to £600 by annual increments of £25. The 1913 amendment fixed the salaries of the Magistrates at £700 with an additional £100 for the principal Magistrates in the four centres. These salaries *were charged upon the Consolidated Fund without any further appropriation.* This was a marked advance, and an important step towards securing the independence of the Magistrates.†

In *Attorney-General* v. *Edwards*, (1891) 9 N.Z.L.R. 321, considerable stress was laid upon the desirability of provision being made for the payment of judicial salaries by a fixed grant, as a material factor in securing the independence of the Judges. Sir Robert Stout, who led for the plaintiff, after quoting from several constitutional authorities, said:

> All these writers recognize that the permanent appropriation of salaries is necessary to judicial independence. *Story* lays it down that without fixity of salary the provision as to tenure of office during good behaviour would be a mockery. *Kent* puts it that unless the salaries can be drawn independently of the Legislature the Judiciary is not independent. There is the same reason now why the Bench should be free from legislative control as there was formerly to free it from the control of the Crown.

Mr. Justice Richmond, in the course of his judgment, referring to the appointment and provision for the salaries of Resident Magistrates said:

> The case of a Supreme Court Judge is not in principle different. The appointment is more important because of the dignity and permanence of the office and also because it ought to be provided for by a permanent grant.

Now, while the Magistrates would not presume to make a claim to the dignity and status of the Supreme

* Magistrates' Courts Act, 1893, s. 15. In October, 1893, it was the intention of the Legislature to give to the Magistrates, who were authorized to exercise extended jurisdiction, a better and more secure status, by holding their appointments during good behaviour. The Bill had been before the Statutes Revision Committee and afterwards passed through the Committee of the House with that provision unaltered. But later the Hon. Mr. Reeves moved that the Bill be recommitted for amendment by striking out the words "during their good behaviour" with a view to inserting the words "hold office during the pleasure of the Governor." The Hon. Mr. Seddon opposed the appointment of such Magistrates for life, while Sir Robert Stout actively supported the clause as it stood, as did Messrs. Guinness and T. Mackenzie. Mr. Seddon had had the Bill recommitted, as he thought that there should be power to remove a Magistrate at will because there might in the future be a decrease in population or a reduction of litigation, and the existing appointments might be superfluous. He said "it was simply monstrous to saddle the taxpayers of the Colony with all these Magistrates for life," since the Magistrates would be in the same position as Supreme Court Judges. Sir Robert Stout's argument was that if they were given a secure tenure of office, and were not liable to dismissal "at the whim of the Ministry" of the day, better men could be obtained for appointment to the Magistracy. Mr. T. Mackenzie (afterwards Sir Thomas) pointed out that it would be possible to give a secure tenure by means of a fixed retiring age, with security of appointment until that event occurred, as Magistrates should be placed beyond the reach of Government interference in any way. He expressed the view that there was then public concern because a number of Magistrates had to be very careful how they adjudicated on matters in which supporters of the Government were concerned. Mr. Guinness said it was important that Magistrates should hold office independently of the Ministry of the day. Mr. Seddon had his way. The Bill was recommitted, and the last paragraph of cl. 15 was amended, and the Bill became law by 23 votes to 17: *82 Hansard*, 908–912.

† The Hon. Mr. Herdman, in introducing the Bill, stated that in the past the salaries of Magistrates had depended on the vote of the House, which had always seemed to him to place the gentlemen occupying those positions in a very invidious position; and the practice itself was objectionable. He thought it was a great step in advance to have their salaries fixed permanently by an Act of Parliament, thus placing them on the same footing as the County Court Judges in England, who exercised similar functions. He added that the Bill would improve generally the status of Magistrates throughout New Zealand, "and that means," he said, "that the administration of justice will be improved and the public generally will be better served." Mr. McCallum, for the Opposition, said they welcomed the spirit of a Bill which endeavoured to give Magistrates a better status: 162 *Hansard*, 652. Sir Francis Bell, in the Legislative Council, explained the effect of the permanency of salaries fixed by the Bill by saying a Magistrate would have nothing to seek or gain by any act or refusal to act in their very laborious and responsible office: *163 Hansard*, 493.

Court Judges, it may well be argued that, as Judges of an inferior jurisdiction, they are entitled to some measure of independence. Had the provisions under discussion remained in the statute, and had the provision relating to their tenure of office which were contained in the 1893 statute, and which were omitted from the 1908 Consolidation Act, also continued to be law, then the Magistrates would have had a tenure of office and independence, which, having regard to their status as inferior Judges, might be regarded as satisfactory. Unfortunately, this provision was repealed without the Magistrates' being made aware of it, and without any appreciation of the effect of the repeal. I shall refer to this later.

While this amendment, in the respects indicated, represented an improvement in the status of the Magistracy and a distinct step towards its independence, it introduced a qualification for appointment for a certain class which was not conducive to the improvement of status nor to independence. The amendment had in effect given all Magistrates the extended jurisdiction. It also required that Magistrates should be barristers or solicitors of the Supreme Court of not less than five years' standing; but (and this seriously detracted from the prestige adherent to the foregoing qualification) it also enabled the appointment of any person who had been Clerk of a Magistrate's Court for a period of at least ten years and who also was a barrister or solicitor. I mention this now, as it is part of the history of the legislation relating to the Magistracy with which I am at present dealing.

The next legislation affecting the Magistrates was the Magistrates' Courts Amendment Act, 1920. This provided for an increase in salaries, and also for a partial division of Magistrates into classes. Thus the principal Magistrate in each of the four main centres was to receive £900, one other Magistrate in each of such centres was to receive £850, and all other Magistrates £800. The order of precedence was to be determined by the Minister of Justice. Salaries still remained charged on the Consolidated Fund.

An important provision was the fixation of a retiring age—*viz.*, sixty-five years.

