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"THE END OF THE WAR."

PEACE in law is not synonymous with the end of hostilities. It lags behind peace in fact. "Public policy," said Lord Macnaghten in *Janson* v. *Driefontein Consolidated Mines, Ltd.*, [1902] A.C. 402, 498, "requires a good citizen in matters of this sort to conform to the rule and guidance of the State." He based this view on the principle that in every community it must be for the supreme power to determine the policy of the community with regard to peace and war, and that it is not for private individuals to pronounce upon the foreign relations of their Sovereign or their country, even though their views may be right in the abstract and might possibly find acceptance with a jury of their countrymen, if such a question were within the competence of such a tribunal.

In his judgment in *Kawasaki Kisen Kabushiki Kaisha of Kobe* v. *Bantham Steamship Co., Ltd.*, [1939] 1 All E.R. 819, 823, Lord Greene, M.R., said:

> It is perfectly manifest, to take a simple case, that, if in any particular litigation a question arises whether or not this country is at war with another country, that is a matter of which the Courts of this country will take judicial notice, and, if the Courts find themselves unable from their own knowledge to take that notice, the source of information to which they must address themselves is one, and one only—namely, the Executive Government, whose function it is to make war, and whose decision as to whether or not a state of war exists concludes the matter. That is one example, and that was what took place in *Janson* v. *Driefontein Consolidated Mines, Ltd.*

In the United States of America the same view is taken—namely, that it is the province of the Government, and not of the Courts, to determine when a state of war exists and when a war ends: *Kahn* v. *Anderson*, (1920) 155 U.S.1. In the opinion of the Supreme Court, "that complete peace, in the legal sense, had not come to pass by the effect of the Armistice and the cessation of hostilities, is not disputable": *Hamilton* v. *Kentucky Distilleries Co.*, (1919) 251 U.S. 146.

In illustration of the difference between the date of the actual cessation of hostilities and the official declaration of the "end of the war," by which the Courts are bound, may be taken in respect of the period following the armistice in 1919 and the manner in which "the end of the war" of 1914–1918 was proclaimed.

An armistice was granted to Germany on November 11, 1918, for a period of thirty-six days; and this was renewed on December 14, 1918. On June 28, 1919, Great Britain and Germany signed a treaty of peace, which stated that it should be ratified and the deposit of ratification should be made at Paris as soon as possible. The two powers did not exchange and deposit ratifications of the treaty until January 10, 1920.

By an Order in Council, dated February 9, 1920, His Majesty's Government in Great Britain declared the date of the termination of the war with Germany to be January 10, 1920. In New Zealand, by Proclamation, dated February 20, 1920, the date of the termination of the war with Germany was likewise declared to be January 10, 1920: *1920 New Zealand Gazette*, 665.

Thus, though hostilities with Germany ceased on November 11, 1918, it was not until January 10, 1920, that, in New Zealand, the war ended in a legal sense: see *Thompson* v. *Mason*, [1921] N.Z.L.R. 973.

The Proclamation of February 20, 1920, to which we have referred, was made in pursuance of s. 24 of the War Legislation and Statute Law Amendment Act, 1918, which was passed after the cessation of hostilities. Subsection (1) (*b*) of that section provided that the war should be deemed to be existent until a date to be named as the termination of the war by the Governor-General. As we have shown, that date was January 10, 1920.

A Select Committee, which was appointed in England at the close of the Great War, to consider the report of Mr. Justice (afterwards Lord) Atkin's Committee as to what provision should be made for defining the phrase "end of the war" and similar phrases occurring in the war emergency legislation, presented an interim report stating their agreement with the conclusion that the date of the end of the war should be held to be the date when the treaty of peace is finally binding on the respective belligerents—*i.e.*, the date when ratifications of the treaty are exchanged or deposited. This was on the assumption that the war was ended by a general treaty of peace between the United Kingdom and all the Powers with which it was at war. If, on the other hand, His Majesty were to make a separate treaty of peace with an individual enemy Power, the end of the war with that Power would be the date when the ratifications of the treaty were exchanged or deposited; but that might have little or no effect on existing emergency legislation. The Committee recommended that Parliament be asked to pass a Bill for this purpose.

The Bill so recommended became enacted as the Termination of the Present War (Definition) Act, 1918 (8 & 9 Geo. V., c. 59), which was an Act to make provision for determination of the then present war, and for purposes connected therewith; and which came into force on November 21, 1918. Section 1, to which further reference will be made, was as follows:—

1. (1) His Majesty in Council may declare what date is to be treated as the date of the termination of the present war, and the present war shall be treated as having continued to, and as having been ended on that date for the purposes of any provision in any Act of Parliament, Order in Council, or Proclamation, *and, except where the context otherwise requires, of any provision in any contract, deed, or other instrument referring, expressly or impliedly,* and in whatever form of words, *to the present war or* the present hostilities.

We propose, in our next article, to consider the words we have italicized; and, in particular, to refer to the phrase "and in whatever form of words," and the word "hostilities" following it, which raised considerable difficulty in the construction of commercial contracts affected by the duration of the war, and caused an unpleasant shock or a pleasant surprise, according to whether or not the contract was unprofitable or beneficial.

In New Zealand, s. 16 of the Finance Act, 1945, provides as follows:—

"16. (1) Wherever in any Act or regulations passed or made since the third day of September, nineteen hundred and thirty-nine (whether before or after the passing of this Act), the war, the present war, the war with Germany, or the war with Germany and any other State or States, or the duration or termination thereof, is referred to, or any equivalent expression is used, every such reference or expression shall be interpreted by the following rules:—

"(*a*) The war is the war with Germany that commenced on the third day of September, nineteen hundred and thirty-nine, and includes the war with Japan:

"(*b*) The war shall be deemed to be existent until a date to be named as the date of the termination of the war in a Proclamation by the Governor-General published in the *Gazette*:

"(*c*) The date to be named in that Proclamation as the date of the termination of the war shall be the date of such termination for the purposes of every such enactment, and the war shall for such purposes be deemed to continue and to be existent until that date.

"(2) The judicial cognizance by the Courts required by any enactment of the existence or termination of a state of war shall be governed by this section.

"(3) Section twenty-four of the War Legislation and Statute Law Amendment Act, 1918, shall be read subject to the provisions of this section."

It will be observed that this statutory provision is confined in its application to "any Act or regulation" passed or made since September 3, 1939, whether before or after the passing of that statute. Very wisely, we think, the Legislature has so confined its application, and has left to the Courts the proper construction of any contract, deed, or other instrument in which the duration of the war, in some form of words, is of importance.

It may be mentioned, in passing, that the conclusion of the war generally, in terms of the English statute, was proclaimed to be August 31, 1921: *1921 Statutory Rules and Orders, 1348.** There was thus a long interval of time between peace in fact and peace in law, varying from fourteen months in the case of the war with Germany to nearly three years in the case of the 1914–1918 war generally. During that period, as well as afterwards, several judicial decisions were given on such questions arising out of the construction of commercial documents as to when peace must be taken to have concluded, or the war ended, or as to the meaning of "the duration of the war." The topic is not without difficulties. As these questions may possibly arise in the near future, we propose to deal more extensively with them in our next issue.

* For the Orders in Council in New Zealand fixing the dates as regards Austria (July 16, 1920), Bulgaria (August 9, 1920), Hungary (August 31, 1921), and Turkey (August 6, 1924), see, respectively, *New Zealand Gazette*, 1920-1924.

SUMMARY OF RECENT JUDGMENTS.

WEBSTER v. WEBSTER.

COURT OF APPEAL. Wellington. 1945. June 29; July 16. MYERS, C.J.; KENNEDY, J.; CALLAN, J.

Divorce—Adultery—Evidence—Standard of Proof required—Inference of Guilt—Evidence consistent only with Adultery—Mere Opportunity alone insufficient—Duty of Appellate Tribunal regarding Incredible Testimony—Divorce and Matrimonial Causes Act, 1928, ss. 10 (a), *14, 17.*

The evidence of adultery must be such that guilt must be inferred; it is not enough that there are circumstances of suspicion; and the evidence must be incompatible with innocence, and such as is consistent only with adultery. In other words, the tests laid down in *Hall* v. *Hall*, (1902) 21 N.Z.L.R. 251, are still applicable.

Further, two other general principles should be applied in respect of evidence of adultery:

1. Mere opportunities for the commission of adultery do not, standing alone, warrant an inference that it has been committed.

2. An appellate tribunal may reject the evidence of witnesses whom it has neither seen nor heard, if it is demonstrated that their evidence is incredible.

Ross v. *Ross*, [1930] A.C. 1, followed.

On an appeal from the granting of a decree *nisi* by a Judge sitting without a jury,

Held, by the Court of Appeal, dismissing the appeal, That the evidence upon which the learned Judge pronounced the decree *nisi* satisfied the tests as above set out, and was credible and pointed to the actual commission of adultery, not merely to the opportunity of committing it.

Hall v. *Hall*, (1902) 21 N.Z.L.R. 251, and *Ross* v. *Ross*, [1930] A.C. 1, distinguished.

Counsel: *Joseph*, for the appellant; *Sievwright*, for the respondent.

Solicitors: *Herd, Joseph, Robieson, and Olphert*, Wellington, for the appellant; *A. B. Sievwright*, Wellington, for the respondent.

BINFIELD v. LANGLEY.

SUPREME COURT. Napier. 1945. May 18, 19; July 23. CORNISH, J.

Orchard and Garden Diseases—New-Zealand-grown Fruit Regulations—Sale of Seventy-seven Apples branded as Count "138"—Apples of Right Variety, Grade, and Size—Contents not "accurately described"—Whether Offence committed—"Wholesale Vendor"—"Producer"—"Owner"—"Sale by owner"—New-Zealand-grown Fruit Regulations (Serial No. 1940/195), Regs. 2, 5—Amendment No. 3 (Serial No. 1943/153), Reg. 6.

