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DEATH DUTIES: PROTECTION OF INSURANCE POLICIES.

II.—PRINCIPLES APPLIED TO NEW ZEALAND CONDITIONS.

IN the earlier part of this article, we considered the two important judgments, *Barclays Bank* v. *Attorney-General*, [1944] 2 All E.R. 208, in the House of Lords; and *Hamilton's Trustees* v. *Lord Advocate*, [1942] S.C. 426, in the Second Division of the Court of Session.

Before applying the principles enunciated in those two cases, it is well to have before us the relevant provisions of our Death Duties Act, 1921. These all appear in s. 5 (1), and are contained in the following paragraphs of that subsection:—

> (*f*) Any money payable under a policy of assurance effected by the deceased on his life, whether before or after the commencement of this Act, where the policy is wholly kept up by him for the benefit of a beneficiary (whether nominee or assignee), or a part of that money in proportion to the premiums paid by him where the policy is partially kept up by him for such benefit, if (in either case) the money so payable is property situated in New Zealand at the death of the deceased:
>
> (*g*) Any annuity or other interest purchased or provided by the deceased, whether before or after the commencement of this Act, either by himself alone or in concert or by arrangement with any other person, to the extent of the beneficial interest accruing or arising by survivorship or otherwise on the death of the deceased, if that annuity or other interest is property situated in New Zealand at the death of the deceased:
>
> (*j*) Any property comprised in any settlement, trust, or other disposition of property made by the deceased, whether before or after the commencement of this Act, and situated in New Zealand at the death of the deceased,—
>
> (i) By which an interest in that property, or in the proceeds of the sale thereof, is reserved either expressly or by implication to the deceased for his life or for the life of any other person, or for any period determined by reference to the death of the deceased or of any other person; or
>
> (ii) Which is accompanied by the reservation or assurance of, or a contract for, any benefit to the deceased for the term of his life or of the life of any other person, or for any period determined by reference to the death of the deceased or of any other person; or
>
> (iii) By which the deceased has reserved to himself the right, by the exercise of any power, to restore to himself or to reclaim that property or the proceeds of the sale thereof.

To summarize the above judgments: In the *Barclays Bank* case, their Lordships held that, even if at the date of the gift of his life-insurance policy the donor-holder sets up a trust fund for payment of future premiums, the proceeds of the policy are not liable to death duty on his death; and this is the law, notwithstanding that the deceased had subtracted from his means by providing the trust fund to keep the policy in force until his death. In such a case, if the taxpayer died within three years of making his gift, in New Zealand the surrender value of the policy would be added to the amount or value of the fund provided by him to keep the policy on foot; but no taxpayer is likely to cavil at the gift duty that would become payable in that event.

The Scots case, *Hamilton's Trustees* v. *Lord Advocate*, seems to carry the matter a little further, because it determines that, even if after the gift the premiums are paid by the donee *with moneys lent by the donor*, death duty on the proceeds of the policy on the donor's death are avoided. But, to bring off any safe application of that principle, the practitioner must act with some wariness. In the Scots case, there was a provision in the trust instrument that the trustees could borrow from the settlor the money to pay the premiums; and, accordingly, there was no difficulty in proving that there was a valid contract of loan. The onus of proof that the moneys used to pay premiums on a policy, after the gift or settlement of that policy were lent, would, it seems, be on the taxpayer; and not on the Commissioner of Stamp Duties, to prove the contrary. If this were not so, s. 5 (1) (*f*) of the Death Duties Act, 1921, would have little usefulness to the seekers of revenue. That paragraph of s. 5 (1) is unlike s. 5 (1) (*g*), because liability under it arises from the fact of the policy having been kept up by the deceased, or from the fact of some of the premiums having been paid by him; and *it is independent of the existence of any obligation upon him to do so*, or of any arrangement between him and any other person in relation thereto: see, hereon, *Adams's Law of Death and Gift Duties in New Zealand, Supplement No. 2*, 24, citing *Attorney-General* v. *Robinson*, [1902] 2 I.R. 67. Therefore, if the practitioner advises his client that he can safely lend the money necessary to pay the premiums, he should be careful that some written contract of loan should, at least, be prepared and executed. Preferably, as in the *Hamilton's Trustees* case, it should be incorporated in the trust instrument itself.

Coming back to our typical case of the businessman who makes a gift *inter vivos*, or a settlement, of his life-insurance policy: If the beneficiaries' interests

in the policy are not indefeasibly vested during his lifetime, but become indefeasibly vested at his death, then, no matter who pays the premiums after the date of the gift or settlement, the full proceeds of the policy are liable to death duties on the death of the insured. This is a point to which particular attention should be given by practitioners, when drawing settlements affecting any description of property, including life-insurance policies. The highest Courts have interpreted provisions in the death-duties statutes in Great Britain which correspond with s. 5 (1) (*g*) of the Death Duties Act, 1921, in a manner, which, in contradiction of the effect sought, renders liable to death duty most of the forms of settlements set out in the precedent books. The matter may be thus summarized: care must be taken to ensure that the interests of *all* the beneficiaries are *indefeasibly vested before the insured policyholder dies*; and this implies care to see that the insured has released any special power of appointment that he might have reserved by his will or settlement, or by a power of revocation or variation.

Again reverting to our typical case: If, by any gift or settlement, any life interest in the proceeds of the insurance policy is created, and the life-tenant survives the settlor, then the present value of the life interests at the death of the insured will be liable to death duty: *Barclays Bank* v. *Attorney-General* (*supra*). To this extent, s. 5 (1) (*g*) of the Death Duties Act, 1921, applies. Care must be taken, therefore, to ensure that the interests in remainder are indefeasibly vested before the death of the insured, because, in such case, the policy-moneys will be wholly exempt from death duties. For an example of a life interest being caught by s. 5 (1) (*g*), see *Public Trustee* v. *Commissioner of Stamp Duties*, (1912) 31 N.Z.L.R. 1116.

There is one further river to cross, when discussing the typical example of a businessman with a life-insurance policy, which he gives away or settles in his lifetime. Assuming that all interests have indefeasibly vested, and there are no life interests: if he dies within three years of making the gift or settlement, what death duty is payable? Lord Macmillan, in *Lord Advocate* v. *Inzievar Estates Ltd.*, [1938] 2 All E.R. 424, 429, supplies the answer:

> The assured may pay no further premiums in respect of the policy after its transfer. In that case the section has no application. The policy has ceased on transfer to be an asset of the deceased's estate. The only claim which the Crown could have to estate duty on the death of the assured would be where the transfer had been to a gratuitous donee within three years of the assured's death—that claim would be under quite a different head.

If then, during the period before the death but after the gift, no premium was paid by the donor, the proceeds of the policy escape duty; but the value of gift, to be taken into account at the death of the donor within three years of making the gift, is the surrender value *as at the date of the gift*: see ss. 5 (1) (*b*) and 6 (2) of the Death Duties Act, 1921. As we have reminded our readers, the surrender value is less than the real value.

We shall now consider, in the light of the principles that we have explained and applied, children's endowment policies which many parents take out and on which they pay the premiums.

As previously explained, s. 5 (1) (*g*) does not apply—except with regard to life interests—to life-insurance policies if the interests of the beneficiaries are indefeasibly vested before the death of the insured. It is unusual to create life interests in endowment policies, and the interest of any one who has the beneficial ownership thereof is usually indefeasibly vested.

Section 5 (1) (*f*) of the Death Duties Act, 1921, applies only to a policy effected by a deceased person *on his own life*. Now, children's endowment policies are not effected by a parent (or other contracting party) on his own life; and, therefore, they cannot be caught by s. 5 (1) (*f*). For the purpose of considering their liability to duty, they fall into two classes: Some are beneficially owned at the date of a parent's death by the parent effecting the contract of insurance. Others are beneficially owned by the child nominated. The former class will be liable to death duty at the death of the parent. What the measure of value of the policy will be in that case, we cannot say or give any authority in support of any submission. But, on principle, it would seem that the value would be the *then* surrender value. The policy, in terms, may provide for a refund of the premiums paid by the parent to his personal representatives: in such case, the amount of the premiums to be refunded would probably be taken as the value of the policy to the deceased, and be dutiable accordingly under s. 5 (1) (*a*).

Children's endowment policies are not a subject for any generalization, as they take so many diverse forms. Each individual policy must be carefully examined in order to ascertain the respective rights and liabilities of the several parties named therein: a matter that is not often attended to when the policy is taken out. If it is clear from the terms of the policy that the beneficial ownership is in the child nominated, then nothing in respect of such a policy is the concern of the revenue authorities in relation to the estate of the parent when deceased; unless, of course, a gift of the policy was made to the child within three years of the parent's death, in which case the surrender value at the date of the gift would be dutiable; though, in most cases, such a policy would have little or no surrender value.

The mere payment of premiums by the parent during his lifetime to keep on foot a child's endowment policy is not the subject of accounting in death-duty statements, because it has been held that, by reason of the relationship between the parties, any such payment is in the nature of an *advancement* to the child nominee, the parent not being entitled to a lien: *In re Roberts, Public Trustee* v. *Roberts*, (1945) 61 T.L.R. 572.

In that case, a father took out an insurance policy on his son's life and paid the premiums until he, the father, died, after which his executors paid three further premiums, and the son then died. The policy provided that on the son's death the insurance money should be paid to the father, his executors, administrators or assigns "but always as trustee or trustees for the life assured." It was held that the policy-moneys, less the last three premiums, formed part of the son's estate. Here, the amount of three years' premiums paid by a parent before his death on a policy taken out by him for a child nominee, in the absence of any special provisions, could be brought in by the Commissioner of Stamp Duties under s. 5 (1) (*b*) as a gift made by the deceased within three years of his death; but it is possible that even these premiums might be exempted by the Commissioner in a proper case under s. 44 (1) (*a*) of the Death Duties Act, 1921.

