New Zealand
Law Journal

Incorporating "Butterworth's Fortnightly Notes."

VOL. XXII. TUESDAY, OCTOBER 22, 1946 No. 19

DAMAGES IN FATAL ACCIDENTS: AMOUNTS NOT DEDUCTIBLE.

SECTION 3 of the Deaths by Accidents Compensation Act, 1908, is as follows:

> 3. Where the death of a person is caused by a wrongful act, neglect, or default, and the act, neglect, or default, is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, the person would have been liable if death had not ensued shall be liable to an action for damages notwithstanding the death of the person injured, and although the death was caused in such circumstances as to amount in law to a crime.

And s. 5 of the statute reads:

> Every such action shall be brought by and in the name of the executor or administrator of the deceased person, and the jury may give to the parties respectively for whom and for whose benefit the action was brought such damages as they think proportioned to the injury resulting from the death.

Those sections reproduce the effect of ss. 1 and 2 of the Fatal Accidents Act, 1864 (9 & 10 Vict., c. 93), known popularly as "Lord Campbell's Act."

For many years it had been authoritatively stated that the dependants are entitled in such an action to recover only the proved pecuniary loss suffered by reason of the deceased's death. In determining this loss, all pecuniary benefits accruing to the dependants by reason of the deceased's death were taken into account, and the damages to be awarded were accordingly diminished. For instance, it was held soon after Lord Campbell's Act came into operation that the proceeds of a policy of insurance on the life of the deceased accruing for the benefit of his dependants was in that category. And in *Grand Trunk Railway Co. of Canada* v. *Jennings*, (1888) 13 App. Cas. 800, 804, 865, Lord Watson, in delivering the opinion of the Privy Council, stated the general rule of such reduction of damages:

> It appears to their Lordships that money provisions made by a husband, for the maintenance of his widow, in whatever form are matters proper to be considered by the jury in estimating her loss; but the extent, if any, to which these ought to be imputed in reduction of damages must depend on the nature of the provision and the position and means of the deceased. When the deceased did not earn his own living, but had an annual income from property, one half of which has been settled upon his widow, a jury might reasonably come to the conclusion that, to the extent of that half, the widow was not at a loss by his death, and might confine their estimate of her loss to the interest she might probably have had in the other half. Very difficult considerations occur when the widow's provision takes the shape of a policy on his own life, effected and kept up by a man in the position of the deceased, William Jennings. The pecuniary benefit which accrued to the respondent from his premature death, consisted in the accelerated receipt of a sum of money, the consideration for which had already been paid by him, out of his earnings. In such a case, the extent of the benefit may fairly be taken to be represented by the use or interest of the money during the period of acceleration; and it was on that footing that Lord Campbell in *Hicks* v. *Newport, &c., Railway Co.* (1857) 4 B. & S. 403*n*), suggested to the jury that, in estimating the widow's loss, the benefit which she derived from acceleration might be compensated by deducting from their estimate of the future earnings of the deceased the amount of the premiums which, if he had lived, he would have had to pay out of his earnings for the maintenance of the policy.

That was the recognized rule in Great Britain until the passing of s. 1 of the Fatal Accidents (Damages) Act, 1908, (*supra*): and, where that legislation has not been copied, or where legislation with the like effect has not been enacted, that is still the rule: see the remarks of Lord Porter in *Davies* v. *Powell Duffryn Associated Collieries, Ltd.*, [1942] A.C. 601, 618, 619; [1942] 1 All E.R. 657, 666.

In Great Britain the first modification of the Fatal Accidents Act, 1846, as to the assessment of pecuniary loss was made in the Fatal Accidents (Damages) Act, 1908 (8 Edw. 7, c. 7) (*12 Halsbury's Complete Statutes of England*, 340). Section 1 provided:

> In assessing damages in any action, whether commenced before or after the passing of this Act, under the Fatal Accidents Act, 1846, as amended by any subsequent enactment, there shall not be taken into account any sum paid or payable on the death of the deceased under any contract of assurance or insurance, whether made before or after the passing of this Act.

Later, by the Widows', Orphans', and Old Age Contributory Pensions Act, 1929 (20 Geo. 5, c. 10) (*20 Halsbury's Complete Statutes of England*, 632), s. 22 made a further modification in enacting that

> In assessing damages in any action under the Fatal Accidents Act, 1846 to 1908, whether commenced before or after the commencement of this Act, there shall not be taken into

account any widows' pension, additional allowance, or orphans' pension payable under the principal Act. The Widows', Orphans', and Old Age Contributory Pensions Act, 1925.

The provisions of the foregoing statutes were not reproduced in New Zealand legislation. But in 1936, with the appearance of the Law Reform Act, 1936, the following section was enacted.

> 7. In assessing damages in any action under the principal Act [the Deaths by Accidents Compensation Act, 1908] there shall not be taken into account *any gain*, whether to the estate of the deceased person or to any person for whose benefit the action is brought, *that is consequent on the death of the deceased person*.

The genesis of this section was a resolution passed at the Legal Conference in Dunedin, in April, 1936, which recommended amendment of the Deaths by Accidents Compensation Act, 1908, to provide that where the deceased had a policy of insurance, any moneys coming thereunder to the plaintiff should not abate the liability of the defendant. This, it was pointed out, had been the law in England since the passing of the Fatal Accidents (Damages) Act, 1908, as above. Where the relation of master and servant existed between the deceased and the defendant, that was already law in this country: Workers' Compensation Act, 1922, s. 14; but, of course, a right of action under the Deaths by Accidents Compensation Act, 1908, does not depend on the establishment of the relationship of master and servant.

In July of the same year, in an article which appeared in this place (*12 New Zealand Law Journal*, 185), we suggested that the resolution of the Legal Conference had not gone far enough, as, we considered, that in any contemplated amendment of the Deaths by Accidents Compensation Act, 1908, pensions should not be taken into account in the assessment of damages, so that the receipt of a pension consequent on the death of the deceased by his widow should not abate the liability of the defendant any more than the receipt by her of the proceeds of a policy of life insurance on his life should do. We then pointed out that this was somewhat lightly touched on in both Courts in *Shaw* v. *Hill*, [1935] N.Z.L.R. 915; but no expression of opinion was given in the Court of Appeal whether or not such a pension should be excluded in the assessment of damages. It was, however, a fact that immediate alteration in the law followed the decision in *Carling* v. *Lebbon*, [1927] 2 K.B. 108, where the Court of Appeal had held that a widow's pension should be taken into account in the assessment of damages, and whatever such damages may have been they should be reduced by the true value of the pension, as a pension was not within s. 1 of the Fatal Accidents (Damages) Act, 1908, to which we have referred. In the consequent amendment of the law, the Widows', Orphans', and Old Age Contributory Pensions Act, 1929 (Gt. Brit.), s. 22 (as we have seen above) provided that in the assessment of damages in a fatal accidents suit, no widows' pension, additional allowance, or orphans' pension, should be taken into account. In submitting that a similar provision should be enacted in New Zealand, we said:

> We think this matter is sufficiently of importance that the doubts existing as to the inclusion or exclusion of pensions in assessing damages under the Deaths by Accidents Compensation Act, 1908, should be resolved at an early date by an amendment of the law on the lines of s. 22 of the statute of Great Britain to which we have referred. Where the financial position of widows and children is concerned, it is an undesirable state of the law if amendment in cases of doubt be not effected until a definite decision of the Court be found against their interests; and is particularly of importance that the law should be made definite in this regard in this country, where pensions are almost exclusively provided by the State.

In the following September, the Law Reform Act, 1936, was enacted, and Part II was devoted to amendments of the Deaths by Accidents Compensation Act, 1908. Section 7 went further than the recommendation of the Legal Conference, and its draftsmanship was intended to make a comprehensive modification, which included (in a very wide sweep) more than the provisions of the two statutes of Great Britain to which reference has been made: as use of the words "any gain" shows. To repeat the section:

> 7. In assessing damages in any action under the principal Act there shall not be taken into account *any gain*, whether to the estate of the deceased person or to any person for whose benefit the action is brought, *that is consequent on the death of the deceased person*.