The variation in the salaries was a retrograde step and tended to have several undesirable effects. Principally, it militated against that judicial independence which is eminently desirable in Inferior Courts as well as in Superior Courts. It held out in effect the prospect of promotion by favour of the Minister of Justice. Any Magistrate who showed any independence of judgment or who tended to be critical when dealing with cases concerning the Crown or Executive, or whose judgments were not to the liking of the Executive, ran the risk of never attaining to any of the higher salaried appointments.

Next, it was a cause of jealousy and friction between Magistrates themselves. It was said to tend to draw the better Magistrates to the cities, leaving the country to the tender mercies of the inferior Magistrates. Whether this was so or not is open to question; because there were sound Magistrates who preferred the comparative freedom of a country circuit to the monotonous grind of a city appointment. But it cannot be questioned that there arose an invidious distinction between the "City Magistrates" and the "Country Beaks." It was unfortunate, perhaps, that the calibre of the Magistrates was not sufficiently uniform to prevent such distinction. A Magistrate on a country circuit usually has a more varied assortment of cases to try, as well as cases of greater importance, because in country districts the expense and delay incident to a Supreme Court action at a distance often forces litigants to accept the more convenient and nearer tribunal, and bring therein actions, which, if they lived in or adjacent to a city, they would bring in the Supreme Court.

Between 1920 and 1926 two small amendments were passed providing for the appointment of temporary Magistrates and altering the qualification for the appointment of Clerks of Court to the Bench. To be eligible for such appointment a Clerk had now to have been continuously employed as an officer of the Justice Department for a period of at least ten years, and during such period employed for not less than five years as the Clerk of a Magistrate's Court and to be a barrister or solicitor.

There was also an important alteration with regard to retiring-allowances made in the Finance Act, 1924. These allowances were to be paid from the Consolidated Fund into which salary deductions were paid and the retiring age was raised to sixty-eight years.

The Amendment Act, 1927, increased the salaries to £1,000 for the principal Magistrates in the four main centres, and to £900 in all other cases. At the same time the jurisdiction of the Court was raised to £300.

Retiring-allowances were also placed on a better basis. These alterations were made as the result of representations made by the Magistrates to the Government.

The joke, however, was on the Magistrates, because the Government of the day succeeded in raising the salaries of the Magistrates and at the same time effecting a saving. It arose in this way: up to that time Magistrates when sitting as Coroners received a fee of £1 1s. for each inquest. As a part of the bargain resulting in the increased salaries, these fees were dropped. At that time they amounted to over £1,500 per year. Also, during the negotiations, it was agreed that the number of Magistrates should be reduced by two, thus resulting in the saving of £1,600 per year; and making a total saving of approximately £3,200 per year. As against this, the increases in salary approximated £2,600 per year—a net saving of about £600 per year, and everybody was happy.

This perhaps may not be an altogether fair appraisement of the position because the published figures do not show the number of inquests conducted by Justices of the Peace sitting as Coroners. What then happened was rather a redistribution of the moneys already being paid to the Magistrates as remuneration. Magistrates in the main centres had a much greater number of inquests to conduct than those in the country. Hence they received a much greater addition to their already larger incomes. The new arrangement doing away with Coroners' fees and increasing salaries was a more equitable arrangement. The fact remains, however, that there was no real increase in salaries. In 1928, the Act was consolidated.

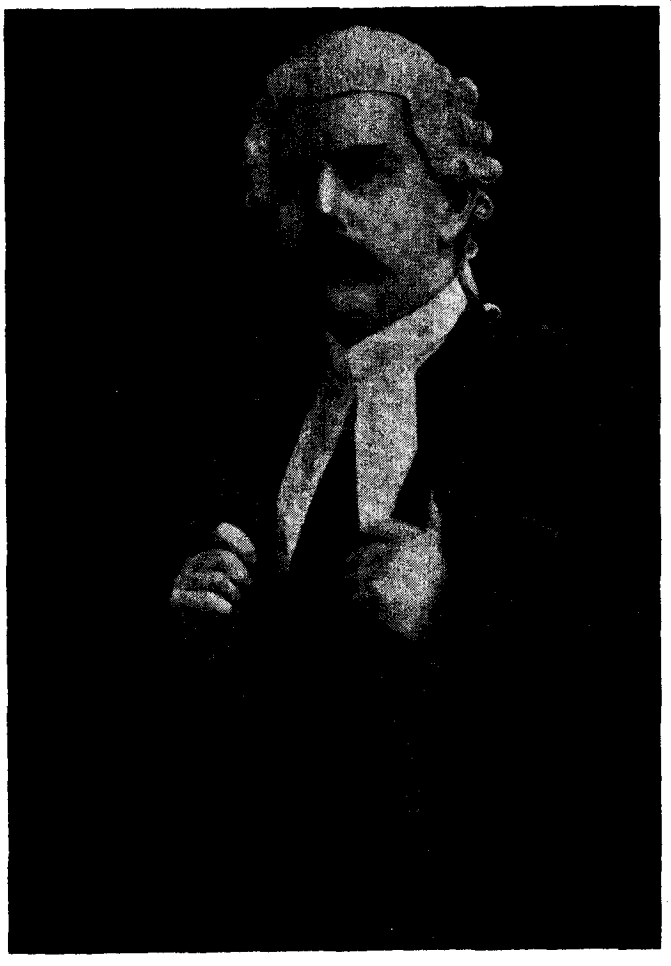
(To be concluded).

THE LATE MR. FREDERICK EARL, K.C.

Tributes from Bench and Bar.

Before the daily work of the Supreme Court commenced at Auckland on April 17 last, reference was made to the death of Mr. Frederick Earl, K.C., formerly one of Auckland's leading barristers. On the Bench were Mr. Justice Callan, Mr. Justice Cornish, and the Hon. Sir John Reed.

Mr. Earl was born in Melbourne in the year 1857. He attended the South Melbourne Grammar School, and the Melbourne University. As a young man, he came to Auckland and was admitted to the Bar there in the year 1880. He then commenced practice in partnership with the late Mr. A. B. Campbell. He subsequently entered into partnership with Mr. George Kent.