In order to comply with Reg. 5 : 14 of the New-Zealand-grown Fruit Regulations, 1940, the vendor of apples in a package must keep the package, whatever type of standard package it may be, filled with apples of the variety, grade, and size represented by the particulars including the count thereof required to be branded on the package.

If the vendor of apples sells a "bushel" case, branded as count of "138," containing only seventy-seven apples of the variety, grade, and size branded on the package, he commits the offence of selling fruit in a package in which the count (required to be branded on every standard package of fruit) did not accurately describe the contents of the said package.

The term "owner" in Reg. 5 is not restricted to "producer" or "wholesale vendor" as defined in Reg. 2.

Counsel: *Hallett*, for the appellant; *Sproule*, for the respondent.

Solicitors: *Hallett and O'Dowd*, Hastings, for the appellant; *Kennedy, Lusk, Willis, and Sproule*, Napier, for the respondent.

MITCHELL v. WALPOLE AND PATERSON, LIMITED.

SUPREME COURT. Wellington. In Chambers. 1945. June 15, 25. JOHNSTON, J.

Insurance—Motor-vehicles (Third-party Risks)—Practice—Third-party Procedure—Law Reform—Joint Tortfeasors—Driver of borrowed Motor-car colliding with Motor-lorry—Passenger killed—Possible Tortfeasors—Husband of Passenger claiming Damages from Lorry-driver's Employer—Defendant pleading Contributory Negligence on part of Car-driver—Application for Issue of Third-party Notice to Owner of Borrowed Car—Third-party Proceedings against Insurers considered—Motor-vehicles Insurance (Third-party Risks) Act, 1928, s. 6 (4) (c)—Statutes Amendment Act, 1938, s. 40—Law Reform Act, 1928, ss. 4, 17—Code of Civil Procedure, R. 95.

The driver of a borrowed car, with the plaintiff's wife as passenger, collided with the motor-lorry owned by the defendant company and driven by its servant. The plaintiff's wife died from injuries received in the collision. On his own behalf and on behalf of his children, the plaintiff sued the owner of the lorry, claiming damages from him. The latter's defence was that the collision was due to the negligence of the driver of the car, or that his negligence contributed to it.

On application by the defendant for leave to issue a third-party notice to the owner of the car,

Held, 1. That, as s. 40 of the Statutes Amendment Act, 1938, extends the liability of the indemnifying insurance company to cover cases where a passenger is killed as a result of negligence attributable to joint tortfeasors, and the exemption set out in s. 6 (4) (c) of the Motor-vehicles Insurance (Third-party Risks) Act, 1928, does not apply, the owner of the car must be regarded as the principal of the borrower, and a possible tortfeasor with the owner of the lorry.

Stewart v. *Bridgens*, [1935] N.Z.L.R. 948, G.L.R. 774, distinguished.

2. That the purpose of the application was not to bring in and place before the jury an insurance company as defendant, as the question of insurance was no more raised than if the plaintiff had joined the owner of the car as a defendant.

Gowar v. *Hales*, [1928] 1 K.B. 191, distinguished.

Jones v. *Birch Bros., Ltd.*, [1933] 2 K.B. 597, mentioned.

3. That, as the damages incurred by a plaintiff, may, *prima facie*, have been caused by the negligence of more than one, and, in the case of a collision between two vehicles, by either or both of the drivers of those vehicles, a defendant is entitled, under R. 95 of the Code of Civil Procedure, to bring in the other as an alleged tortfeasor on the ground that he is entitled to contribution from him.

4. That, although the plaintiff appeared in two capacities ((*a*) as husband of the deceased passenger, in respect of loss of consortium, and (*b*) as father of the children of the deceased passenger, in respect of the loss of their mother), and had, limited his action to claiming against the owner of the lorry the matters in issue concerned the owners of both vehicles; and, since the passing of s. 17 of the Law Reform Act, 1936, the observations in *Horwell* v. *London Omnibus Co.*, (1877) 2 Ex.D. 365, and the cases following it, no longer apply.

Horwell v. *London Omnibus Co.*, (1877) 2 Ex.D. 365, distinguished.

5. That leave should be given to the defendant to issue the third-party notice, as such joinder would give the defendant an opportunity of establishing a claim for contribution against the car-owner, or an adverse verdict would not prejudice the plaintiff in respect of a fresh action against the car-owner; and, further, the mere fact that issues of law might follow upon the determination of facts, and might cause the plaintiff's action to be delayed or complicated, was not sufficient ground for refusing such leave.

Jones v. *Birch Brothers*, [1933] 2 K.B. 597, distinguished.

Observations as to third-party proceedings against insurers.

Counsel: *C. F. Treadwell*, in support; *A. M. Ongley*, to oppose.

Solicitors: *A. M. Ongley*, Palmerston North, for the party sought to be added; *Treadwell, Gordon, Treadwell, and Haggitt*, Wanganui, for the defendant.

TANSEY v. RENOWN COLLIERIES, LIMITED.

COMPENSATION COURT. Auckland. 1945. June 20; July 19. O'REGAN, J.

Workers' Compensation—Liability for Compensation—Fireman-deputy in Coal-mine—Remuneration in Excess of £400 a Year—Substantial Employment—Timbering, Shot-firing and Coal-face Dusting—Whether "employed by way of manual labour"—"Worker"—"Manual labour"—Workers' Compensation Act, 1922, s. 2—Coal-mines Act, 1925, ss. 61, 62—Coal-mines Regulations, 1939 (Serial No. 1939/94), Regs. 94–103.

In order to ascertain if a servant is "employed by way of manual labour" within the meaning of that phrase in the definition of "worker" in s. 2 of the Workers' Compensation Act, 1922, the real and substantial character of the employment must be considered, to the exclusion of matters which are merely incidental or accessory, the question being a question of fact in each case.

Where the employment is substantially for manual duties, whether or not involving heavy physical exertion, it is employment "by way of manual labour." Where the chief duties of the servant are those which require intellectual labour, and the duties of manual labour are subordinated to these, the servant is not a "worker"; but where duties of manual labour are performed by a servant in about equal degree he is "employed by way of manual labour."

Every case involving the question whether or not an employee in receipt of remuneration exceeding £400 a year is "employed by way of manual labour" must depend on its own facts; and, when occupations under the same name differ so greatly in the character of the duties they involve, no attempt should be made to codify or classify men as being within or without the statute by the mere name of the post which they have undertaken to fill.

Jaques v. *Steam-tug "Alexandra" (Owners)*, [1921] 2 A.C. 339, 14 B.W.C.C. 148, and *Re Gardner, Re Maschek, Re Tyrrell*, [1938] 1 All E.R. 20, followed.

Lawton v. *Holm Shipping Co.*, (1931) 7 N.Z.L.J. 343, *Smillie* v. *Rangitikei Co-operative Dairy Co., Ltd.*, [1934] N.Z.L.R. 238, G.L.R. 254, referred to.

Leafberg v. *Public Trustee*, [1921] N.Z.L.R. 282, and *Cameron* v. *Gear*, [1918] G.L.R. 662, not followed.

A fireman-deputy in a coal-mine, whose remuneration exceeded £400 a year, whose first duty was to attend to the work of supervision and inspection and this to safeguard the lives of the men of whom he had charge and who was not by the Coal-mines Regulations, 1939, prescribing the duties of a fireman-deputy, required to do any hard labouring work, during more than half his working-time was employed in timbering and shot-firing and other incidental manual work.

Held, That, on the evidence, the plaintiff was "employed by way of manual labour"; and he was, therefore a "worker" within the meaning of that term as defined by s. 2 of the Workers' Compensation Act, 1922.

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

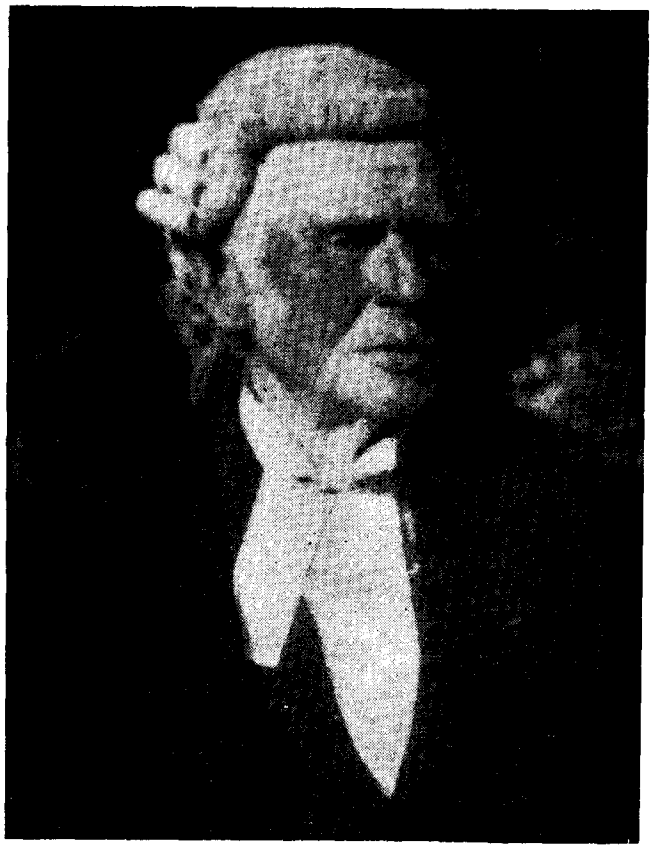
Solicitors: *King and McCaw*, Hamilton, for the plaintiff; *Buddle, Richmond, and Buddle*, Auckland, for the defendant.

THE LATE MR. FREDERICK WILDING, K.C.

A Great Lawyer and a Great Athlete.

Senior King's Counsel for the Dominion, Mr. Frederick Wilding died in Christchurch recently. He was ninety-two, and had achieved the record of practising as a lawyer for more than sixty years.