We must not conclude, however, without repeating a warning that the majority of children's endowment policies effected at the present time are in such a form that the beneficial ownership is in the contracting parent, and not in that of the child nominee. To escape death duty, the parent who has these policies should validly assign them or make an effective declaration of trust in respect of them. The two classes of policies are clearly defined in the unreported judgment of Blair, J., *In re Wilson; Alexander* v. *Wilson*, which is reproduced in *Adams's Law of Death and Gift Duties in New Zealand, Supplement No. 2*, 121. In that case, the deceased had taken out three endowment policies on the lives of his children. It was held, in the case of one of the policies, that, at the time when it was taken out, the deceased parent had effectively declared a trust of the policy in favour of the child nominee. It was also held, following *In re Engelbach's Estate, Tibbetts* v. *Engelbach*, [1924] 2 Ch. 348, that the other two policies had remained in the beneficial ownership of the deceased parent. Generally, as to the beneficial ownership of children's endowment policies, see *Adams's Law of Death and Gift Duties in New Zealand*, 55, and *Supplement No. 2*, 26, 27; and also the articles in this JOURNAL, (1944) Vol. 18, 126, and (1945) Vol. 21, 35.

To make this article complete, we repeat the warning given in last year's JOURNAL, p. 214, regarding socalled "Probate Policies." This was as follows:

> Many testators take out life policies expressly for the purpose of paying death duties. Such policies are often referred to as "Probate Policies," and some contain a provision that payment will be made to the Stamp Duties Department on proof of death and without production of probate.
>
> There is a trap here into which testators can easily fall. Suppose the will to contain a number of specific and general devises and bequests and a gift of residue, and no direction as to payment of duties, and the testator later takes out a "Probate Policy" without altering his will. There is little doubt that the testator would die under the impression that the policy-moneys would constitute not only the immediate but the ultimate fund from which payment of duties was to come. The residuary legatee could, however, contend that s. 31 of the Death Duties Act, 1921, applied, and insist on each beneficiary bearing his share of estate duty and the succession duty on his succession. There would seem to be no answer to this contention, and the result would be the same if the will were made after the policy was taken out.

It is not our intention to enter into the intricacies of company law in regard to the subject-matter of this article. But various means of effecting policies on the lives of managers and directors of companies, in whose lives there would be an insurable interest, may suggest themselves to our readers, with payment of premiums out of profits. With the principles of *Barclays Bank* v. *Attorney-General* (*supra*) and *Hamilton's Trustees* v. *Lord Advocate* (*supra*), before them, and with the examples already given of the application of the several paragraphs of s. 5 (1) of the Death Duties Act, 1921, in mind, they can for themselves discover means of forcing the revenue authorities away from their statutory anchorages; and so, to apply Lord Mackay's words, find a spot where the flukes of their anchor cannot hold.

SUMMARY OF RECENT JUDGMENTS.

HARDWICK v. LINCOLN.

SUPREME COURT. Auckland. 1946. March 20, 21, 22, 25, 26; April 12. FAIR, J.

Building Contract—Damages—Employer, with Full Knowledge of Terms of Contract, of Defects in House built by Builder on his Land, and, after Several Inspections, taking possession of House—Action of Employer against Builder Claiming damages based on Replacement Value of a Large Number of Items—Whether Damages limited to Replacement Value—Whether Damages assessable on Difference in Value between Work required by Contract to be done and Work actually done.

The defendant, a builder, contracted with the plaintiff, an owner of land, to build a house for him thereon. The plaintiff, after complaining of various defects and disconformities in the building, after several inspections, and after allowing the defendant to make certain alterations that he required, paid the contractor and went into possession, but still dissatisfied with many matters. Nine months later he issued a writ against the defendant alleging numerous breaches of contract and claiming damages based upon what it would cost him to make good the defective workmanship, and to replace the defective material in order to make it correspond with that specified in the contract.

The main question at issue (and the only one upon which this case is reported) was whether this was the correct basis for the assessment of damages.

Held, 1. That the conduct of the plaintiff in taking possession of the house with full knowledge of the terms of the specifications, and the plans, and the condition of the floors and walls and other items, and thereafter allowing the defendant to make certain alterations that he required, made it inequitable of him to require that he should be awarded as damages the amount that it would cost to remove the whole of the work that was not in accordance with the contract and replace it by material and work in accordance with it.

Forrest v. *Scottish County Investment Co., Ltd.*, [1915] S.C. (Ct. Sess.) 115, applied.

H. Dakin and Co., Ltd. v. *Lee*, [1916] 1 K.B. 566, *Thornton* v. *Place*, (1832) 1 M. & Rob. 218; 174 E.R. 74, distinguished.

Pearson-Burleigh Ltd. v. *Pioneer Grain Co.*, [1933] 1 D.L.R. 714, referred to.

2. That the plaintiff was entitled to replacement value only, where that was necessary to give the plaintiff substantially what he contemplated; and that for other deficiencies he must accept as compensation the difference in value between the work required to be done and what was actually done.

Counsel: *Weir*, for the plaintiff; *Urquhart*, for the defendant.

Solicitors: *Buddle, Richmond, and Buddle*, Auckland, for the plaintiff; *R. Urquhart*, Auckland, for the defendant.

DIXON v. DIXON.

SUPREME COURT. Wellington. 1946. May 10. MYERS, C.J.

Divorce and Matrimonial Causes—Practice—Petition—Place of Filing—Change of Venue—Matrimonial Causes Rules, 1943, RR. 33, 74—Code of Civil Procedure, R. 4, 604.

Rule 4 of the Code of Civil Procedure does not apply to proceedings in divorce.

A divorce petition may be filed and heard in any Registry of the Supreme Court, irrespective of the place of residence of the petitioner and of that of the respondent.

Rule 604 of the Code of Civil Procedure does not apply to such a case. The respondent may, however, under R. 33 of the Divorce and Matrimonial Causes Rules, 1943, apply for a change of venue, not as of right, but upon the merits.

Hedlund v. *Hedlund*, (1914) 33 N.Z.L.R. 1493, followed.

Huxtable v. *Huxtable*, [1943] N.Z.L.R. 466, dissented from.

Counsel: *Hanna*, for the respondent in support of application for change of venue; *R. Stacey*, for the petitioner, to oppose.

Solicitors: *Duncan and Hanna*, Wellington, for the respondent; *W. J. and R. Stacey*, Wellington, for the petitioner.

REFRESHER COURSE.—I.

COMPANY LAW.

Changes since 1939

By E. C. Adams, LL.M.

The most important changes in company law since the beginning of the War have been made by regulations, and the most important is made by the Finance Emergency Regulations, 1940 (No. 2) (Serial No. 1940/118), which was necessary to control the issue of capital.

Restrictions on Formation.

Under these regulations the consent of the Minister of Finance was necessary for :—

(*a*) The registration of every new company.
(*b*) The commencing of business in New Zealand of any company incorporated outside of New Zealand.
(*c*) The increase of the nominal capital of a company, or the making of a call.
(*d*) The giving of a legal or equitable mortgage or charge by a company, except an advance made by a bank in good faith, if repayable on demand.
(*e*) The increasing of any amount secured by such mortage or charge covered by (*d*) above.
(*f*) The issue of any prospectus or other document offering for subscription or publicly offering for sale any securities.*

If a company does anything in contravention of these regulations, the security is not invalid, but those concerned commit an offence against the regulations, and are liable to be prosecuted accordingly.

These regulations have now been modified as follows, for it is no longer necessary to keep the same stringent control over every issue of capital.

By the Finance Emergency Regulations, 1940, Amendment No. 4 (Serial No. 1946/80) made on May 22, 1946, the restrictions imposed by the principal regulations do not apply to :—

(*a*) The registration under the Companies Act, 1933, of any company with a nominal capital not exceeding £10,000.
(*b*) Any increase of the nominal capital of a company where the amount of that increase, together with the amount of all other increases of the nominal capital of the company made within one year before that increase, does not exceed £10,000.
(*c*) Any call made by a company upon its shares where the amount of that call, together with the amount of all other calls made by the company upon its shares within one year before that call and the amount of all issues of capital, as defined in Reg. 12 (3) of the principal regulations made by the company in New Zealand within one year before that call, does not exceed £10,000.
(*d*) Any issue of capital (which includes the giving of a mortgage or charge, legal or equitable) or public offer of securities for sale made by a company where the amount of the issue of capital made or offered to be made, together with the amount of all other issues of capital made in New Zealand by the company within one year before that issue or offer and the amount of all calls made by the company upon its shares within one year before that issue or offer, does not exceed £10,000.

It will thus be seen that right throughout these amending regulations there runs an exemption up to £10 000 for any one year.

The consent of the Minister should be applied for through the local Assistant Registrar of Companies. In this connection the reader is referred to *Supplement No. 3* to *Morison's Company Law in New Zealand*, pp. 94 *et seq.*

The Debtors Emergency Regulations, 1940 (Serial No. 1940/162) and the Mortgages Extension Emergency Regulations, 1940 (Serial No. 1940/163), also affect companies, and I shall discuss these at further length in my notes on changes in Real Property Law. In connection with these two regulations, *Morison*, at p. 94, says :—

> These regulations, which supersede the Courts Emergency Regulations, 1939, affect the rights of creditors to institute and proceed with winding-up proceedings, of debenture-holders to appoint a receiver, and of mortgagees and debenture-holders to exercise rights and powers under mortages and debentures.†

Annual Lists and Summaries.

Coming to the statutes affecting companies the most important appears to be s. 12 of the Statutes Amendment Act, 1945, based on a recommendation made by an English committee which was set up by the Government of Great Britain, in 1943, to report on company law reform. Although it is still necessary for each company to file an annual return each year, a complete list of all the members is necessary only once every three years. For the other two years a list of the alterations from the previous year will suffice, particulars of the various transfers registered being necessary.