The late Mr. Earl, K.C..

The President of the Auckland Law Society, Mr. A. Milliken, in addressing their Honours, said:

"Mr. Earl was a man of great ability, and he readily reached prominence at the Bar. Notwithstanding the fact that he lived to a ripe age, he never enjoyed really good health and he retired at a comparatively early age, at a time when it was generally agreed he could have attained greater eminence had he so desired.

"Mr. Earl was an acknowledged authority on Native land laws. His *mana* among the Maori people was very great. They looked to him as their guide, philosopher, and friend. One of Mr. Earl's most outstanding successes came towards the close of his more active career when, after years of work and litigation, he was instrumental in establishing the right of the Natives to the ownership of the lake beds at Rotorua.

"He was a very sound lawyer. He knew his legal principles, and he had a great faculty of readily recognizing and assimilating all essential facts. His addresses to the Court were eloquent and forceful, and were delivered in deep, resonant, and flexible tones in a most compelling manner. His great ability as an advocate was acknowledged when, in 1912, he was created King's Counsel.

"During the last war, he was Chairman of the Auckland Military Service Appeal Board, and his services on that body were recognized when, in 1919, he was made an Officer of the Order of the British Empire.

"Before Mr. Earl left Melbourne to come to New Zealand, he sought the advice of an old practitioner there, and this old practitioner advised him never to confine himself solely to the practice of the law, but to take up outside interests also, and we know that Mr. Earl took that advice. We know, too, of the interest he took in the sporting and recreational activities in this city. Football, cricket, racing, and amateur theatricals all engaged his attention as a young man. He was an enthusiastic Rugby player, and he represented his province in the first team that went on tour. In 1933 he presented the Jubilee Trophy to the Auckland Rugby Union for annual competition among senior teams, in remembrance of the Rugby players of earlier days.

"For thirty-one years the late Mr. Earl was on the Committee of the Auckland Racing Club, and for twenty years of that period he was a steward. He represented the Auckland Racing Club on the New Zealand Racing Conference, and he acted as an Appeal Judge in racing matters. Many good horses were raced in his colours. In 1921 he was appointed Chairman of the Royal Commission set up to make representations on the granting of totalizator permits.

"He took a very lively interest in the Auckland Amateur Operatic Society, of which he was chairman for many years.

"It was as a cricketer that Mr. Earl will, perhaps be best known for his outside interests. He was a lover of clean and honest sport, and notwithstanding the great interest he took in other activities, it is quite correct to say that cricket claimed his greatest attention. Over sixty years ago he was an active playing member of the Auckland Cricket Club. In 1894 he was made Vice-president of the Auckland Cricket Association; in 1903 he was made President, and he

(Concluded on p. 166.)

LAND SALES COURT.

Summary of Judgments.

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

No. 45.—D. TO S.

Rural Land—Dairy-farm Management—Potential Value disregarded by Vendor—Expenditure on Pasture—Productive Value—Increasing Returns—Dairy-farm Management and Labour Costs.

Appeal concerning the sale-price of a farm property of 166 acres and 33 perches. It lay adjacent to the Bruntwood Cheese Factory and Railway-station. It was 11½ miles from Hamilton and 3½ miles from Cambridge. The sale price of £6,000 inclusive of the value of a chattel agreed to be sold and of an estimated value of £25 was considered too high by the Rural Land Sales Committee which fixed the basic value of the land at £5,000 and recommended its acquisition for the settlement of returned servicemen.

The Court said: "The property has been allowed to deteriorate somewhat seriously during recent years, and a good deal of money will have to be spent and a great deal of work will have to be done to bring it back to the standard of the average dairy-farm in the Bruntwood district. When so brought back it will, by reason of the natural quality of the soil, be of a value equal to the best of the land in that district.

"By reason of this circumstance the property has, as was generally agreed, a potential value. It is difficult to estimate the value of that potentiality. Mr. M., the principal Crown witness, although he agreed to the existence of the potentiality, was not prepared summarily to make an estimate of its value. The overall estimate of the value of the property given by Messrs. H. and D. must, it is thought, include something on this account.

"This is a factor which the Court can take, and the Committee could have taken, into account under s. 53 of the Servicemen's Settlement and Land Sales Act, 1943. There is, however, no need in the light of the circumstances of this case to follow the topic further. It is sufficient to say that potentiality is a factor which the vendor apparently disregarded in agreeing to accept the price she did.

"For the rest, everything that was the subject of debate during the hearing of the appeal and everything that arises out of the discussion of such topics as were debated comes within the ambit of the major question the Court has to consider—namely, what is the productive value of the farm when determined in the manner prescribed by s. 53 of the Act?

"To this question Messrs. H. and D. did not specifically advert, and their evidence has reference to some only of the items which enter into the calculation of the productive value. They testified in these respects as experienced and responsible farmers in the district and the Court has given full consideration to their testimony. The estimate of the productive value made by the other principal witness called by the appellant led to a result which, on its face, could not be other than fallacious.

"In the main, therefore, upon many crucial issues calling for determination the Court has only the evidence of the Crown witnesses upon which to reach a conclusion. That evidence, however, was so fairly given and was so clearly impartial and cogent that it can properly be made the basis of a considered decision.

"Having said so much, it can at once be further said that, having regard to the history of the property, its demonstrated carrying-capacity during recent years, and the present state of the pastures, the Court accepts the assessment of the productive capacity of the property to which the Crown witnesses testified. Their assessment of the outgoings, except in those specific respects to which reference is later made, also seem proper. Such a finding, involving as it does that the property will carry ninety-five cows and replacement stock, does not involve a refutation of the evidence of Messrs. H. and D., for it is now certain that when the property carried the one hundred cows, which fact they made the basis of their evidence, no replacement stock was carried. From this it appears that the Crown witnesses in their assessment in this respect were just and in no sense conservative.