Mr. Wilding was born in Montgomeryshire, Wales, where his father was a doctor, on November 20, 1852. He was educated at Hereford Cathedral School and at Shrewsbury. In 1874 he was admitted as a solicitor in England, and afterwards read in a barrister's chambers for admission to the Bar. However, he decided to leave for New Zealand before being called to the Bar. After arriving in the Dominion in 1879 he was admitted as a barrister and solicitor. In that year, he commenced practice in Christchurch.



The late Mr. F. Wilding, K.C.

Mr. Wilding was one of the first men to take silk in New Zealand, his patent being dated August 6, 1913.

Before leaving Hereford, he had distinguished himself as an all-round athlete, a sprinter, cricketer, Rugby footballer, oarsman, and tennis player. He had also practised there as a solicitor, for he told how his first case had been the defence of a client, who had been found in the room of one of the maids in a country house, and was charged with being found in a dwellinghouse by night with intent of committing a felony; but the future King's Counsel persuaded the not altogether unsympathetic Justices that the intent was amorous rather than felonious and got him off.

On coming to New Zealand he confined himself to cricket and lawn tennis, representing Canterbury province in the former game with marked success for forty years, both as batsman and particularly as bowler, and with "Dick" Harman being five times doubles champion in tennis. When he was fifty-three he partnered his son, Anthony, the international tennis champion in doubles matches at Prague.

In practice, he devoted himself mainly to the common-law work. In drawing his pleadings, working up his evidence, planning the conduct of his case, and consulting the authorities, he was thorough and untiring and had a keen eye for the salient features. Early in his career in Christchurch, he had a run of libel, slander, malicious prosecution, and like cases, in which he was very successful. But he was equally sound on the equity side, as the reports of his appearances in the Christchurch Supreme Court testify. He had a bright, taking address, knew how to handle a jury, was alert and quick in the uptake, and never let an opportunity pass of scoring off an opponent. Whether at law, cricket, or tennis, he mixed brains with his delivery, varying his tactics from time to time as occasion required, making a home-thrust whenever he found an adversary off his guard. With an office in Ashburton as well as Christchurch, he handled a great variety of business—country as well as town. He was modest as to his capabilities, rarely appearing in the Court of Appeal, preferring to brief counsel regularly engaged there, and in cases that he considered vital, briefing recognized leaders of the Bar. For instance, when a client of his was charged with inciting to arson, he briefed Sir Robert Stout, a wise choice, for the latter dominated the scene and laughed the case out of Court.

One might almost call Mr. Wilding the Cincinnatus of the profession, for he brought with him from Hereford the love of a garden, of the apple, and of cider. He formed the Styx Apple Company and spent much time in the planting of the orchard, in supervising the tending of the trees, and in arranging for the brewing of the cider. His death recalls a remark he made when the subject of burial was in discussion. "I should like," he said, "to be buried under an apple tree, where my sap would mingle with that of the tree, and when autumn came around my friends could pluck a juicy apple from the tree and say 'Old Wilding tastes well this year.'"

It was wonderful how, with his practice and his sport he kept up work in his garden, rising early in the morning to till his soil before cycling to the office. Fruit, flowers, and vegetables, he cultivated with facility; and the week-end before his death he was still digging in his garden, facing a bitter wind, which brought about the bronchitis that carried him off.

His home, Fownhope, at Opawa, with its two tennis courts, swimming-baths, and spacious garden was the Mecca, not only of sportsmen, cricketers, tennis-players, but of musicians and travellers. On Saturday and Sunday afternoons, there was an almost unique assemblage of brains and brawn in an atmosphere of complete freedom and absence from all formality. Tennis on the courts with well-blended and well-matched partners, afternoon tea on the spacious verandah, with fruit from the garden, were followed by suppers at which chosen friends and kindred spirits mingled. Cider from the Styx apples, and many ideas, were broached and discussed. Mrs. Wilding presiding, gracious and attentive to her guests, her husband sparkling like his own cider, and helping to make the conversation go as smartly as a series of the bright rallies in which the guests had been engaged on the tennis courts. Into the somewhat narrow and parochial atmosphere of a small Cathedral City, he, a reader and thinker, brought a breezy and unconventional spirit, well calculated to disturb mass thinking (or, rather, mass want of thought). No matter what the subject, he would always constitute himself "*Advocatus Diaboli*," and espouse the cause of the nonconformist to conventional ideas, defending the most deprecated persons and practices, and expressing the most heterodox views. Those suppers were most provocative of thought and made many of his friends realize that *Audi Alteram Partem* is a good motto.

To the end he kept his interest in his professional work and in his garden, for he was working on a case for the office when he was stricken. So passed at the ripe old age of ninety-two, in harness to the end, an able lawyer, a great athlete, and a good friend; and with him is likely to pass into the hands of the sub-dividers and builders that hospitable home, of which, as well as of the host and hostess, so many will cherish happy and grateful recollections.

TRIBUTES OF BENCH AND BAR.

On July 9, there was a large attendance of practitioners at the Supreme Court, Christchurch, to pay their last respects to the late Mr. F. Wilding, K.C.

His Honour Mr. Justice Northcroft, presided.

The Canterbury Law Society.

The President of the Canterbury District Law Society, Mr. E. A. Lee, addressing His Honour, said that the members of the Profession were assembled in Court to do honour to the memory of a very distinguished colleague, Mr. Frederick Wilding, K.C. With his passing there had been severed another link with the early history of the Province. Mr. Wilding had arrived in New Zealand and commenced practice in Christchurch in 1879, and few had had the distinction of practising for so long and with such success. He had continued to take an active interest in his business until a few days before his death, and, until then, too, he had retained the clarity of thought and judgment which had been an outstanding feature throughout his career, The President continued: "Most of Mr. Wilding's brilliance in the Courts belongs to another generation; but those who knew him then still speak of his ability as an advocate, and of the success which invariably followed his appearances. His outstanding legal achievements were in the civil Courts, where he built for himself a reputation which in his time was surpassed by none, and equalled by very few. It is said that he was always a dangerous opponent, against whom constant vigilance was necessary. He took silk in 1913, and at the time of his death his patent antedated that of any of his colleagues then living.

"He had a marked capacity for work, and that industry, together with his great experience and sound knowledge of the law, made him an outstanding member of the profession. By his ability, personality and service to the public he built for himself in his lifetime one of those businesses which are the best examples of the honour and tradition of the Law in New Zealand.

"While it is as a lawyer that we will best remember him, it should be said that it was not only in his profession that he distinguished himself. Apart from his services as an adminsitrator, he had a brilliant record as a competitor in athletics, cricket, football, rowing, and tennis, and his service to the last-named sport and the memory of an internationally famous son is perpetuated by Wilding Park, one of the City's playing areas.

"While we always regret the passing of a fellow member, it will be a source of satisfaction to us all and of comfort to his family that he had lived far beyond life's allotted span, and had continued to do his duty to his profession and to the public to the end.

"His memory, which we honour to-day, will remain fresh for many years. The members of the Profession in Canterbury join in extending sympathy to his family and business associates."

Mr. Justice Northcroft.

His Honour Mr. Justice Northcroft said that he spoke for the Chief Justice, to whom Mr. Wilding was an old personal friend, and for all the Judges in associating the Bench with the Bar in the tribute which has fallen from the President. Proceeding, His Honour said:

"You, Mr. President, have referred to the late Mr. Wilding's lengthy practice of his profession in the city, and in this Court. For more years than most of us have yet attained, he gave ungrudging service to that jealous mistress—the Law. Despite his loyal and faithful attention to his professional work, he still had energy and zeal for the encouragement and assistance of young people in those wholesome athletic activities from which had sprung his own well-balanced life.

"The advocate is the servant of justice. That service demands patient industry; it demands honesty; it demands courage; and it requires judgment. All these virtues were strengthened in Mr. Wilding in the playing-field. All these virtues were brought by him to the assistance of the Court in the administration of justice.

"In his distinguished career on the playing-field he acquired also the lesson of give and take, of tolerance, whence comes the capacity for friendship. Thus, through many years, he was the friend of many. Above all, he was the friend of his profession and of its members. Like all great advocates, while loyal to his client he was still the friend of the Court. He fulfilled the admonition of Lord Chief Justice Cockburn:

> The arms which an advocate wields he ought to use as a warrior, not as an assassin. He ought to uphold the interests of his client *per fas*, and not *per nefas*. He ought to know how to reconcile the interests of his clients with the eternal interests of truth and justice.

To the very end Mr. Wilding maintained an active association with his honoured profession. His store of learning, his well-practised judgment, and his wise counsel were freely given by him, even within these last few weeks. His has been a life of great fulfilment, and of honour and distinction in his profession, to which he in turn brought both honour and distinction. We hope and trust that this gathering and these tributes from his fellows of the Bar, as well as from his friends on the Bench may bring comfort to his family in their great loss."

STAMP-DUTY LAW: RECENT AMENDMENTS.

Part II of the Finance Act, 1945.*

By E. C. ADAMS, LL.M.

Every conveyancer must have a good working knowledge of the Stamp Duties Act, 1923. In a land transaction the money is very often paid over, settlement effected, and bill of costs rendered before the instrument is presented for stamping; it is extremely exasperating in such circumstances to receive subsequently a note from the Stamp Duties Office that not sufficient duty has been proferred.

It is true that objection to the non-stamping or insufficient stamping of instruments is not now nearly so frequently taken at *nisi prius*, as, for example, in the days of Lords Mansfield and Tenterden, when a sustained objection appears to have had the effect of vitiating an instrument. (In those days the presiding Judge often referred the stamp point to the Full Bench of Judges to sit later in London.) The present stamp-duty law in New Zealand is not nearly so drastic, except in such exceptional cases as s. 149 of the Stamp Duties Act, 1923, the effect of failure to stamp a buyer's and seller's contract note on the sale of shares in a mining-company contract is that the contract is unenforceable by the party at fault. Usually, the only effect is to render the instrument liable to a statutory penalty, which, however, may be rather substantial, unless reduced by the Revenue officials. Sometimes, the only effect is liability to a fine on summary conviction—*e.g.*, unstamped appraisements: s. 155 (4). In the case of unstamped receipts the liability is cumulative, a summary prosecution (s. 179), and statutory penalty (s. 178). But it is understood that in practice the Crown officials enforce only one method.