Immediately, there were expressions of doubt as to the meaning and the extent of operation of the italicized words: see *McElroy and Gresson's Law Reform Act, 1936*, 28, where the matter was fully discussed. The use of the word "gain" was not sufficiently definite, it was thought, to exclude, for instance, damages under the principal Act which are dependent on a wife's "pecuniary loss" on the death of her husband: and it was suggested that it is impossible to ascertain the "pecuniary" loss resulting from the death regardless of the corresponding gain, even if the accelerated receipt of lump-sum damages be considered the only gain consequent on the death: see *Baker* v. *Dalgleish Steam Shipping Co.*, [1922] 1 K.B. 361. The precise language used in the Fatal Accidents (Damages) Act, 1908, of Great Britain, was pointed to as being more satisfactory than the wording of s. 7 of the Law Reform Act, 1936.

In other words, there was considerable doubt as to what sums must be disregarded in assessing a widow's "pecuniary loss," which is the basis of her damages under the principal Act. And it was then asked whether the amount of a lump-sum payment to a widow consequent on the death of her husband, who was a small wage-earner, would not in itself be a "gain" to her: and, also, whether a widow's pension was actually in the nature a "gain" consequent on her husband's death.

The proper interpretation of s. 7 of the Law Reform Act, 1936, came up for consideration in *Alley* v. *Alfred Buckland and Sons, Ltd.*, [1941] N.Z.L.R. 575, by Ostler, J., who termed it "a matter of great importance." A claim was made on behalf of a widow and three dependent children, consequent on the death of her husband and father, for £2,000 general damages. Before trial the following questions of law were argued: (*a*) whether any capital or income received by the widow and children of the deceased was a "gain" consequent on the deceased's death within the meaning of s. 7 of the Law Reform Act, 1936: and (*b*) whether, in order to reduce the damages, evidence could be given at the trial of the action for damages of the acquisition of property under the will of the deceased by his widow or children.

The learned Judge observed that it was, in his opinion, unfortunate that the Legislature, in enacting s. 7 should not have been content, when reforming the law, to amend it so as to bring it into conformity with the law in England. (He was referring to the enactments to which we have already given some consideration.) In the course of his judgment, at pp. 581 and 582, His Honour said :

> . . . there can, I think, be no room for doubt as to the meaning and intention of the amendment made in England in 1908. The intention was that even if the dependant by virtue of the insurance-moneys he received was better off than if the death had not occurred he could still bring an action, and in assessing the damages that gain to the plaintiff was not to be taken into account. That is clearly the meaning which Lord Hewart attributed to the amendment in the case just cited, in which he said : "If a man who is insured for £20,000 is killed in a railway accident, his widow and children can recover from the railway company damages which are not diminished by the circumstance that on the death of the deceased there becomes payable the large sum assured." That must also be the intention with the amendment concerning pensions. I understand that counsel for the defendant does not deny that this is the true meaning of the English amendments. Our s. 7 goes further. It provides that in assessing damages in any action under the principal Act there shall not be taken into account two species of gain : (i) any gain to the estate of the deceased that is consequent on his death ; and (ii) any gain to any person for whose benefit the action is brought, that is consequent on the death of the deceased.

The first species of gain, His Honour said, could only refer to insurance-moneys or sums of money such as friendly-society benefits payable to the estate of the deceased upon his death : and defendant's counsel had admitted that such moneys are included in the first species of gain mentioned in s. 7. But, he added, the section clearly provides that a second species of gain shall not be taken into account in assessing damages—*i.e.*, any gain consequent on the death—to any dependent for whose benefit the action is brought. His Honour continued :

> The words are so wide and so clear that I find it impossible to hold that they can have any other than their literal meaning. "Any gain" must mean "any gain whatsoever," and must, I think, have been intended by the Legislature to include any gain to the dependant from the estate of the deceased. I am aware that this construction largely upsets the principle of compensation for loss upon which the Act was based ; that it turns the action in cases where the dependants have suffered no loss by the death into a purely punitive action in which the Court or jury which has to assess damages is left without a clear principle upon which to perform its task ; and that it makes the assessment of damages more difficult and uncertain. I doubt if the Legislature realized the full effect of the words it has used ; but nevertheless the words used are so clear that they must be given effect to notwithstanding this unfortunate result, and, notwithstanding that the dependants by sharing in the estate of the deceased have become better off than they were in the deceased's lifetime, the Legislature has provided that they may still bring their action, and that in assessing the damages, which were intended to be purely compensatory, the gain or profit which the dependants have made out of the death of the deceased is not to be taken into account.

After answering submissions by the defendants' counsel on the construction of s. 7, His Honour said that, as the wording of that section is clear and unambiguous and affects a change in the scope of the statute, the Court must assume that such was the intention of the Legislature, and must give effect to that intention, whether it approves of it or not. Moreover, it was clear that the amendment of the Act in England in 1908 was intended to alter the scope of the principal Act by giving an action to dependents who, by reason of the receipt of insurance-money from the estate of the deceased, had suffered no loss. The learned Judge added :

> Yet that drastic alteration in the law and in the intention of the Act was brought about by a short amendment similar in its words to s. 7. If the Legislature can partially destroy the basis of the action in one amendment, it can wholly destroy it in another. The admission that in s. 7 the Legislature intended that insurance-moneys and pensions received by dependants in consequence of the death would not be taken into account is impliedly an admission that the Legislature could equally intend to except all gains to dependants consequent upon the death of the deceased from being taken into account. In my opinion, it has done so in plain and unequivocal language. . . .
>
> It does not, of course, follow from this view of the law that the whole basis in assessment of damages is gone. The action in theory still remains an action founded upon compensation for loss. The amount of that compensation will vary in accordance with the age, occupation, and earning-power of the deceased bread-winner, and the age, earning-power, and degree of dependence of the claimant. But in assessing the damages no profit to the dependant in consequence of the death can be taken into account.

On the question relating to the evidence relevant to any "gain . . . consequent on the death of the deceased person," His Honour said that it followed from his interpretation of s. 7, that all evidence as to such gain or profit is irrelevant to the inquiry, and, therefore, inadmissible, for only relevant evidence is admissible. In his opinion, a dependent may not even be asked in cross-examination any questions tending to prove that he or she is better off financially by reason of the death upon which the action is founded, for only questions which are relevant and questions which affect the credibility of a witness may be asked in cross-examination.

Moneys received under a superannuation and staff-benefit scheme came up for consideration in the recent case, *McPhee* v. *Carlsen*, [1946] V.L.R. 316, where the Full Court considered whether or not these moneys were to be taken into account in assessing damages under the statute in Victoria, reproducing the Fatal Accidents Act, 1846, with this amendment, made by s. 18 of the Wrongs Act, 1928 :

> In assessing damages under this Part there shall not be taken into account any sum payable on the death of the deceased under any contract of assurance or insurance (including a contract made with a friendly or other benefit society or association or trade union) whether made before or after the passing of this Act.

It will be observed that this section does what our s. 7 of the Law Reform Act, 1936, does not : it follows the exact wording of s. 1 of the Fatal Accidents (Damages) Act, 1908 (Gt. Brit.), with the inclusion of the specific contracts detailed in parenthesises. It does not go so far as the judgment in *Alley's* case (*supra*) shows that our section goes. But the judgment is interesting, as showing one form of payment that is a "gain . . . consequent on the death of the deceased person" in our legislation, and a distinction in our legislation from that enacted anywhere else to benefit plaintiffs in fatal accident suits.

In *McPhee's* case, a company had established a staff-benefit scheme to provide benefits for its employees, or alternative benefits on the maturity of endowment assurance policies. On request, the company took out a policy for an employee, and the premiums were payable partly out of contributions by the company

and partly out of contributions by the employee. The scheme and the policy comprehended various contingencies which might happen in the employee's lifetime, including that which happened to the deceased, namely—his accidental death while in the employer's service. On death in the company's service before pension age, the executors or administrators or permitted assigns of the employee were entitled to receive through the company all moneys and bonuses payable in respect of the particular employee's policy or policies, after the deduction of any premiums advanced by the company. In accordance with this scheme two policies were taken out by the company, and the deceased was named as the person whose life was assured by it. In an action for damages brought under the Wrongs Act, 1928 (Vict.), on behalf of the widow and children of the deceased, the learned trial Judge directed the jury that only prospective premiums which would have been payable except for the employee's death could be taken into account in assessing damages. On appeal to the High Court, it was contended that His Honour had been in error in holding (*a*) that the jury, in assessing the amount of damages, were not entitled to take into account the payments to the widow and her children by the employer, and (*b*) that the said payments were sums paid or payable on the death of the deceased under contracts of insurance or assurance within the meaning of s. 18 of the Wrongs Act, 1928.