The Emergency Regulations Revocation Order (No. 2) (Serial No. 1945/181), repealed the Companies Emergency Regulations, 1942, Amendment No. 1 (Serial No. 1942/299), a war-time measure, which contained provisions dispensing with a full list of the members and certain other particulars required by ss. 117-119 of the Companies Act, 1933.

Section 6 of the Statutes Amendment Act, 1939, contains an important amendment of the Chattels Transfer Act, 1924, which incidentally affects mortgages given by companies. For the purposes of the Chattels Transfer Act, 1924, book debts are deemed to be chattels, and are deemed to be situate in the place where the grantor of the instrument comprising them longest resided or carried on business during the period of six months next before the execution of the instrument. The effect of this is that mortgages of book debts by companies must now be registered in the office of the Assistant-Registrar of Companies.

* For the purposes of the regulations, "Security" includes shares, stock, bonds, debentures, debenture stock, and Treasury bills, but does not include bills of exchange or promissory notes.

† The regulations are fully discussed and annotated in *Kavanagh's Debts and Mortgages Emergency Legislation.*

Section 6 of the Statutes Amendment Act, 1941, contains machinery provisions which will be found very convenient in practice and will facilitate, and cheapen the cost of, administration of small estates. This section enables a company to register the beneficiary, or the legal personal representative, of a deceased shareholder or debenture holder, as the owner without requiring probate or letters of administration to be taken out, provided that the amount paid up on the shares or owing under the debentures does not exceed £100. Before any company can act under this section the directors must pass a resolution to that effect; and notice of the exercise of the powers conferred by the section shall within fourteen days thereafter be given by the company to the Commissioner of Stamp Duties.

Many cases have been decided on company law since the War. It is impracticable to mention the majority of them here: most of them deal with machinery or matters of procedure. I shall mention only those which appear to affect general principles of company law.

Duties of Directors.

In an income-tax case, on appeal from Canada, the Privy Council applied a very elementary but fundamental principle of company law—*viz.*, that each company is a separate legal or juristic entity: *Pioneer Laundry and Dry Cleaners, Ltd.* v. *Minister of National Revenue*, [1940] A.C. 127, [1939] 4 All E.R. 254. Thus a company formed for the purposes of taking over the assets of a company in liquidation has a separate entity from that of the company in liquidation, although the shareholders in both companies may be identical.

Regal (Hastings), Ltd. v. *Gulliver*, [1942] 1 All E.R. 378, emphasizes in a most salutary way the serious responsibilities of directors to the shareholders. The duties of directors are of a fiduciary nature like those of trustees to their beneficiaries, and they must not make a profit by reason of their position. The principle of *Keech* v. *Sandford*, (1726) Sel. Cas. Ch. 61, 25 E.R. 223, applies. *Regal (Hastings), Ltd.* v. *Gulliver (supra)*, deals with general principles, but the practitioner will find the recent New Zealand case of *In re Hamiltons (Australia and New Zealand), Ltd. (In Liquidation)*, [1946] G.L.R. 82, (which follows, *inter alia*, *Regal (Hastings), Ltd.* v. *Gulliver*), most useful as containing a detailed analysis and enumeration of what acts or omissions can and cannot be brought home to a director—what, in short, does or does not constitute misfeasance by a director.

The duties of receivers on the realization of assets are set out in *Nelson Bros., Ltd.* v. *Nagle*, [1940] G.L.R. 507. The duty of a receiver is to exercise due care, skill, diligence, and judgment in the sale of the assets: if he negligently or unnecessarily sacrifices the assets, he will be liable to damages; what is a reasonable degree of skill, care, or diligence is a question of *fact* depending upon the circumstances of the case. In any claim against a receiver for damages, the question is whether he was guilty of *negligence* in not getting a better price and in not using the ordinary care to do so. A receiver's failure to furnish to the company adequate accounts and particulars of sale may be a reason for mulcting him in costs.

Whether a receiver appointed by a debenture-holder is the agent of the company or of the debenture-holder depends upon the terms of his appointment as incorporated in the debenture: *Central London Electricity, Ltd.* v. *Berners*, [1945] 1 All E.R. 160.

As to the appointment of receivers, see article by Mr. H. E. Anderson, in (1941) 17 N.Z.L.J., p. 184.

Memorandum.

The memorandum of association is the *charter* of a company, "a peculiarly sacred document in the constitution of a company": *Best* v. *Newton King, Ltd.*, [1942] N.Z.L.R. 360. The Court has no general equitable jurisdiction to alter the terms of the memorandum on the ground of *mistake*: it can be altered only in manner prescribed by the Act—*i.e.*, every proposed alteration must be sanctioned by the Court: *Scott* v. *Frank F. Scott (London), Ltd.*, [1940] Ch. 794, [1940] 3 All E.R. 508; *In re Whakamaru Timber Co., Ltd. (in Liquidation), Williams* v. *Hull*, [1944] N.Z.L.R. 1. Nevertheless the articles may be read to explain any ambiguity in the memorandum or to supplement it upon any matter in which it is silent: *Best* v. *Newton King, Ltd. (supra)*.

Articles.

The House of Lords case, *Southern Foundries (1926), Ltd., and Federated Foundries, Ltd.* v. *Shirlaw*, [1940] A.C. 701, [1940] 2 All E.R. 445, 56 T.L.R. 637, lays down a most important principle as to a company's rights to alter its articles. An alteration in the articles which, if acted on, would cause a breach of contract between the company and a person (other than in respect of the rights of members as such) is not invalid, as it was at once thought, nor can an injunction be granted to prevent the company from adopting the new articles. But if the company or some other person acts on the altered articles, and so causes a breach of an antecedent contract between the company and a third person, the company is liable to an action for damages at the suit of the person aggrieved. The cause of action does not arise on the alteration of the articles; the right does not accrue until in fact there has been a breach of contract by the company.

Reduction of Capital.

The most important case decided by the New Zealand Courts during the war period on company law, is, I think, *In re Taupo Totara Timber Co., Ltd.*, [1943] N.Z.L.R. 557, dealing with *reduction of capital*. As we all know, a resolution to reduce capital must be confirmed by the Supreme Court. The Act gives a wide *discretion* to the Supreme Court; but there is a right of appeal to the Court of Appeal, which will not lightly interfere with a refusal of the Supreme Court to confirm, but it will reverse that Court, if the Judge of first instance has applied a wrong principle, or has failed to take relevant factors into consideration. In this case the Supreme Court refused to confirm the proposed alteration, but it was overruled by the Court of Appeal. Nevertheless it is considered that only in very rare cases will the Court of Appeal do this. Another remarkable feature of this case is that the Court of Appeal refused leave to appeal to the Privy Council: [1943] N.Z.L.R. 672.

The objector to the proposed reduction was not a creditor of the company, but another timber company, which complained that damage might be caused to its forests by the operations of the Taupo Totara Timber Co., Ltd., and that, if the latter reduced its capital, it would be less able to make adequate com-

pensation for the damage. The Court of Appeal pointed out that s. 69 of the Companies Act, 1933, made provision for the ascertainment of creditors and for their claims being paid or secured, but that there was no provision for the investigation of merely possible claims against the company by reason of future tortious actions. Normally therefore, if existing creditors consent or their debts have been secured, or if there are no creditors, the reduction should be sanctioned, unless it appears that it should be refused out of regard for those who may be induced to take shares in the company, or because the Court does not consider that the reduction is fair and equitable as between different classes of shareholders. Nevertheless as the discretion conferred by s. 69 is a wide one, it may be that in a proper case, although it may be rare, the Court will exercise its discretion *out of regard for the public interest* in respect of future creditors and, in particular, to prevent a proposed reduction of the capital which in the circumstances manifests a dishonest or perhaps even an unfair disregard of the interests of persons in imminent danger of suffering loss thereby, although the tort, which they have every reason to fear, may not yet have been committed. In the opinion of the Court of Appeal, however, this was not such an exceptional case.

GENERAL.

A case which may in future be used against the dishonest or over-acquisitive company promoter or vendor of property to a newly-created company, is *Osborne* v. *Steel Barrel Co., Ltd.*, [1942] 1 All E.R. 634. At. p. 638, Lord Greene, M.R., laid down this salutary principle—

> A company cannot issue £1,000 nominal worth of shares for stock of the market value of £500, since shares cannot be issued at a discount. Accordingly, when fully-paid shares are properly issued for a consideration other than cash, the consideration moving from the company must be at the least equal in value to the par value of the shares *and must be based on an honest estimate by the directors of the value of the assets acquired.*

This, read in conjunction with *Regal (Hastings), Ltd.* v. *Gulliver* (*supra*), which emphasizes the *fiduciary* nature of directors' duties, shows that during the War company jurisprudence has advanced along ethical lines, " a consummation devoutly to be wished." And although there is nothing to prevent a company from issuing new shares at par, when they are worth more than par by being saleable at a premium in the market, the directors may be answerable to the shareholders for wasting the assets of the company: see speech of Lord Wright in *Lowry (Inspector of Taxes)* v. *Consolidate African Selection Trust, Ltd.*, [1940] A.C. 648, [1940] 2 All E.R. 545, 56 T.L.R. 735. His Honour Mr. Justice Northcroft, proceeded along similar lines in *In re Avon Motors, Ltd. (in Liquidation)*, [1941] N.Z.L.R. 470. His Honour laid it down that a person who has either taken advantage of his position as a director of a company, in order to prefer his own interests to those of the members and creditors, or, who has been shown to be an irresponsible optimist prepared to take risks with other people's money in order to make a profit for himself, or, who has made under s. 226 a false declaration as to solvency knowing it to be false, is a person by whom fraud has been committed in accordance with s. 216 (1) of the Companies Act, 1933. (Section 216 is the section, first appearing in the 1933 Act, which empowers the Supreme Court on the application of the Official Assignee to prohibit a director from accepting other directorships for a period not exceeding five years). In the course of his judgment His Honour said:

> The machinery of the Companies Act may be used by unscrupulous persons as a vehicle of fraud. Instances where juggling of companies and their assets by such persons have caused loss to unsophisticated investors have, no doubt, provoked the enactment now before me.