Nevertheless, the presiding Judge or one of the counsel sometimes takes stamp objections; and examples of such are *White* v. *Ensor*, (1892) 11 N.Z.L.R. 586, and *Gower* v. *Cornford*, [1937] N.Z.L.R. 1176. And readers of this JOURNAL may remember the witty note by Scriblex, *ante* p. 21, relating how the very obliging Court usher had placed on the Bench for His Honour's use a standard textbook on stamp-duty law obligingly opened at the page he had observed counsel reading just before the commencement of the hearing. Furthermore, s. 54 of the Stamp Duties Act, 1923, places upon every Court of civil jurisdiction obligations with respect to every unstamped or insufficiently stamped instrument which is chargeable with duty, and which is produced as evidence. The Court must impound the instrument. It is, therefore, to the advantage of the parties thereto, as well as to the State, that an instrument should be sufficiently stamped. It is considered accordingly that a short article explaining Part II of the Finance Act, 1945 (which deals exclusively with stamp duty), will be of interest to readers of the NEW ZEALAND LAW JOURNAL.

DECENTRALIZATION.

Decentralization is now the order of the day: we have it in the rehabilitation of returned servicemen: the Land and Income Tax Department is about to be decentralized, and the New Zealand Law Society has recently requested more decentralization in the Stamp Duties Department. The dominant note of Part II of the Finance Act, 1945, is decentralization; and, to this extent, this Part of the Act will doubtless be welcome to the legal profession.

REDUCTION OR REMISSION OF PENALTIES.

Section 7 of the Finance Act, 1945, authorizes Assistant Commissioners (and there is an Assistant Commissioner in each district office) to reduce or remit penalties when instruments are presented late for stamping.

It has previously been pointed out how the effect of non-stamping or insufficient stamping is not now nearly so drastic as formerly. But conveyancers of more than thirty years' experience will doubtless recollect, and those of a later generation will be surprised to learn, that it was not until November 1, 1915 (being the date of the coming into operation of the Finance Act, 1915), that the Stamp Duties Department had any authority whatever to remit or reduce the statutory penalty payable on an instrument: s. 85. That section, however, did not authorize the *refund* of penalties already paid: s. 34 of the Stamp Duties Act, 1923, in substitution for s. 85 of the Finance Act, 1915, extended the Commissioner's powers in that direction but did not confer any power whatsoever on an Assistant Commissioner.

As amended by s. 2 of the Stamp Duties Amendment Act, 1927, and s. 7 of the Finance Act, 1945, s. 34 of the Stamp Duties Act, 1923, now reads as follows:—

> The Commissioner or an Assistant Commissioner may, if he thinks fit, on special grounds, reduce or remit in whole or in part any penalty so incurred, and the Commissioner may on such grounds refund in whole or in part any such penalty, but no such refund shall be made unless application therefor is received by the Commissioner or an Assistant Commissioner within six months after the payment of the penalty.

The present position is that District Stamp Offices may now reduce or remit penalties on instruments other than receipts without recourse to Head Office, but refunds of penalties already paid will still have to go to Head Office. Only the Commissioner may still remit a penalty on a receipt: s. 17 of the Stamp Duties Amendment Act, 1924.

DRAFTING SLIP RECTIFIED.

Section 8 of the Finance Act, 1945, reads:—

> Section sixty-eight of the principal Act is hereby amended by omitting from subsection two the words "twelve shillings and sixpence" wherever they occur, and substituting in each place the words "fifteen shillings."

This supplies an omission in drafting and takes our minds back to the dark days of the depression. In 1930, consequent upon the fall in revenue, stamp duties in New Zealand were generally increased. Instruments previously liable to a duty of 12s. 6d., became subject to 15s.; but, apparently, both the Law Draftsman and the Department failed to notice s. 68 (2) of

* Passed on July 26, 1945.

the principal Act: duty thereunder remained at 12s. 6d.; but, as comparatively few instruments are stamped under this section, the loss of revenue has not been great.

EXTENSION OF "DEED NOT OTHERWISE CHARGED" DUTY.

As every conveyancer knows, s. 168 of the Stamp Duties Act, 1923, as amended by s. 19 of the Finance Act, 1930, imposes a fixed duty of 15s. on every *deed*, not otherwise charged, subject to the qualification expressed by s. 16 (2) of the Stamp Duties Amendment Act, 1924, which provides that where any instrument chargeable with duty under s. 168 is expressly exempted from any *ad valorem* duty chargeable under any other provision of the principal Act, the duty charged under s. 168 shall not exceed the amount of the *ad valorem* duty that would have been payable if the instrument were not exempt from such *ad valorem* duty.

By the definition clause in s. 2 of the principal Act, "deed," includes any instrument of disposition capable of registration under the Land Transfer Act, 1915; but the term is not otherwise defined or explained. In practice it is often very difficult to determine whether or not an instrument presented for stamping is a deed. Except in the case of execution by a corporation, sealing is no longer requisite for a deed executed in New Zealand; but s. 26 of the Property Law Act, 1908, provides that a deed shall be attested by at least one witness, who shall add to his signature his place of abode and calling or description. It is obvious that, if an instrument is executed by a corporation itself—*i.e.*, not by its attorney—but not under its seal, or is one executed by a natural person and there is no witness, or if there is a witness, he does not add to his signature his place of abode and calling or description, the Stamp Duties Department cannot stamp the instrument as a deed; it may for the purposes of stamp duty fall into the category of a simple agreement: s. 154 of the Stamp Duties Act, 1923.

But the converse does not by any means apply: it certainly does not follow that every instrument executed in New Zealand and attested in accordance with s. 26 of the Property Law Act, 1908, is a deed. Useful guidance may be obtained from a dictum of that very sound real-property lawyer, the late Mr. Justice Edwards, in *Re Palmer*, [1919] G.L.R. 82, 83:

> It may sometimes be difficult to determine whether or not a document, signed and attested as prescribed by that section is a deed. But it is certain that a document so signed and attested is not necessarily a deed. Where such a doubt arises [whether an *unsealed* document is a deed] it must be determined with regard to the attendant facts, the nature and form of the document, and whether a deed is necessary to effect its purpose.

Thus, a document renouncing an executorship, not being in the nature of a contract or transferring any property, is not a deed.

The writer of this article knows no really satisfactory definition of a "deed" for the purposes of New Zealand law. About twenty years ago, a rather enterprising examiner for the New Zealand University in real property asked the candidates for such a definition in the first question of the paper. One wonders what answers he received from the aspiring barristers and solicitors and hopes that the unusual type of question did not affect them with undue nervousness.

All this leads up to s. 9 of the Finance Act, 1945, which reads as follows:—

> Every transfer of shares or of any equitable interest in shares shall, if it is exempt from conveyance duty, be deemed to be a deed for the purposes of section one hundred and sixty-eight of the principal Act.

Apparently some companies in New Zealand do not require transfers of shares in their company to be in the form of deeds. Now no matter what *form* of transfer they accept, the instruments will be stampable as deeds not otherwise chargeable, if they are exempt from *ad valorem* conveyance duty. Examples of transfers of shares which will be liable now to deed not otherwise chargeable duty are—

(*a*) Transfer of shares in a company (including a mining company) from a legal personal representative or a trustee to the beneficiary: s. 81 (*d*) of the Stamp Duties Act, 1923.

(*b*) Transfer of shares in a company (including a mining company) from a trustee to a trustee on the appointment of a new trustee or on the retirement of a trustee: s. 81 (*c*).

(*c*) Transfer *on sale* of shares in a company (other than a mining company) to be held on a charitable trust in New Zealand: s. 81 (*f*).

N.B.—A conveyance on *sale* of the legal ownership of shares in a mining company is wholly exempt from conveyance and deed duty by the combined operation of s. 81 (*g*) of the Stamp Duties Act, 1923, and s. 16 of the Stamp Duties Amendment Act, 1924. But, on the transaction (whether charitable or not), the buyer and seller must exchange contract notes duly stamped in accordance with Part VIII of the Stamp Duties Act, 1923.

(*d*) Transfer *not on sale* of shares in a company (including shares in a mining company) to be held on a charitable trust in New Zealand: s. 81 (*f*) of the Stamp Duties Act, 1923.

The term "shares" is defined in s. 2 of the principal Act as meaning shares in the capital of any company incorporated in New Zealand or elsewhere, and includes stocks.

ANNUAL LICENSE DUTY PAYABLE BY AGENTS OF FOREIGN INSURERS.

Section 10 of the Finance Act, 1945, reads—

> Section one hundred and eighty-nine of the principal Act is hereby amended by adding to subsection two, as amended by section twelve of the Finance Act, 1941, the words "except in any case where the Minister of Stamp Duties, in his discretion, directs that only one duty shall be charged in respect of any number of agencies."

Section 12 of the Finance Act, 1941, had provided that the agents of two or more foreign insurers should be subject to a separate annual license duty in respect of each agency. Now the Minister in his discretion may direct that only one duty shall be charged in respect of any number of agencies. This amendment, however, is of more interest to the insurance world than to conveyancers.

GUARANTEES: AN ANOMALY RECTIFIED.

