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FAIR RENTS LEGISLATION: SOME RECENT DECISIONS.

THE principles upon which the Court proceeds when considering applications or submissions based on the Fair Rents Act, 1936, have become generally settled. From time to time, however, the application of those principles to new facts, and the arising of new circumstances necessitating additional interpretations, render later decisions of more than passing interest. We have accordingly collected the more recent cases heard in the Magistrates' Court since we last gave some consideration in these columns to rent-restriction legislation.

The only substantial effect of the Fair Rents Act, 1936, is to place restrictions on the making of an order for possession of a tenement under s. 180 of the Magistrates' Courts Act, 1928. Consequently, although s. 12 of the Fair Rents Act, 1936, provides that notice is to be given by the landlord before commencing proceedings for possession of a dwellinghouse subject to the statute, the giving of this notice, where necessary, is not sufficient to found jurisdiction to make an order for possession, unless the tenant has been given a notice to quit as required by s. 16 of the Property Law Act, 1908. The reason is that, as the jurisdiction of the Magistrates' Court to make an order for possession is conferred by s. 180 of the Magistrates' Courts Act, 1928, it can, in terms of that section, be exercised only where the term or interest of the tenant has ended or been determined. In *Johnson* v. *Taylor*, (1944) 4 M.C.D. 41, it was held that s. 13 of the Fair Rents Act, 1936, is supplementary to the Magistrates' Courts Act, 1928, as regards the recovery of possession. A landlord may be entitled to possession, but he must also establish one of the grounds set out in s. 13 of the Fair Rents Act, 1936. In other words, he is not deprived of the right to possession, but the exercise of that right is restricted in terms of the Fair Rents legislation: the fetter is, however, not upon the landlord, but upon the action of the Court, which may exercise its jurisdiction only in the instances specified in that legislation.

Last year, in this place, 20 NEW ZEALAND LAW JOURNAL, 223, 272, we considered the definition of "dwellinghouse" in s. 2 of the statute, as amended, in the light of the judgment of Mr. Justice Fair, in *Blakey* v. *Brennan*, [1944] N.Z.L.R. 929, and the judgment of the Court of Appeal in England in *Vickery* v. *Martin*, [1944] 2 All E.R. 167, with special reference to apartment-houses and boardinghouses respectively. The matter again came before the Court in *Wylie* v *D. and G. Properties, Ltd.*, (1944) 4 M.C.D. 91, where it was decided, following *Blakey* v. *Brennan* (*supra*) that an apartment-house taken over and let as a going concern for the business of letting apartments was not subject to the Fair Rents legislation, and it was immaterial whether or not the tenant was living in the premises for the purposes of his business, as the question whether or not the tenement is a "dwellinghouse," as defined in s. 2 of the statute, depends on the facts at the time of the creation of the tenancy. In the course of his judgment, Mr. A. E. Dobbie, S.M., said *obiter*, following *Vickery* v. *Martin* (*supra*), which he distinguished on the facts before him, that if a house is let as a dwellinghouse, and is subsequently used substantially for business premises, either for boarders or apartments, and the tenant is still using part of his own dwelling, the tenement retains its character as a dwellinghouse, and is subject to the statute.

Where a tenancy has not been ended by effluxion of time, or determined by a notice to quit, the tenant has the right to apply to the Court, under s. 6 of the statute to have a fair rent fixed; and this is the position notwithstanding the fact that an order for possession has been made against him provided that the warrant of possession has not been executed. Thus, in *Hamilton* v. *Stewart*, (1944) 4 M.C.D. 39, the tenant's rent being in arrears, proceedings for possession under s. 181 of the Magistrates' Courts Act, 1928, resulted in an order for possession being made, but, pursuant to s. 14 of the Fair Rents Act, 1936, the warrant was suspended so long as the tenant paid current rent and a proportion of the arrears weekly. He failed in making such payments; and application was made by the landlord for leave to proceed with a warrant of possession (on the erroneous assumption that such leave was necessary). Before that application was heard, the tenant applied for an order under s. 6 of the statute to determine the fair rent. It was held that the original tenancy had not been ended, and as no warrant of possession had been executed, the tenancy continued to exist by virtue of s. 181 (3) of the Magistrates' Courts Act, 1928, and the tenant was still a tenant, even in the legal sense. The tenant in this case was not a statutory tenant. The learned Magistrate, Mr. H. P. Lawry, S.M., observed *obiter* that a statutory tenant—that is, one who, though ordinarily a trespasser, remains in posses-

sion of the premises after the termination of the contractual tenancy, but under the protection of the Fair Rents legislation—is entitled to the advantages given him thereunder, including the right to apply to have the fair rent fixed. He further observed that the term "tenant" where used in the Fair Rents Act, 1936, had a different and enlarged meaning from the ordinary legal acceptance of the term, so that a tenant is still a tenant, for the purpose of s. 14 of the statute, after an order for ejectment has been obtained. As Bankes, L.J., said in *Remon* v. *City of London Real Property Co., Ltd.*, [1921] 1 K.B. 49, 54, in a passage cited with approval in *Public Trustee* v. *Graham*, [1943] N.Z.L.R. 541, 546, under Rent Restriction legislation, the expression "tenant" has been used in a special, a peculiar sense, and as including a person who might be described as an ex-tenant, some one whose occupation had started as a tenant. And Scrutton, L.J., in the same case, at p. 59, said that, though it appeared to be a straining of language to describe as a "tenant" a person whose tenancy has expired and who stays on against the active protest of the landlord, such a person seemed to be within the clear intention of the Legislature.

In order to sustain an action to recover possession of a dwellinghouse on the ground set out in s. 13 (1) (*c*) of the Fair Rents Act, 1936—namely, that (subject to consideration of hardship as set out in subs. 2) "the tenant has been guilty of conduct that is a nuisance or annoyance to adjoining or neighbouring occupiers"—it must be proved, as a matter of fact, that the tenant's conduct was a nuisance or annoyance to them. The exception so stated presupposes some complaint of such conduct by adjoining and neighbouring occupiers, and proof of nuisance or annoyance to *them*. Thus, in *Wellington City Corporation* v. *Ah Sing*, (1945) 4 M.C.D. 163, the owner alleged that the tenants of a dwellinghouse were conducting a common gaming-house, and sought an order for possession on the ground stated. Assuming that the game played was pa-ka-poo, and that the tenants used the premises as a common gaming-house, and that they were consequently a nuisance at common law, no adjoining or neighbouring owners had made any complaint, and there was nothing before the Court to prove that the conduct complained of had been a nuisance or annoyance to them. The claim for possession accordingly failed.

Two attempts to circumvent the provisions of the Fair Rents Act, 1936, and its amendments, recently met the like fate. The principle underlying each judgment is the same, but, as the facts were different, and may be reproduced in other circumstances, we propose to consider them both.

In a judgment by the late Mr. S. I. Goodall, S.M., *Crocker and Bullen* v. *Fairhurst et Ux.*, service of a notice to quit was admitted. The plaintiffs were vendor and purchaser respectively of a dwellinghouse of which the defendants were the tenants. On the first day of hearing, Bullen, the purchaser of the freehold, and the tenants led evidence of their respective hardship. At that time the sale and purchase had not been completed. But, at the adjourned hearing, evidence was given that the sale had been completed; and the plaintiff, Bullen, had become the landlord. Thereupon, the tenants contended that as the purchaser required the premises for his own occupation, he must in terms of the earlier part of s. 63 (1) of the Finance Act, 937, satisfy the Court that alternative accommodation would be available, or that, in terms of the latter part of s. 63 (1), an excess of hardship rested with him. Bullen's counsel contended that, as his client was shown to have acquired the right to receive the rents after the action was brought and before hearing, if he were not already entitled to proceed, he should be allowed to amend his claim so as to plead that he was then the landlord, and required the premises for his own use and occupation as a dwellinghouse, so as to bring his claim within s. 13 (1) (*d*) of the principal Act. But, it will have been observed, Bullen, the real applicant for the order for possession, was not the landlord when the plaint-note was filed, and so did not have the status to enter a plaint; and his co-plaintiff, having ceased to be the landlord, had no status to obtain an order for possession.

The learned Magistrate clarified the whole position in an admirably-written judgment. He held that s. 63 of the Finance Act, 1937, means that when a purchaser buys a dwellinghouse over a tenant's head, then the purchaser is not entitled to be an applicant for an order for possession and urge hardship until he has acquired the status of landlord; and, if any one else, as landlord, meanwhile brings the action, alternative accommodation must of necessity be available: see *Beer* v. *Patterson*, (1941) 2 M.C.D. 127.

Consequently, where both vendor and purchaser under an agreement respecting a tenanted dwellinghouse claimed possession, on the ground that the purchaser required it for his own occupation, no alternative accommodation had been offered to the tenant, and, before the hearing, possession was given and the purchaser became entitled to collect the rent, the action cannot be effectively maintained under s. 13 (1) (*d*) of the Fair Rents Act, 1936 by the vendor; or, under s. 13 (1) (*f*) of that statute, by the purchaser as he had no status to claim possession when the plaint was issued.

