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LAND TRANSFER: INDEFEASIBILITY OF TITLE: AN EXTENSION.

A covenant for renewal in a lease is not a mere personal covenant, but is a covenant running with and binding the land. As Edwards, J., said, in delivering the joint judgment of himself, and Cooper and Chapman, JJ., in *Gilmer* v. *Crawford*, (1906) 26 N.Z.L.R. 657, 667 :

> This has sometimes been called anomalous, but it is too firmly established by authority to be questioned : *Woodall* v. *Clifton*, [1905] 2 Ch. 257, 279. The principle upon which specific performance of such a covenant can be enforced was held by Jessel, M.R., to be that it creates an equitable interest from the time of its execution : *Moore* v. *Clench*, (1875) 1 Ch.D. 447, 452.

With the equitable right to claim the renewal, a covenant for renewal creates an equitable interest in the land comprised in the lease within the words of s. 214 of the Native Land Act, 1909, as was said by Chapman, J., in *In re a Lease, Rangihuia Kingi to Mokau Coal and Estates Co., Ltd.*, [1917] N.Z.L.R. 127, 131, following *Gilmer* v. *Crawford* (*supra*).

These statements of the law are interesting and instructive in view of the recent judgment of Mr. Justice Finlay in *Pearson* v. *Aotea District Maori Land Board*, [1945] N.Z.L.R. 542, which marks an extension of the principle of the indefeasibility of Land Transfer titles, by extending it to the protection of such an equitable interest. Statute law was contravened by the inclusion in a Native lease of a perpetual right to renewal, such lease being subsequently registered under the Land Transfer Act. Notwithstanding the fact that the lease itself was void, because of the inclusion in it of such right to renewal, the registration of the lease was held to give to the lessee an indefeasible right to the renewal in terms of the original lease.

The lease in question contained a perpetual right of renewal, and was registered. Later, the lessee's interest therein was transferred to a purchaser for value. The first term of the lease having expired, a new lease was executed by the lessor Board and by the transferee of the former lease ; but it did not contain a provision for perpetual renewal, a fact that was not realized at the time by the transferee, the lessee under the new lease. There was no allegation or suggestion of fraud on the part of any one. In an action by the lessee against the lessor, the lessee claimed rectification of the lease by the lessor's accepting a surrender, and issuing him a new lease containing the provision for perpetual renewal in the same terms as were contained in the original lease.

The learned Judge held that the original lease was one which the lessor had no power to grant if accompanied by a perpetual right of renewal ; it conferred such a right on the lessee ; and it had not been validated. He found further that the plaintiff lessee was a purchaser for value without notice from a registered proprietor of a leasehold interest in the demised land. Consequently, His Honour said, the lessee's rights were to be determined by the fundamental principle of the Land Transfer Act as defined in *Fels* v. *Knowles*, (1906) 26 N.Z.L.R. 604, 620, where it was stated in the judgment of Denniston, Edwards, Cooper, and Chapman, JJ., that the cardinal principle of the statute is that the Register is everything, and that, except in cases of actual fraud on the part of the person dealing with the registered proprietor, such person, upon registration of the title, has an indefeasible title against all the world. The learned Judge added : "The title to every estate and interest which is the proper subject of registration is indefeasibly vested in the registered proprietor."

It had been argued for the plaintiff that the plaintiff was entitled to the benefit of the right to perpetual renewal, even though the lessor, when it executed the lease, had no right or power to confer it, because the lease had been registered under the Land Transfer Act, 1915, and accordingly, as he had no knowledge of any irregularity in his title, he had an indefeasible right to perpetual renewal by virtue of s. 198 of that statute : *Assets Co., Ltd.* v. *Mere Roihi*, (1905) N.Z.P.C.C. 275, *Katene te Whakaruru* v. *Public Trustee*, (1893) 12 N.Z.L.R. 651, 661, *Fels* v. *Knowles*, (1906) 26 N.Z.L.R. 604, and *Boyd* v. *Mayor, &c. of Wellington*, [1924] N.Z.L.R. 1174.

The argument for the defendant Board is of considerable interest, in view of the result. It was contended that an option to renew is not an integral part of a lease, but is merely an ancillary provision. It was conceded that an option to purchase is protected ; but such protection was exceptional and special from the express terms of s. 94 of the Land Transfer Act, 1915 ; and there is no such special statutory

provision relative to an option for renewal. Counsel for the lessor adopted a dictum of Williams, J., in *Otago Harbour Board* v. *Spedding*, (1885) N.Z.L.R. 4 S.C. 272, 279, where that learned Judge said:

> It appears to me that it is an essential principle of the Act that the mere execution of instruments should transfer no interest in the land, but should merely give a right *in personam*. If this view be correct, there seems no reason why the defendant should be estopped, or why he should not refuse to take an estate contracted to be granted to him by contract which could not be enforced. Taking this view of the case, it is hardly necessary to decide whether the defendant would have been estopped if the lease had been completed by registration. If the lease is absolutely void as being in contravention of the statute, as appears to me to be the case, I do not think he would have been estopped. It is essential to an estoppel that there should be mutuality. Now, if the lease be void, the Harbour Board are not estopped from impeaching it. They could have executed the lease and put the lessee in possession, and the next day have brought an ejectment against the lessee notwithstanding the lease.

Furthermore, it was argued, *Fels* v. *Knowles* (*supra*), at pp. 622, 623, provided an answer to the plaintiff's claim: In the joint judgment of Denniston, Edwards, Cooper, and Chapman, JJ., delivered by Edwards, J., reference was made to the following passage from the judgment of Richmond, J., in *Katene te Whakaruru* v. *Public Trustee*, (1893) 12 N.Z.L.R. 651, 665, where that learned Judge said:

> As to the right of renewal which the lease purports to create, there will be no declaration. No present decision is called for. The latter part of s. 87 of the Land Transfer Act, [1885: s. 94 of the present statute] is an ineffectual provision, for registration of a mere agreement must of necessity leave open the question whether it is valid and enforceable.

Their Honours in *Fels* v. *Knowles* commented on this passage, as follows:—

> His Honour was speaking, it will be observed, with reference not to an option of purchase contained in a registered lease granted by a registered proprietor, but with reference to a covenant for renewal granted by a person who purported to be acting under a power. *The two things are essentially different.* Moreover, the statute does not expressly authorize the insertion in a lease of a covenant for renewal. But even in such circumstances His Honour guarded himself from expressing the opinion that the covenant could not be enforced. The provisions of s. 87 of the Land Transfer Act did not come into consideration in that case, and what was said upon that subject is at most an *obiter dictum*.

Support to these expressions of judicial opinion was sought in the judgment of Edwards and Cooper, JJ., in *Horne* v. *Horne*, (1906) 26 N.Z.L.R. 1208, 1218, adhering without qualification to the decision in *Fels* v. *Knowles* (*supra*).

The learned Judge in *Pearson's* case, at the outset of his judgment posed the real question for determination, as follows:—

> The question then resolves itself into one as to whether or not registration of a right of renewal is a proper subject of registration under the statute. It is not expressly authorized in the sense that there are no words in the statute specifically authorizing its registration. In this respect it differs from a right of purchase, registration of which is expressly authorized by s. 94. It was this latter section which was the subject of adjudication in *Fels* v. *Knowles*, (1906) 26 N.Z.L.R. 604, *Horne* v. *Horne*, (1906) 26 N.Z.L.R. 1208, and in *Rotorua and Bay of Plenty Hunt Club (Inc.)* v. *Baker*, [1941] N.Z.L.R. 669.

His Honour went on to say that s. 93 of the Land Transfer Act, 1915, authorizes the registration of leases for any term not less than three years. A right of renewal is something which affects and is, in a sense, definitive of the term of a lease. It constitutes, he said, a covenant which runs both with the land and with the reversion, and he referred to the judgment of Farwell, J., in *Muller* v. *Trafford*, [1901] 1 Ch. 54, 61. The learned Judge continued:

> The doctrine of perpetuity is not, of course, here in question, but the principle must, I apprehend, be the same so that leases with a right of renewal must be regarded as to the term in the light of a grant of a definitive number of years, with the right in a lessor to add something in the way of an additional term or terms. In that sense the right of renewal is adjectival in relation to the term granted. It constitutes a material qualification of the term, and is therefore something more than a mere ancillary right. It is in other words, an integral part of the estate shown by the Register as vested in the lessee. Its registration is, I think, in consequence authorized under the Land Transfer Act. That a right of renewal also creates an equitable estate in the land is in my view merely coincidental.

We pause here to observe that, had the learned Judge held that the registration of a renewal clause in a lease was not authorized by the Land Transfer Act, 1915, or by some other statute, his decision would have been the other way: *Horne* v. *Horne* (*supra*), *Wellington-Manawatu Railway Co., Ltd.* v. *Registrar-General of Land*, (1899) 18 N.Z.L.R. 250. His Honour's passing reference to the rule against perpetutities, or, as some writers—Professor Garrow among them—prefer to call it, the rule against remoteness of vesting, will interest all conveyancers. Last year this rule was modified in New Zealand by s. 5 of the Law Reform Act, 1944: see p. 5, *ante*. There may be provisions in some registered Land Transfer instruments—*e.g.*, options to purchase in leases, which at common law are void as infringing the rule against perpetuities. If registration is authorized by statute, it appears that, in His Honour's view, registration under the Land Transfer Act will validate them.

The learned Judge, in referring to s. 89 of the Land Transfer Act, 1915, says that that section is confirmatory of the point of view expressed by him, as above.