The abortive Stamp Duties Act, 1922 (abortive because it was never allowed to come into operation), was drafted by the late Sir John Salmond, who, as Solicitor-General, had advised the Stamp Duties Department for many years: it was designed to correct anomalies, prevent leakages of revenue, and opportunity was taken to codify certain rulings which the

Department had acted on. But its framework was dissimilar from the previous statute (the Stamp Duties Act, 1908) which was a consolidation of the Stamp Act, 1882, and its amendments. In New Zealand, the various stamp duties had always been set out in a Schedule to the statute: the 1922 Act (as does the present one, 1923) enacted the duties in the body of the statute itself. In the course of this change of framework the duty on certain classes of instruments (many of which were in common use in the commercial world) were inadvertently increased; the Stamp Duties Act, 1923, rectified the position to a great extent, but it was not noticed that *guarantees*, which from 1902 to 1915 had been liable only to 1s. duty, and from 1915 to 1923 to 1s. 3d. duty, were liable, if in the form of deeds (which they usually were), to duty as on a deed not otherwise charged duty, which was then 12s. 6d. Guarantees are very common instruments indeed, and this change was considered a hardship to the banking, business, and commercial community. Hence, in 1924, there was enacted s. 20 of the Stamp Duties Amendment Act, 1924, to remove the hardship; but it was not noticed at the time that it also created an anomaly. Section 20 (2) provided that every instrument of guarantee should be charged with a stamp duty of 2s. 6d., increased to 3s. by the Finance Act, 1930. Section 20 (4) provided that every instrument of guarantee, the matter whereof was not of the value of £20 or upwards, should be exempt from duty under *that* section; but guarantees for such small amounts, if in the form of deeds, still remained liable to deed not otherwise charged duty: *Mayor, &c. of Wellington* v. *Commissioner of Stamp Duties*, [1925] G.L.R. 158, where Sir Robert Stout, C.J., held that the insertion of the word "conveyance" before duty in s. 81 limited the operation of the section.

Thus, a guarantee for £20 or upwards was liable to 2s. 6d. (later increased to 3s. by the Finance Act, 1930); but one for a lower amount to 15s., if in the form of a deed. The intention of the Legislature was to exempt from *all* stamp duty guarantees where the undertaking was the principal object, and where the matter whereof was under the value of £20. Section 11 of the Finance Act, 1945, effectually carries out this intention by simply omitting from s. 20 (4) of the Stamp Duties Amendment Act, 1924, the words "under this section."

(To be concluded.)

THE STATUS OF STIPENDIARY MAGISTRATES IN NEW ZEALAND.

An Historical Summary.

By S. L. Paterson, LL.B.

(Concluded from p. 191.)

Magistrates' Services to the Cause of Liberty.

Curiously enough, the opinion concludes by suggesting that the reason for the anomaly, if anomaly it be, may be found in the fact that on account of the lower status and salary offered and the larger number of posts to be filled it may be more difficult to be sure of satisfactory appointments in the case of the lower Bench and that it is necessary therefore to reserve powers to terminate an appointment that proves unsuitable. This is an admission that it is an anomaly that Judges of inferior Courts should not have financial independence equally with Judges of the superior Courts; and, of course, it is an anomaly—and an anomaly which, in the interests of the community and particularly of the people, should be put right—because the Magistrates' Court is the People's Court. It is the principal and, for many people of slender means, the only, barrier between the powers of the Executive and the liberties of the people: and one of the only guarantees left for the preservation of the liberties of the people. If the Magistrates are to have their appointments terminated merely because the Executive or a political party having a transitory majority in Parliament thinks them unsuitable, then no man is free and there is no liberty. *Blackstone* says:

> In this distinct separate existence of the judicial power in a peculiar body of men nominated indeed but not removable at pleasure by the Crown consists one main preservative of public liberty; which cannot subsist long in any State unless the administration of common justice be in some degree separated from the legislative and also from the Executive power.

Let us take stock for a moment of the services rendered by the Magistrates in the evolution of the law and the cause of liberty, and ask ourselves whether anything which renders their tenure of office less secure or less independent financially is not undermining the principles given effect to in the Act of Settlement, and in subsequent legislation.

I base my claim to the independence and immunity of the Magistrates upon principle. Once the principle of the independence and immunity of the Judges is conceded, then the same or some similar independence and immunity cannot logically or justly be refused the Magistrates; because they are Judges in every sense of the word. They adjudicate on claims between man and man, and between husband and wife. They also adjudicate between the Crown and the subject, between the Crown and the Executive, and between the Executive and the citizen. Property, status, freedom, and liberty are in their hands. Though the King cannot be prosecuted nor sued, Ministers of the Crown can both be prosecuted and sued for what they do by express command of the King. Ministers of the Crown (and the Minister of Justice who claims to control the Magistrates is no exception) are responsible before the ordinary Courts of Law, including the Magistrates' Court even for the highest acts of State. For these acts of State they can be both sued and prosecuted, and the Magistrates' Courts may have to decide whether the acts are legal or not. The law (especially modern statute law) has endowed the members of the Cabinet and the Executive with very great powers; but the

question whether they have exceeded these powers can be brought before a Stipendiary Magistrate, and the plea that the action which has been called into question was an official act or an act of State will not serve them. "A great deal of what we mean when we talk of English liberty," said *Maitland*, "lies in this."

At the time of the passing of the Act of Settlement, there were no Courts of record which were not presided over by Judges. The old County Courts had virtually died out. The new County Courts established by statute in 1846 had no connection with them. There were, it is true, a number of borough and local Courts, but they had nearly all fallen into abeyance: see *Jackson* on *The Machinery of Justice in England*, p. 29.

The fact of the matter is that the greater part of the jurisdiction now exercised in New Zealand by the Stipendiary Magistrate was at the time of the Act of Settlement exercised by the High Court; and the jurisdiction of the Magistrates' Courts has been built up progressively by encroachment on the jurisdiction of the superior Courts. At the time of the Stuarts, this higher Court dominated the scene; and the lawyers sided with the Parliamentarians in the struggle against the Crown. The clients of the lawyers were the landed proprietors and the merchants, and the rights of the common herd were little considered. The fact that summary Courts even now have no jurisdiction in cases where questions of title to land arise is an anachronism—a survival from the days when the landowners were the ruling class.

The Widening Jurisdiction of Magistrates.

The rise of the Courts of Summary Jurisdiction and of Courts of Record of Inferior Jurisdiction has been rapid, especially over the past hundred years. In 1885, *Maitland* spoke of the summary jurisdiction as "the Rising Sun." Their rise has corresponded with the rise of democracy, the rise of the common people, and that is natural because they are the people's Court. It is not possible to find many books on present-day developments and tendencies for the reason that the material of such books is only in the making.* Any one, however, who cares to look back over the past cannot but help being struck with the coincidence between the widening of the franchise, better education of the masses, the rise of the Labour movement, and the extending jurisdiction of the Summary and County or Magistrates' Courts. The Under-Secretary of Justice in 1939, when addressing a meeting of Justices of the Peace, said: "The statistics reveal that between 80 and 90 per cent. of all matters requiring judicial determination are dealt with in the 'People's Court'." This statement coming as it does from the Permanent Head of the Justice Department is an indication of the extent to which the Magistrates' Courts dominate the administration of justice at the present time. The figures for 1941 (which were the lowest for ten years) show that civil judgments recovered in the Magistrates' Court totalled £362,538 as against £82,344 in the Supreme Court, an average in round figures of £13,000 per Magistrate as against £8,200 per Judge. Convictions in the Magistrates' Court totalled 46,000, as compared with 1,496 in the Supreme Court, all of which were preceded by preliminary hearings in the Magistrates' Court.

The *Official Year-book* for 1894 contains some interesting information which shows the effect of the widening jurisdiction of the lower Courts. It is interesting and informative because during the preceding year important changes in the law had taken place, consequent upon the passing of the Magistrates' Courts Act, 1893, the Justices of the Peace Act, 1892, and the Criminal Code Act, 1893. The *Year-book* makes reference to the necessity for a more extensive jurisdiction because of the increase of settlement and the pressure of business in the Supreme Court. The Justices of the Peace Act, 1892, had given the Magistrates' Court jurisdiction to try sundry indictable offences, and the *Year-book* said: "The increasing use of this provision may account for the fall in the number of convictions in the higher Court." There had been 13,583 convictions by summary Courts while only 366 prisoners had been committed to the Supreme Courts. Referring to the civil work of the Magistrates' Courts, the *Year-book* said: "The Act constituting these Courts was passed only last year, but experience in its working shows already that it has gone a very great way towards bringing cheap and speedy justice within reach of all."

Some very pertinent comment is made by Mr. Jackson, Lecturer in Law at Cambridge University in his book *The Machinery of Justice in England*, on the extension of jurisdiction of the County Courts, and as to the effect of extension previously granted. He says, at p. 322:

> Since the Judicature Acts there has been agitation from time to time for a reconsideration of the jurisdiction of the County Courts. By 1888 the general jurisdiction had been raised to a limit of £50 a figure that was altered in 1903 to £100. The last inquiry into the desirability of extending County Court jurisdiction was made by the Royal Commission on the Dispatch of Business at Common Law. The Commission was opposed to any substantial change. Far more interesting than the recommendations is the evidence that was given. A full analysis of the evidence would require a large amount of space. In brief, it may be said that those connected with the County Courts advocated extension of jurisdiction: High Court Judges and leading barristers opposed extension. Since King's Counsel do not appear in County Courts and some of the witnesses became King's Counsel many years ago (in some cases before they went on the Bench), it is pertinent to point out that these witnesses can have had little recent experience of County Courts. The Trades Union Congress wanted a jurisdiction of £500 while the London Chamber of Commerce objected to any increase of jurisdiction. Many points in this controversy could be cleared up if far more information was available. . . . The state of our judicial statistics is deplorable. A study of the better kept statistics of the Edwardian Age can throw some light on the 1903 extension of County Court jurisdiction. The raising of County Court jurisdiction from £50 to £100 resulted in a decrease of about one hundred cases a year where such sums were recovered on the King's Bench Division with an increase in the County Courts of nearly two thousand such cases a year. An allowance would have to be made for decrease in small cases at Assizes, but on the most generous estimate possible it is clear that many actions between £50 and £100 were brought in the County Courts that would not have been brought at all if the only Court available had been the High Court. Yet in 1936 a responsible body could dispose of the question of County Court jurisdiction without thinking of some of the relevant figures.