The Court could not permit the amendment of the statement of claim by a vendor and purchaser to permit a purchaser who had since the issue of the plaint acquired the status of landlord to claim under s. 13 (1) (*d*) and prove hardship under s. 63 (1) (*b*) of the Finance Act, 1937, because of the restrictive tendency of the Fair Rents legislation, and the important distinction made therein in the case of a purchaser who has bought a tenanted dwellinghouse and has not yet acquired the status of a landlord. This amendment was sought in different circumstances from those in which an amendment should generally be allowed in order to accomplish substantial justice, because—as Scrutton, L.J., said in *Russoff* v. *Lipovitch*, [1925] 1 K.B. 628, 636, in a passage cited in *Akel* v. *Clark*, [1940] N.Z.L.R. 147, 152, 153—an action such as that under notice "arises out of the common law as modified by subsequent statutes. The original common-law right to possession has been modified by the Rent Restrictions Act in the case of houses to which the Act applies, and a claim for the possession of such a house cannot any longer be made under the common law, for the common law is gone." So, too, the Fair Rents Act, 1936, restricts and fetters the powers of the Court, and modifies the landlord's original right to possession: *Akel* v. *Clark* (*supra*, at p. 150).

In another case, about the same time, *Tatham et Ux.* v. *Welsh*, Mr. H. P. Lawry, S.M., had a variation of the same problem. The owner of a tenanted property was separated from his wife. After a proper notice to quit, he claimed possession, under s. 13 (1) (*d*) of the

Fair Rents Act, 1936. No alternative accommodation had been offered. No question of hardship was in issue. It appeared in evidence at the first time of hearing, that the husband had acquired the property to fulfil his undertaking to provide his wife and children with a home; and he did not intend to occupy any part of it. The learned Magistrate later intimated that the husband could not succeed as he did not require possession for his own use and occupation; and he rejected an argument that, in law, husband and wife are one. But, before that decision could be given, and no doubt in anticipation of it, an application was made under s. 59 of the Magistrates' Courts Act, 1928, to join the wife as plaintiff, on the ground that, since the first hearing, the husband had leased the property to her; and so, it was contended, s. 13 (1) (*d*) had been complied with. The learned Magistrate pointed out that the wife's right to claim possession must depend on her status and the rights attached to that status, at the time of the filing of the plaint-note: *Haigh* v. *Dyer*, [1918] N.Z.L.R. 638, 641. At the time of the launching of the proceedings the wife was not a landlord, and neither was she when the case was called for hearing, whereas the power to make an order for possession is limited to cases where the premises are reasonably required by the landlord for his own use. The husband, as the plaintiff, when the case came on for hearing, did not want the dwellinghouse for his own use; and the wife at that time, did not pretend to any status as a landlord; and, further, there was nothing before the Court to show that she was a "successor in title" to the original landlord so as to make her a landlord for the purposes of the statute: *Wordsley Brewery Co.* v. *Halford*, (1903) 90 L.T. 89. It was, at least clear, that no rent had been paid to her, as landlord, before the adjourned hearing. On technical grounds, too, she could not succeed, as s. 63 of the Magistrates' Courts Act, 1928, when providing for change of parties in certain cases, does not in express terms or by necessary implication apply to assignments, even assuming that a lease may be regarded as an assignment of the landlord's right for possession under s. 13 of the Fair Rents Act, 1936: *Brown* v. *McNeil*, [1930] N.Z.L.R. 511, 519. Further, the lessee joined with the landlord as plaintiff could, under s. 59 of the Magistrates' Courts Act, 1928, be struck out as a plaintiff, as such joinder would, in effect, rob the defendant of his right to judgment in the proceedings originally brought by the landlord: *Colonial Cheese Hoop Co., Ltd.* v. *Alexander Harvey and Sons, Ltd.*, [1927] N.Z.L.R. 459, 461. Moreover, the learned Magistrate observed, the joinder of the wife as plaintiff had the effect of substituting one cause of action for another, contrary to the proviso to s. 101 (2) of the same statute; and s. 57 did not apply, as it was not a joinder of two separate claims. As neither plaintiff could succeed, the learned Magistrate said there was no need to strike out the added plaintiff.

In concluding his judgment, Mr. Lawry made the useful observation that a statement of claim for possession of a dwellinghouse under the Fair Rents Act, 1936, must, in order to comply with s. 68 (4) of the Magistrates' Courts Act, 1928, refer to the special grounds upon which the plaintiff relies, and must contain, *inter alia*, such circumstances as may suffice fully and fairly to inform the Court and the opposite party of the cause of action—namely, all the material facts which must be proved to entitle the plaintiff to recover.

SUMMARY OF RECENT JUDGMENTS.

MOUNT EDEN BOROUGH v. N.Z. WALLBOARDS LIMITED.

COURT OF APPEAL. Wellington. 1945. September 11, 26. MYERS, C.J.; JOHNSTON, J.; FAIR, J.; NORTHCROFT, J.; CORNISH, J.

Town-planning — Compensation — Town-planning Scheme provisionally approved by Borough Council—Approval by Town-planning Board not received—Area Zoned as "Special residental district"—Refusal of Council to grant Consent to Erection of Extensions of Factory Buildings in such Area—Such Extensions alleged to be in Contravention of such Provisional Scheme—Whether Borough liable to pay Compensation for such Refusal—Town-planning Act, 1926, ss. 22, 29, 34—Town-planning Amendment Act, 1929, s. 5—Statutes Amendment Act, 1940, s. 54.

Paragraphs (*a*) and (*b*) of s. 29 (2) of the Town-planning Act, 1926, which specify some of the cases in which compensation shall not be payable under that section refer only to a town-planning scheme finally approved by the Town-planning Board; and thus to claims made by reason of action taken by a Borough Council under s. 22 of the statute.

Section 54 of the Statutes Amendment Act, 1940, refers only to a finally approved town-planning scheme.

Re Ellis and the Ruislip Northwood Urban District Council, [1920] 1 K.B. 343, applied.

James v. *Waimairi County Council*, [1929] N.Z.L.R. 449, G.L.R. 32, considered.

Therefore, a borough, which has provisionally approved a town-planning scheme that has not yet been finally approved by the Town-planning Board, is liable to pay compensation to the owner of factory buildings in an area zoned by the said scheme as a "special residential district" for refusing its consent under s. 34 of the Town-planning Act, 1926 (as amended by s. 5 of the Town-planning Amendment Act, 1929), to extensions of those buildings, on the ground that they would be a contravention of the said provisional scheme; and it is not entitled to avail itself of the provisions of s. 54 of the Statutes Amendment Act, 1940.

Counsel: *Cleary*, for the plaintiff; *Stanton*, for the defendant.

Solicitors: *Nicholson, Gribbin, Rogerson, and Nicholson*, Auckland, for the plaintiff; *Earl, Kent, Stanton, Massey, North, and Palmer*, Auckland, for the defendant.

LYSONS AND ANOTHER v. COMMISSIONER OF STAMP DUTIES.

SUPREME COURT. New Plymouth. 1945. August 22, September 19. FAIR, J.

Public Revenue—Death Duty (Succession Duty)—Charitable Trust—Bequest of Property to Borough Corporation in New Zealand—"Whether held on any charitable trust in New Zealand"—Death Duties Act, 1921, s. 18.

Property given by the will of the deceased person to the Corporation of a borough in New Zealand, without more, is "property left by the will of the deceased . . . and held on any charitable trust in New Zealand," and so exempt from succession duty under s. 18 of the Death Duties Act, 1921.

In re Smith, Public Trustee v. *Smith*, [1932] 1 Ch. 153, and *Trimble* v. *Hill*, (1879) 5 App. Cas. 342, followed.

Solicitor-General v. *Dunedin City Corporation*, (1875) 1 N.Z. Jur. N.S. 1, and *Petone Borough* v. *Lower Hutt Borough*, [1918] N.Z.L.R. 844, G.L.R. 641, applied.

Bowman v. *Secular Society Ltd.*, [1917] A.C. 406, and *R.* v. *Carswell*, [1926] N.Z.L.R. 321, referred to.

Counsel: *Sheat*, for the appellant; *Byrne*, for the respondent.

Solicitors: *Nicholson, Kirby, and Sheat*, New Plymouth, for the appellant; *Crown Law Office*, Wellington, for the respondent.

BOND v. WATERFRONT CONTROL COMMISSION AND WELLINGTON WATERSIDE EMPLOYERS' UNION INDUSTRIAL UNION OF EMPLOYERS.

SUPREME COURT. Wellington. 1945. August 2, 3. BLAIR, J.

COURT OF APPEAL. Wellington. 1945. September 13, 26. MYERS, C. J.; JOHNSTON, J.; FAIR, J.; NORTHCROFT, J.; CORNISH, J.

Industrial Conciliation and Arbitration Acts—Award—Wages—Overtime—Employer's Option to Allow Time off in Lieu of Payment of Overtime Rates—Time when such Option should be exercised and Time off given.

Practice—Costs—Third-party—Defendant and Third-party with Identical Interests—Separate Representation Unnecessary—Third-party Costs disallowed against Unsuccessful Plaintiff.

Clause 3 (*d*) of the Wellington Foremen Stevedores, Timekeepers, and Permanent Hands Award, 1944 (*44 Book of Awards*, 841) provided as follows:—

"All time worked outside of the hours prescribed in cl. 2 hereof shall be paid for at the rate of time and a half for the first four hours and double time thereafter: Provided, however, that in lieu of payment for overtime the employer may allow time off to the extent of one and a half hours for each hour of overtime worked. The option to allow time off shall not apply to time worked on Sundays and holidays."

Clause 7 of the award directed that wages should be paid weekly not later than Thursday. In practice, they were paid on Thursday for the week ending at 7 a.m. on the previous Wednesday.

In an action by a foreman stevedore claiming balance of wages, it was held by *Blair*, J., that the employer's option under cl. 3 (*d*) of the award provided for his exercising his right to set off by means of time off within a reasonable time, and he dismissed the plaintiff's claim and awarded costs to the defendant and to the third party to be paid by the plaintiff.