> because it prescribes that, upon registration of a transfer of a lease, the estate and interest of the transferor as set forth in the instrument, with all rights, powers and privileges thereto belonging or appertaining shall pass to the transferee. Regarded from that point of view, the transferee, in this instance the plaintiff, would be regarded as becoming vested of the term with a right to its renewal. Confirmation of the soundness of this view is found in *Roberts* v. *District Land Registrar at Gisborne*, (1909) 28 N.Z.L.R. 616, 617, where Edwards, J., said:
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> > "The Registrar, holding this view, has taken the proper course in refusing to register the lease, inasmuch as the rights given to the lessee under the provisions for renewal will, upon the registration of the lease, be entitled to the same protection as the term granted by the lease."
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> As indicative of his view that rights of purchase and rights of renewal do not differ in this respect he referred to *Rutu Peehi* v. *Davy*, (1890) 9 N.Z.L.R. 134, and *Fels* v. *Knowles*, (1906) 26 N.Z.L.R. 604, both of which cases have relation to rights of purchase. This statement is significant because Edwards, J., in the report of *Fels* v. *Knowles* (*supra*) at p. 636 made some reference to the distinction between a covenant for renewal by a person purporting to act under a power, and an option to purchase contained in a registered lease granted by a registered proprietor.
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> On the other hand, it seems clear that Williams, J., in *Otago Harbour Board* v. *Spedding*, (1885) N.Z.L.R. 4 S.C. 272, at least tentatively held a different view from that here expressed. What he said in that relation was, however, *obiter dicta*, and whilst any opinion, however tentative, expressed by that learned Judge is entitled to the most profound respect, I am constrained respectfully to confess that my own conclusions accord with what seems to have been the firmly held view of the late Mr. Justice Edwards.

Some confirmation of the judgment in *Pearson's* case may be found in the judgment of Sir Robert Stout, C.J., in *Wolters* v. *Riddiford*, (1905) 25 N.Z.L.R.

532, in which a Native lease, which, it was admitted, ought not to have been registered, as it was in violation of the Native Land Court Act, 1894, had been registered, though on its face it showed that it was a lease contrary to law. (It does not appear that this case was cited to the learned Judge in *Pearson's* case, to which it bears distinct resemblance.) The learned Chief Justice held that the lease in question was unimpeachable. He said that the case could not be distinguished from the decision in *Assets Co., Ltd.* v. *Mere Roihi* (*supra*); and he continued, at pp. 533, 534, as follows:

> In my opinion it would be frittering away the decision in the *Assets* cases to attempt to distinguish this case from the decision in those cases. It was contended that a grave wrong was done in those cases to infants and others by orders and judgments made and given without jurisdiction, but the mere fact of registration was held to deprive these persons of any right to claim their lands. Non-compliance with Native-land statutes was brushed aside as of no importance after registration under the Land Transfer Act . . . There is no doubt that if a Native Land Court confirms a deed that ought not to have been confirmed, and the District Land Registrar registers such confirmed deed, the result may be that the restraint on alienation which is provided in the Native Land Court Act, 1894, and its amendments, may be set aside.

The judgment in *Wolters* v. *Riddiford* (*supra*), was approved by the Court of Appeal in *Harris* v. *McGregor*, (1912) 32 N.Z.L.R. 15, 40, in a judgment delivered by Williams, J. Referring to that judgment, their Honours said:

> The lease there on its face was contrary to law, and the judgment of the learned Chief Justice suggests that the duty of the District Land Registrar would have been to refuse to register it, as not complying with the law. It was also held that the lessees, in getting the Registrar to register an invalid lease, were not guilty of fraud so as to disentitle the lessees to the protection of the Land Transfer Act when the lease was registered. . . . The judgment on the summons, however, declared that the vendor had a complete and irrefragable title. That meant, of course, a good title as against all the world. It was necessary for the decision that the vendor should have such a title, because, if he had not, the Court could not have forced a bad title on an unwilling purchaser.

Again, in *Boyd* v. *Mayor, &c., of Wellington* (*supra*) the majority of the Court held that, though the land taken under the Public Works Act by the local body was taken under a Proclamation that was void *ab initio*, registration of such Proclamation in the absence of fraud gave the local body an indefeasible title.

From such indefeasibility of title, where the instrument itself is void or contrary to law, it is only a step, perhaps, to hold that the contents of such an instrument, which themselves confer rights, are themselves indefeasible, in the absence of fraud, upon registration of that instrument. And, if this be so, it matters not whether the rights conferred are legal or equitable (as in *Pearson's* case), if such contents are expressly or by implication authorized to be included in the instrument.

Nevertheless, the step taken in *Pearson's* case is a most important one, for the Native-land cases just cited, and *Boyd's* case, deal with indefeasibility of *existing* estates or interests duly registered under the Land Transfer Act. *Fels* v. *Knowles* was concerned with a right of purchase contained in a lease, and the registration of such a right is specially authorized by the Land Transfer Act itself. *Pearson's* case extends the principle of indefeasibility to an equitable right, not so *specially* authorized, to have a registered estate or interest *in futuro*.

There is much to be said for the principle of indefeasibility of title conferred by registration under the Land Transfer Act as interpreted and applied by our Courts, which really derives from *Assets Co., Ltd.* v. *Mere Roihi* in the Judicial Committee of the Privy Council. For example, the learned Judge points this out in *Pearson's* case itself, where he says in concluding his judgment:

> Such a finding is, I am happy to think, consonant with justice, as Edwards, J., commented in respect of a somewhat analogous right, a right of purchase: see *Rutu Peehi* v. *Davy*, (1890) 9 N.Z.L.R. 134, 151. Certainly no lessee would have devoted many years of effort and much money to the falling of bush and the development of virgin land into a farming property in a then remote and largely unsettled locality unless he were assured of a long term of occupancy. That development would be to the advantage of the Native owners too, and it may well be this consideration which actuated the Board in granting the leases.

In the statute-book, many Acts validating title to land are to be found. It is expedient, as being for the public good, that title to land should be *certain*; that persons proposing to contract on the strength of the Land Transfer Register Book should be able to rely implicitly on the correctness of its contents. A noteworthy example of the aim of the Legislature to achieve this desirable object is the Statutory Land Charges Registration Act, 1928, which quite rightly compels the holders of statutory charges to register them. An extreme example of the application of the doctrine that persons proposing to contract with respect to land on the Register Book, may rely is *Abigail* v. *Lapin*, [1934] A.C. 491, in the Privy Council.

The doctrine of indefeasibility of title under the Land Transfer Act also has its disadvantages. First, it may operate so as to defeat equitable estate or interests, or merely equitable rights to have transactions set aside or to resist claims for specific performance—*e.g.*, the rights of beneficiaries under trusts, as in *Fels* v. *Knowles*; or the rights of Native lessors, as in *Pearson's* case. This disadvantage is, however, inherent in any legal system designed to ensure certainty of title and freedom from litigation. For instance, it is inherent in the provisions in England of the Real Property Acts of 1925, with which the name of Lord Birkenhead will always be associated, and which restrict the classes of legal estates and keep equitable estates off the legal title by the device of "the curtain." Secondly, it may have the effect of abrogating on occasion a well-established rule of the common law, for example, the rule against remoteness of vesting; or of frustrating the intention of the Legislature as expressed in another statute, for example, the statutory provisions enacted for the benefit of those requiring the protection of the law, such as the provision that no Native shall tie up his Native land by lease for a period longer than fifty years. *Pearson's* case is an example of this class.

The latter disadvantage, and it is a most substantial one, may be mitigated to a great extent in practice, if District Land Registrars are astute to discover illegalities in instruments, and decline to register instruments, which *ex facie* are contrary to the common law (such as an option to purchase infringing the rule against perpetuities), or which are in contravention of statute law. As Sir Robert Stout, C.J., pointed out in *Wolters* v. *Riddiford*, in the passage we have quoted, the doctrine of indefeasibility of title laid down by the Privy Council in *Mere Roihi's* case casts additional

duties and responsibilities on District Land Registrars to ensure that instruments are not in contravention of the law.

It is hoped by all practitioners that the present practice of appointing only barristers or solicitors of long-standing practical experience to the important posts of District Land Registrars will long be continued. We are well served by those in office, the Registrar-General and all his District Land Registrars. We should like to see an improvement in their status and salaries; for cast upon them is the heavy duty of maintaining the high standard of a State-guaranteed title to land throughout the length and breadth of the Dominion, thus creating and maintaining facility and certainty in all dealings in land and in registrable interests in land, amid all the multiplicity and variety of such interests, to say nothing of the cross-currents of the statute law affecting land in other directions, and the quicksands of legislation by regulation of which there is no end.

SUMMARY OF RECENT JUDGMENTS.

ST. JOHN'S COLLEGE TRUST BOARD v. AUCKLAND EDUCATION BOARD.

FULL COURT. Wellington. 1945. July 6, 16. MYERS, C.J.; KENNEDY, J.; CALLAN, J.; FINLAY, J.

Public Works Acts — Compensation — Assessment — Existence of Willing Buyer—Whether One Buyer of Land as Whole Contemplated—Land Suitable for Subdivision into Allotments for Building Purposes—At Relevant Date some Allotments saleable, but Remainder unsaleable in Allotments—Matters for Court's consideration—Method of Assessment—Finance Act (No. 3), 1944, s. 29 (1)—Servicemen's Settlement and Land Sales Act, 1943, s. 54.

Section 29 (1) of the Finance Act (No. 3), 1944, which provides that, in determining the amount of compensation to be awarded by a Compensation Court, the value of the land shall, subject as therein appears, be taken to be the amount which the land, if sold in the open market by a willing seller on the relevant date might be expected to realize imports the existence of a willing buyer, but not necessarily only one buyer of the land as a whole.

Where, on the relevant date on which the value of land taken under the Public Works Act, 1928, is to be assessed for the purpose of ascertaining the amount of compensation to be awarded, the land is suitable and intended for subdivision into allotments for building purposes, the Compensation Court, if the claimant shows that there was a market for the subdivisions as on that date and that the subdivisions could then have been sold, may award compensation upon the assumption that, on that date, the claimant sold the land to several purchasers in lots accordingly.