In his judgment, Sir Edmund Herring, C.J., pointed out that before the amendments made to the Fatal Accidents Act, 1846, to which we have referred, the recognized rule regarding life-insurance policies resulting in the accelerated receipt of a sum of money was that the benefit which the widow received from acceleration might be reduced by deducting, from the jury's estimate of the future earnings of the deceased, the amount of the premiums, which, if he had lived, he would have had to pay out of his earnings for the maintenance of the policy. The learned Chief Justice went on, at p. 319, to explain the rule that was applied in *Jennings's* case (*supra*). He said:

> To compensate for the benefit arising from the acceleration of a life policy, you take into account the premiums and estimate the financial loss after they have been deducted from the estimated future earnings. That was done in this case. The law has been amended in the interests of plaintiffs, and defendants have no cause for complaint if the Court continues to work on the old rule after the new enactment. . . . it is true that the periodical contribution was from the wages of the deceased, subsidized by an equal amount from the company. These additional payments may, however, properly be regarded as an addition to the member's earnings and may be disregarded in calculation.

The learned trial Judge had directed the jury to disregard the money received from the company as inadmissible under s. 18 of the Wrongs Act, 1928; but he directed them to estimate the deceased's future earnings subject to the deduction of the value of future superannuation instalments, which, had he lived a normal span of life, he would have paid, under the company's scheme. The appellant contended that, as the moneys were paid by the company under a pension scheme, they were accordingly not within s. 18, that the amount received from the company consequent on the death of the deceased was accordingly to be taken into account in the assessment of damages on the basis of the deceased's future earnings after superannuation deductions; and that the policies involved in the superannuation scheme were only a mode of investment of the contributions to the fund under the general plan of the scheme.

The learned Chief Justice held that, whether or not the moneys received were sums paid under a contract of insurance within s. 18, the only way in which these moneys could be taken into account was by deducting the amount of prospective future premiums from the total of the deceased's estimated future earnings; and that the jury had been properly directed at the trial. He did not come to any conclusion whether s. 18 applied to the case; but said he was not to be taken as deciding that it did not. Macfarlane, J., did not express any final opinion on s. 18; but he considered that whether the moneys came to the employer as agent or as trustee, they came to the deceased's personal representatives or his assigns or dependents, as the case may be, under a contract of insurance, as when the provisions in the superannuation scheme as to contingencies which had not happened, and could not now happen, were excluded, a contract for life insurance was the only contract left. Gavan Duffy, J., held that the company held the moneys under a trust, and, under the regulations of the scheme, it was bound, as a trustee, to pay the moneys to the employee's dependents; they were sums paid on the death of the deceased, and were received by them under a contract of insurance.

In New Zealand, the moneys would not have been taken into account under any head, as they were "a gain . . . consequent upon the death of the deceased." The question argued in *McPhee's* case, whether in view of s. 18 of the Wrongs Act, 1928, the future prospective payments of insurance premiums were to be taken into account although the actual moneys received on the death of deceased were not the subject of deduction when assessing damages, also can not arise here. The rule exemplified in *Jennings's* case (*supra*) has had no application at all since the passing of s. 7 of the Law Reform Act, 1936. But, even if it had, it is ineffective and nugatory; as on the facts of *McPhee's* case, it would not matter in our Courts. If the question of deduction, because of the moneys received from the pension scheme on the death of the deceased, be approached from the viewpoint of the notional deduction of the premiums which would have been paid if the deceased had lived until the happening of the last of the possible contingencies on which the moneys would have been payable to him or to his estate, the "gain" would be the net amount so ascertained. From another angle, the "gain" would include the whole of the policy-moneys paid on his death while in his employer's service, *plus* (not *minus*) the notional amount of the future payments of contributions to the superannuation scheme, since these, by his untimely death, had been "saved" to him or his estate, and thus became a "gain" to his estate. In either event, the "gain" cannot be taken into account by the jury in assessing damages; and the old rule is inapplicable either directly, as in *Jennings's* case, or in *McPhee's* case; or in reverse, by reason of the alteration in the law made by s. 7 of the Law Reform Act, 1936.

This subject has opened out wider vistas, by reason of several recent authoritative decisions under the overseas equivalents of our Deaths by Accidents Compensation Act, 1908, than we contemplated when we began this article. These new decisions will, accordingly, be discussed in our next issue.

SUMMARY OF RECENT JUDGMENTS.

GIFFORD v. PENROSE SAWMILLING COMPANY, LIMITED.

SUPREME COURT. Auckland. 1946. March 27-30; April 12; July 17. CORNISH, J.

Damages—Quantum—Motion for New Trial on Ground that Amount awarded Excessive—Loss of Eye—Matters to be taken into Consideration—Reduced Purchasing Power of Money—Contingencies affecting Human Life—Possible Consequences of Injury suffered.

In determining the amount of general damages that a jury may legitimately award for personal injury, the following considerations should be kept in mind: (i) the reduced purchasing power of money compared with the figures to which the Courts were accustomed in the past; (ii) the various contingencies that affect human life and operations; (iii) a present sum of money in hand means more in proportion than the earnings which, from day to day and from year to year, for some indefinite period, a man may be able to acquire; and (iv) the extent to which the plaintiff's injury places him at a disadvantage in competition with other industrial workers; and (v) where the injury is the loss of one of a pair of organs, the possibility of the result of the loss of the other.

Lee Transport Co., Ltd. v. *Watson*, (1940) 64 C.L.R. 1, and *Ritchie* v. *Victorian Railways Commissioners*, (1899) 25 V.L.R. 272, applied.

The plaintiff lost an eye as the result of a sawmill accident and sued for damages. Before the accident he had arranged to become a farmer. After recovering from the accident he got a job on a farm, but lost it as the result of a drought, and the time of the hearing, he was employed as a landscape gardener's labourer. At the time of the accident his weekly wage was £5 (gross), which would have been increased in a few days, on his attaining twenty-one, to £5 19s. (gross). In his employment at the time of hearing he was earning £5 19s. (gross). In the action for damages against his employer, a *sawmilling company, he was awarded £2,000 damages by the* jury.

On a motion for a new trial, on the ground that the damages were excessive,

Held, dismissing the motion, That it could not be said that a jury could not reasonably have awarded £2,000 general damages.

Matheson v. *Schneideman*, [1930] N.Z.L.R. 151, and *Cunningham* v. *Australian Woollen Mills Pty., Ltd.*, (1944) 45 N.S.W. S.R. 114, followed.

Counsel: *Fawcett*, for the plaintiff; *Cocker*, for the defendant.

Solicitors: *Dufaur, Fawcett, and Cairns*, Auckland, for the plaintiff: *Milne and Meek*, Auckland, for the defendant.

HODGE v. PREMIER MOTORS LIMITED.

SUPREME COURT. Auckland. 1945. October 1; December 3. FINLAY, J.

Landlord and Tenant — Lease — Notice to Quit — Evidence — Tenancies within or outside Scope of s. 16 of the Property Law Act, 1908—Notice required for Valid Determination thereof respectively—Landlord suing for Possession, relying on Determination of Tenancy by Notice not expiring at the end of periodic Term—Onus of establishing Absence of Express or Implied Terms as to Duration of Tenancy—Property Law Act, 1908, s. 16.

In the case of a tenancy falling within the scope of s. 16 of the Property Law Act, 1908, *viz.*, a tenancy as to the duration of which there is no agreement, that tenancy may be validly determined by a notice given at any time, and its validity is not affected if such notice does not expire at the end of a periodic period from the commencement of the tenancy.

Heron v. *Yates*, (1911) 31 N.Z.L.R. 197 followed.

Aliter, In the case of a weekly or a monthly tenancy not falling within the scope of s. 16 of the Property Law Act, 1908, which can be validly determined by a notice which expires at the end of a periodic week and of a periodic month respectively from the commencement of the tenancy.

Queen's Club Gardens Estates Ltd. v. *Bignell*, [1924] 1 K.B. 117, *How* v. *Mansfield*, [1925] N.Z.L.R. 91, and *Precious* v. *Reedie*, [1924] 2 K.B. 149, followed.