On an appeal from that judgment,

Held, by the Court of Appeal, 1. That cls. 3 (*d*) and 7 of the award must be read together; and that if the employer decides to allow time off in lieu of payment for overtime, such time off need not be actually allowed and taken off in the same week as that in which overtime was worked; but the employer is entitled to allow that time off within a reasonable time.

Per *Myers*, C.J., *Northcroft* and *Cornish*, JJ., That the employer must on each Thursday either pay overtime or decide to allow time off in lieu of payment for overtime and inform the worker accordingly; and that he is bound to exercise his option at or before the time of payment, and, if he exercises his option in favour of giving time off in lieu of payment for overtime, he is entitled to allow that time off as soon as practicable and within a reasonable time.

The third party was brought in on the defendant's application by consent of the third party. The defence of the defendant and third party was exactly the same, and it was unnecessary for them to appear separately.

On appeal from the order of *Blair*, J., awarding costs against the plaintiff in favour of the third party,

Held, per *totam curiam*, That the order for such costs be set aside.

Appeal from the judgment of *Blair*, J., dismissed, subject to variation of the order for costs.

Counsel: *Harding* and *Shayle-George*, for the plaintiff; *Cleary*, for the defendant; *Stevenson* and *Kemp*, for the third party.

Solicitors: *Phillips and Coles*, Wellington, for the plaintiff; *Barnett and Cleary*, Wellington, for the defendant; *Izard Weston, Stevenson, and Castle*, Wellington, for the third party.

MAJOR-GENERAL BARROWCLOUGH

Welcomed on Return to Practice.

In the Supreme Court at Auckland, on September 27, in a claim for salvage against the owners of the Greek vessel, *Kotor*, which had a Greek captain, Mr. H. P. Richmond appeared for the owners, and Mr. H. E. Barrowclough appeared for one of the salvors, this being his first appearance in Court after his return from his distinguished war-service. At the conclusion of the hearing, Mr. Richmond said: "We members of the Bar feel that on the occasion of the return to practice of our very gallant and distinguished friend, Mr. Barrowclough, we would like to say how much we welcome him amongst us again.

"I think the legal profession in New Zealand may very fairly congratulate itself upon the very high number of members of the profession who have attained to high rank in the armed forces, both in this war and in the last; and I think we can say, very fairly, that the profession has in this way contributed perhaps in an outstanding degree to the ranks of our fighting men. There have been, as Your Honour well knows, a large number of members of the profession who have attained to very high rank, and, amongst these, there is none who has done so with more honour and none who has distinguished himself more highly than our friend Mr. Barrowclough, whom we now welcome amongst us.

"For myself, it could not help passing through my mind that it seemed for a moment a pity that one who a short time ago donned the breast-plate of Leonidas and held the Pass of Thermopylae for the Greeks should in this case be fighting against them. But thinking it over, I can see that my friend has identified himself as again being one of the salvors of the Greeks, though on this occasion not entirely without financial reward."

His Honour Mr. Justice Callan, before whom the action had been heard, said: "You having gracefully said what you have just said, Mr. Richmond, I cannot allow the occasion to pass without adding that I welcome with very great delight the return of Mr. Barrowclough to this place. I know a great deal about his service in the last war. I have read a great deal and heard a great deal about his service in this war, and we are all exceedingly proud of him and welcome him back amongst us with great pleasure."

PREPARATION OF INSTRUMENTS BY WAY OF SECURITY

Some Notes and Suggestions.

By C. E. H. BALL, LL.M.

To the busy practitioner, the preparation of an instrument by way of security often involves the refreshing of the memory as to the scope of the provisons implied by the Chattels Transfer Act, 1924. These provisions, though very full, often fall short of the requirements of a particular case. It may be worth while, therefore, to examine briefly the provisions implied by the Act, and then make suggestions as to what additional expressed provisions, or modifications of the implied provisions, are desirable in certain particular cases.

What is implied by the Chattels Transfer Act.—The Act implies, in all instruments, covenants for title as set out in the Third Schedule (s. 49), and, in instruments by way of security, the covenants, provisoes, agreements, and powers set out in the Fourth Schedule so far as they are applicable: s. 50. In the case of two or more grantors or grantees, the covenants impose an obligation on the grantors or operate in favour of the grantees severally as well as jointly (s. 52), and bind the executors, administrators, and assigns of the grantor, and operate for the benefit of the executors, administrators, and assigns of the grantee, and, if a company or corporation, its successors and assigns: s. 53. Then, by s. 54, all implied covenants, provisoes, conditions, agreements, and powers may be negatived, modified, altered, or added to by express words in the instrument.

These provisions amplify the drafting of the instrument by making it unnecessary to insert covenants as to title, provision that the covenants are to be joint and several, and that executors, administrators, assigns or successors are to be included.

To make it easier to see how far the implied covenants, provisoes, conditions, agreements, and powers meet the needs of the particular security, how it may be necessary to modify them, and what further provisions may be desirable in any particular case, a brief outline of the Fourth Schedule to the Act (which is of some length) follows:—

FOURTH SCHEDULE.

COVENANTS IMPLIED IN INSTRUMENTS BY WAY OF SECURITY.

1. A covenant to pay interest and principal.

2. A covenant to pay interest on any further advances.

3. A covenant not to allow the chattels to become prejudicially affected, and to pay rent in respect of the land on which they are.

4. A covenant to keep the chattels in the present good order and condition, to repair or replace chattels damaged or destroyed, and to execute security over replacing chattels.

PROVISOES AND AGREEMENTS IMPLIED IN INSTRUMENTS BY WAY OF SECURITY.

5. The grantor, until default, bankruptcy, or a judgment is unsatisfied for ten days, may retain possession and use of the chattels.

6. The giving of a bill of exchange or promissory note, until honoured, is not payment, and does not affect the powers of the grantee, nor does it, or the remedies thereunder, merge in the covenants of the instrument.

7. The grantee, upon default, bankruptcy, or a judgment remaining unsatisfied for ten days, may take possession of and sell the chattels, with provision as to the application of the purchase-money.

POWERS, COVENANTS AND PROVISIONS IMPLIED IN STOCK SECURITIES.

8. A power for the grantee to enter and view the stock, the grantor on seven days' notice to give the grantee reasonable assistance.

9. A covenant that the grantor will not further encumber the stock without consent, change the general quality, character, or description, remove them from the land, or sell except in the ordinary course of business.

The grantor will brand, earmark, and mark with the brands, earmarks, and marks specified in the instrument and not otherwise.

The grantor will maintain the stock free from disease and in a clean and healthy condition, and on demand deliver to the grantee a return of the stock.

10. Other stock of the grantor are to be included in the security. The grantor is to pay all outgoings and observe all obligations of stock-owners, with power for the grantee to do so at the grantor's expense on default. The grantee lawfully taking possession may until sale continue in possession and manage the property.

POWERS IMPLIED IN CROP LIENS.

11. Upon default the crop shall be harvested either by the grantor or the grantee at the grantee's option but at the grantor's expense, and delivered to the grantee, who is given wide powers of sale.

POWERS IMPLIED IN WOOL LIENS.

12. Upon default the wool shall be shorn either by the grantor or the grantee at the grantee's option but at the grantor's expense, and delivered to the grantee, who has wide powers of sale.

Modification of Implied Provisions.—Having summarized the implied provisions in a form convenient for visualizing their total effect, it remains to consider how they may require modification to meet the circumstances of a particular case. This can perhaps best be done by commenting on the clauses of the Fourth Schedule.

Clause 1.—Some practitioners consider it wise to extend this covenant to cover the payment on demand (with interest until paid) of all moneys which the grantee expends in carrying out the grantor's obligations on the latter's default: see note on power of attorney, *post*. It has been held that this covenant continues to operate although the grantee has taken possession and sold part of the chattels: *New Zealand Serpentine Co., Ltd.* v. *Hoon Hay Quarries*, [1925] N.Z.L.R. 73.

Clause 2.—If further advances are to be secured, it must not be overlooked that the instrument must be drawn accordingly. This covenant only operates where further advances are secured. The expression "further advances" has a wide and generally satisfactory definition in the Fifth Schedule, although in appropriate cases it may be desirable to extend it: see *Watts* v. *Kelly*, [1932] N.Z.L.R. 369, G.L.R. 31.

Clause 3.—It is not unusual, where the chattels covered by an instrument are situated on leasehold land, to endeavour to obtain from the landlord an undertaking not to distrain on them for rent.

Clause 4.—It is wise in certain cases to extend the provision as to maintenance—*e.g.*, in the case of motor-vehicles, to provide for servicing at prescribed intervals by a reputable garage. This is particularly applicable in the case of vehicles used in licensed transport services, where a faulty condition may jeopardize the license, and in such a case, since the value of the vehicle may largely depend on its availability in the service, covenants are sometimes inserted that the license shall be kept on foot, renewed, and that, in the event of the grantee or any transferee from him becoming entitled to the vehicle, the grantor will assist in procuring a license to be granted to the grantee or transferee. The same suggestion as to servicing is sometimes appropriate in the case of other kinds of machinery, particularly where the distributor has recognized servicing arrangements.

Provision is often made prohibiting sales in the ordinary course of business, or making it clear that they are contemplated, and the terms on which they may be made. Difficult questions sometimes arise as to whether the grantor has the implied right to sell, in the ordinary course of his business, chattels subject to an instrument by way of security. A rough test may be applied by asking whether the continued existence of his business is dependent on such sales being permissible: *Bowden* v. *The King*, [1921] N.Z.L.R. 249. As to current account loans on stock, see the notes to cl. 9, *post*.