New Zealand and Australian Land Co. v. *Minister of Lands*, (1895) 13 N.Z.L.R. 714, followed.

Federal Commissioner of Land Tax v. *Duncan*, (1915) 19 C.L.R. 551, and *Kiddle* v. *Deputy Federal Commissioner of Land Tax*, (1920) 27 C.L.R. 316, referred to.

If, however, the Court is of the opinion that, upon the evidence, some only of the allotments forming a particular portion of the land or having a certain particular frontage could have been sold at the relevant date, but the rest of the land was unsaleable in allotments upon that date, then the Court's assessment should be made upon the basis of the sums at which each such saleable allotment could have been sold on that date, while the assessment of that portion of the block which was unsaleable in allotments on that date should be made upon the assumption that on that date the claimant sold the whole of such portion of the land in one undivided parcel to one purchaser desirous of acquiring it for the purpose of subdivision and sale as building sections. The amount of the award would be the aggregate of these assessments.

But, if the land taken is suitable and intended for subdivision, and there is no market for the sale of the allotments on the relevant date, then the Court's assessment must be made on the basis of what the land might be expected to realize for sale on the open market as one undivided parcel to one purchaser desirous of acquiring it for the purpose of subdivision and sale as building sites.

Napier Harbour Board v. *Minister of Public Works*, [1941] N.Z.L.R. 186 referred to.

Counsel: *Cocker*, for the claimant, St. John's College Trust Board; *Towle*, for the respondent, the Auckland Education Board.

Solicitors: *Hesketh, Richmond, Adams, and Cocker*, Auckland, for the claimant; *Towle and Cooper*, Auckland, for the respondent.

KNOWLES AND ANOTHER v. COMMISSIONER OF STAMP DUTIES.

SUPREME COURT. Dunedin. 1944. August 9; December 20. KENNEDY, J.

Public Revenue—Death Duties (Succession Duty)—Charitable Trust—Legacy for the General Purposes of "The New Zealand "Alliance for the Abolition of the Liquor Traffic"—Whether a "charitable trust"—Evidence—Affidavit—Admissibility—Death Duties Act, 1921, s. 18—Death Duties Amendment Act, 1925, s. 5 (3).

As the main and dominant object of the New Zealand Alliance is to secure a legislative change by force of the direct vote of the people, which is a political object, the New Zealand Alliance is not a "charitable trust" within the meaning of that term as used in s. 18 of the Death Duties Act, 1921.

Bowman v. *Secular Society Ltd.*, [1917] A.C. 406; and *Inland Revenue Commissioners* v. *Temperance Council of Christian Churches of England and Wales*, (1926) 136 L.T. 27, followed.

In re Villers-Wilkes, Bowers v. *Goodman*, (1895) 72 L.T. 323; *In re Foveaux, Cross* v. *London Anti-Vivisection Society*, [1895] 2 Ch. 501; *Inland Revenue Commissioners* v. *Yorkshire Agricultural Society*, [1928] 1 K.B. 611; *General Medical Council* v. *Inland Revenue Commissioners*, (1928) 13 Tax Cas. 819, and *Bonar Law Memorial Trust* v. *Inland Revenue Commissioners*, (1933) 49 T.L.R. 220, distinguished.

Leave may be given under s. 5 (3) of the Death Duties Amendment Act, 1925, to admit in evidence an affidavit in so far as it records facts and not opinions.

Royal Choral Society v. *Inland Revenue Commissioners*, [1943] 2 All E.R. 101, referred to.

Counsel: *H. S. Adams*, for the appellant; *Paterson*, for the respondent.

Solicitors: *Adams Bros.*, Dunedin, for the appellant; *Paterson and Lang*, Dunedin, for the respondent.

THE INTERNATIONAL COURT OF JUSTICE.

I.—The United Nations' Jurists, and their Work.

By C. C. AIKMAN, LL.M.*

The recent visit of His Honour the Chief Justice, the Rt. Hon. Sir Michael Myers, G.C.M.G., to the United States of America arose out of an invitation extended to the Government of New Zealand by the Government of the United States of America on behalf of the so-called Sponsoring Powers. The invitation recalled that no effort had been made during the Dumbarton Oaks conversations to prepare a statute for the International Court of Justice envisaged by Chapter VII of the Proposals. Each of the Governments of the United Nations was asked to designate a representative for a meeting of the United Nations Committee of Jurists to be convened at Washington, on April 9, 1945, for the purpose of preparing a draft statute. It was further proposed that, if the work of the Committee of Jurists was not completed by the time the United Nations Conference on International Organization commenced, sessions should be continued at San Francisco.

The Washington Committee of Jurists acted as a body of jurists who did not purport to bind their Governments. After ten days' work in both full committee and sub-committee, they agreed unanimously on a draft statute which left three important questions for determination by the San Francisco Conference. The task was left uncompleted because it was felt that the outstanding questions—the method of nomination of Judges; a decision on whether the Court should be a continuation of the Permanent Court of International Justice or a new Court; and the problem whether or not the jurisdiction of the Court should be compulsory—raised considerations that were political rather than juridical.

The organization of the United Nations Conference on International Organization provided for four Commissions dealing respectively with General Provisions, the General Assembly, the Security Council, and Judicial Organization. The main work of the Commissions was done in the technical Committees into which each of the Commissions was divided. Commission IV on judicial organization had one technical committee for the International Court of Justice and a second for other legal problems, such as the judicial status of the Organization, registration of treaties, and privileges and immunities. Committees reported to their respective Commissions, and Commissions reported to the Conference in Plenary Session. A Steering Committee comprising Chairmen of Delegations was responsible for the general control of the Conference, and this Committee had associated with it a smaller Executive Committee, a Co-ordination Committee and an Advisory Committee of Jurists. The Advisory Committee of Jurists consisted of one representative of each of the five languages of the Conference—English, French, Russian, Chinese, and Spanish—and a United States Chairman.

The Chief Justice attended meetings of Commission IV, along with the Rt. Hon. the Prime Minister; and he was the New Zealand representative on Committees IV/1 and IV/2. The majority of the jurists who sat on the Washington Committee likewise travelled to San Francisco and represented their countries on Committees IV/1 and IV/2. Committee IV/1 was, therefore, able to accept without further discussion a considerable number of the articles of the Washington draft. A number of new points were raised; and these points, together with the three outstanding questions referred to above, comprised the main part of this Committee's work.

SOME PROMINENT JURISTS.

As readers of the JOURNAL will recall, the Chief Justice had the signal honour of being one of the two visiting jurists asked to reply to the speech of welcome made by Mr. Edward R. Stettinius, Jr., Secretary of State of the United States. The Chief Justice had associated with him on this occasion the Chinese representative on the Washington Committee, Dr. Wang Ch'ung-hui, a Deputy Judge of the Permanent Court of International Justice from 1922 to 1930, and a Judge from 1931 to 1936. The Washington Committee was also fortunate in having, as one of the Belgian representatives, M. Charles de Visscher, a Judge of the Permanent Court from May, 1937. Judge Manley O. Hudson of the United States, well-known for his magnificent contribution to the literature on the Permanent Court, was present as an observer representing the Permanent Court, and his advice was freely sought. Judge Hudson and Judge J. Gustavo Guerrero, of El Salvador, the last President of the Court, participated in the work of Committee IV/1 as observers. M. Lars J. Jorstad, a past Deputy-Registrar of the Court, represented Norway at both Washington and San Francisco.

The United States representative, Mr. Green H. Hackworth, Legal Adviser to the Department of State, was the Chairman of the Washington Committee, and he had with him as advisers Mr. Charles Fahy, Solicitor-General of the United States, and Mr. Philip C. Jessup, Professor of International Law at Columbia University.

Perhaps the strongest delegation at the Conference so far as its legal members were concerned was that from the U.S.S.R. Professor S. A. Golunksy served as an expert at the Moscow Conference in 1943, and at the Crimea Conference in 1945, while both he and Professor S. B. Krylov had the advantage of having been delegates to the Dumbarton Oaks Conference. Professor Golunsky has been Dean of the Institute of Law of the U.S.S.R. Academy of Science and Expert Consultant of the People's Commissariat for Foreign Affairs; and Professor Krylov is Legal Adviser of the People's Commissariat for Foreign Affairs.

* Mr. Aikman, an officer of the Department of External Affairs, accompanied the Chief Justice to Washington, and was at San Francisco an Adviser to the New Zealand Delegation. He was Alternate to the Chief Justice on Committees IV/1 and IV/2, and a New Zealand Representative on Committee III/2.

The United Kingdom was represented at Washington by Mr. G. G. Fitzmaurice, third Legal Adviser to the British Foreign Office, while Sir William Malkin, G.C.M.G., C.B., K.C., First Legal Adviser to the Foreign Office, was the United Kingdom representative at San Francisco. It will be remembered that Sir William Malkin was a passenger in an aircraft lost over the Atlantic while carrying members of the United Kingdom Delegation home from the Conference. Sir William had behind him an extensive experience of international conferences, going back as far as the 1919 Peace Conference. The death of this distinguished but modest jurist will be a world-wide loss.

Professor Jules Basdevant, representative of France throughout the discussions on the International Court, was another international jurist whose connection with many international conferences, and with the work of the Permanent Court, made his contribution to the work of the Committees on which he sat of particular value.

Mr. John E. Read, Legal Adviser to the Canadian Department of External Affairs, had as his adviser in Washington the Hon. Wendell B. Farris, Chief Justice of The Supreme Court of British Columbia, and the Hon. F. Philippe Brais, C.B.E., K.C., President of the Canadian Bar Association. Mr. Warwick F. Chipman, K.C., Canadian Ambassador to Chile, represented his country at San Francisco.