Mr. Jackson goes on to refer to the questions of comparative costs, both to litigants and the public, and also to the question of accessibility of Courts, in connection with which he says that it must be remembered that Courts exist for the public at large and not for the convenience of Judges.

* "English Justice"—by "Solicitor," "In Search of Justice"—Mullins, "Justice in a Depressed Area"—Muir, and Professor Jackson's work, already referred to, are all works which will repay study.

MAGISTERIAL INDEPENDENCE.

It is not my desire to traverse again the forceful arguments put forward by a contributor to the NEW ZEALAND LAW JOURNAL, in January last (*ante*, p. 5). I have tried to show that, historically and by process of evolution, the jurisdiction now exercised by the Stipendiary Magistrates is such that it can hardly be denied that the constitutional principle of the independence of the judiciary contained in the Act of Settlement should be extended to them. Within certain limits the jurisdiction of the Magistrates is co-ordinate with that of the Supreme Court; but a Judge exercising that part of his jurisdiction, often with the assistance of a jury, has security of office and immunity, while a Magistrate has none. Surely it is just as necessary that the Magistrate should be independent as it is that the Judge should be, more especially since, as has been shown, the Magistrates do the greater amount of work—that is to say, the greater amount in volume, not value.

The law administered in the Magistrates' Courts is growing in bulk and complexity year by year. The tendency of modern statecraft is to place numerous obligations and restrictions on citizens which are enforced by summary procedure. This of necessity has to be done by means of statutory regulations and Orders in Council. The very complex nature of our modern social and economic systems makes this necessary, so that much of the work of the summary Courts deals with the interpretation and application of statutory rules and orders framed to secure some economic or social good. Few of these ever reach the Supreme Court.

The public tend to find these obligations and restrictions irksome. Confidence in the judicial system and respect for the law can only be maintained so long as the public can be assured that the Magistrates can stand between them and the Administration, uninfluenced by hope of favour or fear of frown. It has been said that the Executive does not in fact interfere with the Magistrates. The answer to this is, that that fact is not generally known, and that, to paraphrase a well-known legal dictum: "The Magistrates must not only be independent, but they must be seen to be independent."

In conclusion, an improvement in the status of the Magistrates will mean that men of higher qualifications, of longer standing, and greater professional experience will be induced to accept appointment to the Magistrates' Bench, and to use the words of Mr. (later Mr. Justice) O'Regan, in 1929, as reported in 5 NEW ZEALAND LAW JOURNAL, p. 75:

> "Anything that will exalt the importance of the Bench, anything that will give its occupants more assured position, must conduce to the highest of all interests—the interests of the people at large."

LAND AND INCOME TAX PRACTICE.

Balance Date.—When a taxpayer wishes to change his balance date or in the case of a new business to adopt for income-tax purposes a balance date other than March 31, he must first obtain the approval of the Commissioner of Taxes. Section 4 (2) of the Finance Act (No. 2), 1937, provides that the Commissioner's consent must be given before any change is effected, and the taxpayer would be bound by his decision.

On the general question of balance dates, the Land and Income Tax Department has intimated that only in exceptional circumstances will the Commissioner approve of balance dates other than March 31. While it is realized that it may be more convenient to make returns to some other date, it is not considered that this is sufficient, in itself, to justify the Commissioner's approval. It is pointed out that the law provides for returns to be made to March 31, that the Department is organized to deal with returns to that date, and that late returns are the cause of a considerable amount of additional work in the Department.

Income from within British Dominions: Land and Income Tax Act, 1923, s. 89. In (19.4) 20 NEW ZEALAND LAW JOURNAL there appeared an article at some length on the question of the assessability in New Zealand of pensions payable from the United Kingdom and Eire, and of interest from British Government Securities. A schedule was appended showing the various types of British Government Securities from which it can be ascertained whether interest from those sources will be treated as assessable or non-assessable income.

It has now been established from a reliable source that interest from Australasian Consolidated Stock derived by a resident of New Zealand is chargeable with income-tax in Australia and accordingly is non-assessable income for assessment purposes in New Zealand.

Taxation of Interest on Commonwealth Loans issued prior to January 1, 1940. The following brief outline of one of the provisions of the Income Tax Assessment Bill, 1945, is quoted from a circular recently issued by the Taxpayers' Association of New South Wales (Inc.):—

The extent of the liability to tax on the above-mentioned issues is governed by s. 3 of the Income Tax Assessment Act, 1936/44, which provides:

"Nothing in this Act shall affect the operation of the Commonwealth Debt Conversion Act, 1931, or of subsection (2) of section fifty-two B of the Commonwealth Inscribed Stock Act, 1911–1932."

Section 20 of the Commonwealth Debt Conversion Act, 1931, provides that interest from securities subject to income-tax shall not be subject to ordinary Commonwealth income-tax to a greater extent than that imposed in 1930.

Subsection (2) of s. 52B of the Commonwealth Inscribed Stock Act, 1911/1932, extends the same concession to interest derived from loans issued after September 12, 1931, where the prospectus so declared.

Such a declaration was included in the prospectuses of all loans floated up to December 31, 1940. Thereafter interest from Commonwealth Loans was subject to tax at the current rates of tax in force, less a rebate of 2s. in the pound on the amount of the interest as provided by s. 160A B of the Income Tax Assessment Act.

No difficulty arose in the application of the provision contained in s. 3 of the Income Tax Assessment Act until the introduction of the uniform tax in 1942 which embodied a system of concessional rebates of tax in place of concessional deductions on certain personal and domestic items of expenditure.

In consequence of this change, the Commissioner decided that the amount of the tax payable on Commonwealth Loan's interest subject to the 1930 rates should be based on the difference between the 1930 rates and the average rate payable on the property income at the current rates ascertained by deducting from the property tax a proportion of the concessional rebates allowable.

In a recent case before the Board of Review, a majority of the Board decided (see *The Taxpayers' Bulletin*, December 31, 1944, p. 152) that the method adopted by the Commissioner was incorrect, and that the proper method of assessment is to ascertain the respective property rates of tax applicable to the total taxable income—

(*a*) Under the current rates of tax; and

(*b*) Under the 1930 Rates Act—

and to apply the difference between two rates to the amount of Commonwealth Loan interest subject to the rebate.

The difference between the two methods is set out in the following example :—

A taxpayer's taxable income includes £28 of Commonwealth Loan's interest subject to the 1930 rates. He has £100 of concessional allowances rebateable under s. 160 of the Income Tax Assessment Act at the personal-exertion rate applicable to his total taxable income.

	Personal Exertion.	Property.	Total.
Taxable Income	£241	£149	£390 0 0
Rates of tax applicable	56·2077d.	67·6821d.	—
Amount of tax (to nearest shilling)	£56 9s.	£42	£98 9 0
Less rebate of tax on £100 of concessional allowances	..£100 @ 56·2077d.		£23 8 0
			£75 1 0

Less rebate of tax on £28 of Commonwealth Loan's interest subject to 1930 rates—

(*a*) By Commissioner's method :—

$$\text{Property tax £42} - \frac{\text{Property tax £42}}{\text{Total tax £98·45}} \times \text{Section 160 rebate £23·4}$$

Taxable Property : Income, £149.

$$= \text{£42} - \frac{\text{£9·99}}{\text{£149}} = 51{\cdot}559\text{d. in pound.}$$

1930/31 rate applicable to a taxable income of £390 6·123

45·436

Rate for calculation of rebate :—

Rebate £28 × 45·436d. = £5 6s.

(*b*) By Board of Review method :—

Property rate applicable to total taxable income of £390	67·6821d.
Less 1930/31 property rate applicable to total income of £390 ..	6·123d.
Rate for calculation of rebate ..	61·5591d.

Rebate £28 × 61·5591d. = £7 4s.

After the decision of the Board of Review was given, a number of taxpayers affected by it sought to have their assessments for past years amended by the application of the Board's method in place of that which had been used by the Commissioner.

Except in cases where an objection against the subject assessment had been lodged as provided by the Income Tax Assessment Act, the Commissioner adopted the stand that he had no power to implement the Board's method in past assessments as the question involved in the decision was one of law and not of fact.

Exception was taken to this decision of the Commissioner by a number of persons through Press correspondence, in particular, and representations to the Commissioner and the Commonwealth Treasurer (Mr. Chifley), and on April 18, the latter announced that, despite the correct legal attitude adopted by the Commissioner, remission of tax would be granted to any taxpayers who could receive any benefit in their past assessments by the application of the method announced by the Board of Review.

The procedure to be followed by any taxpayer who desires to avail himself of the Treasurer's decision is as follows :—

1. Application should be made to the Deputy Commissioner of the State in which the taxpayer's returns were lodged, setting out the years of income, the assessment of which he desires to be recalculated with regard to any Commonwealth Loan interest affected.
2. The application must be made not later than December 31, 1945.

The Treasurer has arranged with the Commissioner of Taxation to make any refunds found to be due.

The refunds, being outside the scope of the Income Tax Assessment Act, will be charged to a Treasury vote.

Securities affected.—The following Commonwealth Loan issues are affected by the decision :—

4 %	1944	3 %	1948	4 %	1953	3⅞ %	1955
5⅞ %	1947	3¼ %	1949	3¾ %	1954	4 %	1957
4 %	1947	3⅜ %	1949	3⅞ %	1954	4 %	1959
5¼ %	1948	4 %	1950	5⅛ %	1955	4 %	1961
3⅛ %	1948	3¼ %	1951	4 %	1955		

Taxpayers affected.—All individual taxpayers who derived interest from the above-mentioned securities during the years ended June 30, 1942, June 30, 1943, or June 30, 1944, and who were entitled to any concessional rebate under s. 160—*i.e.*, for dependants, medical expenses, gifts, life insurance, or calls in mining companies—will be entitled to an adjustment. Similarly individual taxpayers whose income from trust estates or partnerships represented in part interest from these securities will be entitled to claim.