Savory v. *Bayley*, (1922) 38 T.L.R. 619, distinguished.

Tenancies in respect of which an agreement as to duration has been expressly made or in respect of which such an agreement can be properly implied, are outside the scope of the section.

O'Brien v. *Jarrett*, (1886) N.Z.L.R. 5 S.C. 14, and *Scholium* v. *Burripp*, [1916] N.Z.L.R. 1050, applied.

Where the tenancy was created by agreement, the onus is upon the landlord who, relying on s. 16 of the Property Law Act, 1908, and, having given his tenant a notice to quit, which does not expire at the end of a periodic period from the commencement of the tenancy, sues for possession, to prove with the greatest certainty possible the terms of the agreement in order to satisfy the Court that duration was neither an express nor implied term of the agreement.

O'Brien v. *Jarrett*, (1886) N.Z.L.R. 5 S.C. 14, and *Hawley* v. *Phillips*, (1894) 12 N.Z.L.R. 538, applied.

Where the party giving the notice finds difficulty in obtaining information on the subject—(*e.g.*, where he is not the original landlord or the original tenant), he should give comprehensive form of notice to which validity has been attributed by authority.

Where the plaintiff in such an action gives no evidence as to the agreement under or by which the tenancy was created, and there is no evidence upon or from which it could be inferred that there was no agreement as to the duration of the tenancy, he must be non-suited.

Doe d. Ash v. *Calvert*, (1810) 2 Camp. 387; 170 E.R. 1193, followed.

Counsel: *C. H. M. Wills*, for the plaintiff; *Haigh*, for the defendant.

Solicitors: *C. H. M. Wills*, Auckland, for the plaintiff; *F. H. Haigh*, for the defendant.

REFRIGERATORS LIMITED v. STEPHENS AND OTHERS.

SUPREME COURT. Auckland. 1946. March 18; April 12; July 12. CORNISH, J.

Contract—Construction—Sales Tax—Contract between Wholesaler and Retailer fixing price—No mention of Sales Tax in Contract—Invoices of Goods supplied under Contract showing Sales Tax in Addition to Price—Trade Custom or Usage alleged, but not Proved—Sales Tax recoverable—Sales Tax Act, 1932-33, s. 63.

In the absence of any agreement that the price is inclusive of sales tax, a wholesaler, under the Sales Tax Act, 1932-33, who complies with s. 63 (1) of the statute, and, in every invoice delivered or sent to the purchaser, a retailer states in addition to the price for which the goods are sold, the amount of the sales tax payable thereon, has the right under s. 63 (2) to recover the amount of the tax from such purchaser.

American Commerce Co., Ltd. v. *Frederick Boehm Ltd.*, (1919) 35 T.L.R. 224, applied.

The plaintiff company, a wholesaler, agreed to supply the defendants with lockers at the price of £17 8s. 6d. each. No mention was made of sales tax. The defendants were obtaining the lockers for the Public Works Department, which had agreed to the price before the defendants had placed the order with the plaintiff. Over a period of months, the defendants received invoices for goods supplied, on each of which sales tax was shown as a separate item in addition to the price. They took no exception to any of them, but passed them on to the Government quantity surveyor; but, later, on sending a cheque to the plaintiff, they deducted sales tax from its account. Only when the quantity surveyor challenged plaintiff's price as excessive, did the defendants raise objection to the addition of sales tax. They relied upon an alleged trade custom or usage, that in all estimates that a building contractor gets from subcontractors or from various manufacturers of material, the price to the builder included sales tax, unless it is otherwise specifically stated.

In an action claiming the amount of sales tax payable on the transaction between the parties,

Held, That no such trade custom or usage had been proved, and as s. 63 of the Sales Tax Act, 1932-33, applied, the plaintiff company was entitled to judgment.

Counsel: *Stanton*, for the plaintiff: *Rosen*, for the defendants.

Solicitors: *Earl, Kent, Stanton, Massey, North, and Palmer*, Auckland, for the plaintiff: *Meredith, Meredith, Kerr, and Cleal*, Auckland, for the defendants.

THE LAW SOCIETY'S NEW PRESIDENT.

Mr. P. B. Cooke, M.C., K.C.

Mr. Philip Brunskill Cooke, who was elected last month as President of the New Zealand Law Society, is the sixth occupant of that office. The profession has been fortunate in its former Presidents: it has never been more fortunate than in this latest appointment.

Mr. Cooke was born at Palmerston North fifty-three years ago. His father, the late Mr. Frank H. Cooke, was in practice for many years in Palmerston North, where he held the offices of Crown Prosecutor and Borough (and later City) Solicitor. The new President was educated at Wanganui Collegiate School and at Victoria University College. He graduated as a Bachelor of Laws in 1913. The course for this degree occupied him but three years, and the manner in which he passed it foreshadowed the success that was later to be his in the practice of his profession. He spent a year as Associate to the then Chief Justice, Sir Robert Stout; and at the end of the year 1913, entered the office of Messrs. Chapman, Skerrett, Tripp, and Blair. There he had the good fortune to work under Mr. C. P. Skerrett, K.C., who was at that time in the full flush of his brilliant career at the Bar. The War intervened and Mr. Cooke was away on active service until 1919, when, on his return to New Zealand, he rejoined his former principals and soon afterwards was admitted as a partner by them.

S.P. Andrew, photo

MR. P. B. COOKE, K.C.

Only a few years were to pass before Mr. Cooke became a senior member of his firm. In 1926, Mr. C. P. Skerrett became Chief Justice of New Zealand. Two years later, Mr. A. W. Blair (now His Honour Sir Archibald Blair), was appointed to the Supreme Court Bench. From that time until 1936, Mr. Cooke shared with his partner and friend, Mr. G. G. G. Watson, the responsibilities of the common-law side of a great practice. Mr. Cooke left the firm—the only one with which he had in any way been connected during his professional career—to take silk, on January 30, 1936. In taking this step he gained the distinction of being the youngest barrister to become a King's Counsel in New Zealand.

Mr. Cooke's success as a member of the inner Bar is so well known that it is unnecessary to dilate upon it. His industry and precision and thoroughness are proverbial: his sheer ability, both as an adviser and as an advocate, in various fields of practice, has long since been recognized and admired by the profession. Along with all these qualities there goes a charm of manner, and, in addition, a sense of humour that is never very far from the surface. In short, here is a member of the Bar whom the profession regards with admiration and affection, no one grudging him the success which is the result of his own tireless efforts.

Our new President has served his country in two wars, and has served it with distinction. In the War of 1914–18 he was a Signals officer, and went overseas with the New Zealand Engineers, the Signals being in those days a part of that Corps. He saw service in Egypt, France, and Flanders. He held various appointments with the New Zealand Division, including that of Officer-in-Charge of Artillery Signals; and before the end of the War, he had risen to the command of the New Zealand Divisional Signal Company, and to the rank of temporary Major. In 1918, he was awarded the Military Cross for distinguished services during military operations in France and Flanders. He returned to New Zealand in 1919. In the War of 1939–45, Mr. Cooke again offered his services and was posted to the Adjutant-General's Branch at Army Headquarters in Wellington. He served in that Branch on a part-time basis for over a year, and then was fully mobilized for approximately two more years. He held the rank of Lieutenant-Colonel, and was Director of Personal Services.

Throughout his career, Mr. Cooke has rendered fine service to the affairs of the profession. In earlier years, he was unable to offer his services to the Wellington District Law Society, owing to the rule of that Society limiting accession to its Council to one member of a firm. During that period, however, he was a member of the Council of the New Zealand Law Society as representative of the Marlborough District Society

He became President of the Wellington District Law Society in 1938, having been a member of the Council of that Society for two years. He has also been a member of the Council of Law Reporting for over ten years. He served on the Joint Audit Committee when it was inaugurated. For several years past, he has been a member of the Rules Committee created under the Judicature Amendment Act, 1930, as a representative of the New Zealand Law Society. In respect of each and every one of these offices, the holder has performed his duties with characteristic energy and ability.