The Report of the New Zealand Delegation to the San Francisco Conference emphasizes the close relationship between the Australian and New Zealand Delegations. This relationship was much in evidence in Commission IV, and on the important issues of the eligibility of New Zealand and Australian nationals as Judges of the Court, and the compulsory jurisdiction of the Court, the Chief Justice had the advantage of frequent consultation with the Australian Minister of External Affairs, the Rt. Hon. H. V. Evatt, K.C., and with Professor K. H. Bailey, Australian Representative on the Committees of Commission IV.

One of the early tasks of the Steering Committee of the San Francisco Conference was the allocation to the delegations of executive positions on the various Commissions and Committees of the Conference. This task was simplified in the case of Commission IV by the presence as delegates of their countries of a number of prominent lawyers. Dr. Caracciolo Parra Perez, Minister of Foreign Affairs of Venezuela, was Chairman of Commission IV. Committee IV/1 had as its Chairman, Dr. Manuel C. Gallagher, Peruvian Minister of Foreign Affairs. Dr. Gallagher is one of Peru's outstanding lawyers and dean of the Bar Association. Abdel Hamid Badawi Pasha, Minister of Foreign Affairs of Egypt and head of the legal Department of the Egyptian Government, as well as Royal Legal Adviser to the Prime Minister, chaired Committee IV/2. The rapporteurs of Committees IV/1 and IV/2 were respectively Sayid Nusrat Al-Farsy, a past Director-General of Justice and president of the Codification Department in Iraq, and Dr. Mariano Arguello Vargas, Secretary of State in the Office of Foreign Affairs in Nicaragua. Dr. Vargas has been Professor of Civil and Commercial Law in the Universities of Oriente and of Managua.

Earlier Informal Discussions.

Problems associated with an International Court had been considered by a number of informal bodies before the Committee of Jurists met at Washington. In the early part of 1943 the Government of the United Kingdom proposed that advantage should be taken of the presence in London of a number of experts in the service of certain of the Allies to consider the future of the Permanent Court of International Justice. An Informal inter-Allied Committee was set up with Sir William Malkin as Chairman. On this Committee experts from Belgium, Canada, Czechoslovakia, the French Committee of National Liberation, Greece, Luxembourg, Netherlands, New Zealand, Norway, and Poland sat in their personal capacities and not in the names of their Governments. Dr. R. M. Campbell of the New Zealand High Commissioner's Office in London represented New Zealand on the Committee.

The report of the inter-Allied Committee was published by the United Kingdom Government and circulated to the governments which had signed the United Nations Declaration of January 1, 1942, and to certain "associated" nations, with a request for comments. Since the report contained a comprehensive survey of the various issues involved in the continued existence of an International Court it was used by many governments in their pre-Washington study of these issues. Some governments sent their comments to the United Kingdom government and these were later published.

When the Dumbarton Oaks Proposals were made public on October 7, 1944, they left open numerous questions as to the part to be played by the "International Court of Justice" in the new international organization. The American Bar Association and the Canadian Bar Association, feeling that these questions called for the active interest of members of the profession of law, asked Special Committees to examine the proposals. These Committees had been established to consider efforts to organize the nations for peace and security, more particularly as they related to law and the administration of justice among Nations. The two Associations co-ordinated their activities and held twenty-five regional group conferences of lawyers throughout the United States and Canada—eighteen in the United States and seven in Canada—for the purpose of formulating the considered opinions of representative lawyers in each region. The two Associations were finally able to publish a Statement of Principles and Joint Action which was made available in time to be of assistance to representatives at the Washington Committee. Chief Justice Farris, referred to above as an adviser to the Canadian delegation, was Chairman of the Committee of the Canadian Bar Association concerned, and the Hon. Philippe Brais was a member. Members of the American Bar Association's Committee were present at San Francisco as unofficial consultants.

A United Nations Lawyers' Association Proposed.

The interest of the legal profession of the United States in the work of the jurists of the United Nations was further displayed at a dinner given in San Francisco by the Federal and State Judiciary, the Bar Association of San Francisco, the National Lawyers' Guild, and the State Bar of California in honour of the judiciary and

bar of the United Nations. The dinner was attended by more than 900 guests. Speakers included Hon. Phil. S. Gibson, Chief Justice, California Supreme Court, Hon. Robert W. Kenny, Attorney General, State of California, and the Hon. Earl Warren, Governor of the State of California, while the Hon. John J. Parker, United States Circuit Judge, gave the main address of the evening on the subject "World Government by Law."

The opportunities provided by the gatherings of the United Nations jurists at Washington and San Francisco for the discussion of matters of common interest led to suggestions that an association of lawyers of the United Nations should be established. Informal meetings were held towards the close of the Conference at San Francisco and the writer attended one of these as an observer. The feeling was that the proposed Association should consist of representatives of organizations of lawyers, judges, and jurists from the several United Nations. The Inter-American Bar Association, which is to hold a conference at Santiago in October was suggested as a guide. Finally, it was decided that a preparatory committee of legal representatives from the Embassies and Legations in Washington of such of the United Nations as were interested should meet in Washington to take the necessary steps to establish a United Nations Lawyers' Association. It can be anticipated that the New Zealand Law Society will be approached when definitive proposals have been formulated.

DEVISE OF MORTGAGED LAND.

Deed of Covenant by Devisee with Mortgagee.

By E. C. ADAMS, LL.M.

EXPLANATORY NOTE.

At common law the heir or devisee of mortgaged land was entitled to have the mortgage debt paid out of deceased's personal estate, unless the land was devised *cum onere* or the personalty was otherwise exonerated, or the debt was an ancestral debt which the testator had not adopted as his own: *Garrow's Real Property in New Zealand*, 3rd Ed. 506. In England, the general rule was reversed by an Act of 1854, commonly called "Locke King's Act," which has been adopted in New Zealand.

The position in New Zealand now is that a devisee of mortgaged land takes it *cum onere* (the land being primarily subject to the payment of the mortgage debt), unless the testator has by his will or codicil or by deed or other document specifically and expressly signified a contrary intention: Property Law Act, 1908, s. 109. This applies to all land in New Zealand, the domicil of the testator being immaterial: *In re Rowling*, *Ellis* v. *Rowling*, [1942] N.Z.L.R. 88, 102. In this case His Honour the Chief Justice, Sir Michael Myers, reviewed the leading authorities on the point as to what constitutes a contrary intention for the purposes of this section.

From an executor's point of view the important part of s. 109 is subs. (3), which provides that nothing in the section shall affect or diminish any right of the mortgagee of land to obtain full payment or satisfaction of his mortgage debt, either out of the personal estate of the deceased or otherwise.

A devisee of mortgaged land is not entitled to a transfer or conveyance of the land until the debts of deceased (including, of course, the mortgage debt) have been duly paid or satisfied or provided for: *McCormack* v. *Lee*, [1941] N.Z.L.R. 114, 120.

A legal personal representative, who distributes the assets of deceased before all liabilities have been discharged, commits *devastavit* and is liable to the mortgagee accordingly to the extent of deceased's assets: *14 Halsbury's Laws of England*, 2nd Ed. 419.

On the death of a mortgagor, an action on the covenant lies against the personal representative, and the judgment can be enforced against him to the extent of the assets remaining undistributed: *23 Halsbury's Laws of England*, 2nd Ed. 454.

In New Zealand, a legal personal representative (especially where the value of the equity is substantial) often takes the risk of transferring a parcel of mortgaged land to the devisee before the administration of the estate is completed, relying on the implied covenant for indemnity by the devisee: *In re Pharazyn*, (1897) 15 N.Z.L.R. 709; s. 88 of the Land Transfer Act, 1915; *Pattison* v. *Commissioner of Stamp Duties*, [1940] N.Z.L.R. 93, 97.

Often in practice a mortgagee will consent to the transfer of the land to the devisee and to the distribution of the other assets of deceased without making any provision for payment of the mortgage debt, if the devisee directly covenants with him to perform the obligations under the mortgage. This is the safer course for the legal personal representative to pursue, for the concurrence of the mortgagee in the act of *devastavit* releases the personal representative from liability: *14 Halsbury's Laws of England*, 2nd Ed. 421.

In (1943) 19 N.Z.L.J. 204, there is set out a suitable precedent, exonerating the legal personal representative on the *sale* of land, which has been mortgaged by the deceased. The following precedent is shorter and appears to meet the case of a transfer of mortgaged land to the devisee with the mortgagee's concurrence. The deed of covenant should be drawn and executed in duplicate, the mortgagee retaining one, the devisee the other. The stamp duty on the original deed will be 15s., and 3s. on the counterpart.

PRECEDENT.

THIS DEED made the day of 1945 BETWEEN A.B. of Palmerston North spinster and C.D. of Christchurch commercial traveller (hereinafter called "the covenantors") of the one part and the State Advances Corporation of New Zealand (hereinafter called "the mortgagee") of the other part WHEREAS the said A.B. and E.F. of Christchurch spinster (hereinafter called "the mortgagors") are registered as executrices as the proprietors of an estate in fee-simple in all that parcel of land containing [*Set out area*] more or less situate in the [*Set out here situation and official description of land*] and being all the land comprised and described in Certificate of Title Volume folio subject to fencing agreement contained in Transfer No. and subject to memorandum of mortgage No. to the State Advances Superintendent but which is now vested in the mortgagee AND WHEREAS the mortgagee has been requested to consent to the transfer of the said land to the covenantors as tenants in common in equal shares and to the distribution of the assets in the estate of G.H. of Gisborne widow (now deceased) without making any provision thereout for meeting the liability of the said estate under the said mortgage which the mortgagee has agreed to do in consideration of the execution by the covenantors of these presents NOW THIS DEED WITNESSETH that for the consideration aforesaid the covenantors DO HEREBY JOINTLY AND SEVERALLY COVENANT with the mortgagee that they will punctually pay perform observe and keep all and singular the moneys covenants conditions and agreements on the part of the mortgagor in the said memorandum of Mortgage No. contained expressed or implied and will be jointly and severally liable in respect thereof in the same manner as if they had executed the said mortgage as mortgagors.