In a later case on the same section the same learned Judge held that fraud for the purposes of that section, is that which connotes actual dishonesty, involving, according to current notions of fair trading among commercial men, real moral blame. In this case a solicitor director was disqualified from being a director for a period of four years, because on the evidence the Court held that in a prospectus prepared by him there had been misleading statements and omissions, which had not been accidental, but of purpose. Another director who had not compiled the prospectus, but had adoped it and was a party to its issue, was disqualified for two years: *In re Brighton Coal-mines, Ltd. (in Liquidation)*, [1944] N.Z.L.R. 275.

DOMINION LEGAL CONFERENCE, 1947.

Wellington District Law Society as Hosts.

In a circular to all legal practitioners, the Council of the Wellington District Law Society has invited all members of District Law Societies to the Dominion Legal Conference, to be held in Wellington on April 4, 5 and 6, 1947, being the Wednesday, Thursday and Friday after Easter next.

In order to facilitate the preparation of the timetable in detail, District Societies and members of the Profession wishing to submit remits for consideration, or make any suggestions as to papers to be read, should communicate as soon as possible with the Secretaries of their local Societies, who are asked to forward at an early date all such remits and suggestions. It is suggested that as far as possible all remits and suggestions for papers be in the hands of the Wellington District Law Society by September 30, 1946, when the necessary selection will be made by the Conference Committee.

Owing to present conditions it is certain that there will be considerable pressure on all available accommodation. The Hotels are holding at the disposal of the Society until the end of July a limited number of rooms, and it will be therefore necessary for practitioners to reply at the latest by July 20, if they desire accommodation arranged for them. If accompanied by lady relatives, they should also state whether they desire accommodation arranged.

CRIMINAL LAW: MENS REA.

And the Burden of Proof.

By I. D. CAMPBELL, LL.M.

Criminal offences may include *mens rea* as an essential ingredient, or may be offences of absolute liability, involving only an *actus reus*. There is no intermediate class. But the offences in which *mens rea* is an ingredient may be divided into two classes according to the method by which *mens rea* (or the absence of *mens rea*) is to be established. This results in the threefold classification of offences given in *R.* v. *Ewart*, (1905) 25 N.Z.L.R. 709, in the judgment of Edwards, J. (one of the majority in the Court of Appeal). He classified statutory offences as follows :—

(1) Those in which, following the common-law rule, a guilty mind must either be necessarily inferred from the nature of the act done, or must be established by independent evidence.

(2) Those in which, either from the language, or the scope and object of the enactment it is plain that the Legislature intended to prohibit the act absolutely, and the question of the existence of a guilty mind is relevant only for the purpose of determining the quantum of punishment.

(3) Those in which, from the omission of such words as "knowingly" or "wilfully," it is not necessary to aver in the indictment that the offence was "knowingly" or "wilfully" committed or to prove a guilty mind, and the commission of the act in itself *prima facie* imports an offence, but in which, nevertheless, the person charged may discharge himself by proving to the satisfaction of the tribunal which tries him that in fact he had not a guilty mind.

This classification is still valid, but it now requires to be expressed in different terms. The description of Class 2 (absolute liability) is not affected, but the descriptions of Classes 1 and 3 (offences involving *mens rea*) need some alteration. Class 1 relates to offences where the statutory definition expressly includes *mens rea*. Examples are murder, assault, burglary. It is doubtful whether there is any crime in this class in which a guilty mind must *necessarily be inferred from the nature of the act alone*. If the witnesses for the prosecution give evidence that the accused took aim at a man, fired, and killed him, a guilty mind *may* be inferred from the nature of the act; but even in this case *mens rea* is not *necessarily* to be inferred, since it could be disproved by evidence of various kinds—*e.g.*, that the accused was a Police officer engaged in suppressing a riot. Class 1 therefore comprises cases in which the statute expressly refers to both *actus reus* and *mens rea*, and the *mens rea* may be established by the prosecution either by independent evidence or by evidence of an *actus reus* of such a nature that a jury *could* reasonably find, in the absence of further evidence, that *mens rea* was proved.

A vital alteration must be made in the description of Class 3. Even before *Ewart's* case it was recognized that if *mens rea* were an ingredient of an offence (either under Class 1 or Class 3) there must be proof to satisfy the jury ultimately that *mens rea* existed. But the accepted way of stating the distinction between the two classes was that the burden of proof was different. In *R.* v. *Prince*, (1875) 2 C.C.R. 154, Lord Esher (then Mr. Justice Brett) said: "The ultimate proof necessary to establish a conviction is not altered by the presence or absence of the word 'knowingly,' though by its presence or absence the burden of proof is altered." The same idea was sometimes expressed in the form of a presumption: it was said that *prima facie* evidence raised a presumption of *mens rea*, which the accused was required to rebut. In Class 3 in *Ewart's* case it was said that after a *prima facie* case had been made out, the accused "*may discharge himself by proving to the satisfaction of the tribunal* that he had not a guilty mind." Statements of this kind gradually led to the view that if the evidence for the prosecution was sufficient for the jury to find:

(*a*) That, in a case in Class 1, the accused had committed the *actus reus*, and *mens rea* could be inferred from the act, or was *prima facie* established by independent evidence thereof; or

(*b*) That, in a case in Class 3, the accused had committed the *actus reus*,

then the accused must be convicted unless he adduced evidence which positively convinced the jury of the absence of *mens rea*. If he merely left them in doubt, then, it was said, he had not discharged the burden of proof that lay upon him: he had not rebutted the presumption of *mens rea* raised by the evidence for the prosecution, and must be convicted.

This view has been definitely overruled by the House of Lords, reversing the Court of Appeal, in *Woolmington* v. *Director of Public Prosecutions*, [1935] A.C. 462; and none of the earlier statements on the burden of proof, or the necessity to rebut a presumption of *mens rea*, can now be accepted as good law.

As the decision in this case lays down the fundamental principles of English (and New Zealand) law on the burden of proof in criminal cases, it must be carefully studied. The following notes give an outline of the case:—

Woolmington's wife had left him. He tried to get her to return to him, but without success. He went to the place where she was staying, armed with a rifle. She was shot dead. He said he went there with the intention of frightening her into thinking he was going to do away with *himself* if she did not return, but that she was accidentally shot as he was taking the rifle from under his overcoat.

The Judge directed the jury to the effect that if the Crown satisfied them that Woolmington had shot his wife, he should be found guilty *unless he could prove that the shooting was accidental*.

This direction to the jury was upheld by the Court of Criminal Appeal, whose decision was reversed by the House of Lords (Viscount Sankey, L.C., Lord Hewart, L.C.J., Lords Atkin, Tomlin and Wright).

The following extracts are from the speech of Viscount Sankey, L.C.:—

> If at any period of a trial it was permissible for the Judge to rule that the prosecution had established its case and that the onus was shifted on the prisoner to prove that he was not

guilty and that unless he discharged that onus the prosecution was entitled to succeed, it would be enabling the Judge in such a case to say that the jury must in law find the prisoner guilty and so make the Judge decide the case and not the jury, which is not the common law.

While the prosecution must prove the guilt of the accused there is no such burden laid on the prisoner to prove his innocence, and *it is sufficient for him to raise a doubt as to his guilt: he is not bound to satisfy the jury of his innocence.*

Where intent is an ingredient of a crime there is no onus on the defendant to prove that the act alleged was accidental. Throughout the web of the English criminal law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner's guilt, subject to . . . the defence of insanity and subject also to any statutory exception . . . *No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained.* When dealing with a murder case the Crown must prove (*a*) death as the result of a voluntary act of the accused, and (*b*) malice of the accused. It may prove malice either expressly or by implication. For malice may be implied where death occurs as the result of a voluntary act which is (i) intentional and (ii) unprovoked. When evidence of death and malice have been given (this is a question for the jury) the accused is entitled to show, by evidence or by examination of the circumstances adduced by the Crown, that the act on his part which caused death was either unintentional or provoked. If the jury are *either satisfied with his explanation, or,* upon a review of all the evidence, *are left in reasonable doubt* whether, *even if his explanation be not accepted,* the act was unintentional or provoked, the prisoner is entitled to be acquitted.

It is pointed out in *Mancini* v. *Director of Public Prosecutions*, [1941] 3 All E.R. 272, that the words "entitled to be acquitted" at the end of the above quotation should be read as meaning "entitled to the benefit of the doubt." If there is a doubt as to whether the killing was intentional or accidental, the accused is entitled to be acquitted (unless the case comes within s. 183 of the Crimes Act); whereas if there is a doubt as to whether an intentional killing was provoked, the accused is entitled to have the offence reduced from murder to manslaughter (under s. 184), but is not entitled to be acquitted. See also *R.* v. *Prince*, [1941] 3 All E.R. 37.

The principle of *Woolmington's* case, as stated in the decision itself, does not apply to "the defence of insanity or any statutory exception." (In New Zealand, the defence of insanity must itself be included as a "statutory exception," being provided for in the Crimes Act, 1908, s. 43.) The rules in regard to the burden of proof and standard of proof of these statutory defences are as follows:—

(*a*) Insanity.—(i) Every one is presumed sane until the contrary is proved: Crimes Act, 1908, s. 43 (1). The burden of proof of insanity is therefore on the accused. (ii) The standard of proof of insanity is *not* the standard required of the prosecution in a criminal trial (to satisfy the jury "beyond all reasonable doubt") but is merely the lower standard of civil cases (to prove "on the preponderance of probability"): *Sodeman* v. *The King*, [1936] 2 All E.R. 1138.