"Taking the returns of the present tenant, the fact that peak years of production were enjoyed by the previous tenant and the progressive process of deterioration of the pastures into account, the same may be said of their estimate of the probable butterfat return per cow. That the returns per cow will improve and attain the high average for the locality as the pastures improve has not been questioned. This feature has doubtless influenced the opinions of Messrs. H. and D. considerably for they as neighbouring farmers could, for many reasons, effect recovery more economically than a farmer with this area alone to work.

"In the result, what is indicated as necessary in order to reach a proper conclusion is an examination of the items of outgoings which the Crown witnesses took into their calculation of the productive value. In this relation the Court shares the opinion of the Committee that a man working this farm would not shoe his horses. The journeys they have to make are too short and over a road of such a nature that shoeing is really unnecessary. This excludes an item of £12 from the expenditure side of the budget produced by Mr. M. and confirmed by Mr. B.

"Then, too, a mistake has crept in as to the amount of the factory pay-out. This factory does not in fact pay interest nor any form of bonus. It simply distributes to its suppliers the whole of the net proceeds of the sale of its products.

"The return to the farmer must therefore be calculated at 1s. 7¼d. per pound of butterfat instead of at 1s. 7d., as Mr. M. assumed. As, however, the recovery by the supplier of 1s. 7¼d. a pound requires the isolation by him of a sum in share capital which earns no return in interest and is recognized as never likely to earn any such return, the Court holds the view, for reasons which are more exhaustively stated in the judgment of the Court in the case *No. 43—W. to B.*, that interest at 5 per cent. on the amount of the share capital should be deducted from the aggregate of the returns at 1s. 7¼d. per pound of butterfat. On such a basis the return assessed by Mr. M. will have to be increased by a net sum of £6 14s. 6d.

"Another question, and one of general importance, arises. This has relation to the reward for management on dairy-farms. This question profoundly affects all dairy-farmers who may in future desire to sell their properties, for the capital moneys involved will in many cases be considerable.

"The question arises from the fact that Mr. M., in conformity with instructions received by him, has calculated his reward for labour and management item on a prescribed formula. This formula involves fixing a sum in respect of management for the first forty cows milked and adding £2 per cow for each cow over forty. A radical departure from the guaranteed-price formula is involved. It is a departure which, by increasing the cost of management item on the outgoings side of the account, depresses the productive and hence the sale value of all farms on which more than forty cows are milked.

"Ostensibly, what is sought to be achieved by the formula is some equalization in value between smaller and larger dairy-farms. The formula, on its face is inelastic and not adaptable to the facts of individual cases. A consideration of its incidence and purpose shows it to be designed to achieve a result which may well have no relation to reality, whilst it certainly has no relation to any of the purposes of the Act. In addition, from its application, inequity and even injustice might result. Efficiency would unquestionably be penalized.

"The merit claimed for it is that, by its application, the value of larger farms per acre will be depressed to conform to the value per acre of smaller properties of equal quality. What is involved is not necessarily large properties in relation to small holdings, but farms on which forty cows are milked in relation to farms on which any number in excess of forty constitute

the herd. In such a relation there are cogent reasons why the larger area has and should have a higher productive value.

"To begin with, less capital outlay on a per-acre basis is required for buildings, plant, and machinery, whilst the costs of fencing, maintenance, and administration are, on the same basis, comparatively less. The formula therefore disregards factors which do in fact constitute elements of value. It is in that sense out of harmony with reality. Any such disharmony must be productive of injustice.

"The facts of each case should, in fairness, be weighed and considered with as little in the way of restraint and compulsion upon the responsible tribunal as circumstances will allow. This can be achieved by reference, at least initially, to the basis established by the figures upon which the guaranteed price was fixed. This basis the Court has invariably adopted subject only to a recognition of the fact that adjustment to the circumstances of particular and individual cases is, upon occasion, necessary in the interests of justice.

"The guaranteed price is currently a crucial feature in every dairy-farm undertaking. It in effect constitutes a continuing contract governing the price at which the dairy-farmer agrees to sell his product. The constituent items by which that price was determined come within the scope of the factors which were the subject of agreement and are, therefore, at least *prima facie* evidence of their own propriety and correctitude. As at December, 1942, the guaranteed price allowed 9·28d. per pound of butterfat for labour and, incidentally, management reward. This figure was based on a hypothetical dairy-farm producing 12,000 lb. of butterfat from forty-eight cows.

"It was assumed that two units of labour would be employed, one a hired man and the other the owner. This computation allowed £4 4s. 6d. for the hired man and £4 14s. 6d. for the owner, who would also enjoy other recognized advantages. Implicit in this basis is the fact that as production increased so, incidentally, would the reward to the owner proportionately increase.

"The departmental formula disrupts this basis and disrupts it solely with a view to establishing some uniformity of value between lands of equal-per-acre productivity. The achievement of that kind of uniformity is not the purpose of the Servicemen's Settlement and Land Sales Act, nor does any such objective come within its scope. Just as the Act is not designed to govern land settlement generally for the whole Dominion, neither is it designed to operate as an instrument for the unification of land values.

"On the contrary, each farm which is the subject of inquiry is to be judged separately, and its productive value determined on the basis prescribed by s. 53 of the Act. That value cannot be adjusted to the results achieved by neighbouring farmers who have lesser or greater areas. It can only be judged by the price at which the product from it must be sold and with a proper regard to the factors which constitute the basis on which that price was fixed. Any flexibility which justice demands can be obtained by making such adjustments as the facts of each particular case indicate as necessary.

"For the reasons given, the Court is unable to accept the departmental formula. It is inapplicable and likely to produce inequitable results. The guaranteed-price figures afford a more appropriate and a more equitable basis for the relevant computation.