IN WITNESS WHEREOF these presents have been executed the day and year first before written :—

SIGNED by the said A.B. as covenantor in the presence of— } A.B.

Witness : I.J.

Occupation : Solicitor.

Address : Palmerston North.

SIGNED by the said C.D. as covenantor in the presence of— } C.D.

Witness : K.L., J.P.

Accountant, Christchurch, N.Z.

THE COMMON SEAL of the State Advances Corporation of New Zealand, &c. } [SEAL]

THE STATUS OF STIPENDIARY MAGISTRATES IN NEW ZEALAND.

An Historical Summary.

By S. L. PATERSON, LL.B.

(*Continued from p. 180.*)

The view held by the Justice Department in 1922 was that Magistrates were not officers employed in the Public Service. On September 20, 1922, the Under-Secretary addressed to the Minister a memorandum as follows :—

> I shall be glad to have a definite ruling as to whether it is intended that Magistrates are to be included in the scope of the Cabinet decision that—
>
> > "An officer's salary shall be held to cover the whole of duties during regulation business hours notwithstanding that a portion of such duties may be performed on behalf of other Departments and then he shall get no fee or other commission in addition to salary for work performed during ordinary hours."
>
> I wish to point out, in the first place, that a Magistrate is not an "Officer of the Public Service." He is really a judicial officer of the Crown, who is not subject to the rules and orders governing ordinary Public Servants. No Magistrate can be *ordered* to act as Chairman of a Board or Commission for another Department. It is only by working long hours and to some extent dislocating their ordinary Magisterial work that the busier Magistrates are able to carry out the additional duties cast upon them. . . .
>
> C. E. MATTHEWS,
> Under-Secretary.

In Cabinet,
30 Sep., 1922.

Rule not to apply to Magistrate.
F. W. THOMSON,
Secry.

Apparently the views of the Justice Department have changed since then; and there are not wanting indications in certain quarters that some people would like to see Magistrates reduced to subservient Government employees, which was one of the underlying causes of the lodging of a petition by some of the Magistracy asking for a better status.

The opinion of the Crown Law Office, to which reference has been made, also referred to the financial independence of the Judiciary. It said that this was a constitutional principle, and not a question of law except in so far as the principle has been adopted by the Legislature, and that it was not recognized in England until the Act of Settlement of 1700 which was limited in its effect. This statement is hardly in accordance with the article in the *Law Quarterly Review*, by Professor Holdsworth, previously referred to, and which was quoted or misquoted in the opinion. At p. 29, Professor Holdsworth said :

> The provisions of the Act of Settlement which gave the Judges security of tenure *did not introduce any new law* as to their constitutional position. It simply provided security that full effect should be given to their now recognized position as the independent guardians of a supreme law.

The fact of the matter was that the Judges had evolved from being mere servants of the King to independent guardians of the law. This was of course a natural consequence of the victory of the people in the struggle against the prerogative of the Crown. I hope to show

that Magistrates by a similar process of evolution have reached a not altogether dissimilar position.

It is not perhaps inappropriate to point out here that the position of the Magistrates may be likened to that of the puisne Judges at the time of the Act of Settlement. Up to that time, the Chief Baron and Barons of the Exchequer and the Chief Justices of the other Courts held office during good behaviour; but the puisne Judges of the other Courts did not—see the argument of Mr. George Harper in *Attorney-General* v. *Edwards*, (1891) 9 N.Z.L.R. 326, 335. In the same case Mr. Robert Stout (afterwards Sir Robert Stout, C.J.), who appeared for the plaintiff, traced the evolution of the New Zealand Judges from Crown officers to independent Judges (*ibid.*, 326).

I should like to quote here an extract from Mr. Harper's argument at p. 337. He said :

> The history of the law in England shows that there is no common-law principle of judicial independence, but that it has been of gradual growth and has only recently even in England been carried to the fullest extent possible under the British Constitution.

I quote this, because, in the opinion referred to, it was stated that the statutory provisions fell short of recognizing to the full the constitutional principle that a Judge should have nothing to hope and nothing to fear from the Executive Government, because (*a*) they took no account of fluctuation in the purchasing power of money; (*b*) they did not extend to travelling-expenses; and (*c*) though they forbid reduction they do not forbid increases in salary; and, in theory, the hope of an increase or bonus might impair the independence of the Judiciary equally with the fear of a reduction.

I am glad the writer said "in theory" because it gives some indication of the extent to which the views expressed are out of touch with reality. Mr. Harper said that principle had been carried by legislation to the fullest extent possible under the British Constitution. Legislation to protect the Judges' salaries against fluctuations in the purchasing-power of money or to provide against his travelling-expenses might be possible in *Alice in Wonderland*, but would most likely prove nothing but a headache to a British Law draftsman. Had the writer referred, instead, to the reduction in salaries due to increased taxation, he would have been on firmer ground, since salaries could be made tax-free as in the United States of America. So far as the fluctuation in the value of money is concerned, the salaries of the Judges have been progressively increased as the value of money altered: see the article by Professor Holdsworth, referred to.

When the opinion discusses the position of inferior judicial functionaries it is probably technically correct when it says that both in New Zealand and in England no statute has ever given inferior Judges or Magistrates a tenure *Quamdiu se bene gesserint*; but their appointment has always been held at pleasure, and that it had never been widely contended that the constitutional principle should apply to inferior judges. This statement, however, ignores certain facts, and certain historical developments.

I have earlier referred to various provisions in ealier legislation in New Zealand, which gave the Magistrates a tenure of office which was so close to *se bene gesserint* as to make little difference. There are also the provisions contained in the County Courts Acts in England. It must be remembered that colonial Judges were at one time appointed during pleasure; but the practice was to treat them as if the constitutional principle applied to them. In *Attorney-General* v. *Edwards* (*supra*), at p. 368, Williams, J., said :

> The circumstance mentioned in the argument that the practice in Crown colonies was not to remove a Judge except for cause although the appointment was during pleasure, shows that the Crown in exercising the power of removal looked at the provisions of the Act of Settlement not as a law by which it was bound, but as a salutary rule which it was desirable to follow.

Apparently the practice was not to remove such persons without giving them notice and an opportunity of answering the charges brought against them: see *Willis* v. *Gipps*, (1846) 5 Moo. 379, 13 E.R. 536, and *Re Colonial Judges*, (1869) 6 Moo. P.C. (N.S.) App. IX, 16 E.R. 827. Also compare *Reg.* v. *Owen* (*supra*) and *Ex parte Ramshay*, (1852) 18 Q.B. 174, 118 E.R. 65.

The writer of the opinion did not refer to the dictum of Williams, J., but said that one of the reasons for there being no demand for the application of the constitutional principle to inferior Judges was that it was well known that Magistrates exercise exactly as much freedom in cases where the Crown is directly or indirectly concerned as if they were appointed for life, and perhaps because the Executive Government scrupulously observes the rule of never attempting to interfere with a Magistrate in judicial matters any more than it would attempt to interfere with a Judge of the Supreme Court. If this reason be correct (which is more than doubtful), it is a direct contradiction of the dictum of Williams, J. The interference by the Executive Government is one of the very things that some of the Magistrates have complained about in a petition recently presented to Parliament.

Another reason given by the writer of the opinion is that the control enjoyed by the superior Courts is regarded as sufficient to prevent any miscarriage of justice through a time-serving attitude on the part of the lower Bench. This is open to the criticism that in many instances there is no appeal on fact from the Lower Court, and a time-serving Magistrate would be more likely, and would have more scope, to achieve his purpose in dealing with fact; and, in any case, Supreme Court proceedings take money which not every litigant has to spare. I have read somewhere an argument based on the control by the superior Courts over the inferior Courts, to the effect that this control gives a measure of independence to the lower Courts, because the superior Courts can protect them against victimization by the Executive. I cannot, however, put my hand on it now.

The opinion also overlooks that the constitutional principle of the independence of Judges of inferior Courts equally with those of the superior Courts has been recognized in the United States of America, in Article III of the Constitution, which runs :

> The judicial power of the United States shall be vested in one Supreme Court and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges *both of the Supreme and inferior Courts* shall hold office during good behaviour and shall at stated times receive for their services a compensation which shall *not be* diminished during their continuance of office.

(To be concluded.)

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. 47.—W. TO W.C.C.

Urban Land—City Property—Corner Influence—Amount allowable for same—Distinction from Retail-trade Area—Double-frontage considerations.

Appeal in respect of a block of land in what might be called a "back area" in the City of Wellington. It contained 1 rood 27·9 perches, and had a frontage to Bond, Lombard, and Cornhill Streets. On it there were a number of old buildings which were, as to some of them at least, associated with the early history of Wellington.

The Court said: "The case is in many respects difficult. A careful analysis of the evidence, however, discloses that the substantial question calling for consideration is the sum which should be allowed for what is commonly known as corner influence. This is shown by dissecting as far as is possible and then contrasting the values assessed by the various witnesses. Apart from any value attributable to corner influence, and leaving the value of the buildings out of account, Mr. J., the City Valuer for Wellington, values the land at £12,195. Mr. S.'s assessment of its value on a similar basis is £12,086. Mr. B., the Crown witness, values the land at £14,180, but this includes the added value attributable to corner influence which he nowhere separately assesses.

"In the light of these figures, it becomes apparent that, if the true sum to be added in respect of corner influence is £2,000 or approximately that sum, and not £3,300 as claimed by Mr. J., or £3,400 as claimed by Mr. S., then any difference between Messrs. J. and S., on the one hand, and Mr. B., on the other, is reconciled; and the decision of the Committee is justified.

"The value to be attributed to corner influence cannot, it is thought, be decided even in approximate terms by reference to any of those empirical processes suggested by Messrs. J. and S. American experience, as expressed in the various formulae upon which reliance was placed, has relation to circumstances very different in many respects from those here pertaining.