Generally companies will not be affected as the system of granting rebates for concessional allowances does not apply in company assessments. Technically the liabilities of private companies under s. 104—*i.e.*, on undistributed profits—are covered by the same principles in any case where any of the company's shareholders derived interest of this description.

Form of Application.—It is unnecessary for taxpayers to calculate the amount of refund to which they are entitled. This will be done in any event by the Department on receipt of the taxpayer's application.

An appropriate form of application has been prepared and supplies may be obtained from the offices of the association.

Wear and Tear of the Human Body.—The following article on the question of whether medical expenditure is incurred in earning income is quoted from *The Taxpayers' Bulletin*, Vol. 13, No. 2, at p. 15.

"Expenditure on repairs and maintenance of plant and machinery used for business purposes is deductible as an expense in gaining the taxpayer's income. Should doctors' bills paid for the purpose of restoring a breadwinner to health be regarded as an expense incurred in gaining the breadwinner's income ?

"This novel line of reasoning was argued before the English Court of Appeal, which dismissed the claims of the taxpayer on the ground that medical expenses are sums expended for domestic or private purposes.

"In delivering judgment, the Master of the Rolls (Lord Greene) said, in part :—

"'Turning back to the next point in sequence, that relates to the deduction of his doctor's bills. It is much to be regretted that he had to incur those bills, and I may perhaps be permitted to say that I am glad to see that the trouble from which he suffered is now apparently passed, and that he is restored to health. But his argument there is that they are permissible deductions as one of two grounds—one on general grounds, the other under the wear-and-tear argument—is concerned, it is quite impossible to say that the taxpayer's own body is a thing which is subject to wear and tear, and that the taxpayer is entitled to deduct medical expenses because they relate to wear and tear. It is wear-and-tear of plant or machinery. Your own body is not plant. Your horse conceivably may be ; I do not know what it is under the Income Tax Acts. It certainly has, under the Employers' Liability Acts, been held to be plant in a suitable case, but I have never heard it suggested by anybody that the taxpayer's own body could be regarded as plant. In fact, the point has only, I think, to be stated.

"'He says it is deductible on general grounds. The answer there, to my mind, is quite conclusive. The rules about deductions are to be found in R. 3 of the rules applicable to Cases I and II of Schedule D in which deduction is prohibited in respect of—" any disbursements or expenses, not being money wholly and exclusively laid out or expended for the purposes of the trade, profession, employment, or vocation."

"'It is quite impossible to argue that a doctor's bill, represents money wholly and exclusively laid out for the purposes of the trade, profession, employment, or vocation of the patient. True it is that if you do not get yourself well and so incur expenses to doctors, you cannot carry on your trade or profession ; and if you do not carry on your trade or profession, you will not earn an income ; and if you do not earn an income, the Revenue will not get any tax. The same thing applies

to the food you eat and the clothes that you wear. But expenses of that kind are not wholly and exclusively laid out for the purposes of the trade, profession, or vocation. They are laid out in part for the advantage and benefit of the taxpayer as a living human being. Paragraph (*b*) of the rule equally would exclude doctors' bills, because they are, in my opinion, expenses of maintenance of the party, his family, or a sum expended for a domestic or private purpose, distinct from the purpose of the trade or profession.' "

NEW ZEALAND LAW SOCIETY.

Meeting of Council.

A meeting of the Council of the New Zealand Law Society was held at the Supreme Court Library, Wellington, on June 8, 1945.

The following Societies were represented: Auckland, by Messrs. A. H. Johnstone, K.C., and M. R. Grierson (proxy); Canterbury, Messrs. E. A. Lee and R. L. Ronaldson; Hamilton, Mr. W. Tanner; Hawke's Bay, Mr. M. R. Grant; Marlborough, Mr. G. M. Spence; Otago, Mr. A. J. Dowling; Southland, Mr. J. H. B. Scholefield; Taranaki, Mr. R. J. Brokenshire; Wanganui, Mr. A. B. Wilson; Westland, Mr. A. M. Jamieson; and Wellington, Messrs. H. R. Biss and G. G. G. Watson.

The Vice-President (Mr. A. H. Johnstone, K.C.) occupied the chair.

Apologies were received from Messrs. H. F. O'Leary, K.C., V. R. Fletcher, J. B. Johnston, L. P. Leary, and A. Milliken.

Mr. A. T. Young (Treasurer) was also present.

Before commencing the ordinary business of the meeting the Vice-President welcomed all those who were attending the meeting of the Council for the first time.

Repatriated Prisoners of War.—The Secretary reported that a cable had been sent to General Kippenberger, who was in charge of the camp in England for repatriated prisoners of war, asking him to convey to New Zealand solicitors and clerks the best wishes of the profession in New Zealand.

Brigadier Inglis.—The Secretary reported that the congratulations and good wishes of the Society had been telegraphed to Brigadier Inglis on his overseas appointment.

The New Solicitor-General.—In referring to the appointment of Mr. H. E. Evans to the high office of Solicitor-General, the Vice-President stated that the Society was indebted to Mr. Evans for his services in the past as Acting-Treasurer, as a member of the Conveyancing Committee and of the New Zealand Council of Law Reporting.

It was unanimously decided to convey to Mr. Evans the congratulations and good wishes of the Society.

New Zealand Council of Law Reporting.—Mr. A. M. Cousins was appointed a member of the New Zealand Council of Law Reporting in place of Mr. H. E. Evans. In accordance with s. 8 of the statute, the retiring date will be the first Monday in March, 1949.

Conveyancing Committee.—Mr. E. P. Hay was appointed a member of the Conveyancing Committee in place of Mr. H. E. Evans.

Death Duties Act, 1921: Revaluations.—The following letter was received from the Valuer-General:

In reply to your letter of the 28th March, I have to advise that recently the valuing staff of the Department has been considerably increased, and it is anticipated that as the new members become more conversant with the requirements of the Valuation of Land Act, work will be kept up to date. A further improvement in the position is expected with the return of other members of the staff from overseas.

The members of your Society may be able further to eliminate the possibility of penalty interest accruing through a hold-up in the completion of valuations if, as soon after date of death as possible, and prior to the filing of accounts, they request the Stamp Office to have the new valuations made of the dutiable land where it is deemed necessary. By adopting this procedure the new valuation would be at hand, in the majority of cases, before the accounts are filed. This is the course at present followed by some solicitors, and I would suggest that it be recommended by the Society for general practice.

Purchase of Property by Soldiers: Ad Valorem Duty.—The following letter was received from the Attorney-General:

In further reply to your letter of the 8th December herein, I have now been advised by my colleague the Minister of Finance that the Government have agreed to waive fees payable on the incorporation of a company formed to protect advances made to returned servicemen under the Rehabilitation Act and on registration and stamping of securities for advances made under the Act.

It is, however, not considered desirable that assistance to ex-servicemen should be in the form of large scale remissions of stamp duty which tend to create administrative complications since, in equity, such remissions should apply to all ex-servicemen whether they finance their purchases with a Government loan or otherwise.

Such remissions of duty would also represent a free grant of public moneys to one group of ex-servicemen without regard to their service or their need and in addition, permanent statistical records of stamp duty receipts would be interfered with.

The Government holds the view that State assistance to an ex-serviceman should take the form of providing on special conditions the finance required for the purchase and that the stamp duty payable should be met and added to the loan where this is necessary.

Servicemen's Settlement and Land Sales Act: Solicitor Acting as Chairman of a Land Sales Committee in Cases where his Firm is Interested.—The following letter was received from a District Society:

A practice prevails in this district which appears to my Council undesirable, if not improper, for a practising solicitor, who is Chairman of a Land Sales Committee, to sit and hear cases, both contested and uncontested, in which his own firm is interested, and my Council asks for a ruling as to the propriety of this action.

Mr. Watson stated that, when making representations to the authorities on the various matters arising out of the Servicemen's Settlement and Land Sales Act, a request was made that Deputy-Chairmen should be appointed who would be able to act on such occasions as referred to by the Otago Society.

On the motion of the Vice-President it was resolved that it was not proper for a practising solicitor who is a Chairman of a Land Sales Committee to act as chairman both in contested and uncontested cases in which his firm is interested.

Free Legal Service.—The following letter from the Navy Department was received:

I have to inform you that it is desired to promulgate for the information of members of the Royal N.Z. Navy, full details of the services which are provided by your Society to members of the New Zealand Armed Forces. At the present time no such information is available officially in this Department and inquiries from personnel cannot, therefore, be answered satisfactorily.

The Secretary stated that particulars were required of uniform service carried out by legal practitioners throughout the Dominion free of charge to members of the Forces.

It was decided to inform the Navy Department that free legal service to members of the forces included wills, powers of attorney, and legal advice.

IN YOUR ARMCHAIR—AND MINE.

By SCRIBLEX.

Past King's Counsel.—The appointment of a new Solicitor-General seems invariably to give rise to the belief in the minds of the public that the office carries with it the grant of a patent as King's Counsel. However the practice adopted in New Zealand does not seem to confirm this belief. In 1907, when the patent of King's Counsel first appeared, Dr. Fitchett was in the office and held it for a further three years without taking "silk," and his successor, J. W. Salmond, had to be content to wait for it for a like period, the grant coinciding with his trip to England to appear in the Privy Council. W. C. MacGregor had practised as a "K.C." for some years prior to his appointment, while in the case of the more recent occupants of the office, now Fair and Cornish, JJ., the grant was made shortly after each became Solicitor-General—an office that the latter held for eleven years. A surprising picture, however, is presented by the record of the Attorney-General who is ostensibly the leader of the Bar. In the past thirty-eight years, only two of the holders of this title have been King's Counsel—Sir John Findlay and Sir Francis Bell. The outer Bar claims Herdman, Rolleston, Sidey, Downie Stewart, Sir Apirana Ngata, and its present holder, the Hon. H. G. R. Mason, while the retirement of the Hon. G. W. Forbes from his duties as Attorney-General was not unfavourably regarded by the legal profession which could not relish a layman as its leader.