There is an old saying that "to succeed at the Bar one must work like a horse and live like a hermit." Like a good many sayings, this is not always true. Our new President has complied and still complies with the first of these conditions; but the second he has rightly eschewed, and has found time to take a prominent part in various outside activities. He has been a member of the Thorndon Lawn Tennis Club for a very long time; and has held the office of President of that Club. In addition, he has been honoured with life-membership. He still plays a useful game of tennis, though perhaps not now so quick of eye or fleet of foot as in days gone by. At one time, badminton claimed his interest and he not only played that game enthusiastically, but also took an interest in its administration, being President of the Wellington Badminton Association for a term. But, in games, his greatest love is golf. For many years he has been a member of the Wellington Golf Club, and he still plays regularly, being on a single-figure handicap. For several years he was a member of its Committee.

His interests are shared by that charming and gracious lady, his wife. They have two children. Their son is also to become a member of the profession.

Such, then, is a picture of our new President, albeit on a small canvas. The profession is confident that by the appointment of the new President it has placed its traditions in good hands; and he is assured of the loyal support of every member of the profession during his term of office.

LIBERTY AND THE COMMON LAW.

Speech at Canterbury Law Society's Dinner.

By A. T. Donnelly.

I am to speak about the Common Law tonight, and, in particular—so went my instructions—Liberty and the Common Law. It is a big brief, covering as it does a thousand years of British history in Britain and beyond the seas.

In England, the Common Law, in laymen's language, is the unwritten law of England administered in the King's Courts, based on ancient and universal usage and embodied in commentaries and reported cases. It is the law of the ordinary Judges of the King.

In New Zealand, our law is the Common Law of England, civil and criminal as we inherited it from the Mother Country, together with changes and additions required for our own purposes.

It is a fact that only two races of the world have shown a genius or instinct for the law. The systems of law which owe their development to these two races, the Roman and the Norman, now cover the whole world or wherever in the world there is any law we think worthy of the name.

The Norman conquest was more than a change of dynasty: it was a legal revolution. And since the Conquest, for nearly a thousand years, the Norman influence has stamped and shaped our law, and its influence survives in our Courts in New Zealand today.

Within the last fortnight we had in our Courts a link with medieval times. A 20th-century citizen, driving a 20th-century motor-car from a 20th-century cabaret was said by the Police to have drunk so much 20th-century gin, or compounds thereof, that he should not have been driving the car at all. The defence was that he had already been in peril—a defence developed by medieval lawyers and expressed in two words of a medieval tongue, *autrefois acquit*. This plea and defence would have been as well understood by a lawyer of the 12th century in Westminster Hall as by a lawyer of the 20th century in the Magistrates' Court in Christchurch, New Zealand.

When you think of this case, we who have inherited the Common Law know we have inherited a great estate, and it is worth while looking at its birth, its growth, its place in our life: and there are some things about it we might remember to-night.

I spoke of Westminster Hall just now. William Rufus contemplated a new palace at Westminster, but only a part of it, Westminster Hall, was built; and that was practically finished in 1099. In this Hall, the Courts of England sat for centuries in plain sight and hearing almost of one another. At one end was put the marble seat of the Chancellor where his Court was held. When Sir Thomas More was being inducted as Chancellor under Henry VIII he stopped on his way to the marble chair to receive a blessing from his father a Judge at the time, sitting in the Common Pleas Here, through the centuries the Judges of England sat sifting and threshing the principles, and hammering and shaping the form and content, of the Common Law Here took place great forensic contests such as the case of Ship Money, the trial of the Seven Bishops Erskine's perfect oratory in *Hardy's* case and, Brougham *in* the great Case of the Queen. So we can say, as lawyers of a small country with a proud humility that in some degree "We are heirs to all the ages" and sometimes we should think about it for a little while for in regard to it we have duties as well as rights.

How the Common Law Grew.

There are interesting points about this. Unlike modern legislation, it did not come hot and damp from the Government Printer. It grew according to the rule of Bacon, who says—

> It were good therefore that men in their innovations would follow the example of time itself which indeed innovateth greatly, but quietly and by degrees scarce to be perceived.

Our legal system has never been at any one time "old, middle-aged, or young." It has preserved the method of nature," in what has been improved, it was never wholly new, in what was retained it was never wholly obsolete." Holmes, in his great book *The Common Law*, the inspiration of Salmond, says much the same thing:

> The truth is that the law is always approaching and never reaching consistency. It is forever adopting new principles from life at one end and it always retains old ones from history at the other which have not yet been absorbed or sloughed off. It will become entirely consistent only when it ceases to grow.

The Common Law, therefore, grew like a tree or a plant, or an animal; it had its weaknesses and its inconsistencies, but it went with human nature, and people were content to live with it, and live under it, whether they stayed in Britain or went across the seas.

Like any other institution the Common Law has always had its critics. The most famous is Mr. Bumble, in *Oliver Twist*. Mr. Bumble's attention was called to the fact that in the eye of the law it was at that time presumed in favour of a wife in certain circumstances that she acted under the influence of her husband: Mr. Bumble said with great indignation—

> If the law supposes that the law is a ass, a idiot, the law is a bachelor and the worst I wish the law is that his eye may be opened by experience.

I want to refer you to another observation of Mr. Bumble, where he discussed with his friend, the undertaker, a grievance he had against a Coroner's jury for adding a rider to their finding.

> Said Mr. Bumble: "If the Board attended to all the nonsense ignorant jurymen talk they'd have enough to do."
>
> "Very true," said the undertaker, "They would indeed."
>
> "Juries," said Mr. Bumble, "Juries is ineddicated, vulgar, grovelling wretches."
>
> "So they are," said the undertaker. . . .
>
> "And I only wish we'd a jury of the independent sort in the house for a week or two," said the beadle. "The rules and regulations of the Board would soon bring their spirits down for them."

I cite these two observations of Mr. Bumble to you because they lead to something I want to say about the Common Law to-day, its relation to administrative law and to politicians and governments.

Mr. Bumble was only a Poor Law officer and has been dead for a hundred years, yet his descendants still reign over us in all sorts of jurisdictions. He was the founder of a powerful house or dynasty. Many of us have had our spirits brought down by the rules and regulations of the Board, not the workhouse Board of Mr. Bumble's time; but one or some of the host and swarm of Boards and local and general authorities, which, bred by the complications of the war and social life to-day, and armed with the sting of rules and regulations, irritate and persecute the ordinary private citizen.

This brings me to a reference to the present conflict everywhere between the law of the Courts and the statutes on the one side, and administrative law—the law of the politicians and the governments—on the other.

Whether we like it or not the erosion of the jurisdiction of the Courts by administrative law will increase, or, at the best, will not diminish. To-day, administrative law is to the body politic what aspirin is to the individual—given often before diagnosis for any ailment, mild, serious, or imaginary. All that can be done by those who do not like this treatment is to keep the doses down, and see the medicine is a proper prescription for the complaint.

The friends of the administrative law doubt, so they say, the capacity of the legal mind to interpret the statutory intention of a democratic Parliament bent on legislation of a far reaching and often novel class.

The opponents say in the words of Chief Justice Hughes of the Supreme Court of the United States:

> There is still the need to recognize the ancient right, and it is the most precious right of democracy, the right to be governed by law and not officials, the right to reasonable, definite and proclaimed standards which the citizen can invoke against both malevolence and caprice.

The conflict between the law of the Courts and administrative law is now on everywhere and the conflict will affect us all for good or ill, so we should form our own ideas about it according to our sympathies and social and economic and political beliefs.

Pride and Affection for the Common Law.

I now turn to some characteristics of the Common Law, which justify our pride in it and our affection for it.

The economic legislation of modern times, without expressing any opinion on its merits, shows plainly enough for all of us to see a faculty or accomplishment of the British legal system, which, like a golden thread, runs through its history for a thousand years, which is lacking in current foreign systems of law, namely a capacity and competence to change, amend, and adjust itself easily and without friction in accordance with the felt necessities of the time, and the prevailing moral and political theories.

It is a glorious and eternal quality of our legal system and by reason of this quality, and the resulting universal civic confidence in our legal system, New Zealand and all other British countries have stood the strain of the last hard and bitter years without dictators and oppression on the one side, and without disorder or revolution on the other.

A changing sense of utility, justice and public policy has always been able to change the law. For example: *Bowman* v. *Secular Society*, [1917] A.C. 406:

> The question whether a given opinion is a danger to society is a question of the times and a question of fact.