"One major difference is that all such formulae are primarily designed to apply only to retail-trade areas: this is not such an area. The degree of the applicability of any formula in such a case as the present must, therefore, in any event, remain a matter of personal judgment. Messrs. J. and S. recognize this; for by reason of the premises having no value for the purposes of retail trade and there being, in consequence, an absence of several of those factors which constitute valuable features in corner influence, they have elected to modify the scale which they adopted by one-half. Such a modification implies that, in their view, one-half of corner-influence value, as determined by the scale, has reference to those factors which have relation to retail trade, whilst the remaining half has relation to the remaining features which go to make up the sum of the advantages which find a place in the assessment of the value referable to what is known as 'corner influence.'

"There is no authority, so far as the Court is aware, for any such apportionment. Most authorities merely summarize the advantages enjoyed by a corner site and say that, in the light of the many transactions of which they have had experience or to which their records extend, a certain formula indicates what willing purchasers have paid in the past, and so what willing purchasers are likely to pay in approximately similar circumstances in the future for those advantages which attach to a corner location.

Briefly summarized, those advantages are—

(*a*) Accessibility to two or more streams of people.
(*b*) Accessibility to more light and air than internal lots.
(*c*) The benefit of being able to establish service-entry points upon the lower value frontage; and
(*d*) Better fire-protection.

"*Somers* alone, so far as is known to the Court, has made an independent assessment of the light and air factor. He assesses it at a constant factor of 6½ per cent. of the unit value of the higher-value frontage. In this respect he may well have been influenced by the high standard of buildings he would naturally envisage on retail sites in American cities. All the rest of the percentages contained in his formula (they range from a minimum of 2.629 per cent. to a maximum of 44.5 per cent.) by which he found corner sites exceeded interior lots in value, he attributed to the sum of the other advantages which corner lots enjoy.

"Not only, therefore, are the formulae evolved from transactions in American cities of great magnitude inconclusive for present purposes, and, therefore, of doubtful validity in this instance, but their use here involves an apportionment of the value of contributing factors which no authority has yet sponsored. Being conscious, no doubt, of these difficulties, Mr. J. has endeavoured to support his assessment of 50 per cent. by reference to local sales.

"The validity of his conclusion in this respect depends in each instance on a series of assumptions. In each case he has assumed the sum the purchaser paid for the land and the sum which the purchaser paid for the buildings on the land. If he is in error in either respect, then his inference as to what was paid for corner influence must be erroneous. There are too many uncertainties involved in such a method, and the margin for error is too wide to make a valid conclusion reasonably possible.

"A sounder approach would seem to be to consider what the advantages of a double frontage would confer upon a purchaser, so far as those elements in corner influence are concerned which do in fact attach to the site under consideration. In doing that it is necessary to appreciate that corner influence extends over a limited length only of the frontage on each of the streets from which corner-influence value emanates. That length is determined by the nature and extent of the use to which the corner site will probably be devoted.

"Having regard to the location and character of this site, and the limitation last mentioned, it does not appear that accessibility other than for service-transportation purposes plays any or any substantial part. The contrary was not, other than faintly, asserted by any of the valuers, and could scarcely be maintained. It seems clear, for instance, that in the absence of a retail trade character, a multiplicity of entrances along the limited lengths of frontage subject to corner influence will not be required and could not be of any considerable value.

"For the rest, the advantage which a double frontage confers so far as light and air are concerned is, in the main, the retention for profitable use of those internal areas which, were the lot an interior lot, would have to be set aside to provide light and air. Any area or areas so set aside, being internal, would not be of the same value as the frontage. Then, too, such areas are necessarily made as limited as is reasonably practicable: they are unlikely, it is thought, to exceed 5 per cent. of the total area.

"Some indication of the value of the internal areas which could in this instance be saved for remunerative use can be judged from the fact that Mr. S. assessed the frontage to Lombard Street as being worth £31 10s. per unit, and the frontage to Cornhill Street as being worth £30 10s. per unit. The value of any internal area or areas which can be thus saved by the existence of a double frontage will not, in consequence, be very great.

"For the rest, the only advantages are better access to the site for service purposes and more economical "circulation" on each floor of any building which might be erected. As the streets are of almost equal value, any saving effected by the

establishment of a traffic entrance upon the lesser-value street is almost negligible.

"The Committee appears to have assessed a sum of £1,985 as the added value attributable to corner influence. This is ascertained by deducting Mr. J.'s assessment of the value of the land without corner influence, £12,195, from the value of £14,180 with corner influence included as fixed by the Committee. A careful consideration of the evidence suggests that this sum fairly expresses in monetary terms the advantages the two corner sites would be regarded by a purchaser as enjoying by reason of their double frontage. An allowance of £2,000 on this account would be ample.

"The demolition value of the buildings was much debated during the hearing of the appeal, but nothing substantial seems to turn upon that question. Mr. J. valued the buildings at £900, but included in his assessment a corrugated-iron building which is on skids and is claimed by the tenants as their sole property. This building is probably removable by the tenants. It was valued by Mr. J. at £75, so that his valuation of the buildings may properly be regarded as £825. The Committee allowed £820. The buildings are ruinous, and their salvage value could not be assessed within wide limits. Any difference, therefore, between Mr. J.'s assessment and what the Committee allowed can be disregarded.

"The composite result of the findings expressed in this judgment is in substantial accord with the prices actually paid for the property since December 15, 1942, as at which date the value has to be determined by the Court.

"The property was sold on March 4, 1943, for £11,000 and resold on March 31, 1943, for £15,500. As the earlier sale was by a responsible trustee, it cannot be regarded as having been altogether improvident, whilst the latest price paid may well have been influenced to some extent, so far as the purchaser was concerned, by speculative considerations. The market for such properties was, it is said, 'hardening' at the date of the latest purchase after a long period of quiescence.

"Upon the whole, the Court can only conclude that the price fixed by the Committee was reasonable and proper. The appeal is therefore dismissed."

No. 48.—L.P., LTD. TO L.

Urban Land—Suburban Building Sections—Value—Whether referable to Recent Sales in same Locality—Whether such Sales only One Element among Others—Consideration of Factors demonstrably creating Value additional to Basic Value.

Appeal concerning the value of two suburban building sections forming part of a subdivision.

In these cases a conflict had arisen between Mr. A. and Mr. C., by reason of their adoption of two different indiciae of value. Mr. A., to use his own words, was "largely guided" by the prices paid by the Housing Department for adjacent properties. Mr. C. was guided by conclusions to be drawn from the totality of sales in the locality. He did not disregard prices paid by the Housing Department, but treated those sales as constituting only elements of the sum of the elements from which conclusions could be drawn.

The Court said: "The Housing Department being required to buy at prices not exceeding the December, 1942, values, the purchases by the Department are certainly relevant. They cannot, however, be decisive, for otherwise the Department would be put in the position of virtually exercising the primary function of the tribunals set up under the Soldiers' Settlement and Land Sales Act, 1943, in those localities in which the Department might buy properties. The proper view is to regard the prices paid by the Department as of the same evidenciary value as if those prices had been paid by any other purchasers.

"This is, in essence, what Mr. C. has done. The Committee acted upon a similar view and, in the opinion of the Court, it was right. There can be no justification for holding, as a matter of principle, that purchases made by one purchaser, even if that purchaser is a Department of State, should be taken as outweighing in evidenciary value the purchases made by other people.

"A careful analysis of all the sales in the locality discloses that the prices fixed by the Committee were proper. Any sales at prices in excess of those allowed by the Committee can, as to most of them, be fairly explained, whilst the residue are, in point of number, so few as to be almost negligible. With respect to these latter it can fairly be said that they are out of harmony with the great majority of relevant sales. Such a position is not uncommon where, as here, subdivisional lands in large areas have remained unsold and largely unsettled for want of a market over a considerable number of years.

"For the rest, the Court is in agreement with the Committee that, whilst the basic value of any land to which s. 54 of the Act relates may be increased to make it a fair value having regard to relevant considerations, yet any such increase can only properly be allowed by reason of factors which have demonstrably created an additional value. A mere expectation that purchases by the Housing Department will result in the establishment of a well-built suburb, and that properties within the limits of that suburb will increase in value, is based too much upon uncertain anticipation to justify a present allowance of an additional value. There may be some accretion of value, or there may not. The results, at this stage, are quite problematical.

"Upon the whole, the Committee seems to have fixed fair and proper values, and the appeals must be dismissed."

No. 49.—T.C. ESTATE TO M. AND CO.

Urban Land—Lots in Future Business Centre—Valuation Per Foot of Frontage—Whether Applicable—Location and Characteristics—Comparable Sales.

Appeal from an Urban Land Sales Committee regarding the sale price of lots in a subdivision at Tawa Flat, near Wellington.

The Court said: "It is admittedly difficult to fix the value as at December, 1942, of those sections in Tawa Flat which are bought upon the assumption that they will be in or near to the future business centre. At the present stage of development it is impossible to say with any degree of assurance where that centre will or will not be. That a stabilized centre will ultimately develop is, however, reasonably certain, and any assessment of value must necessarily take into account the extent to which purchasers, who are or have been influenced as to the price are willing or have been willing to pay by reason of their anticipation as to where that centre will be.

"Account must be taken, too, of the fact that the need for large buildings has not up to the present been within the reasonable anticipation of any one. Any site which affords sufficient room for a store and moderate ancillary amenities is likely to be regarded, other things being equal, as of equal value to a site which may be somewhat larger in area. This tends to invalidate to some extent any per-foot frontage assessment of comparative values.

"The adoption of the per-foot method in this instance seems to lead to an unacceptable conclusion, for an assessment of the value of Lot 24 at £285 is far from according reasonably with the sale price of other lots. For purposes of comparison, the course best calculated to achieve a fair result is to regard the lots merely as lots and, whilst paying due regard to location and characteristics, to treat minor differences of area and frontage as merely some of the factors to be considered, and not as decisive or major factors.