(*b*) Other statutory defences.—A statute (or regulation made under statutory authority) may impose criminal liability for some act or omission "unless the defendant proves" some matter—*e.g.*, that he had obtained a license or permit; that he had lawful means of support; that he had lawful excuse for being on the premises. (For examples see Crimes Act, 1908, ss. 208, 216; Police Offences Act, 1927, ss. 50, 51, 52; many of the Emergency Regulations during the war.) The burden of proof thus lies on the accused to establish his defence, but the civil standard of proof applies as in the case of the defence of insanity: *R.* v. *Carr-Braint*, [1943] 2 All E.R. 156. If the accused leaves the jury in doubt as to whether or not to accept his explanation, the rules in the following paragraph will apply.

In *Woolmington's* case and others falling within its scope, the accused may be acquitted if he leaves the jury in doubt whether his defence has been established. This does not apply to any of the statutory exceptions. If, in the cases mentioned in the last paragraph, the accused leaves the jury in doubt whether or not to accept his defence, he is *not* entitled to an acquittal. But the result in such an event will depend on the following distinction:—

(*a*) If the statute lays down a presumption which the accused is required to rebut, then the presumption has not been rebutted unless the jury are satisfied on the preponderance of probability that it is to be believed. If they are left in doubt, the presumption still applies, and the accused must be convicted. Thus if, on the whole of the case, the jury are left in doubt whether the accused was insane (and are convinced beyond all reasonable doubt that, apart from this defence, he was guilty) he must be convicted.

(*b*) If the statute permits the accused to prove certain facts as a defence, but does not lay down a presumption that the contrary is to be presumed until disproved, then no verdict of guilty or not guilty can be returned if the jury are left in doubt, on the whole of the case, as to whether the accused has established his defence. Thus in *Sparre* v. *The King*, (1942) 66 C.L.R. 149, the High Court of Australia held, on provisions resembling s. 216 of our Crimes Act, that if the jury are unable to agree on the question whether the accused had reasonable cause to believe that the girl was over the age of sixteen, *no verdict can be given*, and a new trial should be ordered. McTiernan, J. (at p. 157) said: "It was within the province of the jury to find that the accused either had established the defence or had not established the defence. In the former event there should be a verdict of not guilty, in the latter a verdict of guilty. But a failure to agree whether a defence has been established does not amount to a finding that the defence has not been established. The position, therefore, is that in a criminal trial the jury has been unable to reach a decision as to whether a defence has been established or not. The result is that no verdict can be given." Williams, J., said: "Where the jury disagree on an issue of fact which must be determined in order to dispose of the proceedings, the trial fails because the tribunal of fact has been unable to fulfil its function," but this statement must be read in its context: it applies only to cases where the statute places the burden of proving a defence on the accused, and establishes no presumption which is to apply until rebutted.

A conviction may be set aside if the jury does not plainly understand the rules as to the burden of proof

and the standard of proof, or have them pointed out during the trial, so far as relevant to the evidence and the nature of the defences raised by the accused or open to him on the evidence: *Laurence* v. *The King*, [1933] A.C. 699, 707; *Mancini* v. *Director of Public Prosecutions* (*supra*); *R.* v. *Lincoln*, [1944] 1 All E.R. 604; *R.* v. *Roberts*, [1942] 1 All E.R. 187.

Mistake of fact, and the defence of intoxication (as negativing *mens rea*) are within the principle of *Woolmington's* case. Whether the defences of compulsion, self-defence, and other statutory defences come within that principle or within *Sparre* v. *The King*, has not been decided and is not clear.

DESTITUTE PERSONS AND SOCIAL SECURITY.

The Effect of the Receipt of Benefits.

The question is sometimes asked whether a person who is in receipt of a benefit under the Social Security Act, 1938, may obtain an order under the Destitute Persons Act, 1910, or whether the quantum of such an order, if obtainable, is to be affected by the receipt of such a benefit

In *Ranson* v. *Ranson*, (1939) 1 M.C.D. 236, it was held that in the circumstances there obtaining, the person seeking the order was not a "destitute person" within the meaning of the Act, in that he was in receipt of an age-benefit. Such a position could, however, obtain only in respect of applications for maintenance orders by "near relatives" under Part I of the Destitute Persons Act, 1910. In such cases it is fundamental that the person seeking the order is a "destitute person."

In respect of "destitute persons," attention must be drawn to the fact that beneficiaries in receipt of a social security benefit are entitled to receive or earn £52 per year without diminution of the benefit; and this fact is an indication of what the State evidently regards as adequate maintenance. It must be mentioned, too, as pointed out in the judgment referred to, that benefits other than monetary are given by the Social Security Act; and "maintenance" as defined in the Destitute Persons Act includes "medical and surgical relief." The receipt of a benefit is a very material consideration in such cases—*i.e.*, claims under Part I of the Act—where it is a condition precedent to the making of an order that the claimant should be a "destitute person." Also, under Part I, an order may be made for "any sum not exceeding forty-two shillings a week," and concurrent orders may in the aggregate exceed the maximum for any order allowed under s. 5 (2), provided that each separate order is limited to that maximum: see *Primmer* v. *McPhail and Barclay*, [1917] N.Z.L.R. 134. If, therefore, a beneficiary under the Social Security Act surrendered his benefit, it would be competent for him, if, as assumed, he would then be a "destitute person" to apply for orders under Part I of the Act; and so obtain in the aggregate a much larger sum than if he continued to receive the age-benefit.

The position, however, is different in the cases of applications for orders by wives for maintenance of themselves and their children. In such cases, there is no condition precedent to their obtaining an order that they should be destitute. It is material to mention that when a benefit is given to a "deserted wife" at a period during the currency of a maintenance order payments made under the order are sent by the Courts to the Social Security Department (by way of Public Account Bank Receipt). Further, it is to be noted that under s. 13 (9) of the Social Security Amendment Act, 1943, nothing in that section is to take away or restrict the liability imposed by the Destitute Persons Act or to affect the power of a Magistrate to make a maintenance order under that Act. It appears, therefore, that there is nothing in the Social Security Act affecting, so far as wives and children are concerned, the scheme of the Destitute Persons Act as regards the liability for maintenance being placed on the persons specified in the latter Act.

It must be remembered that the year of the judgment in *Ranson's* case was 1939, and that it concerned only "destitute persons," who must be destitute before an order can be made in their favour.

It is suggested, too, that the 10s. per week to be paid to mothers in respect of their children is not a factor a Magistrate can take into account when making an order: see s. 13 of the Social Security Amendment Act, 1943, as such benefit is given to the mother for the benefit of the child and is not to relieve the father of his duty. In other words, the State does not intend to relieve fathers of their duty to the extent of 10s. per week; or to put it another way, fathers are to be better off by 10s. per week.

Reference may be made to *In re Wood, Wood* v. *Leighton*, [1944] N.Z.L.R. 567, in which, to quote the headnote, it was held that testators who can afford to do so should wholly relieve the general taxpayer from burdens which the law imposes in respect of persons to whom such testators have statutory duties, and who have insufficient means for their own maintenance; and the Court should not make an order which produces a result that throws upon the general taxpayer any portion of such burdens which the testator could have afforded to discharge.

A testator, however, in measuring the extent of his duty, may take into account the "superannuation benefit" mentioned in ss. 11, 12, and 13 of the Social Security Act, 1938, as this is something which will be received, if at all, irrespective of whether or not the testator does his duty.

It would appear, therefore, that, if a person is in receipt of an age-benefit, he cannot be regarded as a "destitute persons," he is not entitled to an order; but if it appears to the Magistrate that the benefit does not remove the beneficiary from the category of "destitute person" then he would be entitled to an order.

AUCKLAND'S SERVICEMEN WELCOMED HOME.

A Happily-conceived Gathering.

On May 31, the Auckland District Law Society welcomed home those practitioners of its district who have served during the recent war, on land, at sea, and in the air, in all the theatres of conflict, and on every continent and ocean, many of them with very distinguished records.

The Society has the proud record that no less than 209 qualified men from its district were in the Armed Forces in the war period.

Cutting adrift from all precedents, the Society evolved a new form of legal gathering; and the brilliant success that attended the Council's efforts will, no doubt, have some bearing on future gatherings of practitioners both in Auckland, and in other parts of the Dominion.

There were over two hundred and fifty members present. They attended from all parts of the Society's district, including a strong representation from the Far North. As the President said during the evening, it was the largest assemblage of practitioners ever held in Auckland.

The gathering which began at 6 p.m., was, in design, an informal one: lounge suits were the correct dress, and the attendance was strictly limited to practising lawyers. Dinner was followed by a smoke-concert: and supper concluded the proceedings after several hours of really happy forgathering. As a real "get together" of the profession, it was a tremendous success.

L. P. Leary, the President of the Society, was a most versatile and energetic chairman and he deserves well of his professional brethren for the outstanding results achieved. He was assisted by the immediate past-president, A. Milliken (as a kind of *amicus curiae*), and by a talented committee, including Bryce Hart, who, with H. Ah Kew, as illustrator, were responsible for a topical souvenir of the occasion. The walls of the large dining-hall were adorned by a number of large cartoons, of professional and topical reference and interest, which were also H. Ah Kew's work.

An interesting feature of the gathering was the fact that the members of the orchestra, the solo vocalists (J. B. Ramsay, and A. E. L. Dodd, Helensville) and the violin soloist, were all practitioners. Max Grierson (Pukekohe) as a violinist of great versatility, and Trevor Sparling at the piano, were particularly outstanding in contributing to the evening's success.