Crown Milling Co. v. *The King*, [1927] A.C., 394; N.Z. P.C.C. 37, 43:

> It is not for this tribunal, or any tribunal, to adjudicate as between conflicting theories of political economy. Strong views may be entertained on the one side or the other: but the one material question is whether the monopoly is contrary to the public interest. The burden of proof is upon the asserting party.

There is this further observation about the Common Law, namely, its rights and privileges should not be taken for granted: because these had to be thought out or fought out in past times.

The traditions of the Judges of England are still the inspiration of the Judges, and, we can also say, the lawyers of New Zealand to-day. Our Judges and Magistrates still, across the centuries, draw from the secret root of the Common Law the juices which are the life of the law.

We should sometimes remind ourselves of our legal history by reading about it: and I have always thought our library should have *Holdsworth's History* and the general works of such Englishmen as Pollock and Maitland, and the Americans Holmes, Thayer, and Cardozo.

I have heard hundreds of times the form used by the Registrar to a Jury before a Criminal trial begins but it never leaves me unmoved, because centuries of struggle for freedom and justice are condensed in those few words.

Every British citizen, because of the Common Law, when charged with a crime, must have a public trial before an impartial Court according to the law of the land which he himself has helped to make. The words of the Registrar remind us that this right was hardly won, and hardly held, in England, and does not exist at all on the Continent of Europe which the War has forced down to a lower level of human freedom than at any time since the days of the Black Death.

There are two recent New Zealand cases which show that our Judges to-day are alert as any Judges of the past to maintain in full vigour and effect the rights and privileges of the ordinary man under the Common Law.

The first case was the one affecting the furlough soldiers, who finally refused to go back, in breach (it was said) of their agreement and the terms of their leave. The important thing is that by a judgment of our Supreme Court these men, then under illegal military restraint, by the strength of the old prerogative writs of the Common Law were plucked out of the jaws of the Army at a time when the physical survival and victory in War of this country were yet in doubt.

Last of all, in the September number of the *Law Reports*, our Court of Appeal affirmed once again the ancient common-law right of the citizen charged with a crime to have the facts decided by the jury, irrespective of the opinion of the Judge, and the further right that the burden of proof is always on the Crown.

Respect for the law and confidence in its administrators and administration in these times of turmoil, anxiety, and unrest, stand like stone in our community, strong, steady and unchanged. Like the Church of God, we can truly say our law is built upon a rock. No one could say that the administration of the law should be managed or controlled, diluted or depreciated, inflated or deflated. Whatever the future may hold for this or any other British dominion, changes will come from within the law not from explosions without the law. We have seen how forces without the law in other countries have thrown up dictators or revolutionaries, whose tyranny has rooted up the traditions of a race of people, changed its social soul, put out the light of freedom and destroyed the liberty of the individual citizen. It is the law and the law alone which saves the British people from the social tragedies of other countries.

I close with a quotation from a great modern American :

> It is the fashion to find fault with the administration of the law and there certainly are faults and abuses, but now and then let it be said there is more to be thankful for than to criticize. Won by the devotion and sacrifice of thousands through the long years of history that which we vaguely call "The Law" still stands as the citadel of human freedom. There are grounds for the belief that the stars in their courses are still in league with justice and it behoves all lawyers to see to it that they are on the side of the stars.

I give you the toast of the Common Law by adopting the words once used by Lord Harris, a great Empire Empire administrator, a great cricket administrator. In the eightieth year of his age he gave the toast of "Cricket" :

> "It is a great inheritance, it is all British. Cherish it my brothers; for it is now in your hands."

THE RESPONSIBILITIES OF PARENTS.

For Torts of their Children.

By R. Else Mitchell, of the New South Wales Bar.

The recent decision of the High Court of Australia in *Smith* v. *Leurs*, (1945) 70 C.L.R. 256, throws valuable light on one of the questions discussed in a recent issue of this Journal under the title "Tort: The Responsibility of Infants and their Parents" (*ante*, p. 57).

In *Smith* v. *Leurs*, a conflict arose between two groups of boys some of whom were in possession of shanghais; there was some exchange of stone-throwing and then the boy Leurs, who was thirteen year of age, fired a piece of gravel from his shanghai, at one of the opposing group, Smith, who was fourteen years of age. The gravel hit Smith in the eye, and seriously damaged it. Proceedings claiming damages were brought by Smith, through his next friend, against the boy Leurs and the two persons who had adopted him as their son. The action alleged assault by the boy and negligence of his adopting parents in allowing him to be in possession of a shanghai and to use it. The parents denied that the boy was under their supervision and control, and also denied that they had any knowledge of the dangers associated with the possession or use of the shanghai.

The action was tried in the South Australian Supreme Court by Mayo, J., who entered a verdict for the plaintiff against all defendants for £305; but, on appeal to the Full Court, the verdict against the adult defendants was set aside on the broad ground that the trial Judge had exacted a degree of care out of step with general practice and the understanding of ordinary people. From this decision the plaintiff appealed to the High Court which dismissed the appeal on the ground that the facts disclosed no breach of parental duty.

The first point established by the judgments of the Judges of the High Court of Australia is that the adopting parents were in the same position as natural parents because the South Australian statute, the Adoption of Children Act, 1925–1943, provides that for all purposes, civil and criminal, an adopted child shall be deemed in law to be the child born in wedlock of the adopting

parents, and the Guardianship of Infants Act, 1940, provides that each parent has equal rights and responsibilities with respect to an infant. Moreover, the infant defendant resided with the adopting parents and was in fact under their supervision and control.

With respect to the substantial question of whether the adopting parents were guilty of negligence, Sir John Latham, C.J., at p. 259, said :

> A parent as such is not responsible for the torts of his child, though, if the child is his servant or acts with his authority, the parent will be liable as his employer or principal. But a person who, as a parent, has the control of a child is responsible for negligence in the exercise of that control if injury results. Whether there is negligence depends upon all the circumstances. A baby two years old playing with another baby should not be allowed to have a knife or a box of matches. It may be negligent to allow a particular child to have an airgun : *Bebee* v. *Sales*, (1916) 32 T.L.R. 413. Is it negligent to allow a boy of thirteen to have a shanghai, after giving him caution and warning about its use? A shanghai does not go off " of itself " by accident—as may happen with a loaded gun. It requires deliberate intention before it can produce any effect.

His Honour went on to point out that the boy had been warned of the danger of using a shanghai, and was told not to use it away from home ; he was old enough to understand the warning, but disobeyed it. In these circumstances, it could not be said that the parents were guilty of any negligence ; to hold otherwise " would involve setting up an impracticable and unreasonably high standard of parental duty."

Dixon, J., in his judgment adverted to the common misunderstanding that a parent is liable for the harm done by his child—a misunderstanding which has ensued from the persistence of the notions of early law. These have been preserved by the French Civil Code, which lays down the following rule, " *Le père, et la mère aprés le décès du mari, sont responsables du dommage causé par leurs enfants mineures habitant avec eux* " : Art. 1384. However, as His Honour pointed out at p. 261, the English law developed in the opposite direction, and in 1860 Willes, J., said in *Moon* v. *Towers*, (1860) 8 C.B. (N.S.) 611, 615 ; 141 E.R. 1306, 1308 :

> I am not aware of any such relation between a father and son, though the son be living with his father as a member of the family, as will make the acts of the son more binding upon the father than the acts of any body else.

Dixon, J., observed that there are various relationships which in law make a person liable for the acts of another ; but it is exceptional to find in the law a duty to control another's actions to prevent harm to strangers. With respect to the relationship of parent and child His Honour, at p. 262, said :—

> It appears now to be recognized that it is incumbent upon a parent who maintains control over a young child to take reasonable care so to exercise that control as to avoid conduct on his part exposing the person or property of others to unreasonable danger. Parental control, where it exists, must be exercised with due care to prevent the child inflicting intentional damage on others or causing damage by conduct involving unreasonable risk of injury to others : *Salmond, Torts*, Ch. III, sec. 17 ; p. 69 of 9th Ed. ; *Winfield, Torts*, 2nd Ed., 105 ; *American Re-statement of the Law, Torts, Negligence*, paras. 315, 316 ; *Beebee* v. *Sales*, (1916) 32 T.L.R. 413 ; *Brown* v. *Fulton*, 9 R. (Court of Sess.) 96 ; *cf. North* v. *Wood*, [1914] 1 K.B. 629 ; *Black* v. *Hunter*, [1925] 4 D.L.R. 285 ; *Kennedy* v. *Hanes*, [1940] 3 D.L.R. 499, at pp. 509–510 ; *Edwards* v. *Smith*, [1940] 4 D.L.R. 638. The standard of care is that of the reasonably prudent man, and whether it has been fulfilled is to be judged according to all the circumstances, including the practices and usages prevailing in the community and the common understanding of what is practicable and what is to be expected.