"Viewed from this standard, there are a number of sales which seem, to a greater or less degree, fairly comparable. The sale of Section 30 at the corner of Main Road and Cambridge Street to the S. Trust can be disregarded as it was not passed by the Committee and probably gives effect to an increasing price since December, 1942. The sale of Lot 23 at £350 almost opposite the corner, bought by the S. Trust, seems reasonably comparable, as does the sale of Lot 11 fronting Melville Street and Oxford Street at £400. The latter lot was obviously bought as a business site by reason of its proximity to the railway-station. Lot 24 will also be a business site if the business centre changes from the present somewhat nebulous centre. As at December, 1942, a buyer might well regard this Lot 23 as of greater value than Lot 24 by reason of its closer proximity to the present centre, slight as that centre is. On the other hand, Lot 24 is at a point past which a considerable volume of traffic must flow by reason of the roading scheme adopted, and it has three frontages as against the one frontage enjoyed by Lot 23.

"All things considered, a reasonably prudent buyer might well think that Lot 24 was of a value equal to Lot 23, despite the somewhat greater area of the latter. The Court thinks, therefore, that the attribution of an equal value to the two lots would be reasonable. Such a finding is in accordance with the value indicated by the sale of Lot 11 at £400, for that lot lies at a point in relation to the station which will always assure it of a business value by reason of the commercial benefits to be derived from passing traffic.

"The basic value of Lot 24 is fixed at £350 and consent to the sale at that price is given accordingly."

LAND AND INCOME TAX PRACTICE.

Bankrupt Estate—Income Derived by Official Assignee.—The Official Assignee is a "public authority" and as such comes within the definition of a "person" as contained in the definition in s. 2 of the Land and Income Tax Act, 1923. Section 72 of the principal Act provides that income-tax shall be payable by every person on all income derived by him. However, s. 78 (*b*) exempts from tax the income of any public authority, but this exemption would not extend to income "received in trust." The income is "received in trust" and not as agent, as the Official Assignee can be regarded as an administrator, and the definition of "trustee" (s. 2) includes an executor or administrator. The Official Assignee is bound to apply the bankrupt property or income in the manner directed by the Bankruptcy Act, 1908, and consequently he is liable for income-tax, social security charge, and national security tax on income derived by him as trustee of a bankrupt's estate.

Bank Pensions—Liability for Tax.—Bank pensions received by residents of New Zealand are assessable for income-tax purposes as follows:—

1. Bank of New South Wales: Pensions assessable in New Zealand as from April 1, 1943—*i.e.*, for the year ended March 31, 1945, onwards.
2. Union Bank of Australia, Ltd.: Pensions are assessable in New Zealand as from January 1, 1944.
3. Commercial Bank of Australia, Ltd.: No pensioners resident in New Zealand at the present time.
4. Bank of Australasia: Pensioners of this bank receive two pensions, *viz.*—
   (*a*) *A bank pension* which is a supplementary pension voluntarily paid by the bank at the discretion of the directors; and
   (*b*) *A Provident Fund pension* which is paid out of the staff's Pension Fund.

   Originally both these pensions were subject to Australian income-tax, but now the Australian taxation authorities have exempted the bank pension for some years back and the Provident Fund pension as from October 10, 1943.

   For the income year ended March 31, 1944, therefore, the whole of the bank pension was liable to New Zealand income-tax, together with that portion of the Provident Fund pension derived from October 10, 1943, onwards.

   For the income year ended March 31, 1945, onwards, both pensions will be liable in full for New Zealand income-tax.
5. Bank of New Zealand.
6. National Bank of New Zealand, Ltd.

   Pensions from these two banks have always been assessable as the pension funds are domiciled in New Zealand.

The pension funds of the first four banks mentioned above are domiciled outside of New Zealand and prior to the dates shown the pensions were taxed in the country where the fund was domiciled.

Pensions from all the banks enumerated have always been liable to social security charge and national security tax in New Zealand since the inception of those taxes.

Refunds of Social Security Charge and National Security Tax: Social Security Contribution Regulations, 1939, Amendment No. 3 (Serial No. 1945/35).—This amendment amends previous legislation with regard to the refunding of social security charge and national security tax overpayments and in effect brings the position into line with that of refunds of income-tax as enacted in s. 8 of the Land and Income Tax Amendment Act, 1944.

Regulation 2:

Clause (1).—This clause is largely self-explanatory, but it should be noted that the words "would have become due if it had been payable" cover cases where the registration fee has been paid in error—*e.g.*, by an absentee or a person under sixteen years of age.

"Financial year" means the year ending March 31. Apart from the extension from three years to four years, this alters the previous basis and permits the adjustment of all instalments within the earliest year—*e.g.*, an application made in March, 1945, permits a refund of the *May*, 1940, and subsequent instalments, but an application made in April, 1945, permits a refund only of the *May*, 1941, and subsequent instalments.

Clause (2).—This clause extends the adjustment period for social security charge and national security tax on salary or wages and "other" income to four years from the *end* of the *financial year* (as defined above), instead of three years from the date of application in the case of salary or wages, or three years from the end of the month in which an instalment became due in the case of income other than salary or wages, as was previously the case.

The words "would have become due if it had been payable" cover cases where the combined charge has been paid on amounts not subject thereto—*e.g.*, a legacy, or social security benefit or wages paid to a person under sixteen years of age.

The last portion of para. (1) of cl. (2) extends the time for refund purposes to permit a refund within four years after the end of the financial year in which a declaration is furnished. (It should be noted that in this instance "declaration" means "original," "amended," "additional," or "supplementary" declaration.) Thus the combined charge paid on an original declaration of income other than salary or wages for the year ended 31st March, 1945, furnished in, say, May, 1946—*i.e.*, twelve months late—is subject to refund up to March 31, 1951.

Clause (2) is tied up with cl. (3), and, consequently, if an "amended," "additional," or "supplementary" declaration is furnished in a different financial year from that in which the original declaration was furnished, the extended time for refund purposes applies only to the *additional* charge paid *by reason of that later declaration*.

The proviso to cl. (2) is important, and it should be noted that the words "by reason" of that notice of assessment limit the refund, as follows:—

(*a*) If the assessment is an original one *and a declaration has not been* furnished, a refund of the full charge assessed is permissible within four years of the end of the financial year in which the assessment is made. The benefit to the taxpayer in this case is the extension of time in which the refund can be made. If a *further* assessment (whether an additional or an amended assessment) is made increasing the charge payable, the period for reopening that assessment is extended, but the refund is limited to the additional charge paid as a result of that particular assessment.

(*b*) If the combined charge payable under an original declaration is subsequently increased by reason of the issue of an assessment (whether original, amended, or additional) the period for the reopening of *that* assessment is extended, but the refund is limited to the additional charge paid as a result of that particular assessment.

Clause (3).—This further clarifies the position where an amended assessment is issued or an amended declaration is furnished. The extended time for a refund is limited to the amount of the increased charge paid as a result of that amended assessment or declaration. Thus several different time limits may apply if amended assessments in respect of the same income year have been issued in different financial years.

Clause (4).—This clause specifies that a document is not a notice of assessment unless it is expressly described therein as such. Thus it should be noted that social security accounts, statements, and under-payments, demands, or letters embodying particulars of the combined charge are *not* notices of assessment.

Regulation 3:

Clauses (1) *to* (4).—These revoke the previous clauses relating to refunds and are self-explanatory. Note, however, that the revocation of subcl. (5) of Reg. 16 of the Social Security Contribution Regulations, 1939, brings the adjustments of overpayments on provisional declarations into line with all other refund adjustments. Previously it was possible to obtain a refund later than the time-limit imposed for ordinary overpayments.

It should be noted that in terms of cl. (3) the regulations apply retrospectively to any application for a refund made on or after April 1, 1944.

Clause (4) preserves the rights under the provisions repealed in respect of applications made prior to April 1, 1944.

IN YOUR ARMCHAIR—AND MINE.

By SCRIBLEX.

Inference or Conjecture.—The legal student is told that when a witness swears that he saw a woman walking with a man pushing a pram with a baby in it this is a statement of alleged fact. If he concludes that the baby belongs to the woman and the pusher is the husband, that is inference; but if he concludes further that the woman's husband is the father of the child he soars into realms of pure conjecture. In *Yuill* v. *Yuill*, [1945] 1 All E.R. 183, an appeal from Wallington, J., who dismissed a divorce petition, accepting the evidence of the respondent and the co-respondent and basing his belief that they were substantially truthful upon a "careful observation of their demeanour" and an opinion he had formed of their "type and characteristics," Lord Greene, M.R., says:

> The evidence of the appellant and Young was that they found the respondent and co-respondent in bed together asleep and in the dark, the respondent in pyjamas, the co-respondent naked except for his vest. Both of them denied that they had committed adultery on this occasion although they had done so on numerous occasions in the same place. Wallington, J., accepted their denial of adultery, and it may well have been true. But he does not comment upon their story as to how they came to be in the situation in which they were found, nor does he anywhere say that he believed it. It is not one of the specific matters upon which he expressed himself satisfied with their evidence and I find it impossible to suppose that he gave to it the importance which it deserved as bearing upon their credibility. All that he did was to refuse to draw the inference that adultery had taken place."

The House of Lords has laid it down that it is not enough for people to be thrown together in an environment which lends itself to the commission of the offence, unless it can be shown that the association of the parties was so clear that adultery might reasonably be assumed as the result of an opportunity for its occurrence. The conduct of the parties in *Yuill's* case seems amply to satisfy this test, and none of our juries would have found it necessary to soar quite so far into the realms of very impure conjecture.