Clause 8.—In some cases, particularly with large back country stations, the grantor's obligation to give reasonable assistance to view is enlarged by a covenant to muster.

Clause 9.—This covenant by the grantor is frequently modified, particularly in current account loans, by prohibiting sales, whether in the ordinary course of business or not, without the prior consent of the grantee.

Clause 9 (second paragraph).—It may be desirable to authorize the grantee, before he enters into possession, to brand, earmark, or mark on default by the grantor, in which case the abbreviated expression, that the grantor "will brand, earmark, and mark" should also be inserted: refer to the meaning of these words in the Fifth Schedule to the Act.

Clause 10.—As to the inclusion of stock not described, see the subheading "Future Stock," *post*.

Other suggested provisions.

Power of attorney.—While it may not be necessary in simple cases, here are cases where it is desirable to insert in the instrument a provision constituting the grantee the attorney of the grantor for doing whatever is necessary for further assuring the chattels secured, for performing any covenant by the grantor on the grantor's default, and in stock loans where the proceeds of dairy produce or wool are assignable, for executing the assignment.

Assignment of dairy proceeds.—It is often found convenient to insert in an instrument affecting the stock of a dairy-farmer, a covenant to assign dairy-produce proceeds. As to the effect of such an assignment, see s. 12 of the Bankruptcy Amendment Act, 1927, and as to the stamp duty payable thereon, see s. 4 of the Stamp Duties Amendments Act, 1927.

Further advances.—See the notes to cl. 2 of the Fourth Schedule (*supra*).

Defined expressions.—By s. 51, the definitions in s. 2 of the Act, and the expressions in the Fifth Schedule, when used in any instrument, or in any covenant in it, have the meanings given in the statute, and drafting can be reduced by the use of such expressions as "chattels," "grantee," and "grantor" in s. 2, and "upon demand," "further advances," "will, upon demand, pay the balance due upon the account current between them," "will insure," and "will brand, earmark, and mark" in the Fifth Schedule.

Requirements under the Act.

The Schedule.—The importance of a proper and exact description of the chattels in the Schedule under s. 23 cannot be over-emphasized—*e.g.*, machinery, by maker, model, No., and other details. As to the description of stock, see s. 28.

Land.—Apart from special provisions, a statement as to where the chattels are situated is unnecessary: *Hunt* v. *Rangitikei Fibre Co., Ltd.*, (1891) 10 N.Z.L.R. 42. There are special provisions which would exclude replacing farming plant under s. 26 (*c*), and which require a description of the land on which stock are depasturing (ss. 28 and 29), crops are growing (s. 35), and sheep subject to a wool lien are depasturing (s. 38).

After-acquired Chattels.—Where a loan on chattels is to be expended in the purchase of chattels, there should be a declaration in the instrument as mentioned in the proviso to s. 24.

Defeasance.—Care must be taken not to take an instrument subject to a defeasance unless embodied in the instrument, or in the case of a collateral security, referred to therein as required in s. 25.

Future stock.—By s. 29, an instrument comprising stock, unless the contrary is expressed, also covers the natural increase of the stock, and all stock of the classes described in the instrument provided they are (i) the property of the grantor, (ii) branded, earmarked, or marked as specified in the instrument, or covenanted to be branded, earmarked, or marked, and (iii) which after the execution of the instrument are on the land mentioned therein. It should be emphasized, first, that at least one member of the class should be described, and, secondly, that the brands, earmarks, or marks with which they are covenanted to be branded should be set out. Future poultry or stock which cannot properly be marked are included without a covenant to brand: s. 30.

Security over crops.—The necessity for an exact description of the land is recalled (*Pyne, Gould, Guinness, Ltd* v. *Meredith and Co.*, [1926] N.Z.L.R. 241; also the necessity of obtaining the consent of the landlord or mortgagee: s. 37.

Security over wool.—A security over sheep includes, unless the contrary is provided, a security over wool shorn from such sheep: s. 41. Where security is not held over the sheep on which the wool is growing, the consent of the grantee of security over the sheep is required to the giving of a wool lien to a third party: s. 40.

Execution by Natives.—The provisions of s. 547 of the Native Land Act, 1931, as to execution, where the grantor is a Native must be complied with.

SUPREME COURT PROCEDURE.

Omissions and Irregularities in Filed Documents.

Amongst the omissions and irregularities occurring in Supreme Court procedure the following comprise a few instances; and mention of these, no doubt, will be of assistance and guidance to practitioners.

PROBATE AND ADMINISTRATIONS APPLICATIONS.

Sureties: In applications for letters of administration and for an order dispensing with sureties the requirements in respect of the latter are often overlooked, or complete information not supplied, necessitating a requisition. Further, it is not always realised that one motion will cover the application for letters of administration and for an order dispensing with sureties.

The general practice is not to dispense with sureties unless the following circumstances are present:—

1. Where all the next-of-kin are *sui juris* and join in consenting to sureties being dispensed with; but not where there are infants.
2. Where there are no debts in the estate, unless they are sufficiently secured.

To warrant sureties being dispensed with, both these conditions as a rule should exist: *In re Morrison*, (1931) 7 N.Z.L.J. 115, and *In re Sixtus*, (1912) 14 G.L.R. 440.

An application for an order dispensing with sureties must show that no child of the deceased predeceased him, leaving issue who would be entitled to share in the estate under the Administration Act, 1908: *In re Brown*, [1939] N.Z.L.R. 93. (Section 49, therein referred to, is, in respect of deaths occurring after January 1, 1945, now repealed, *see* now, the Administration Amendment Act, 1944, ss. 6–9).

The necessary information as to the above requirements can be included in the affidavit supporting the motion, and any consents should be annexed as exhibits.

Codicil: An executor must swear faithfully to execute the will and *codicil*.

Clause 4 of Form 34 of the Code of Civil Procedure should be used with the following modification: "That I will faithfully execute the said will *and codicil*," &c.

The motion must be for probate of the will and codicil: *In re Ahlstrom*, [1924] N.Z.L.R. 1151.

Observance of some one or more of the following rules of the Code of Civil Procedure is often overlooked:—

Rule 518: Where there is more than one executor and application for probate is not made by all, then those applying must state in the supporting affidavit the names and addresses of the other executors, and the reason why such persons do not join in the application for probate.

Rule 519: An affidavit of due execution is required where there is no attestation clause to a will or codicil, or if the attestation clause thereto be insufficient.

It is also to be remembered that an affidavit is required where there are blanks in an attestation clause to a will or codicil: see *In re Hatinan*, (1911) 14 G.L.R. 124.

The following most common mistakes are referred to in *In re Ahlstrom*, [1924] N.Z.L.R. 1151:—

1. The decision *In re Russell*, (1910) 29 N.Z.L.R. 365, is often overlooked. The exhibit-note should state that the will upon which it is endorsed is "now produced and shown to (the executor) and mentioned and referred to in his affidavit to lead grant of probate of himself as (sole) executor."

2. Where the nature of the handwriting of the signature to the will suggests that either the testator is illiterate or suffering from bodily weakness, an affidavit under R. 521 or R. 522, as the circumstances may require, should be filed.

3. Rule 597B, para. (*e*), that "every endorsement shall show the purpose of the motion or summons," is often disregarded; while para. (*f*) of the same rule, that "every notice of motion for administration in which dispensing with or reducing security is applied for shall be endorsed so as to show such application in the endorsement," is one of the commonest omissions.

4. Papers are often intituled "In the matter of the will of," instead of "In the estate of."

5. Many practitioners fail to observe the effect of the decision in *In re Eastwood*, (1910) 29 N.Z.L.R. 1037, that the omission of "together present at the same time," or equivalent words in the attestation clause to a will requires an affidavit under R. 519.

6. Where alterations or interlineations occur in a will and the attestation clause does not account for these, an affidavit under R. 525 is required, and the motion-paper should ask that such alterations or interlineations form part of the probate.

7. An affidavit will not usually be received where the jurat is on a separate sheet of paper to the body of the affidavit.

8. Contractions such as "Sept." for "September" render an affidavit liable to be rejected.

Rule 531C. Where probate or administration is applied for after the lapse of one year from the death of the deceased, the reason for the delay must be shown by affidavit. This information can be included in the supporting affidavit.

Codicil misquoting date of will: If a codicil misquotes the date of the will, an explanatory affidavit containing a clause that a search for a will has been made must be filed: *In re Rhodes*, (1914) 34 N.Z.L.R. 190.

FORM OF CHAMBER ORDER.

It is not generally realized that under R. 417A any order made by a Judge sitting in Chambers (except Chambers for Court), can be signed—

(*a*) Personally by the Judge who made such order; or

(*b*) By the Registrar.

The advantage of this rule from a point of view of expedition and convenience is readily seen, particularly in a Supreme Court Registry where there is no resident Judge.

BANKRUPTCY PETITIONS.

In Bankruptcy petitions, where the act of bankruptcy is non-compliance with the requirements of a bankruptcy notice, various forms of allegations are used; and, in a number of cases, the allegation is not complete or sufficient.

The act of bankruptcy is complete at the last moment of the seven days: *In re Hastie*, [1926] N.Z.L.R. 428.

The form of allegation of non-compliance is as follows: "has failed before the day of , 19 , to comply with the requirements of a bankruptcy notice duly served on him on the day of , 19 : *Re Dunhill*, [1894] 2 Q.B. 235.