Starke and McTiernan, JJ., delivered separate judgments, in which they came to the same conclusion and held that the appeal should be dismissed.

It is important to mention that the plaintiff did not at any time argue that a shanghai was a chattel which was dangerous *per se*, so that it could be classed with explosives, loaded guns, poisonous chemicals, tigers, &c. The evidence was that most of the boys living in the district where the accident happened possessed and used shanghais. Sir John Latham, C.J., described a shanghai as " a common object of boyhood life " ; Starke, J., classed it with childish playthings and not as a dangerous article and Dixon, J., quoted several historical references to the shanghai or, as it is called in England, the catapult, or, as in America, the slingshot. The *Liber Albus* of the City of London contained an ordinance preventing the carrying of a " stanbowe " (stonebow) and *Morris's Austral English*, (1898), collects numerous quotations, during the years 1863 to 1895, which condemn the use of the shanghai as a source of public danger and annoyance. Yet only in Western Australia (55 Vic. No. 27, s. 9) and New Zealand (s. 3 (*w*) of the Police Offences Act, 1927) is there at the present day any legislative provision for the repression or discouragement of the shanghai or catapult *eo nomine*. In general, therefore, the Court concluded that a shanghai could not be regarded as a chattel dangerous *per se* so as to impose a special duty of care in respect of its possession and use.

The decision in *Smith* v. *Leurs* should be compared with that of Tucker, J., in *Ricketts* v. *Erith Borough Council*, [1943] 2 All E.R. 629, in which an action was brought against a local authority which was in control of a school, and the owner of a nearby shop, to recover damages for injuries sustained by the use of a bow and arrow, which a pupil of the school had bought. The plaintiff claimed that the local authorities had been negligent in failing to maintain adequate supervision of the school playground where the accident occurred, and further alleged that the shopkeeper had been negligent in selling a dangerous article—namely, the bow and arrow, to a young boy, without any warning as to the danger in using it.

Tucker, J., dismissed the action against both defendants on the grounds (*a*) that the local authority was not obliged to maintain constant supervision of the playground ; and, (*b*) that the bow and arrow in itself was not a dangerous thing and hence no duty of care rested on the seller towards the boy or any other person.

Cases of this type are fortunately infrequent, and, though the injuries sustained by innocent persons as a consequence of the use of semi-dangerous playthings are undoubtedly serious, those injuries in general cannot be the responsibility of any one but the boy himself. The law in this respect is an implicit recognition of the maxim that " boys will be boys."

IN YOUR ARMCHAIR—AND MINE.

By SCRIBLEX.

The Value of an Eye.—Cornish, J., has recently confessed to being almost, but not fully, persuaded that no twelve men could reasonably have awarded a young man of twenty-one years the sum of £2,000 for the loss of his right eye: *Gifford* v. *Penrose Sawmilling Co., Ltd.* (*Ante*, p. 255). It was contended by the defendant that the plaintiff could readily adjust himself to monocular vision and that he would be under no special disability in the calling he preferred—namely, farming. As against this, it was pointed out that being debarred from participating in activities and forms of recreation attended by risk of bodily injury or the likelihood of injury to the good eye, he would be deprived of much of the enjoyment of life. In *Cunningham* v. *Australian Woollen Mills Pty., Ltd.*, (1944) 45 N.S.W. S.R. 114, a middle-aged woman of forty-eight held the jury verdict for £2,515 for the loss of an eye, Jordan, C.J., considering it "impossible to say that the amount of the verdict is so much out of proportion to the gravity of the injury and to the personal and pecuniary damage likely to have been sustained by the plaintiff that reasonable men could not have awarded it." *Omnia mutantur.* In a case tried before Blackburn, J., plaintiff's counsel dwelt at great length upon the contention that the seriousness of the injury had blighted his client's future career. "I have lost the sight of an eye," interpolated the Judge, "and it has not blighted my career, as you see." The jury awarded trifling damages; and, so conscience-stricken was Blackburn, J., upon turning the matter over in his mind, that he forwarded his cheque for £50 to the plaintiff the following morning.

Criminal Trials.—There is a note of bathos, when at the end of a lengthy and exciting criminal trial, the verdict of "not guilty" is followed by a direction from the Bench that the accused be discharged; the dock door is opened and he leaves the unwelcome atmosphere of the Court. At one time, upon the returning of this verdict, it was the duty of the Clerk of Assize to say to the acquitted man: "Down upon your knees and say 'God save the King and this Honourable Bench'." Even then his departure into the realms of freedom was delayed until he had paid the keeper of the prison, the Clerk of Assize, and the Under-Sheriff—a custom that was permitted until nearly the end of the eighteenth century. By way of compensation, however, prisoners then on trial had a wider medium of self-expression. They were given the chance of "challenging the array" and thereby displacing all the jurors at once. In one, instance, after the Clerk had read the customary words, "These good men whose names I am about to call," and so on, the accused emphatically stated to the surprise of all: "I object to the whole b——— lot." "That, prisoner is, I take it, a challenge to the array," observed the Judge. "Officer, let another jury be empanelled." The second proving more to his liking, the prisoner then turned to the Judge and said: "I object to you, too, you b——— old———." "*That, prisoner,*" was the dignified reply, "is an objection to the jurisdiction of the Court, and I overrule it."

The Art of Self-defence.—"No one can be expected to take flight to avoid an attack if flight does not afford a safe way of escape." This judicial observation (which is helpful to those who are in doubt as to when discretion is the better part of valour) is recorded in a recent issue of the *South African Law Journal* and emanates from an appeal successfully brought by a Native convicted of assault with intent to do grevious bodily harm. He was a crippled railway dining-room-car attendant who was violently struck by a European incensed at the Native pushing past him, and undeterred from the nobility of his purpose by another European seeking to restrain him. The bewildered victim grabbed a knife and struck his assailant with it. The Judge said, in the course of his judgment, which quashed sentence and conviction: "In all these cases one has to bear in mind the human aspect of the attack. It is all very well for the person, who sits in an easy-chair and tries to analyze the various incidents that took place in order to procure a picture of what actually happened, and then *ex post facto* to say he ought to have done this, and he ought to have done that, as a reasonable man." Such a broadminded and tolerant view appeals to common sense although it may not commend itself to "mad dogs of Englishmen, out in the midday sun."

Qualified Approval.—It was stated by counsel in the present Court of Appeal that, when approving a formal order (in which the parties had applied the judgment of Johnston, J., in *Mitchell* v. *Walpole and Paterson Ltd.*, [1945] N.Z.L.R. 565), Blair, J., had said that he wanted to make it clear that he "neither concurred in nor dissented from" that judgment. This statement drew from Callan, J., the observation that His Honour had achieved a happy combination of courtesy with caution. Such a detached attitude seems to Scriblex to manifest an elegant neutrality that is much preferable to the reckless bias of counsel whose "feigned ardour and unreal rhetoric," according to Wilde, in *The Decay of Lying*, have been known to "wrest from reluctant juries triumphant verdicts of acquittal for their clients, even when those clients, as often happens, were clearly and unmistakably innocent."

Curran.—The Irish counsel, Curran, had a powerful reputation as a cross-examiner. His wit was keen and penetrating. "My lord," cried one of his victims, "I cannot answer Mr. Curran, he is putting me in such a *doldrum*." "A doldrum!" exclaimed the Judge. "What is a doldrum, Mr. Curran?" "Oh, my lord," replied Curran, "it is a common complaint with persons like the witness. It is confusion of the head, arising from corruption of the heart!" On the other hand, he occasionally met his match. Once this occurred when he was tackling an Irish ostler whose credibility he was anxious to destroy. Every effort to make this witness contradict himself was wasted by his equanimity and jovial good nature. Curran lost his temper, and roared, "Sir, you are incorrigible: the truth is not to be got from you. It is not in you, and I see the villian in your face!" "Faith, your honour," replied the ostler, "my face must be moighty clane, and shinin' indade, if it can reflect like that!" The line of cross-examination was not pursued.