Legislative Density.—In 1928, in consequence of the finding of a Representation Commission, there was constituted the new Electoral and Licensing District of Mid-Canterbury comprising portion of the former District of Ashburton which, as the result of a poll in 1903, had become a no-license district and had remained no-licence up to the time of its inclusion in the new district. At the first annual licensing meeting of the new district, the Committee refused to hear an application for a license in respect of premises situated in the former Ashburton no-license portion on the ground that it had no jurisdiction; and on a motion for writs of certiorari and mandamus to compel the Committee to hear and determine the application, the Court of Appeal found that the effect of carrying no-license in a district when the provisions for local option were in force abolished existing licenses, and that a declaration of the electors in favour of restoration was a condition precedent to granting licenses in place of those which had ceased to exist in consequence of the vote of the people: *Scales* v. *Young*, [1929] N.Z.L.R. 855. The appellant was again unsuccessful in the Privy Council, where Viscount Dunedin delivering the judgment, remarked that their Lordships did not propose to tender any opinion on the subject of injustice which was one for the Legislature and not for them, but they were bound to remark that against what had been urged in justification might well be set the remark that the whole legislation was supposed to rest on the will of the people as expressed by vote and at least the population of the Ashburton portion would have to suffer their fate in silence. Seventeen years of silence appears now to have been broken by L. A. Charles, solicitor for the Ashburton Borough Council, which submits to the Licensing Commission that it is suspended in mid-air like Mohammed's coffin, no longer in a no-license area, and having neither licenses nor the possibility of obtaining them. Practitioners will remember that it was the Licensing Acts which called forth from MacGregor, J., the descriptive phrase: "this thick growth of legislative jungle."

Baron Parke.—It is related of Baron Parke that, when once asked why he had not written a law book, so that posterity might have benefited by his erudition answered, "My works are to be found in the sixteen volumes of Meeson and Welsby," and was met with the instant reply, "and if there had been a seventeenth that would have been the end of the common law." At the Bar he was renowned as a special pleader who had a consuming passion for the technicalities of his art. On one occasion, he took a special demurrer to the bedside of a barrister friend who was seriously ill. "It was so exquisitely drawn," he explained, "that I felt sure it must cheer him to read it." Indeed, such was his reputation as one who profoundly revered ancient precedents that on another occasion when, summoned to advise the Lords, he was suddenly seized with a fainting fit in the midst of his argument; cold water failing to restore him to consciousness, one of his colleagues, knowing his peculiar temperament, rushed into the Library and seized a large musty volume of the old statutes. Coming back, he applied it to the nostrils of the patient who at once opened his eyes and in a few seconds was as well as ever.

Nec Vi, Nec Clam, Nec Praecario.—The recently-appointed Stipendiary Magistrate, Mr. S. I. Goodall, in an affiliation case in the Domestic Proceedings Court at Auckland betrayed his training as "a man of property." The mother of the child, a married woman, was shown by evidence *aliunde* to have separated from her husband and off and on during the past six years to have lived with the defendant. A child was born on November 12, and the mother had been absent from the defendant's house in the early part of the year, staying in the same house as her sister and returning to the defendant's house on March 1. The crucial date in the case of a full-time child would have been February 5. The defence urged that the defendant could not be the father. The Magistrate, saying that he would borrow from the language of another branch of the law, replied that he did not think it necessary that the defendant should have had open, manifest, exclusive, and continuous possession throughout; doubtless the defendant had had it *nec vi*, *nec clam*, but His Worship hesitated to say *nec praecario*.

PRACTICAL POINTS.

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1. Death Duties.—*Bank Accounts and Stock in New South Wales in joint Names of Husband and Wife resident in New Zealand—Death of Husband—Quantum of Death Duty in New South Wales.*

QUESTION: In the estate of A.B., deceased, the New South Wales Commissioner of Stamp Duties has assessed death duty under the Stamp Duties Act, 1920–1939, at £52 6s. 8d., being 8⅓ per cent. on the final balance of £628. C.D., his wife, who has no other assets, cannot work, finds the assessment heavy, and asks whether it is in order or whether any relief is possible.

A.B. died intestate in Auckland in 1944, having no New Zealand assets. His estate consisted of the following assets only: (*a*) Fixed deposit with bank in Sydney in names of A.B. and/or C.D. (wife), £300; (*b*) Balance of savings account with a Sydney branch of the Commonwealth Savings Bank in names of A.B. and C.D., £318; (*c*) Australian Commonwealth Inscribed Stock held by Commonwealth Bank for safe keeping in names of A.B. and C.D., £10: £628.

All these funds were provided out of the housekeeping savings of C.D., and were remitted to Australia in 1938 before the introduction of exchange control. Both had lived in Australia for many years, and had intended to go back within a year or two of remitting; but the war intervened.

ANSWER: It is clear that C.D. the surviving spouse is now beneficially entitled to all the above items of property by virtue of the *Jus accrescendi* or right of survivorship, despite the rather curious wording of the fixed deposit: *Russell* v. *Scott*, (1936) 55 C.L.R. 440; *Fadden* v. *Deputy Federal Commissioner of Taxation*, (1943) 68 C.L.R. 76. In view of the relationship of the parties, there would be no resulting trust in favour of A.B.'s estate.

If A.B. died domiciled outside New South Wales, and, if just immediately prior to the remission of the moneys to Australia in 1938, he was solely beneficially entitled to those moneys, then the assessment appears to be correct. The New South Wales statute has a provision corresponding to s. 5 (1) (*e*) of the Death Duties Act, 1921 (N.Z.); as to which see *Adams's Law of Death and Gift Duties in New Zealand*, 48–51. The Federal statute, on which *Fadden's* case (*supra*) was decided, has no such provision.

A.B.'s actual domicil at date of his death cannot be ascertained from the question; for, at law, domicil and residence are not necessarily the same. If A.B. had a New Zealand domicil in 1938, then he still retained that domicil at his death; and mere intention of going back to Australia (presumably New South Wales) within a year or two of the remitting of the money to Australia would not cause the acquisition or re-acquisition by him of a New South Wales domicil.

As the origin of these moneys is said to be housekeeping savings, the New South Wales revenue authorities (apparently relying on such cases as *Blackwell* v. *Blackwell*, [1943] 2 All E.R. 579, as to which see Article in 1944 *N.Z. Law Journal*, have presumably assumed that these moneys were solely contributed by A.B. If, however, cogent evidence could be produced that these moneys, when they were remitted to New South Wales, were just as much the property of C.D. as A.B., then, it is submitted, the final balance would have to be reduced to one-half of £628—*i.e.*, £314; at all events it is understood that that would be the New Zealand practice. If A.B. died domiciled outside New South Wales, the correct duty then would be 8⅓ per cent. of £314. If, however, A.B. died domiciled in New South Wales, and the whole of his estate passed to his widow, no duty would be payable if the final balance of the estate did not exceed £1,000: Stamp Duties Act, 1902–1932, s. 101A (N.S.W.). XI.

2. Probate and Administration.—*Cessate Probate—Widow Executrix for Life—Others appointed on her Death—Conferring of Title on Sale by beneficiaries—Procedure.*

QUESTION: A. died in 1941, by his will appointing his widow, W., executrix and trustee of his will. By a codicil A. appointed B. and C. "to be the executors and trustees of the foregoing will after death of my wife W." In 1941 the Supreme Court granted administration of A.'s estate to W., "reserving nevertheless to this Court full power and authority to grant like probate and administration to B. and C., the other executors named in the said will and codicil, whenever they shall appear before this Court and sue for the same after the death of the said W."

W. duly filed all death-duty accounts and paid all death duty, but failed to take title by transmission to a parcel of land under the Land Transfer Act. She died in 1944, and B. died in 1943. The beneficiaries have now procured a purchaser for the land and desire to confer title. How can this be done? Will fresh death-duty accounts in A.'s estate be necessary now?

ANSWER: (1) C. should apply to the Supreme Court for a *cessate* probate: *14 Halsbury's Laws of England*, 2nd Ed. 214; *In re Goods of Freeman*, (1931) 48 T.L.R. 1. He should then apply to the District Land Registrar to be registered as proprietor by transmission under s. 123 of the Land Transfer Act, 1915, reciting in the statutory declaration all the relevant facts. There will only be one registration fee payable on this transmission.

(2) Unless additional assets in A.'s estate have come to light in the meantime, it will not be necessary to file fresh death-duty papers *re* A.'s estate; but the Registrar of the Supreme Court will forward the *cessate* probate to the Assistant-Commissioner of Stamp Duties, who will require a statutory declaration along the lines set out in *Adams's Law of Death and Gift Duties in New Zealand*, 268, 269, paras. 20 and 21. The Assistant-Commissioner of Stamp Duties will then endorse a certificate on the *cessate* probate that all duty has been paid and the necessary stamps affixed to the original administration. XI.

RULES AND REGULATIONS.

Public Trust Office Amending Regulations, 1945. (Public Trust Office Act, 1908, Public Service Superannuation Act, 1927, and the Mental Defectives Act, 1911.) No. 1945/85.

Hairdressers (Health) Regulations Extension Notice, 1945, No. 3. (Health Act, 1920.) No. 1945/86.

Goods-service Charges Tribunal Emergency Regulations, 1943, Amendment No. 3. (Emergency Regulations Act, 1939.) No. 1945/87.

Honey Emergency Regulations, 1944, Amendment No. 1. (Emergency Regulations Act, 1939.) No. 1945/88.

Wool Levy Regulations, 1945. (Wool Industry Act, 1944.) No. 1945/89.

Industry Licensing (Fish-export) Revocation Notice, 1945. (Industrial Efficiency Act, 1936.) No. 1945/90.

Industry Licensing (Fish Wholesalers) Revocation Notice, 1945. (Industrial Efficiency Act, 1936.) No. 1945/91.

Industry Licensing (Fish Retailing) Revocation Notice, 1945. (Industrial Efficiency Act, 1936.) No. 1945/92.