Legal Records.—From September, 1940, onwards, the Public Record Office in Chancery Lane was in the bombed area, lost one of its turrets by a high explosive bomb in that month, and was again hit in 1944 by a flying bomb. For a period of over two years its records, so many made by lawyers and showing the growth and development of the English Constitution and its legal system, were moved to a number of repositories, including a castle, training-college, poor-law building, and even to a prison. This last removal was no new experience since, even before the war, departmental records had been lodged in Canterbury Gaol. The remaining records were kept in the basement and lower floors of the building, with a staff that served three shifts, day and night, to prevent destruction from incendiaries. Lawyers in such circumstances should feel proud to read the report of Lord Greene, Master of the Rolls, in a letter to *The Times*. He says: "No record in my custody has been damaged by enemy action."

Grand Jury Addresses.—At the opening of the July sessions at Wellington, the Chief Justice freely expressed his views on the iniquity of bookmaking and the effect of imprisonment as a means of reducing the operations of these short-oddy gentlemen and their continued flouting of the law. "The Courts should do their best to see that the law is observed in spirit as well as in letter, and should not, by constantly fining bookmakers, adopt a system that amounts to no more or less than licensing bookmakers to carry on their unlawful business." It is not clear, however, why these salutary observations should have been born *ex cathedra* during the address to the Grand Jury at sessions where the criminal dock was singularly free from this class of offender. If the members of the Grand Jury consist of the more important citizens of the community—and no one has been more assiduous in stressing the value of their time than has the Chief Justice—then Scriblex sees the possible cause for complaint in the divergence of their attention from the consideration of the cases upon which bills have to be returned to hypothetical ones that require legislation to effect a real cure. After all, if the Court proposes to embark upon such debateable moral issues without available material for its speculations, there must also be room to dwell upon that large proportion of the public whose generous contributions assist in every case to keep the wolf, if not the policeman, from the bookmaker's door.

Objective Memory.—These reflections upon turf-practice remind Scriblex of a case heard some years ago in which a very angry petitioner said to the Judge, "My husband is an out-and-out loafer. He thinks of nothing but horse racing, night and day. Do you know, Your Honour, he can't even remember our wedding-day." "That's a lie," interjected the respondent, "we were married the day Catalogue won the Melbourne Cup."

Women Witnesses.—"Women I have usually found much better witnesses of what they have seen than men. Men reflect on and draw inferences from what they have seen, and are apt to mix in their evidence what they surmise must have happened with what they actually saw happening; women usually tell just what they saw. Their evidence, however, is reliable only so long as their passions are not involved; when love of their husband or children, or hatred of their neighbour, enters into the question, not a word they utter can be trusted. They have no conscience."—J. A. Strahan (*The Bench and Bar of England*).

From My Note-book.—"Justice is the respect the law pays to man as a rational creature."—R. O'Sullivan, K.C., at the 1945 Grotius Society's Meeting.

"The mark of a profession is that one must serve one's client, and one's own interests are quite secondary matters."—F. R. Gubbins (Melbourne University) on "Professional Conduct."

"Advocacy is a game in which it is nearly always right promptly to lead out the ace of trumps. As a general rule (but there are exceptions) if there is something in the matters to be investigated which is not in your client's favour, don't leave your opponent to bring it out; a skeleton in the cupboard is not nearly so grisly if you open the door yourself."—Viscount Simon in a foreword to Leo Page's *First Steps in Advocacy*.

De Mortuis.—There have been many complaints in Canada of the dilatoriness which accompanies the publication of judgments in the Supreme Court Reports—a Government series of reports subsidized by the Law Societies. A private series of reports does the job with exemplary promptitude. At the last annual meeting of the York County Law Association a member urged that steps be taken to ensure that judgments in the S.C.R. be published "in the lifetime of the litigants."

PRACTICAL POINTS.

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

1. Economic Stabilization.—*Building Contract—Rise in Wages after Contract made—Nothing in Contract providing for Variation in Price—Whether Increased Cost can be added.*

QUESTION: A building contracting firm in January, 1945, entered into a contract to build a public institution for a Board and signed up a contract on the customary form supplied by architects. The contract provided that the job was to be finished within nine months, though it has not yet been started owing, partly to shortage of labour. The price was for several thousand pounds. The contracting firm has now applied to the Board for an increase of the contract price because of the general rise in wages allowed by the Court of Arbitration recently. There is nothing in the contract signed between the Board and the building firm authorizing a variation of the contract price in such circumstances. Can you tell us if there is any law or regulation authorizing a general increase in wages, to be passed on by the building contractor, thereby increasing the contract price?

ANSWER: There is no statute or regulation authorizing a general increase in wages, apart from the two General Orders of the Court of Arbitration, dated August 9, 1940, and March 31, 1942, and operating from August 12, 1940, and November 7, 1942, respectively. Where awards have been amended by the Court in accordance with its new Standard Wage Pronouncement, though the employer is bound to pay the new rates, there is no provision in law enabling him to pass on automatically the burden of the increase.

It may be mentioned for the information of those who have let contracts that regarding each category of labour involved in the performance of the contract, a question of fact will arise in each case whether any increase in wage rates recently made by amendment to the relevant award has actually increased the rate lawfully payable by the contractor to his employees. The reason is that, under several awards, the minimum rate originally specified was exceeded by a margin which varied from district to district and with individual employers. The actual rate paid prior to the commencement of stabilization may still be in excess of the recently increased rate under the relevant award. The higher rate will be the basic rate in terms of the Stabilization Regulations, that is to say, it will be a maximum rate. It follows that unless the contractor has applied to a Wages Commissioner and has obtained approval to a fresh increase to the extent of the margin that was paid above the original award rate, the contractor may not lawfully pay (or justifiably demand reimbursement for) such further increase.

O2.

2. Death Duties—Gift Duty.—*Ante-nuptial Marriage Settlement—Reservation to Settlor of Contingent Life Interest to Settlor—Special Power of Appointment to Settlor—Liability to Gift and Death Duty.*

QUESTION: A., middle-aged, proposes to marry a lady much younger than himself and to make an ante-nuptial marriage settlement of £5,000 the chief provisions of which are as follow: Life-interest to wife, after wife's death life-interest to settlor the husband with remainder to such children of the marriage as A. the settlor shall appoint by will or deed, and in default of appointment to all the children of the marriage equally, and, in default of children to B., A.'s only child by a former marriage. There will be three trustees of which A. will be one and the power to appoint new trustees will be vested in A. during his lifetime. A. does not desire the corpus, £5,000 to be liable to death duty on his death, nor does he desire to pay gift duty although he will do so if necessary. What will be his liability to the Revenue, if he carries out his intentions?

ANSWER: (*a*) As to gift duty: The Commissioner in the first instance will probably assume that there will be issue of the marriage. Therefore, there will be no gift duty payable in the first instance: see s. 42 of the Death Duties Act, 1921. The only duty payable at first will be 15s. stamp duty under s. 168 of the Stamp Duties Act, 1923, on the marriage settlement and *ad valorem* conveyance duty on the transfer of the assets of the trust to the trustees. If eventually there is no issue of the proposed marriage, then the settlement will be reassessed for gift duty under s. 47 of the Death Duties Act, 1921, and gift duty will be payable on the present value of B.'s interest at the date of the settlement—*i.e.*, on £5,000 *less* the actuarial value of the wife's life interest therein.

(*b*) As to death duty: The corpus will be liable to death duty on A.'s death, because of his contingent life interest in the income; it is immaterial whether or not A. survives his wife: see s. 5 (1) (*j*) of the Death Duties Act, 1921, and *Rabett* v. *Commissioner of Stamp Duties*, [1929] A.C. 444, and *Grey* v. *Attorney-General*, [1900] A.C. 124. It will also be liable because of the *special* power vested in A. This causes the corpus to come under s. 5 (1) (*g*) of the Death Duties Act, 1921: see *Adamson* v. *Attorney-General*, [1933] A.C. 257. It is apprehended that A. could well consider whether these two provisions are really necessary. The fact that A. will be one of the trustees and that he will have power to appoint new trustees will *not per se* cause the corpus to be liable to death duty: see recent Privy Council case, *Commissioner of Stamp Duties* v. *Perpetual Trustees*, [1943] 1 All E.R. 575. If A. dies within three years of the marriage settlement, the corpus will be liable to death duty under s. 5 (1) (*b*). The point is that marriage is not consideration in money or money's worth: *Public Trustee* v. *Commissioner of Stamp Duties*, (1912) 31 N.Z.L.R. 1116, 1119. X.

RULES AND REGULATIONS.

Purchase of Wool Emergency Regulations, 1939, Amendment No. 5. (Emergency Regulations Act, 1939.) No. 1945/93.

Purchase of Scheelite Order, 1944, Amendment No. 1. (Marketing Amendment Act, 1939.) No. 1945/94.

Industry Licensing (Fruit and Vegetable Canning) Notice 1940, Amendment No. 1. (Industrial Efficiency Act, 1936.) No. 1945/95.

Land Acquisition Emergency Regulations, 1945. (Emergency Regulations Act, 1939.) No. 1945/96.

Medical Supplies Emergency Regulations, 1939, Amendment No. 2. (Emergency Regulations Act, 1939.) No. 1945/97.

Building Emergency Regulations, 1939. Amendment No. 5. (Emergency Regulations Act, 1939.) No. 1945/98.

Electricity Emergency Regulations, 1939, Amendment No. 1. (Emergency Regulations Act, 1939.) No. 1945/99.

Timber Emergency Regulations, 1939, Amendment No. 2. (Emergency Regulations Act, 1939.) No. 1945/100.

Mining Emergency Regulations, 1939, Amendment No. 1. (Emergency Regulations Act, 1939.) No. 1945/101.

Sale of Food and Drugs Amending Regulations, 1945, No. 2. (Sale of Food and Drugs Amending Act, 1908.) No. 1945/102.

Milk Treatment Regulations, 1945. (Health Act, 1920.) No. 1945/103.