"In the result, Mr. M., from adherence to instructions, has deducted too much for labour reward from the income side of his budget. This must be qualified, however, by the fact that for some years the property will need an expenditure on labour of £25 a year in excess of the normal. A readjustment of Mr. M.'s figures to the extent necessary to give effect to the specific findings of the Court will increase the basic value to a sum in excess of the sale price, irrespective of any question of the cost of correcting building and water deficiencies.

"The basic value is fixed for the purposes of the proposed sale at £5,975. This assessment is made upon the assumption that the purchaser will either receive or get credit for the £250 received under the insurance policy on the destroyed residence. This is his right by law.

"If the Crown acquires the property, it will have no legal right, such as the purchaser has, to receive or get credit for the proceeds of the insurance policy, and the basic value in the event of the Crown acquiring must be reduced by £250 accordingly. For the purposes of an acquisition by the Crown, therefore, the basic value is fixed at £5,725.

"This property is one eminently suitable for soldier settlement and the recommendation of the Committee in that regard is confirmed by the Court. Should the Crown decide not to acquire, consent to the proposed sale to S. is given."

No. 46.—M. TO L.

Rural Land—Dairy-farm—Interest on Sale Capital paid on Butterfat Basis—Shareholder's Bonus—Management and Wages—Basis of Computation.

Appeal from the determination of a Rural Land Sales Committee. It concerned a dairy-farm of some 124 acres. The property was sold as a going concern for the sum of £7,410. The Land Sales Committee consented to the sale subject to the total consideration being reduced to £6,000, of which £1,630 was apportioned to the value of the stock and chattels.

The Court said: "No challenge was addressed during the hearing of the appeal to the assessment by the Committee of the value of the stock and chattels, so it must be assumed that the Committee's assessment of that value was accepted by the appellant as proper.

"There was a sharp conflict of evidence as to the productive value of the property, the differences extending to disagreement as to the number of cows that the property would carry and the probable production of butterfat per cow. Despite the fact that the property is now carrying seventy-two cows which produced 13,800 lb. of butterfat to January 31, 1945, the Court is inclined to the view that the average carrying-capacity of the property is not so great, and that the estimate of the Crown witness, Mr. B., of sixty-eight cows and replacement stock more closely approaches reality.

"Similarly, although Mr. B. estimates the average annual butterfat production at an aggregate of 16,000 lb. whilst the cows now on the property would need to produce only some 30 lb. per head per cow for the residue of the season from January 31, 1945, to achieve that figure—an accomplishment which Mr. J., no doubt rightly, considers they will more than double—nevertheless the Court thinks that the average production is more likely to approximate that estimated by Mr. B. than that estimated by the other witnesses. The pasture is not so good, nor is the inherent quality of the land so great as forcibly to suggest that it could maintain on the average, and under normal conditions, the higher rate of production suggested by the appellant's witnesses.

"In the light of these conclusions the Court is disposed to accept Mr. B.'s production figures as offering the best basis for a proper conclusion concerning the income that can be earned from the land.

"Its acceptance in this way, however, invites careful consideration of the items of expenditure included in Mr. B.'s budget. Amongst these items are several that call for correction. In the first place, it was contended that, as the factory paid out to its suppliers 16·283d. per pound on butterfat, the income item should be calculated at that rate. It transpired, however, that the company paid out to its shareholders an amount equal to 0·057d. per pound of butterfat as interest on share capital. This payment is an earning of the capital invested by the shareholders in the company and, although calculated on a per-pound-of-butterfat basis, is not a revenue item referable to the farm. Mr. B. was therefore justified in deducting the 0·057d. per pound of butterfat and basing his calculation on a net return of 16·226d. per pound.

"This latter figure incorporates a sum calculated at 0·25d. per pound which was paid out by the company as a shareholder's bonus. The inclusion of this sum is in conformity with the judgment of the Court in *No. 43.—W. to B.* It is a sum paid to the supplier and received by him in respect of the butterfat made available by him to the company during the year. It is, therefore, properly regarded, an item of revenue derived from the farming operations.

"That leaves for consideration the sum charged by Mr. B. in respect of management and wages. In conformity with an instruction, the validity of which the Court is not prepared to accept (see judgment of the Court in *No. 45.—D. to S.*), Mr. B. has charged £49 in excess of the basis fixed by the guaranteed-price arrangement. This is possibly a method of indicating that Mr. B. considers that more labour is required on this farm than the guaranteed-price formula allows. The topography of the property, taken in conjunction with the present condition of the pastures and the work necessary for its recovery, suggests that more than the normal amount of labour will be required.

"It would appear reasonable to add to the guaranteed-price basis a sum of £25 per annum on this account. That will make a reduction of £24 per annum in Mr. B.'s assessment of outgoings. This sum capitalized will have the effect of adding £534 to the basic value as found by the Committee, which will give an aggregate basic value of £4,904. The appeal is allowed to this extent and consent to the sale of the land at £4,904 is given. The total sale price of land, stock, and chattels in terms of this judgment will be £6,534."

OBITUARY.

Mr. W. D. M. Glaister, Auckland.

The death occurred on June 1, of Mr. William David Murray Glaister, a well-known Auckland barrister and solicitor. He had not enjoyed good health for several months, but was at his office, as usual, on May 31. He collapsed there and was taken home, but in the evening became unconscious and passed away the following morning.

Born in Dunedin sixty-six years ago, Mr. Glaister was educated there. He started his legal career in Dunedin, and, later, he went to Hawera and Inglewood, Taranaki. He began practice in Auckland about thirty-five years ago. In 1920, he was joined in partnership by Mr. H. Ennor.

Mr. Glaister was connected with a number of philanthropic societies. He was a director of the Y.M.C.A. in Auckland, and about eight years ago was the National President. He was also a member of the committee of the British and Foreign Bible Society, and President of the Auckland Council of Temperance Education. Mr. Glaister was a leading member and former New Zealand President of the Church of Christ, and also a past President of the Auckland Sunday School Union. He was interested in Association football, and was a keen tennis player.