Summons for adjudication: Not infrequently the summons for adjudication is presented in the form calling upon the debtor to appear before a Judge. The summons should be to appear before the Supreme Court: see s. 37 (1) of the Bankruptcy Act, 1908.

Verifying affidavit.—Due verification of the bankruptcy petition, as required by s. 36 of the Bankruptcy Act, 1908, is a condition precedent to the issue of a summons. An affidavit at the foot of the petition in the form given in R. 415 of the Supreme Court Code is not a compliance with this section: *In re Falconer*, (1913) 16 G.L.R. 340, and *In re McGregor*, (1914) 33 N.Z.L.R. 801.

Further, the affidavit verifying a petition sworn before the filing of a petition should not be intituled "In the matter of the petition": *In re Somerville*, (1909) 28 N.Z.L.R. 1055.

PREVENTION OF LAPSE UNDER WILL.

Shares of Issue of Testator.

By J. H. CARRAD.

Section 33 of the Wills Act, 1837, reads as follows:—

> And be it further enacted that where any Person being a Child or other Issue of the Testator to whom any Real or Personal Estate shall be devised or bequeathed for any Estate or Interest not determinable at or before the Death of such Person shall die in the lifetime of the Testator leaving Issue, and any of such Issue of such Person shall be living at the Time of the Death of the Testator, such Devise or Bequest shall not lapse, but shall take effect as if the Death of such Person had happened immediately after the Death of the Testator unless a contrary intention shall appear by the Will.

The section is a most important one, but its existence and effect are not always recognized by legal practitioners. The cases upon the section are discussed in *Garrow's Law of Wills and Administration* and in *Hayes and Jarman's Forms of Wills*, 15th Ed. 67. It is important to remember (to quote from *Hayes and Jarman*) that

> This section *does not substitute the issue* of the intended taker for the deceased, but makes the subject of the gift the property of the intended taker, and, as such, comprised within the dispositions of his will, notwithstanding he died before the testator, *Johnson* v. *Johnson* (3 Ha. 157, 13 L.J. Ch. 79, 1 Hayes, Conv. 406); or descendible as part of his estate, *Wisden* v. *Wisden* (2 S. & G. 396); *Skinner* v. *Ogle* (1 Rob. 363); *Re Wilson* (89 L.J. Ch. 216); or vest in his trustee in bankruptcy, *Re Pearson* ([1920] 1 Ch. 247, 89 L.J. Ch. 123); and estate duty is payable as if the intended taker had survived the testator, *Re Scott* ([1901] 1 K.B. 228, 70 L.J.K.B. 66).

The case of *Re Hensler*, *Jones* v. *Hensler*, (1881) 19 Ch.D. 612, is an interesting one. The headnote of the case is as follows:—

> A father by his will devised a freehold house to a son, and his residuary real estate to trustees in trust for other persons. The son died in his father's lifetime leaving issue living at his father's death, and having by his will devised all his real estate to his father.
>
> *Held*, That as, under the 33rd section of the Wills Act, the son must be deemed to have survived the father, the property passed to the son absolutely under his father's will and he became subject to testamentary disposition by his son: But that as by the will of the son the property was devised to his father, the devise by the son failed, and his heir-at-law was entitled to the property.

It was held in *Re Griffith's Settlement*, *Griffiths* v. *Waghorne*, [1911] 1 Ch. 246, that a child *en ventre sa mere* would be issue left by the devisee or legatee within the meaning of s. 33.

It is sufficient, to prevent a lapse, that any issue should be living at the death of the testator (*In bonis Parker*, (1860) 1 Sw. & Tr. 523, 164 E.R. 842), and the section applies even if none of the issue of the predeceasing beneficiary living at his death survive the testator so long as issue of such beneficiary survive the testator. It is very important to remember that the section has no application if the gift is to the testator's children, or grandchildren *as a class* (see the cases quoted in *Garrow* (*op. cit.*) at p. 330, and in *Hayes and Jarman Forms of Wills*, 1st Ed. p. 69), and in some cases it is difficult to determine whether the gift is a class one. The question of what shows "a contrary intention" within the meaning of the section is discussed in *In re Meredith*, *Davies* v. *Davies*, [1924] 2 Ch. 552, where the testator who had made gifts to his son by his will executed a codicil, after his son's death, in which he referred to such death and to the lapse of the gifts to his son and by which he gave legacies to his son's children. The section was held not to apply in the circumstances.

In *In re Wolson*, *Wolson* v. *Jackson*, [1939] 3 All E.R. 852, the testator directed property to be divided between three named children as and when they should respectively attain the age of twenty-five years. A daughter married in the testator's lifetime and died before attaining the age of twenty-five years leaving issue. It was held that s. 33 did not apply to a contingent interest which had already failed at testator's death.

In view of the passing of the Administration Amendment Act, 1944, the case of *Re Hurd*, *Stott* v. *Stott*, [1941] 1 All E.R. 238, is of interest. In that case, the testatrix left a share of her estate to a daughter who died in 1923 leaving three daughters, one of whom was born out of wedlock and was afterwards legitimated under the Legitimacy Act, 1926. The testatrix died in 1939. It was held that s. 33 applies only to prevent lapse. It does not alter the way in which the estate of the person predeceasing the testator is to be administered. It simply increases the estate, and does not alter the persons entitled to it under the law in force at the time of the death of the person predeceasing the testator. Thus, in that case, although the daughter, for the purpose of preventing lapse, was to be deemed to have died in 1939 immediately after the testatrix, the gift became part of her estate to be administered under the law in force at the date of her death in 1923.

ADOPTION OF CHILDREN.

Procedure in the Magistrates' Court.

Annually over eleven hundred children are being adopted through the Magistrates' Courts of the Dominion.

The jurisdiction to grant orders of adoption of children is given by s. 16 (female child) and s. 17 (male child) of the Infants Act, 1908. Those sections are misquoted frequently by reversal of the section numbers in adoption documents, and it is useful to remember that female children are mentioned first.

Part III of the Act invests a Judge with all the powers and discretions enumerated therein, but the definitions in s. 15 provide "Judge" means a Magistrate, and as, for reasons of economy, no doubt, applicants almost invariably avail themselves of the more familiar requirements of the Magistrates' Court, reference to a Judge will be excluded from this article.

Adoption of children by Natives—*i.e.*, aboriginal Natives of full or half blood—under the provisions of Part IX of the Native Land Act, 1931, and by Cook Islanders under the Cook Islands Act, 1915, will not be treated here, the Native Land Court having the jurisdiction. Natives may adopt a Native child only.

"Child" means a person under the age of twenty-one years. Until the passing of the Statutes Amendment Act, 1939, it meant a girl or boy under the age of fifteen years.

Statistics show that the majority of children adopted in New Zealand are born or registered illegitimate. No *order* of adoption made after the passing of the Statutes Amendment Act, 1942 (October 26, 1942) shall state whether or not a child is an illegitimate: s. 16 (1). As will be shown later, that does not mean that the fact of illegitimacy or otherwise will be hidden from the Magistrate. The information is necessary to the proceedings.

Adoption may be granted to husband and wife, or to one of the spouses with the written consent of the other spouse, or by a single person. With regard to a single person, ss. 16 and 17 of the statute impose age-restrictions upon the unmarried woman and unmarried man; but, by an amendment made by s. 17 of the Statutes Amendment Act, 1942, the Magistrate is given the discretion to waive the stipulated forty years difference in age in the case of an unmarried man applying to adopt a female child, and of an unmarried woman in respect of a male child.

It is proposed to set out the adoption procedure required by the Act, the rules, and the established practice, in a concise way, in order that the practitioner may put through an adoption with a minimum of hindrance and wasteful research.

To obtain a reasonable grasp of the essentials, the following must be read:—

Part III of the Infants Act, 1908 (*Reprint of Statutes*, Vol. 3, pp. 107328), annotated with the amendments comprised in the Statutes Amendment Acts of 1939 (s. 34 (1)—age of child); of 1941 (s. 36—service on mentally defective person); of 1942 (s. 15—consent of child over twelve years); (s. 16—omitting word illegitimate from order); (s. 17—discretion of forty years difference in age); of 1943 (s. 17—discretion as to consent where no parent or guardian).

The Rules under Part III of the Infants Act, 1908: *1 Rules, Regulations, and By-laws, 355*; *1912 New Zealand Gazette*, 828; *2 Rules, Regulations, and By-laws*, 1522; *1916 New Zealand Gazette*, 3139, including the forms prescribed thereunder.

Departmental instructions to Justice and Child Welfare Officers as to obtaining and furnishing reports from Child Welfare and Police Departments.

The Births and Deaths Registration Act, 1924, s. 27 (as to registration of adoption).

All of the above represents a small amount of research; but, for quick reference, it is suggested that the above rules and s. 27 of the Births and Deaths Registration Act, 1924, be interleaved with Part III of the Act annotated to date in the *Reprint of Statutes*. Delete the second schedule to the rules which has been repealed by Infants Act (Adoption Fees) Rules, 1937, (Serial No. 170/1937) which provide for—

Filing application for adoption, 10s.

Order of adoption, 10s.

Those fees cover all documents and copies thereof. No other fees are payable unless a Bailiff is required to serve proceedings in which case his mileage fee only is payable.