At the conclusion of dinner, and after the loyal toast, the whole gathering sang choruses, old-time favourites as well as new; and the chairman enlivened the proceedings by matching table against table, and members of one of the Armed Forces against those of the others. This chorus-singing brightened the proceedings at several stages of the evening's programme.

The Silent Toast.

Those practitioners of the Auckland District who had not returned were honoured in a silent toast. A very touching incident while all stood, was the singing by J. B. Ramsay of Stevenson's *Requiem*, followed by the President's reading of the roll of honour of members of the Society who had laid down their lives in the recent war:

C. F. Blanchard
J. B. Elliott
J. R. Gray
M. C. Green
G. L. Hesketh
J. A. Jamieson
T. Milliken
T. V. Mitchell
J. E. Moody
A. G. M. Tudhope
J. P. Upton

"*These died that we might live.*"

"Our Servicemen."

The President, L. P. Leary, in proposing the toast, "Our Servicemen," said, in welcome to returned practitioners:

"We make no distinction whether you served abroad or at home; every man served where he was sent. Some of you went to the Middle East where your Division was called 'a ball of fire' by the master statesman of the age. To your Division the proudest German division insisted on surrendering—you whom Rommel placed first upon his list.

"Then there are you others from the Pacific, who, in the discomforts and the pestilence of the tropics, with its nerve-racking form of war—its silence and suspense—where many became jumpy and undependable, you never faltered.

"Then some of you were seamen, trained in the tempests of the Pacific and the Tasman, and in whose veins ran the salt of five centuries of admiralty; they tell us you took to corvettes and submarines as to a feast. Nor was your technical excellence less than your seamanship. Lord Mountbatten told us the other day that in control of the radar, the most delicate of all instruments, he automatically asked the man in charge of it, 'What part of New Zealand do you come from?'

"And then as to the airman, whether they acquired their sense of direction from their ancestors who navigated the trackless wastes of water, or from their immediate forbears treading our equally trackless native bush, I cannot say; but quite apart from your intrepidity as fighters (and Lord Mountbatten told us that one in twelve in the Battle of Britain was a New Zealander) your uncanny knack of finding your way home was a matter of constant remark. A distinguished American commander of aircraft told me that his men in the Pacific were never so happy as when they had a New Zealander to show them the way there and back.

"And you who were so unlucky as not to leave New Zealand can make this boast: that, with an almost pitiful inadequacy of weapons, you welded together a force that would have proved a formidable obstacle to any invader.

"In every post that required initiative, dependability, and responsibility, you would find there, or very near it, a lawyer. Lesser breeds without the law ask why this is? Modesty forbids us to answer.

And now that you are all, or nearly all, back we give you the welcome of New Zealanders to their returning warriors that has been shouted for thirty generations: *Haeremai, Haeremai, Haeremai.*"

The Future of the Profession.

The speaker then asked what had those who stayed at home to offer those who were now back? "There are those," he said, "who say that the bottom has been knocked out of the law; and that no wise man would put his son to it. This is foolish counsel: the form of practice may change, is changing; but human affairs are just as complicated to-day as ever. The need of honest guidance is still felt, and will always be felt by the needy, the anxious, the bereaved. The wise investment of the patrimony of orphans, the problem of expanding trade, the solution of the ever-changing tangles wrought by human loves, jealousies and indifference, greed, hate, lust, and avarice, are with us as ever. And, until human nature changes, they will remain.

"Ours is a great tradition, and it confers great privileges. We are the lay custodians of the moral fibre of the nation. Next to the Churches, we have the greatest impact on public morals. The men who practise the law—providing, as they do, the judges and magistrates, and the counsellors—have more direct force on the ethics of the community than any other body of laymen. The applications of the great rules of contract, that is, the law of fair dealing, and the practice of the virtues of truth, justice, and honour—are our every-day effort.

"Nor is there any body of men with a wider intellectual horizon. It is no less than our spiritual one. Not only have we to master the rules of law, but to apply them. The practising lawyer is prepared to study any subject; to argue with medical men, scientists, architects, engineers, all on their own chosen ground; and to argue with understanding. Nothing is too small or too great. The minutiae of the microscope—the habits of the invisible bacillus may be the work of to-day; tomorrow, the very stars in the heavens may be in debate with mariners as to the setting of a course. The laws of physics, the vagaries of the insane—the one pure law, the other no law at all—no uniformity, no diversity can we refuse to study if it be in the brief. Ours is an old-established science. When our sister profession of medicine, of whose accomplishments we are so proud, was lingering in the murk of necromancy, lawyers had already instituted a science of law.

"Then why with this intellectual and moral field need we despond? God forgive me, as I grow older I admire the law and lawyers more. The help and encouragement I have had from them have made me more grateful than I can say.

"So I ask you who have rejoined the ranks: why despair? We have a great tradition, a great past. So, too, a great future stretches illimitably before you. I remind the younger

men that the older practitioners are always willing to help. I remember that one day I was in the room of the late Robert McVeagh, a great lawyer, *clarum et venerabile nomen*. A young lawyer rang him up from the Library and told him he had got into difficulties with his argument, and had to go on in the morning. McVeagh told him to come down right away. He came, and McVeagh had dug out an old brief on a similar point of law, with a wealth of cases and submissions based on them. These he handed to the young man, and told him how to use them. He did, and next day he was the winner.

"If you desire assistance, then, after your years away from offices and books, come to the older lawyers. You will get more out of them for nothing than you will for a fee. Ask, and ye shall receive!

"Now that we are all back together, we must get behind the profession as a whole, and shove it along. We have ideals. Why should we keep them locked in our bosoms? Why should we not advertise them, and let the whole world know the principles for which we stand?

"If we are to attain the corporate sense that this implies, let us have more of these gatherings. I suggest that we institute monthly luncheons at which we could all meet, and hear short addresses to be given by members of the profession, and visiting lawyers, and so on. Others, too, could be asked to address us. Is the law above learning from other people?"

The President put the suggestion to the gathering, and it was acclaimed unanimously.

In concluding, the President said that there is plenty of room in the profession for all the men who had come back. They had returned to the best possible profession in the best possible country, and one and all were welcome. Their brethren rejoiced to see them among them once again.

A Veteran of Three Wars.

The President, in introducing T. H. Dawson, who was to reply to the toast on behalf of "The Servicemen of Three Wars," said that, like Lord Roberts, he was "little, but he's wise, a terror for this size, And he doesn't advertise."

"I missed the first two contingents for the Boer War," Colonel Dawson said, "because I was three inches under the six feet required. In those days I was an articled clerk, earning the emolument of ten shillings a week. But possession of a horse was a *sine qua non* of enlistment. I had no horse, and thought the war would be over before I could save up to buy one. But I had a friend who was aspiring to a legal career, and his father had a horse that he was willing to donate to the war-equipment people. So I sold the son my equity of redemption in my job, and the father supplied the horse as consideration. They lowered the height-standard, and so I got away. That war was a very pleasant war indeed. For instance, when the Boers took prisoners, they stripped them down to their underclothes, and then sent them to rejoin their nearest column. The South African War taught the British many lessons in tactics. But, contrary to popular opinion, it is a falsehood to say that we used bows and arrows."

The speaker went on to tell of his experiences, including the holding of courts-martial. And he gave many humorous instances of court days during the campaign.

The Servicemen of Two Wars.

Then there were some more choruses and vocal and instrumental items before H. E. Barrowclough, who rose to the rank of Major-General and to the command of the 3rd New Zealand Expeditionary Force, in the Pacific area, replied on behalf of "The Servicemen of Two Wars." He said that he very gladly accepted the invitation to respond on behalf of the veterans of two wars to the toast which had been so enthusiastically and copiously honoured. Looking around at them and now that they were deprived of the glamour of their uniforms, he said that he must confess that they were a pretty tough-looking bunch. He made an exception in the case of the President, and, of course, in his own case.

"But you will all understand that whilst speaking on behalf of this ribald and licentious soldiery, I am to be regarded as their advocate and not, oh certainly not, as one of them," he continued. "Our relationship is that of advocate and client, and that their present and future misdeeds during this evening's entertainment are no more to be attributed to me than are the crimes of the felon attributed to counsel who appears for him at his trial.

"It is a little difficult to understand the mentality of the man who twice in one lifetime eschews the arts of peace and takes up the profession of arms. I can find no authoritative precedent for it, and it is not consonant with sound judgment and ordinary common sense. It is a variance with that orderly cycle of life which that sane philosopher, the late Mr. William Shakespeare, described in memorable words. In his seven ages of man, he notes only one period in which the *genus homo*

"'Full of strange oaths, and bearded like the pard,
Seeking the bubble Reputation
Even at the cannon's mouth.'

"One can understand a man's passing through this stage once in his life, for he knows not what he does; but to do it twice is scarcely consistent with that perspicacity and intelligence, which is usually and so properly associated with our learned profession. To pass three times through this exciting experience is still more incomprehensible; and, were it not for the eloquent argument to the contrary which is afforded by one glance at our respected friend, Colonel Dawson, I would have thought that the veterans of three wars should be regarded as persons who might properly be the subject of a reception order under the Mental Defective Act. But Harry Dawson's robust and yet ever-engaging manner proves conclusively that old soldiers never die, and in his case they do not even appreciably, fade away.