Mr. Glaister is survived by his wife and two sons, both of whom have returned to New Zealand after service overseas, one with the Y.M.C.A. in North Africa and Italy, and the other with the forces in the Pacific.

THE LATE MR. FREDERICK EARL, K.C.

(*Concluded from p. 163.*)

continued to hold that office right down to the date of his death. It is truly a unique record that for over forty-two years he should have retained and held the confidence and the loyalty of the Auckland cricketers. He was one of the small body of enthusiasts who acquired and developed Eden Park as a cricket centre, and he was the first Chairman of the Board of Trustees. The deed of trust under which Eden Park is controlled for the joint benefit of cricket and Rugby Football was principally his own work, and his legal knowledge and sound judgment were at all times available for the better management of the Park.

"His manner was genial, generous and hospitable. He was undoubtedly a man of the people; he lived a full and complete life. Though it is thirty years or more since this Court echoed to the sound of his eloquent advocacy, we pause to-day, when great events of international importance overshadow our daily lives, to pay this tribute to one who for many years was a member of our Council and was our President during the years 1905–1908. His last years were spent in the calm atmosphere of retirement, but we will ever remember him as a great advocate, a fine citizen, gifted, brilliant, and popular, and as one who always played a straight bat.

"Now, Your Honours, to his sorrowing relatives we express our deepest sympathy in their sad bereavement."

His Honour Mr. Justice Callan.

Mr. Justice Callan said:

"I think it is a matter for regret that it does not happen to be possible for Mr. Justice Northcroft to be with us to-day; as you have reminded us, he was a partner in the same firm, and a telegram has been received from him asking that he be allowed to be associated with us in the tributes to be paid to-day.

"We have with us an old friend of Mr. Earl, and an old friend of all of us, in Sir John Reed who, as you remember, practised at the Bar in this city during the same period as the gentleman you have assembled to honour, and who knew him well. Indeed, Sir John tells me or reminds me of the circumstance that Sir John and Mr. Earl were together raised to the rank of King's Counsel on the same day in the year 1912.

"As you all know, the Chief Justice is at the moment absent from the Dominion on a task of great importance; but a message has been received from those members of the Bench who happen at the moment to be engaged in Wellington, either in the work of the Supreme Court or of the Court of Appeal, that is to say, from the Acting Chief Justice, Mr. Justice Blair, Mr. Justice Johnston, Mr. Justice Fair, and Mr. Justice Finlay, all of whom desire that it should be said that they associate themselves with the tributes which you have assembled here to-day to pay.

"Mr. Earl had ceased to appear in the Court before I came to Auckland, and therefore I have not any first-hand knowledge of his professional work, nor did I enjoy the privilege of his personal friendship. But since living here amongst you, I have encountered his reputation, and I have heard him described very much as you, Mr. President, have described him—as a man who enjoyed, to a great extent, the confidence and affectionate respect of the Maoris of this district; as a most powerful and persuasive advocate; and I have been told, before this morning, that early in life he had been a performer in, and had throughout his life remained, a loyal supporter of three manly sports—cricket, football and racing, three pastimes which I think it may fairly be said help to express the national character and have helped to form it. I have always been told that throughout a long professional career, and a still longer life, Mr. Earl enjoyed the respect and affection of all classes of his fellow-citizens with whom his varied activities brought him into contact. Now, gentlemen, that is an excellent reputation for any man to achieve and to retain. It is a good thing to succeed in life. But it is a better thing to make many real friends and to keep them. And it is a more difficult thing not to lose the capacity for friendship while achieving worldly success. All these, Mr. Earl succeeded in doing, and he did it in a difficult sphere.

"The life of a barrister is passed in contention. The interests of litigants, who are often for the time being consumed by bitterness, are entrusted to him, and, as you well know, it is not always easy to fight strenuously while avoiding any shadow of unfairness, of personal bitterness, but, on the contrary, preserving the respect and friendship of professional opponents. A busy barrister necessarily reveals his real qualities to his fellow-workers. In the stress and strain of their daily work, barristers come to know each other very clearly and very thoroughly, and so I think a successful barrister who also commands the confidence, affection, and esteem of his professional brethren must be much more than a skilled craftsman in a difficult and exacting profession. He must also be something better. He must be a good man; and by his combination of qualities, such a barrister performs, I suggest, two valuable services to his fellow-men. First, he assists to create the right atmosphere for the performance of that necessary but difficult work—the attempted administration by mere men of justice between man and man; and secondly, he helps to make this imperfect world a pleasant place for all those who in any way come in contact with him. For all of us, life is very largely the sum of a great multitude of daily contacts with our fellow mortals; and if, in all these contacts, we met only fairness, geniality and kindness of heart, informed and guided by intelligence of mind, then this world would be a very much better place than it is.

"Now, from the nature of the work which he did, the offices to which he was elected and which he held, and the reputation he established and retained, I believe that Mr. Earl was not merely a leader of the Bar, but that he must have been such a barrister as I have tried to describe. And when such a man passes from amongst us, it is fitting that his fellow-workers in the law should pause for a moment from their daily tasks to honour his memory, to bring his good qualities and his life which has been lived, to the notice of those who still have their lives before them. Good traditions are not retained without effort, and we cannot expect to imitate good examples unless we spare time to put them before ourselves and pause to consider them. Therefore the Bench readily associates itself with the Bar in paying the tribute to the late Mr. Earl which you, Mr. President, have suitably expressed.

"We desire to join with you in your expression of sympathy to the late Mr. Earl's family."

IN YOUR ARMCHAIR—AND MINE.

By SCRIBLEX.