Section 27 of the Births and Deaths Registration Act, 1924, is last on the above list; but, in the light of experience, it might well be urged that it be studied first. Memorial endorsement against the original birth entry, and re-registration of the birth, are virtually the last steps in the procedure and create the evidence usually contemplated by the adopting parents and utilized frequently by or for the child in later life. It draws attention also to the importance of fixing the proper or Christian names that the Magistrate, on the application of the adopting parents, gives to the child. The question as to whether the names so fixed may be altered or varied subsequent to adoption will be discussed in a later article.

There are numerous reported cases which can be recited more appropriately when dealing with problems arising under the Act.

Important discretionary powers are vested personally in a Magistrate in office. Note carefully the wording of s. 18 (1) (*c*) of the Act:—

Before making an order of adoption, the Magistrate—

> (*c*) Shall be satisfied that the child is under the age of twenty-one years; that the person proposing to adopt the child is of good repute, and a fit and proper person to have the care and custody thereof, and of sufficient ability to bring up, maintain, and educate the child; that the welfare and interests of the child will be promoted by the adoption; and that the consents required by this Act have been duly signed and filed.

That paragraph is considered one of the principal authorities for the additional procedure laid down by the Courts in the way of further affidavits, confidential reports, strict rules as to attestation, and the

reluctance to permit secrecy of the origin of the child and its natural parents to cloud the issues. The Magistrate has other discretionary powers which will be treated in subsequent articles. The approach to any application to dispense with a requirement of the Act, rules, or established practice must, it is considered, be guided by the question as to whether "the welfare and interests of the child will be promoted" (*supra*) by such waiver.

Preparation of Documents.

The prescribed forms in the rules are printed and are not supplied to solicitors. Small quantities on hand in the Court would not be arbitrarily withheld.

Court Officers handle the filed documents in the first instance, and may be relied upon to advise on the wishes of the Magistrates in particular districts. Having regard to the Magistrates' wide discretionary powers, it may nevertheless be accepted that the following, although exceeding the requirements of some of them, will satisfy all in a straight-forward application up to the date of hearing.

A summary of the necessary documents in order of importance is as follows :—

1. *The Birth Certificate being a certified copy of the entry of registration of the child. (*Rule 1A*: *N.Z. Gazette*, 1916, p. 3139).
2. Application (as worded in Form 1 in the Schedule to the Rules) attested by S.M., J.P., Clerk of Court, or Solicitor. (Rule 1) Include the proper or Christian names the applicants desire the Magistrate to fix and also for consent to receive or otherwise apply the premium (*if any*).
3. Consent of natural parents (Form 5), or of the legal guardian or guardians (Form 6) attested by S.M., J.P., Clerk of Court, or Solicitor (Rule 5), not acting for applicants. (Practice.)

3A Certificate by S.M., Clerk of Court, or Solicitor not acting for applicants that s. 21 of the Act has been fully explained to the person giving consent, and that he or she appeared to fully understand the same. (Practice.)

4. Affidavit by natural parent(s) or the legal guardian(s) deposing the facts as to the natural parents of the child.

   In the case of an illegitimate child :

   (*a*) As to whether any person has been adjudged the putative father of the child or not—name and address ;

   (*b*) As to whether any person has acknowledged paternity by paying maintenance.

   In the case of legitimate or illegitimate, whether any premium (including maintenance) is being paid to the adopting parents. (Practice.)
5. Affidavit by adopting parent(s) setting out the particulars enumerated below. (Practice.)
6. Affidavit of character and means by a reputable and well-known person (preferably in the district where the application is filed). (Rule 8 and Practice.)
7. *Exhibit, note on birth certificate showing that it was produced and shown to deponent(s) either in affidavit 4 or 5 above.
8. Fees : Two stamps of 10s. each.
9. If no consents are procurable (as in 3 above), or if application is made to dispense with the consent(s), a memorandum or an affidavit. This is solicitor for the applicants setting out reasons and submissions.
10. Adoption order in triplicate (original for applicant and copies for Court and Child Welfare Superintendent).

Particulars Required in Affidavit of Adopting Parents—

(*a*) Full names, residential address, and occupation of applicant(s), and stating that they are the applicants.

(*b*) Respective ages of applicants, places, and country of birth.

(c) Place and date of marriage. (Marriage certificate produced and exhibited with affidavit. This is not universal practice, but see *In re A.Y.* (*an Infant*), 37 M.C.R. 128. Inquire of Clerk of Court as to requirement.)

(*d*) Health of applicants.

(*e*) Particulars of children of applicants (sex, age, health).

(*f*) Likelihood of further children.

(*g*) Relationship (if any) to child sought to be adopted.

(*h*) Income of applicants and sources thereof.

(*i*) Property (description, value, and encumbrances).

(*j*) Any premium or other consideration being given for or with adoption ; if so, particulars, and how applicants desire same to be applied.

(*k*) Present religion of applicants and child, and religion child proposed to be brought up in.

(*l*) Reasons for adoption.

(*m*) Period child has lived with applicants.

(*n*) Assertion as to ability of applicants to bring up, maintain, and educate the child.

(*o*) Statement that they have had explained to them the effect of s. 21 (1) (*a*), (*b*), and (*c*) and (2) of t he Act.

Additional clauses covering any matters where the discretionary powers of the Magistrate are invoked.

(*p*) Nationality of applicants (required in time of war).

(*q*) The proper or Christian names if it is desired that the Magistrate shall fix.

Rule 3 provides that the Magistrate shall appoint a convenient time and place for the hearing, and endorse the application with same. In practice, the Clerk of Court fixes a date of hearing (usually three or four weeks ahead) when the documents have been filed to his satisfaction. Rule 4 provides for written notice of the time and place to be served on the applicants, but this is redundant where the solicitor and his clients have arranged to attend at the time and place appointed. The hearing is invariably in the Magistrate's private Chambers or room.

Careful attention to all of the above particulars will ensure that, except in the case of certain problems arising with regard to the consents, objections, adverse reports, adoption of adopted children, and other contingencies, the hearing will be despatched smoothly, without the necessity for oral evidence.

(*To be continued.*)

* Birth certificate to be produced and exhibited if not with affidavit by natural parent or guardian.

SURVEYS OF LAND UNDER THE LAND TRANSFER ACT.

When is a New Survey Required?

By E. C. ADAMS, LL.M.

This article deals with the very important subject of surveys of land under the Land Transfer Act, 1915.

The key section is s. 178 of the Land Transfer Act, 1915, which reads as follows:—

> On any application to bring land under the provisions of this Act, or for a new certificate on the subdivision of or other dealing with the land comprised in any certificate or other instrument of title or any part thereof, or for the untransferred part of the land comprised in any such certificate or other instrument of title, the Registrar may require the applicant to deposit in the Land Registry Office of the district a plan of the land or subdivision or portion thereof, as the case may be, which plan shall be in accordance with the regulations for the time being in force in that behalf, and shall be verified by the statutory declaration of a licensed surveyor in such form as the regulations prescribe; and until such requisition is complied with the Registrar shall not be bound to proceed with the application.

This has been the law since the coming into operation of the Land Transfer Amendment Act, 1913. Before that the District Land Registrar had no right to ask for a new survey on being requested to issue a new certificate of title for the residue of the land comprised in a partially cancelled certificate of title. The words in s. 178 "or for the untransferred part of the land comprised in any such certificate or other instrument of title" now give him that right except in two cases—*i.e.*, except where part of the land comprised in a certificate of title has either been transferred to His Majesty for a road-line or has been taken for a public work under the Public Works Act, 1928: s. 86 (2) of the Land Transfer Act, 1915, and s. 28 (3) (*c*) of the Public Works Act, 1928.

The District Land Registrar's powers under s. 178 are discretionary: against his requisition for a new survey there exists the technical right of appeal, either to the Supreme Court or the Registrar-General of Land, under s. 199 or s. 204. But the appellate authority cannot merely substitute its or his own opinion for that of the Registrar's. The Registrar's decision must stand unless it is established that the Registrar has acted upon a wrong principle or has not taken relevant matters into consideration: *In re Taupo Totara Timber Co., Ltd.*, [1943] N.Z.L.R. 672.

It must be pointed out that, if the Registrar requires a new survey on a transfer in pursuance of an open contract of sale and purchase, it is the vendor, and not the purchaser, who must bear the cost thereof: this is because it is the duty of the vendor to give the purchaser a registrable title: *Schischka* v. *Peddle*, [1927] N.Z.L.R. 132.

Tne necessity for s. 178 arises from one of the fundamental features of the Torrens system—*certainty* to title to land: if the boundaries of a parcel of land are uncertain, then the element of certainty is largely non-existent. Curiously enough this species of uncertainty does not cause much concern to land-owners, especially where the value of the land is not great. This is shown by the readiness of most proprietors to accept titles, limited as to parcels, under the Land Transfer (Compulsory Registration of Titles) Act, 1924.

It may be convenient at this stage to state when a new survey is, or may be, required in practice.

A new survey will almost certainly be asked for by the Land Transfer Department in the following instances:—

1. On any application under the principal Act to bring land under the Land Transfer Act.
2. On any application for the removal of the limitation as to parcels on a certificate of title limited as to parcels and issued under the Land Transfer (Compulsory Registration of Titles) Act, 1924, for the making absolute of an interim title under the Land Transfer (Hawke's Bay Earthquake) Act, 1931.
3. Every application for the inclusion of an *accretion* in a Land Transfer title.

A new survey *may* be asked for—

(*a*) Where a new certificate of title is ordered for the *residue* of the land comprised in an ordinary certificate.

(*b*) Where *part* only of land comprised in a certificate of title is being dealt with.

We shall now deal with these five cases *seriatim*.