"That men can twice (and in Harry Dawson's case, thrice) embrace the profession of arms and still be regarded as fit and proper persons to carry on the practice of the law is due, perhaps, to similarity in the two professions. When, as a very young man, I conveyed to my astonished relatives and friends the momentous news that I proposed to read for the Bar, the announcement was received with some doubts and misgivings. I still remember the remarks of the very scholarly divine, who was an old friend of my parents and who happened to be the Master of the residential college in Dunedin, to which I somehow (possibly with his kind assistance) managed to gain admission. He was a man not devoid of humour, and he was capable of a kindly sarcasm at times. In a friendly argument as to the respective merits of the Church and the Law as a profession, he once teasingly referred to lawyers as 'hired assassins'; and it has since occurred to me that the profession of the law and the profession of arms might not be altogether unalike in this respect.

"Be that as it may, the fact remains that a great many lawyers have distinguished themselves in both professions, and I may be pardoned for misquoting a familiar Latin tag if I say, '*Si probantium requiris, circumspice.*' As a profession we may well be proud of that record, and that applies to every Law Society in New Zealand.

"But most of us are now safely back in our civilian occupations. I think I may fairly say that we are glad to be back. You have given us a hearty welcome not only to this evening's entertainment, but generally. You have been helpful and tolerant in our abysmal ignorance of the many changes that have taken place during our absence abroad; and I, most certainly—and I venture to say all of us—have reason to thank you, our hosts, for many acts of kindness and assistance to the depleted staffs of our offices when clerks as well as principals were engaged elsewhere. I know we who have returned are all indebted to partners and clerks who shouldered a very heavy burden that they might retain for us as much as possible of the goodwill of our respective businesses. For all these things we render our most earnest thanks.

"I will not deny that there were some aspects of our active service life which we miss, and shall always miss. The open-air life and the larger scale of things, these are necessarily associated with a war of such magnitude as the recent struggle. It is a little irksome to come down to earth again, and to have to handle the relatively microscopical disputes of ordinary practice. In these servantless days we miss too the ministrations of that marvellous species of the *genus homo sapiens*—the batman. But there are corresponding advantages; and, on the whole, we are glad to be back amongst our friends.

"You will not take it amiss I am sure if I make some reference to those of us who have not come back, and whose presence at this festive board would have been so welcome to us all. And will you pardon me if a make a personal reference, which perhaps I should not make, but which mingled pride and humility compel me to make: of the thirteen members of this Society who gave their lives in this recent war, not less than three of them were in my own firm, Elliott, Gray, and Upton. Grand fellows all of them, and good lawyers! You will have read a recent press report of the manner of John Upton's death, and I can only say that, if ever I am called upon to share his fate, I humbly hope that I may meet it as gallantly as he did.

"But I do not wish to cast a lasting gloom upon these proceedings. Those whom I have invited you to remember would

not wish it so. They were grand fellows—every one. They lived largely and joyously, and they would have taken their full part at such a function as this. On their behalf, as well as on behalf of the survivors of these last two wars, it is my pleasant duty to thank you, Mr. President, and your Council, and all the members of the Auckland Law Society, for the very happy thought that has resulted in our gathering here to-night. I want to assure you that our experience in His Majesty's Forces, whether Naval, Army, or Air, have not destroyed our capacity for enjoyment. I want to tell you that we are very grateful to you for your kindly invitation—that we are enjoying your hospitality to the full, and to the end that we may enjoy it more abundantly."

THE VETERANS OF THE LAST WAR.

F. J. McCarthy said that his task that evening was to plead the cause of the "judgment debtors" of the last war. He used the term "judgment debtors," first, from habit born of long years of practice in the Judgment-summons Court, and, secondly, because the servicemen of the war were in the Society's debt to an extent which they were unable to pay.

"I would first return thanks to you for your kindness in having us here to-night as 'guests of the management,' he continued. "Although we cannot answer the question of what was in the barrel in *Byrne* v. *Bodle*, we can say, thanks to the excellence of the stewards, what was in the barrel to-night. We trust that none of us will justify you in treating us like the Six Carpenters.

"Then, again, we would say, 'thanks very much' for the way in which you looked after our practices for us whilst we were away. Judging by the number of regulations, I have been obliged to read since my return, we folk overseas had much the better of that deal; we were always told by the Sergeant-Major, in no uncertain terms, just what a regulation meant.

"Further I say, like the plaintiff in the 'snail in the bottle' case—thanks for what you have sent us. I did not get any snails in bottles from the Law Society: but I did get some cake, and the blessings which have been called down on the names of our then reigning presidents, Messrs. Stanton and Milliken, would have made those gentlemen blush to the roots of their receding and thinning hair.

"It may interest you to know how we find the lawyers and the law. As to lawyers: your presence here this evening to welcome us back is the 'best evidence' of how we have found you, not that I would for a moment insinuate that you are always in the same happy frame as we find you now. For our part, you will find that many of us are broader; not only in vision, but in other respects; and with suits at twenty guineas per time, this is a serious matter.

"Thanks to that excellent booklet, *Changes in the Law since 1939*, we have no fear as to our future practice. Personally I am fortunate, in that I notice that both my learned partners are constantly reading it—doubtless to ensure its accuracy, and to see that I am not misled.

"I come now to the last part of my argument: as the old saying amongst wheelwrights is, 'the longer the spoke, the greater the tire.' We come back to you for better and for worse. As one contemplates the international scene to-day one wonders whether we have really won this second 'War to end Wars,' or whether, perhaps, after all, the great cause is merely adjourned *sine die*, with an argument still to follow as to who pays the adjournment fee. There is no question of costs: the costs are too high on both sides for any Registrar to tax.

"To-night we drank the silent toast to those of our brethren who have been called to the Bar of the Highest Court for final judgment. 'They died that we might live,' said the Chronicler. Among the greatest of those things for which they fought and died was that our system of law might flourish free from the fear of the Gestapo, the torture-chamber, and the sword. It is when one goes back to a country which has been under a conqueror's heel that one realises what British Justice really means. We are an integral part of that system of the administration of Justice. As our President has said, ours is a profession of service; and, if we keep the true meaning of their sacrifice steadfastly before us, then we need have no fears for the future. With this thought I leave you. On behalf of the returned servicemen of this war, I thank you."

"REPORT AND BALANCE-SHEET."

One of the brightest incidents of the evening was the presentation by Bryce Hart of a report and balance-sheet relative to the gathering. It must have been the most humorous speech to which those present had ever listened, judging by their reactions to the scintillating account of events leading to the present proceedings. As the speaker said, the balance-sheet no doubt suffered from the fact that it was dated May 31, the ominous date of the gathering. The report was spiced with felicities, including local allusions and references of a witty nature to fellow-practitioners. It would be impossible to reproduce the effect of Bryce Hart's brilliant effort, as its telling was not the least diverting of its excellences. He received an ovation at its conclusion.

During the latter part of the evening, a story-telling contest was held, a prize being given for the most successful. The judges, A. H. Johnstone, K.C. for whom J. B. Johnston later deputized, A. A. Milliken, and Bryce Hart, awarded the distinctive trophy to H. A. Steadman. The contest must have been a close one.

And so the evening passed all too quickly for those present. Supper did not bring the proceedings to a close; and, after the planned part of this highly informal gathering concluded, many groups remained until a late hour in a happy and reminiscent mood.

The Auckland Society in general, and its President, L. P. Leary, and his committee in particular, are to be congratulated on their most successful gathering. The originality of the whole of the proceedings was a welcome change from the more formal functions to which the profession has been accustomed.

LEGAL LITERATURE.

Land Agency Law.

Real Estate Agency in New Zealand, being a new edition of Barton's "Land Agent in New Zealand," by J. H. LUXFORD, S.M.; 212 pp. Wellington: Butterworth & Co. (Aust.), Ltd. 37s. 6d.

Mr. J. H. Luxford has added to his valued series of legal writings by producing a work on Real Estate Agency in New Zealand. This is a new edition of Barton's well-known book which has been the standard work on this subject since 1926. Very substantial changes have been effected in the text. The case law to 1945, which has now been incorporated in it, has been extensive and important, and the Servicemen's Settlement and Land Sales Act, 1943, has been another notable development. These changes made a new edition vitally necessary, and a most valuable practical guide to legal aspects of land agency has been the result.

The author has omitted (wisely, in the opinion of the reviewer) Part II and some of the other material in the original work dealing with the general law of real property, and particular topics such as arbitration, which were extraneous to the main subject of the book. The portions that have been retained have been very thoroughly revised and re-written, and presented in a way that makes for much easier reading. Each case is given in the form of a statement of the facts and decision, together with a commentary where necessary. Where there is a fine line between two decisions they are followed by an

extremely careful and well-considered discussion. Another most attractive feature of the book is the number of succinct and clearly reasoned opinions on points not yet judicially decided.

In addition to English and New Zealand cases the author cites relevant decisions in Canada and Australia. Additional cases which can be consulted in reports which have come to hand since the book was written are *Jones* v. *Lowe*, [1945] 1 K.B. 73; [1945] 1 All E.R. 194; *Poole* v. *Clarke and Co.*, [1945] 2 All E.R. 445; *Turnbull* v. *Wightman*, (1945) 45 N.S.W. S.R. 369; and the recent case of *Grey* v. *Wagstaff*, [1946] N.Z.L.R. 207.

A discussion of some problems in the law of agency and a discussion of some of the statements in Mr. Luxford's book will be contributed to these pages shortly, in the form of an article.

The book will be absolutely indispensable to land agents. The agent who fails to master the contents will purchase enlightenment very dearly by experience. The work will also prove of the greatest assistance to legal practitioners. —I. D. C.

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. Magistrates' Court.—*Practice—Evidence taken on Commission—Action settled for less than Amount claimed—Basis of Computation of Costs of Taking Evidence—Magistrates' Courts Act, 1928, s. 173 (2).*

QUESTION: Evidence has been taken on commission pursuant to the relevant sections of the Magistrates' Courts Act, 1928; and costs have been allowed on the amount claimed. The claim has been settled for an amount less than the sum claimed, and I admit that if the case had gone to hearing I could not have recovered more than the amount at which the claim has been settled. Should the costs of such evidence be reduced accordingly?