Sir Sidney Rowlatt.—The death, at eighty-two, of Sir Sidney Rowlatt in March last, removes from the legal scene a Judge whose services for twenty years on the revenue side of the King's Bench Division are said to have been unsurpassed in living memory. In a tribute which appeared in *The Times* (London), Viscount Simon, L.C., speaks of him as an ideal Judge, possessing the unfailing ability to bring to a legal problem "the saving grace of common sense" and a quickness of mind that enabled him to detect the real point in a case with ease and certainty. After he resigned his judgeship in 1932, he presided over the Royal Commission on Betting; and, despite his age, undertook at the commencement of the war the arduous task of chairmanship of the General Claims Tribunal set up to deal with claims arising under the Compensation (Defence) Act, 1939. He sat on many occasions on the Judicial Committee of the Privy Council and was a member of the Board which heard appeals from New Zealand in the cases of *Trickett* v. *Queensland Insurance Co., Ltd.* (1936), and *De Bueger* v. *J. Ballantyne and Co., Ltd.* (1938). A fine classical scholar, both tactful and considerate, he showed qualities of boyish good humour throughout his long and distinguished career.

Churchill in Court.—Two of the various roles which Churchill has filled are those of the person defamed in libel actions. The first, in May, 1912, when he was First Lord of the Admiralty, was against *Blackwood's Magazine*, which revived the old canard that charged him with effecting his escape dishonourably from the Boers in the South African war. The libel was contained in a satirical poem entitled "A Lost Letter of Ancient Rome," and he was represented therein as Claudius who "homeward stole and broke his prison or parole." The case was a civil one tried before Darling, J., and resulted in an abject apology being tendered by the defendants to his counsel, F. E. Smith, afterwards Lord Birkenhead. The second case was for criminal libel. It was heard at the Old Bailey in December, 1923, the accused being Lord Alfred Douglas who had previously been bound over for criminally libelling his father-in-law. On this occasion he had bitterly and maliciously attacked Churchill in a pamphlet called "The Murder of Lord Kitchener." The jury found Douglas guilty after a retirement of only eight minutes, and he was sentenced by Avory, J., to six months' imprisonment. It may have been the long vituperative attack on him by defending counsel that led Churchill later to say of Ramsay MacDonald, "He has more than any other man the gift of compressing the largest amount of words into the smallest amount of thought." At all events, it did not discourage the great gift for epigrammatic statement which has proved of such value to English morale during the present war.

Eye-assessment.—Leaving his customary armchair and placing his ear to the ground, Scriblex heard pertinent comment a few days ago on his paragraph about the photographic technician who claimed damages at common law for the loss of his eye. "How can any jury," said one practitioner, "do more than vaguely estimate the loss? Theoretically, in some avenues of life to be one-eyed appears a distinct advantage." From precedent, small advantage is to be gained. In his *Table-Talk* John Seldon (to whom equity varied "with the length of the Chancellor's foot") wrote as follows:—

> An eye for an eye and a tooth for a tooth that does not meane that if I putt out another man's eye therefore I must lose one of my owne (for what is hee the better for that? tho' this bee commonly received) but it meanes that I shall give him what satisfaccon an eye shall be judged to bee worth.

A footnote in *Everyman's Talmud* says that "since the literal interpretation of eye for eye as shown cannot be always justly applied, the words must bear another interpretation which would be universally applicable—namely, compensation in money."

Names and Addresses.—In *The Old Munster Circuit*, that excellent volume of legal memories, there is mention of one Barney Hughes who tried vainly for twenty years to qualify for the Bar. Finally, at the instigation of the Benchers, he was called up before the patient John Pigott, author of a work on the Irish Land Acts. He said, "Mr. Hughes, I am instructed to give you the benefit of a special examination. Can you tell me what is a tort?" The candidate, it is related, unfortunately mistook the vowel and gave an unexpected reply. Pigott tried again with a few elementary questions but to no better purpose. At last he said: "Mr. Hughes, what is your name?" A correct reply being given, he reported that one question had been answered with intelligence—and Barney was duly admitted to the Bar. The story recalls the first appearance of Sergeant Dowling. In a case in which, as junior counsel, he had nothing to do but sit alongside an eminent leader, a witness who had gone into the box was about to be dismissed without being examined. Dowling asked his leader permission to ask one question and one only. As a result, there appeared in the newspaper report of the trial the following paragraph: "Here Mr. Dowling rose, and in a most impressive tone and manner asked the witness where he lived."

Policeman's Evidence.—"We know that Police standards leave much to be desired, but we are not ready to believe that the democratic process brings to office men generally less believable than the average of those accused of crime."—Mr. Justice Jackson recently in U.S. Supreme Court.

Tips for All.—"There is due from the Judge to the, advocate some commendation and gracing where causes are well handled and fairly pleaded; especially towards the side which obtaineth not: for that upholds in the client the reputation of his counsel, and beats down in him the conceit of his cause. There is likewise due to the public a civil reprehension of advocates, where there appeareth cunning counsel, gross neglect, slight information, indiscreet pressing, or an over-bold defence. And let not the counsel of the bar chop with the Judge, nor wind himself into handling of the cause anew, after the Judge hath declared his sentence; but, on the other side, let not the Judge meet the cause halfway; nor give occasion to the party to say, his counsel or proofs were not heard."—Francis Bacon (Lord Verulam).

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. Executors and Administrators.—*Realty devised to One Person charged with Payment of named Sum to Another—Demand for such Sum—Duty of Executor.*

QUESTION: A. by his will appointed X. his executor, devised his realty to his son B. charged exclusively with the payment of £2,000 to his daughter C., and gave the residue of his estate to his wife. The daughter, C., has called upon X. to protect her interests, and in particular has required him to raise the £2,000 by a mortgage or sale of the realty devised to B. B. has demanded a transfer of the realty to him. What should the executor do?