1. *A new survey will be required on any application under the principal Act to bring land under the Land Transfer Act.*—The Land Transfer Act first came into operation in 1871, and in certain districts some of the early Registrars (presumably in order to encourage landowners to bring their land under the Torrens system) dispensed with adequate surveys. Such titles are in a most anomalous position: theoretically their boundaries are guaranteed and certain, but in actual fact they are not certain. A similar anomalous position also prevails in connection with many Land Transfer titles issued under the Land Transfer (Hawke's Bay Earthquake) Act, 1931, which was passed to meet the extraordinary and, I think, unique position arising from the destruction of the Land Transfer records (including the Land Transfer Register-book), on the occasion of the disastrous fire which followed the great earthquake of February, 1931; until there is a subdivision of such land, or application made for the issue of a residue title, the Registrar cannot ask the proprietor for a new survey, except in cases of *interim* titles applied to made absolute, and the titles are interim only when the outstanding duplicate certificate of title was also lost as a result of the earthquake. These Hawke's Bay interim titles may be usefully likened to titles limited as to parcels under the Land Transfer (Compulsory Registration of Titles) Act, 1924: until a new survey is furnished and acted on by the Registrar, the titles are not State-guaranteed as to the boundaries thereof.

(*To be Concluded*)

LAND SALES COURT.

Summary of Judgments.

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

No. 50.—P.T. to T. and A.

Urban Land—Dwelling in Advanced State of Deterioration—Basis of Valuation.

Appeal from the determination of the Wellington Urban Land Sales Committee.

As arranged, the members of the Court inspected the property which is the subject of this appeal. The outstanding characteristic of the building, apart from the concrete walls—so far as those walls extended—was the cheap character of the construction and its advanced state of deterioration.

The Court said: "The assessment by Mr. G., witness for the appellant, of the value of the building at 25s. per square foot over the whole area, including the two lean-tos at the back, seems to be much too high, and the Court prefers to accept the basis of value assessed by Mr. W., the Crown witness.

"The outside balcony is in very bad repair and is, in truth, supported by the temporary studs inserted by the tenant. These rest on the roofs of the lean-tos. The veranda over the shop front is also defective and worth, it is thought, nearer the sum suggested by Mr. W. than that suggested by Mr. G. Taking the building and its accessories as a whole, and having regard to the dilapidated condition of the building, the Court feels constrained to accept as the true value a figure at least approximating that to which Mr. W. testified.

"This being so, any difference of opinion as to the value of the land is more or less immaterial, for, even if Mr. G.'s value for the land alone were accepted, it would not justify any increase on the sum at which the Committee gave its consent to the sale. In fact, having seen the property, the conclusion seems inescapable that the Committee fixed a proper sum. The appeal is therefore dismissed."

No. 51.—T. to E.

Urban Land—Site Value—Comparative Sale Values—Basis for Inference of True Value.

The Court said: "A state of disharmony seems to exist between the prices at which consents to sale have been given in Wadestown, the locality in which this area is situated. The members of the Court have inspected all the sites to which reference was made during the hearing of the appeal.

"They accept as correct the conclusion reached by some of the witnesses that only two sections afford a proper basis for an inference as to comparative values. These are Lot 14 on Deposited Plan 9107, the sale of which from H. was consented to at £900, on April 11, 1944, and Lot 117 on Deposited Plan No. 1164, the sale of which at £865 was consented to on May 9, 1944. The inspection made by the members of the Court suggests somewhat forcibly that the land, the subject of the present appeal, is a better lot than either of the other two. It has a magnificent view which can never be built out, whilst Lot 117 has, broadly speaking, no view at all except from the upper area from which there will be some limited view from an upper story, as Mr. G. testified.

"Lot 14 answers fairly accurately to the description of it given by Mr. D., the Crown witness. It is difficult to imagine that it has been or ever will be worth £900. However that may be, the Court accepts the testimony of Messrs. G. and T., witnesses for the appellant, that Lot 9 is more valuable than Lot 117 and much more valuable than Lot 14. It would appear that the sale of the latter lot at £900 was at a price so excessive that it should be disregarded, as Mr. D. quite properly contended.

"The sale of Lot 117 cannot, however, be disregarded. It is true that it has a better access than Lot 9, and that the delivery of building materials to it will not cost anything like what it would cost to transport building material to Lot 9. On the other hand, and as against this, must be set off two features: the first is the magnificent view enjoyed by and ensured to Lot 9, and the second is the fact that the house upon Lot 9 is already erected, so that at least the primary transportation costs have already been paid.

"As £865 was fixed in May, 1944, as the value of Lot 117, the sale of Lot 9 at £850 would seem not to be an excessive value for the purposes of the Act. No question was raised as to the value of the building and other improvements upon the area, so that the appeal is effectively disposed of by the acceptance by the Court of the value of £850 as the value of the land alone.

"The values as accepted are: House and other improvements, £1,230; land, £850. (Total, £2,080).

"In the circumstances, the appeal is allowed and consent to the sale is given at £2,080.

No. 52.—H. to M.

Suburban Land—Locality evolving into Residential Area—Recent Sales of nearby Lots—Distinguishing Features—Basis for Fixation of Value.

Appeal from the determination of an Urban Land Sales Committee.

The totality of the evidence suggested, and this was confirmed by the inspection made by the members of the Court, that Stokes Valley, the locality in which the lands, which were the subject of the appeal, were situated, was evolving into a residential area.

The Court said: "For the sake of brevity, the Court summarizes its conclusions as follows:—

"1. With the exception of Lot 12, which is the best section in the appellant's subdivision, the other subdivisional areas owned by the appellant are not as valuable as the subdivisional areas owned or comparatively recently sold by Suburban Developments, Ltd. This by reason of the fact that the areas owned or recently sold by Suburban Developments, Ltd., are adjacent to the school and hall and are closer to the existing shopping facilities and to the settled area.

"2. The blocks of considerable area opposite the appellant's subdivision are not comparable because of narrow frontages and considerable depths. These blocks run into hills at the rear and the value of the rear areas is comparatively small.

"3. The sections on Glen Road and shown on Deposited Plans Nos. 10824 and 12210 are not, as was suggested by the Crown witness, better than the appellant's subdivisional sections. The sections on Tawai Road and Glen Road are mostly inferior to appellant's areas. They were, however, sold in 1943 at prices ranging from £110 to £180 each.

"These latter prices are in comparative accord with the prices paid for three sections higher up the valley where sales at £130 each were effected in 1943. These sections were and are inferior in contour to the appellant's sections and were—as they still are—in scrub and gorse. They are not, in consequence, as valuable as the appellant's sections.

"The sum of the foregoing sales goes far to establish that the sales, or many of the sales, made by Suburban Developments, Ltd., were not at excessive or improper prices. They also establish a basis for the fixation of a value for Lot 12. If that value is fixed at £175, that sum will serve to indicate the degree by which that lot exceeds in value any of the lots sold for less than £175, the sale prices of which have been made the subject of comparison.

"The remaining lots are as valuable as Lot 12 which, the Court is of opinion, is worth £15 more than any of the remaining lots. The basic value of Lot 12 is declared to be £175, and of the remaining lots—namely, Lots 3, 6, 15, 16, 17, 19, 23—is declared to be £160 each, and consent to the sale of these lots at those prices is given.

"The survey plan of Lot 52 appears not to have been deposited up to the present. On the application for consent to sale the area is given as slightly larger than Lot 12. One-third of it is said to be hilly. From the contour of the land, although Lot 52 could not be specifically identified, it does not appear that this lot could be worth as much as Lot 12. However, it may, and probably is, worth as much as any of the remaining lots. The basic value of this particular lot is therefore also fixed at £160, and consent to its sale at that price is given."

IN YOUR ARMCHAIR—AND MINE.

By SCRIBLEX.

An Early Magistrate.—In the early days of the Colony, one Poynter was Resident Magistrate at Nelson and had before him a case of trespassing cattle. When the prosecuting officer apologized for being short of witnesses, the Magistrate retorted, "Don't worry about that, I saw them." Coming down from the Bench, he entered the witness-box and said to the Clerk of the Court, "Swear me, Joe." The oath being duly administered by "Joe," his Worship thereupon gave evidence to the empty Bench, returned to his usual position and fined the owner of the animals. In addition to this habit of administering facile justice, he was known as the "split-the-difference Judge," and laboured under an obsession that if most claims were successful only to the extent of half the moneys claimed the parties concerned would be more than pleased. "A shell for you, and a shell for me, and an oyster is the lawyer's fee," he would remark pleasantly, thereby including counsel in the general discomfort which resulted from his decisions.