ANSWER: Costs are allowed in the first instance on the amount claimed. If, however, the plaintiff recovers a smaller sum than that claimed, costs should be proportionately reduced in accordance with the provisions of s. 173 (2) of the Magistrates' Courts Act, 1928. In this case, therefore, unless the other party consent, you should reduce your costs to the sum to which the plaintiff would have been entitled had the case gone to hearing, and a sum less than that claimed recovered. C.1

2. Conversion.—*Nature of Action against Wrongdoer—Proceeds of Conversion—Damages.*

QUESTION: A person has had his goods wrongfully converted by another person. What remedies has he?

ANSWER: This question is fully answered in the speech of Lord Romer in *United Australia, Ltd.* v. *Barclays Bank, Ltd.*, [1941] A.C. 1, 34, where His Lordship says: "A person whose goods have been wrongfully converted by another has the choice of two remedies against the wrongdoer. He may sue for the proceeds of the conversion as money had and received to his use, or he may sue for the damages that he has sustained by the conversion." His Lordship then proceeds: "If he obtains judgment for the proceeds, it is certain that he is precluded from thereafter claiming damages for the conversion. But, in my opinion, this is not due to his having 'waived the tort,' but to his having finally elected to pursue one of two alternative remedies." C.1

3. Practice.—*Claim—Two Persons Jointly and Severally liable—Whether Plaintiff may elect to Sue One of them only.*

QUESTION: I have been consulted by a plaintiff who has a claim against two persons, who are jointly and severally liable, but he intends to sue one of such persons only. Is he free to do this?

ANSWER: This very point arose in connection with the case of *Bently Motors, (1931), Ltd.* v. *Lagonda Ltd.*, [1945] W.N. 199, 200, and it was there said: "Equally it was clear that a plaintiff who, having claims against two persons jointly and severally liable to him, had elected to sue one only, could not be compelled to sue also the other." The learned Judge (Evershed, J.) then said: "The joinder of the second defendant would in no way affect the plaintiff's right against the first."

It should be noted that even in cases of joint liability, a judgment against one joint debtor does not operate as a bar to proceedings against the others, except in so far as such judgment has been satisfied: s. 94 of the Judicature Act, 1908.

The answer, therefore, is in the affirmative. C.1

4. Legitimation.—*Child born out of Wedlock—Parents since married—Status of Child.*

QUESTION: A child was born out of wedlock, and its parents have now married; but re-registration as required by the Legitimation Act, 1939, has not been made. I have been asked to advise whether the child in question is to be regarded as legitimate?

ANSWER: In *M.* v. *M.*, [1945] W.N. 201, it was held by Denning, J., that there was nothing in the English Act of 1926 to make a declaration of legitimacy a condition precedent to legitimacy in such a case. In New Zealand, the failure of the parents to make an application for registration does not effect the legitimation of the person legitimated. The child, therefore, is to be regarded as legitimate; though the Registrar-General, Wellington, should be approached in connection with registration. C.1

RULES AND REGULATIONS

Revocation of the Quarantine (Armed Forces) Emergency Regulations, 1943. (Emergency Regulations, Act, 1939.) No. 1946/85.

Bees and Appliances (Introduction) Regulations, 1946. (Apiaries Act, 1927.) No. 1946/86.

Rabbit-destruction (Flaxbourne Rabbit District) Regulations, 1946. (Rabbit Nuisance Act, 1928.) No. 1946/87.

Linen Flax Corporation (Travelling-allowance) Regulations, 1946. (Linen Flax Corporation Act, 1945.) No. 1946/88.

Board of Trade (Footwear Marketing) Regulations, 1946. (Board of Trade Act, 1919.) No. 1946/89.

Servicemen's Settlement and Land Sales Emergency Regulations, 1946. (Emergency Regulations, Act, 1939.) No. 1946/90.

Suspension of Apprenticeship Emergency Regulations, 1944, Amendment No. 1. (Emergency Regulations Act, 1939.) No. 1946/91.

Government Railways (Fees of Documents) Order, 1946. (Government Railways Act, 1926.) No. 1946/92.

Cinematograph Films Emergency Regulations, 1946. (Emergency Regulations Act, 1939.) No. 1946/93.

Criminal Appeal Rules, 1946. (Crimes Act, 1908, and the Criminal Appeal Act, 1945.) No. 1946/94.

Exempting certain Railways Department Motor-vehicles from the Operation of Section 4 of the Motor-vehicles Amendment Act, 1934-35 (Mileage-tax). (Motor-vehicles Amendment Act, 1934-35.) No. 1946/95.

IN YOUR ARMCHAIR—AND MINE.

By SCRIBLEX.

Justice's Frozen Wastes.—A chilly note was struck in litigation last month when the Court of Appeal (Blair, Fair, and Cornish, JJ.) transferred from the main Court-room to the smaller Court-room in the cold and draughty Supreme Court at Wellington. The case under consideration was *Wellington Harbour Board* v. *Tollan and the Port Line, Ltd.*, and the four counsel engaged therein during the morning hearing went in and out, both in an effort to keep warm and in an endeavour to ameliorate the prevailing conditions by closing various outside doors and windows. There was no coal; no provision for electricity; and the bite of the southerly seeping in the main door was sharp and unpleasant. The topic is one upon which a speaker lightly touched at Wellington's Victory Dinner, last September. "We would remind the Attorney-General," he said: "that the snows of yesteryear are "no less recent than this present winter; and when "the icy winds blow from the mountain-tops we feel an "increase in that shivering apprehension common to all "of us who practice at the Bar. If only, we sometimes "think, we could be as sure of a verdict as we are of a "cold, life would be more endurable. The tooth of time "is relentless, and, in the structure of Court-houses "deterioration can be just as strange as it is in the "compilation of balance sheets."

But in the frigid atmosphere that characterises so many of our Court-houses during winter, it is not only Judges and counsel who suffer. There are the unhappy witnesses, who often pace the corridors to keep their circulations and courage up. When we have the type of witness who is not only garrulous, but whose teeth chatter as well, is there any wonder that cases are prolonged?

Party Proviso.—Scriblex, as even his most enthusiastic admirers will readily acknowledge, is not a conveyancer, although he hungers to shine in that branch of the profession for which his restlessness and lack of patience have unfitted him. His wanderings, however, sometimes take him into the vicinity of the Fair Rents Court where he listens to the fruitless efforts of some harassed landlord of flats or apartments endeavouring to prove that the conduct of one of his tenants is a nuisance and annoyance to adjoining occupiers. It occurs to him, therefore, that it might be better were we to follow the practical example of the Parisian landlord who incorporates in leases a provision that each tenant is permitted one really rousing party each month. Says one writer on the subject:

> Singing, dancing, playing the piano or tuba, fisticuffs, or bullfights may go on until eight the following morning without fear of recriminations. There is one stipulation: two days before the party the tenant must announce, in writing, his roof-raising intentions.

Thereupon, it seems that formal notice is given to the other tenants—who are thus "given time to leave town for the night, buy earplugs, or, if the party sounds promising, somehow manage to get themselves invited."

Chief Justice Stone.—Known as one of the great dissenting Judges of the United States Supreme Court, Harlan Fiske Stone at the age of seventy-three collapsed on April 22, after reading two dissenting judgments, and died shortly afterwards. He became an Associate Justice in 1925, Chief Justice in 1941—a mode of progression not favoured by our judicial system. The last of the appointees before Roosevelt who showed a marked partiality for New Dealers, he shared with Holmes and Brandeis the task of warning his brethren against substituting their economic predilections for the provisions of the Constitution. He was a New England farm boy, a noted football-player, school-teacher and Dean of Columbia University's law school; and he enjoyed the distinction of earning in one year of his private practice more than the aggregate of twenty-one years on the Bench. The American historian, Charles Beard, speaks of his strong and muscular English which "admitted no double interpretation." In a time of vast legal confusion and change, says *Life*, he brought to the Court a solid respect for the wisdom of the past, a good mind and good heart, a rare humility and pride in craftsmanship, a deep concern for human liberties. "The Fourteenth Amendment," he observes in one judgment, "has no more embedded in the Constitution our preference for some particular set of economic beliefs than it has adopted, in the name of liberty, the system of theology which we may happen to approve."

From My Note Book.—It is perfectly clear that, if a man has the right to call upon the State for work or maintenance, the State must have the corresponding right to control his family, so that it cannot be that two perfectly worthless people are at liberty to reproduce themselves to the utmost of their physical capacity and then say to the State: "Find work or maintenance for all those perfectly unsatisfactory citizens with whom we are doing our best to flood you."—Lord Buckmaster.

The proposal was that a wife when applying for a summons, or a husband when receiving one, should be handed a piece of paper to the effect that a lawyer could be obtained free. In his view, and from the history of the last fifty years, if it was known that there was something for nothing, this might be regarded as very attractive and husbands and wives would revel in seeing each other cross-examined by a lawyer.—Claud Mullins.

Amongst those whom the King has recently approved, on the recommendation of the Lord Chancellor, for appointment to the rank of King's Counsel are Jethalal Motilal Parikh, Sam Pirosha Khambatta, and Brent Mackay Cloutman, V.C., M.C.

Nervous draftsmen of notices to quit can breathe a temporary sigh of relief as the Court of Appeal has now decided the efficacy of a notice to quit "on or before" a certain date. First, construing such a notice apart from authority, it holds its effect is to give an irrevocable notice determining the tenancy on a stated date coupled with an offer to accept from the tenant a determination of the relationship between them on any earlier date (of the tenant's choice) on which he should give up possession of the premises. Such a notice is valid and effectual; authorities to the contrary being overruled: *Dagger* v. *Shepherd*, [1946] 1 All E.R. 133.