ANSWER: He must transfer the land to B. subject to the charge. The realty is not devised to him, but is devised to B. There is no statutory power of sale or to mortgage in New Zealand given to an executor, as is given in England in such a case by s. 16 of the Law of Property Amendment Act, 1859 (22 & 23 Vic., c. 35) (known as "Lord St. Leonard's Act"). Even if the devise had been to X. upon trust for B., subject to the charge in favour of C., X. as such trustee could not sell or mortgage the realty, but he could in England in such a case under the power given by s. 14 of the said statute: see s. 3 of the Trustee Amendment Act, 1933, s. 110 of the Property Law Act, 1908, and ss. 5, 7, and 9 of the Administration Act, 1908.

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2. Executors and Administrators.—*Realty devised to One person Charged with Payment of Named Sum to Another—Registration of Such Charge.*

QUESTION: We have received a reply to our question regarding realty charged with the payment of £2,000 to the testator's daughter, where it is said that the executor must transfer the land devised to B. subject to the charge (*supra*). Will you kindly inform us how this is to be effected so that the charge is protected on the title? Transmission to the executor of the realty is now awaiting registration.

ANSWER: X., after registration of transmission in his favour, should execute a memorandum of encumbrance in Form F, Second Schedule, Land Transfer Act, 1915, in favour of C.: see the definition of "Mortgage" in s. 2 (*d*) of the Land Transfer Act, 1915. X. should then transfer the land to B., subject to the said memorandum of encumbrance.

Unless C. agrees with B. to accept payment at a later date, or unless the will provides for payment in the future, it would appear that the sum should be made payable on demand. If C. agrees to postponement, but is not bound to do so, then it is only reasonable that B. should promise to pay a reasonable rate of interest, which should be inserted in the instrument.

Care must be taken in drawing the instrument that X. does not incur any personal liability. The relevant parts of the will should be recited; and the form employed in *Allan* v. *Dawson*, [1936] G.L.R. 307, could be modified to suit the circumstances.

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3. Mortgage.—*Mortgagees Joint Tenants under Land Transfer Act—Purchasing Land at Registrar's Sale—Tenancy in Common desired.*

QUESTION: A. mortgaged a parcel of land under the Land Transfer Act to B., C., and D. *simpliciter*. B, C. and D. are not expressed in the mortgage to be tenants in common nor is there any statement in the mortgage that the moneys were advanced in shares. There is not the usual clause in a mortgage to joint tenants that the moneys were advanced out of a joint account. It was not the intention that B., C., and D. were to hold as joint tenants. They were not trustees and the moneys were advanced by them in equal shares. B., C., and D. have now exercised power of sale through the Registrar of the Supreme Court, and, having purchased the property themselves at the auction sale, desire the Registrar of the Supreme Court to transfer the fee-simple to themselves as tenants in common in equal shares. Can this be done, or must the Registrar of the Supreme Court first transfer to B., C., and D., so that they shall hold the registered estate as joint tenants, and then B., C., and D. transfer to themselves as tenants in common in equal shares? Could the District Land Registrar decline to register a transfer from the Registrar of the Supreme Court to them as tenants in common?

ANSWER: It would appear that the mortgagees although joint tenants as to the *registered* estate, because of s. 57 of the Land Transfer Act, 1915, were in equity or beneficially tenants in common in equal shares: *Cameron* v. *Smith*, (1910) 13 G.L.R. 193. Section 76 of the Property Law Act, 1908, does not appear to apply.

It was held in *Re Selous, Thomson* v. *Selous*, [1901] 1 Ch. 921, that an equitable estate held by tenants in common might merge in an equal and co-extensive legal estate held by the same persons as joint tenants. By analogy therefore there would appear to be no objection to the Registrar of the Supreme Court transferring the fee-simple to the mortgagees as tenants in common in equal shares. Section 112 (4) of the Land Transfer Act, 1915, appears to support this view. It is also submitted that the District Land Registrar should register such a transfer, if otherwise in order.

RULES AND REGULATIONS.

Hop Marketing Regulations, 1939, Amendment No. 3. (Marketing Act, 1936, and the Agriculture (Emergency Powers) Act, 1934.) No. 1945/60.

Nelson Raspberry Marketing Regulations, 1940, Amendment No. 2. (Marketing Act, 1936, and the Agriculture (Emergency Powers) Act, 1934.) No. 1945/61.

Factory Controls Revocation Notice, 1945. (Factory Emergency Regulations, 1939.) No. 1945/62.

Paper (Manufacture and Sale) Control Notice, 1942, Amendment No. 4. (Factory Emergency Regulations, 1939.) No. 1945/63.

Rabbit-destruction (Upper Rakaia District) Regulations, 1945. (Rabbit Nuisance Act, 1928.) No. 1945/64.

National Service Emergency Regulations, 1940, Amendment No. 17. (Emergency Regulations Act, 1939.) No. 1945/65.

Hairdressers (Health) Regulations Extension Notice, 1945, No. 2. (Health Act, 1920.) No. 1945/66.

Sale of Food and Drugs Amending Regulations, 1945, Amendment No. 1. (Sale of Food and Drugs Act, 1908.) No. 1945/67.

Poisons Act Emergency Regulations, 1943, Amendment No. 1. (Emergency Regulations Act, 1939.) No. 1945/68.

Motor-vehicles Insurance (Third-party Risks) Regulations, 1939, Amendment No. 4. (Motor-vehicles Insurance (Third-party Risks) Act, 1928.) No. 1945/69.

Tobacco-growing Industry Regulations, 1945. (Tobacco-growing Industry Act, 1935.) No. 1945/70.

Rehabilitation Act Extension Order, 1945. (Rehabilitation Act, 1941.) No. 1945/71.

Industrial Conciliation and Arbitration Amendment Regulations, 1945. (Industrial Conciliation and Arbitration Act, 1925.) No. 1945/72.

Industrial Efficiency Emergency Regulations, 1943, Amendment No. 1. (Emergency Regulations Act, 1939.) No. 1945/73.

Egg Rationing Permit, 1944, Amendment No. 1. (Rationing Emergency Regulations, 1942.) No. 1945/74.