Contempt of Court.—Thin-skinned counsel are in the nature of rarities, but a specimen of this sensitive class was recently unearthed in the person of a Mr. Desai, of Bombay. It seems that one Parashuram Detaram Shamdasani had been unsuccessful as a plaintiff in the High Court and had been ordered to pay costs. After taxation he took out a summons to review, and, though a layman, appeared in person to support his objections. In answer to a statement by Mr. Desai who was opposing counsel, the appellant said: "I do not keep anything back at all. My fault is that I disclose everything, unlike members of the Bar, who are in the habit of not doing so, and misleading the Court." This caused protest, and the appellant immediately apologized expressing regret for having used an unfortunate expression during a heated argument. On the following day both the aggrieved counsel and the Advocate-General of Bombay appeared, and, in spite of the fact that the appellant again apologized and expressed regret, the Court was moved to punish him for a contempt in using the language which he did regarding the Bar. He was committed to prison for three months and ordered to pay a fine of Rs. 1,000. On the day after the order was made, the appellant applied to the Judge for a modification of the sentence, again expressing sincere and unreserved regret for having used the expressions which were held to be a contempt, and the sentence was then reduced to imprisonment for eight days, no alteration being made in the fine. Although the sentence was served, an appeal, after some difficulty, was made to the Privy Council and it was here said that it would have been more consonant with the dignity of the Bar to have ignored a foolish remark which had been made over and over again, not only by the ignorant, but by people who ought to know better, and no doubt, would continue to be made so long as there was a profession of advocacy. To treat such words as requiring the exercise by the Court of its summary powers of punishment was not only to make a mountain out of a mole-hill, but to give a wholly undeserved advertisement to what had far better have been treated as unworthy of answer or even notice. Lord Goddard, who delivered the judgment of the Board, said that an insult to counsel or to the opposing litigant was very different from an insult to the Court itself, or to members of a jury who formed part of the tribunal. In view of the fact that the Executive had thought it necessary not only to appear but to endeavour to uphold the order, even though the Chief Justice and another Judge emphatically considered that no contempt had been committed, the Privy Council allowed the appellant the costs of the appeal.

C. K. Allen, K.C.—No fewer than twenty-nine new King's Counsel have recently been called to the English Bar, and amongst them a number whose selection for silk appears to have been based on considerations other than their prominence as practising counsel. An outstanding example is Dr. C. K. Allen, renowned as an author and teacher of law. Few books are more timely or have created more discussion of late then his *Law and Orders*, an inquiry into the nature and scope of delegated legislation and executive powers in England. This is one of the subjects in which even the late Lord Hewart's *New Despotism* never grows old. Dr. Allen's book was written, he says, principally as a warning against the threat of tyranny which must follow if the functions of Parliament are reduced to a humiliating fiction and all power and government are placed in the hands of the Executive, elevated above any restraint of the law. That it is timely is plain when the current mass of departmental legislation is considered. The far-reaching powers of the Executive must, in some measure, be kept under control if the rule of law and the benefits of freedom are to assume their proper values in a peace-time world.

It is worthy of note that in the monumental tenth edition of *Salmond on Torts* that has just reached this Dominion, its editor, Dr. Stallybrass, dedicates the edition "In gratitude to my pupils who in two world wars offered their lives to preserve respect for the rights of others and freedom under the common law."

From My Note-book.—In a world full of selfishness, rivalry, and jealousy, it is essential that the great profession of the law should be dedicated to producing order out of disorder, to assuaging and adjudicating on problems which arise between human beings.—Lord Macmillan, proposing "The Health of the Legal Profession" at the Mansion House on July 5.

Nearly thirteen per cent. of the members of the new House of Commons in England belong to the legal profession. Sixty-seven members of the Bar and seventeen solicitors were returned. From the junior Bar comes Sir Frank Soskice who has been appointed Solicitor-General. For many years, he has had a large practice in the Commercial Court.

Mr. Justice Denning has decided, where a husband obtained a decree in divorce on a undefended petition alleging desertion that, as since the Law Reform (Married Women and Tortfeasors) Act, 1935, a wife might be held liable for costs without proof being given of her separate property, he should in his discretion allow costs against her. The case is *Tickle* v. *Tickle*, which in itself is enough to make you laugh.

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. Divorce.—*Custody of Children—Application made after Decree Absolute granted—Procedure—Matrimonial Causes Rules, 1943, R. 41.*

QUESTION: By a Decree Absolute made three years ago custody of three children was given to the mother (respondent). The father (petitioner) has remarried, and wishes to have the custody of one (a boy). What is the proper procedure: (i) An application for ancillary relief under the new rules; or (ii) a separate petition under the Divorce Act; or (iii) a summons under the Infants Act, 1908, and rules of 1912?

ANSWER: Section 38 (1) of the Divorce and Matrimonial Causes Act, 1928, provides that "In any proceedings for divorce the Court may from time to time either before or after the final decree make such provision as appears just with respect to the custody, &c., of the children of the marriage.

The application referred to in the question appears to come within the provisions of this section. Consequently, if an application is made under s. 38 (1), then Rule 41 of the Matrimonial Causes Rules, 1943, applies; and the application would be by way of an application for ancillary relief.

It is possible that an application could be made under the Infants Act, 1908, but s. 38 (1) referred to contains, it is thought, sufficient authority for such an application. E.2.

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2. Land Transfer.—*Fencing Covenant—Registration of new Fencing Covenants against Land Transfer Titles.*

QUESTION: A. and B. own adjoining tenements under the Land Transfer Act. They desire to register an agreement under s. 22 of the Fencing Act, 1908. (1) Can this be done? (2) If so, what form should such agreement take? I can find no form prescribed either in the Fencing or the Land Transfer Acts.

ANSWER: (1) Yes; such an agreement can be registered: the Fencing Act, 1908, s. 7.

(2) As no form has been prescribed by the Legislature, the utmost latitude is permissible. It is considered, however, that preferably it should be in the form of a deed and attested in accordance with s. 26 of the Property Law Act, 1908; it should be typed on the best hand-made paper and of demy size to comply with the Land Transfer Regulations. Probably as a matter of convenience (if so desired) (on the analogy of leases) the District Land Registrar would permit of registration in triplicate. X.2.

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3. Mortgage.—*Land held as Tenants in Common—Mortgagee Exercising Power of Sale through Registrar of Supreme Court—Purchase at Sale by One of the Two Mortgagors..*

QUESTION: A. and B. (tenants in common) mortgaged to C., who now proposes to exercise power of sale through the Registrar of the Supreme Court. A. has announced his intention of bidding at the sale and becoming the purchaser. Is this permissible; and, if so, who should execute the necessary transfer to A., the Registrar or C.?

ANSWER: There appears to be nothing to prevent A. from being the purchaser at the Registrar's sale; but if the land is also subject to mortgages which rank in priority after C.'s mortgage, then A.'s purchase will not defeat such puisne mortgages: *Otter* v. *Vaux*, (1856) 6 De. G. Mc. & G. 638, 43 E.R. 1381, *Edwards* v. *McDowell*, 50 N.S.W. W.N. 244, and *Ball on Mortgages*, 234.

C. should execute the transfer. The Registrar executes only when the mortgagee is the purchaser: *Garrow's Real Property in New Zealand*, 3rd Ed. 480. X

RULES AND REGULATIONS.

Rehabilitation (Plumbers) Regulations, 1945. (Rehabilitation Act, 1945.) No. 1945/120.

Patents Amendment Regulations, 1945. (Patents, Designs, and Trade-marks Act, 1921–22.) No. 1945/121.

Pharmacy Regulations, 1944, Amendment No. 1. (Pharmacy Act, 1939.) No. 1945/122.

Revocation of Emergency Reserve Corps Orders. (Emergency Reserve Corps Regulations, 1941.) No. 1945/123.

Electrical Supply Regulations, 1935, Amendment No. 6. (Public Works Act, 1928.) No. 1945/124.

Agricultural Workers Wage-fixation Order, 1945. (Agricultural Workers Act, 1936, and the Marketing Act, 1936.) No. 1945/125.

Revocation of certain Transport Legislation Suspension Orders. (Transport Legislation Emergency Regulations, 1940.) No. 1945/126.

Emergency Regulations Revocation Order, 1945. (Emergency Regulations Act, 1939.) No. 1945/127.

Dependency Emergency Regulations, (No. 2), Amendment No. 6. (Cook Islands Act, 1915, the Samoa Act, 1921, and the Emergency Regulations Act, 1939.) No. 1945/128.

Revocation of the Customs Import Prohibition Order, 1940. No. 3. Customs Act, 1913, No. 1945/129.

Noxious Weeds Act Extension Order, 1945. (Noxious Weeds Act, 1928.) No. 1945/130.

Fresh-water Fisheries (Southern Lakes) Regulations, 1945. (Fisheries Act, 1908.) No. 1945/131.

Sale of Food and Drugs Amending Regulations, 1945, No. 3. (Sale of Food and Drugs Act, 1908.) No. 1945/132.

Revocation of the Paper (Newsprint) Control Notice, 1941. (Supply Control Emergency Regulations, 1939.) No. 1945/133

Grocery Trade Labour Legislation Suspension Order, 1942, Amendment No. 1. (Labour Legislation Emergency Regulations, 1940.) No. 1945/134.

Revocation of the Gas-producer Manufacture Control Notice, 1940. (Supply Control Emergency Regulations, 1939.) No. 1945/135.

Trout-fishing (South Canterbury) Regulations, 1936, Amendment No. 5. (Fisheries Act, 1908.) No. 1945/136.

Rotorua Trout-fishing Regulations, 1939, Amendment No. 3. (Fisheries Act, 1908.) No. 1945/137.

Taupo Trout-fishing Regulations, 1939, Amendment No. 2. (Fisheries Act, 1908, and the Native Land Amendment and Native Land Claims Adjustment Act, 1926.) No. 1945/138.

Agricultural Workers Extension Order, 1940, Amendment No. 3. (Agricultural Workers Act, 1936.) No. 1945/139.

Purchase of Wool Emergency Regulations, 1939, Amendment. No. 6. (Emergency Regulations Act, 1939.) No. 1945/140.

Milk Delivery Emergency Regulations, 1945. (Emergency Regulations Act, 1939.) No. 1945/141.

Education (Free Place) Regulations, 1945. (Education Act, 1914.) No. 1945/142.

Education (Post-primary Instruction) Regulations, 1945. (Education Act, 1914.) No. 1945/143.