LAND SALES COURT.

Summary of Judgments.

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

No. 87.—V. TO J.

Urban Land—Builder—Undue Aggregation—"Speculation purposes"—Twenty-one Properties owned—Since coming into Force of Act, Three Properties purchased, Eight Houses and Block of Flats built and Nineteen Properties Sold—Sale of Bare Sections—Disclosure of Building Contracts—Servicemen's Settlement and Land Sales Act, 1943, s. 50 (3).

(*Concluded from p. 248*).

"The Crown, however, more strongly rests its appeal upon the ground that the purchaser proposes to use this land for speculative purposes within the meaning of s. 50 (3) of the Servicemen's Settlement and Land Sales Act, 1943. No definition is provided of 'speculative purposes,' nor has the term been the subject of judicial interpretation in this Court. Mr. Vautier, for the Crown, was unable to assist the Court substantially in the matter of definition of interpretation, but he submitted that in all cases the purchase of land for the purpose of resale at a profit amounts to speculation and is intended to be prohibited by the Act. If we understood him aright, Mr. Vautier claimed that Mr. J., not being by training a builder himself, should not be classed as a builder who might by his efforts improve the land and therefore be entitled to a profit on resale, but should be classed as a mere middleman desirous of acquiring properties and subsequently disposing of them at a speculative profit to third parties. Upon the evidence we are not satisfied that Mr. J. is in a substantially different position from any builder or contractor who owns and manages a business, but does not work personally in his actual building operations, nor are we satisfied on the evidence of his past transactions that he has made a practice of buying and selling in a manner which would justify the application to him in its ordinary significance of the term 'speculator.' Such properties as he has sold have all been consented to by the Land Sales Committee without reduction of price and it would seem to follow that he has not asked unreasonable prices. The Court has never purported to say that the Act does not lay down that a vendor shall be deprived of the full value of his land merely because a sale at that value may show him a profit.

"It is difficult to conceive of any builder or other person proposing to buy and subdivide land except with a view to making some profit on the transaction and under the present legislation the amount of such profit is strictly limited and the possibility of making a profit may indeed be entirely precluded. It would seem indeed that if the provisions of the Act are properly observed successful speculation in land should be virtually impossible. The Court is therefore unable to agree with Mr. Vautier that the mere purchase of land for the purpose of resale at a profit amounts to speculation and is a sound ground for the refusal of consent. It is not desirable to attempt to define the circumstances in which speculation to such a degree as to vitiate a transaction may occur, and each case where the element of speculation might appear to be present must, of course, be considered upon its own facts by the appropriate Committee or by the Court. In the present instance we are satisfied that no good reason exists to refuse consent on the ground that this is a speculative transaction.

"In the course of evidence it appeared that in one or possibly two of his previous transactions, the purchaser had sold a section and subsequently under an arrangement made contemporaneously with the sale had built a house for the purchaser, the proposed building contract not being disclosed to the Committee on the application for consent to sale of the section.

"Mr. J. stated, and the Court accepts his explanation, that in the particular cases in question he was advised that such a procedure was proper and that he was unaware that the building contract should have been disclosed. He stated also that the practice was not one which he had usually followed. It is, of course, quite clear that such a building contract, whether reduced to writing or arranged by word of mouth, is in fact an ancillary or collateral agreement and as such should be disclosed in and filed with the application for the consent of the Court, and that failure to make such disclosure is a breach of the applicant's statutory declaration. The Court would take a serious view of the matter were it of opinion that the purchaser in the course of his building operations had made a practice of such non-disclosure. It is now mentioned in the hope that there will be no further misunderstanding as to the impropriety of failing to disclose such a transaction.

"For the foregoing reasons the Court is of opinion that the Crown's appeal fails and should be dismissed. It is clear, however, that in view of the considerable number of tenanted properties which Mr. J. possesses and has possessed for a considerable time, it would be improper for the Court to agree to his acquiring further properties for letting purposes. Mr. J., however, gave it in evidence that his sole object in purchasing the present property was to provide himself with building sections, and that he would build thereon and on completion sell the houses so built to returned servicemen or other suitable buyers. The consent of the Court to the present transaction is granted upon the undertaking of the purchaser that he will use the land for the purpose of his building business and not for the purpose of adding to his existing holdings which by virtue of being let to tenants may properly be deemed to be held for investment. Mr. J. is not necessarily precluded from selling portions of the present property as building sections, but the Court in reliance upon his undertaking, expects him to use and ultimately to dispose of the land now purchased or of its component sections in accordance with the usual and recognized practice of builders engaged in the business of erecting houses for sale. Subject hereto, the appeal is therefore dismissed."

No. 88.—*In re* B.

Rural Land—Compensation—Land taken by Crown—Committee's Award—Appeal by Owner and by Crown—Productive Value—Expenditure—Maintenance and Depreciation—Locality Value—Potential Carrying Capacity—Capacity for Development—Buildings—Excess or Deficiency—Servicemen's Settlement and Land Sales Act, 1943, s. 53.

Appeal from an Order of the Hawke's Bay Land Sales Committee, made on March 7, 1946, awarding compensation for the taking by the Crown in pursuance of Part II of the Servicemen's Settlement and Land Sales Act, 1943, of an area of 4,151½ acres of land at Pukeatua, near Dannevirke.

The owner of the land, Mrs. B., claimed as compensation the sum of £51,483, and the Crown had offered her the sum of £35,265. After a lengthy hearing the Committee awarded a sum of £43,159 and certain interest, against which award both the Crown and Mrs. B. lodged appeals. At the hearing before the Court, it became clear that there were substantial differences between the parties, both as to the productive value of the land and as to certain other claims, which will be deal with in due course.

The Court said: "The primary duty of the Committee, and now of the Court, is of course to determine the productive value of the land in accordance with s. 53 of the Act. The section itself lays down the method by which the productive value is to be ascertained and in common practice this is effected by capitalizing the net annual income which it is estimated can be derived from the land by an average efficient farmer, as shown by a budget setting out the anticipated gross income and the expenses, other than capital expenditure, required to be incurred in the production of such income. The budget must be prepared on the basis of prices and costs ruling on December 15, 1942.

"For the purposes of the appeal the owner, Mrs. B., relied upon budgets drawn up by two experienced valuers, Mr. W. and Mr. M., while the Crown relied upon a budget prepared by Mr. McK. The three budgets differ considerably both in their component items and in the final result. The first question calling for consideration, and one to which a considerable volume

of evidence was directed, was the carrying capacity of the land. The property, in fact, was managed for the owner by Mr. S., a very experienced and, in the Court's opinion, a thoroughly competent sheep-farmer, from the date of its purchase by Mrs. B., in 1934, until taken over by the Crown, on July 1, 1945. Mr. S. gave evidence as to his farming transactions and it is clear that during the period of his management he carried on the average somewhat less than 5,000 sheep with an appropriate number of cattle. Mr. S. claimed, however, that the true carrying capacity of the property was considerably greater and that it was indeed at the time of taking over by the Crown not less than 5,800 sheep with appropriate cattle. He gave as his reasons for keeping the property understocked, the difficulty of procuring labour and fertilizer during the war, his desire to check the growth of manuka by growing a heavy sole of grass, and the fact that the owner, Mrs. B., had intimated that she did not look for an immediate return of income from the property. The budgets presented by Messrs. W. and M. were based on a carrying capacity of 5,782 and 5,486 sheep respectively. After careful consideration of the evidence, the Court is of opinion that both of these valuers were to some extent influenced by the views of Mr. S., as to the carrying capacity and that they have taken rather too optimistic a view. On the evidence as a whole, we are driven to the conclusion that Mr. S., in accordance with his obvious duty to the owner and as would be expected from a farmer of his experience and efficiency, did his best with the property and in fact maintained it as its full carrying capacity subject only to certain limitations due to circumstances arising from the war and due also to the conservative policy of expenditure which he adopted. Mr. McK.'s budget presented by the Crown, estimated a carrying capacity of 5,241 sheep, a number considerably in excess of the average carried in the past, but a number which, in his opinion, could reasonably be carried subject to a more liberal expenditure on labour, stock, and farming costs generally, which was duly reflected upon the expenditure side of his budget. The Committee considered Mr. McK.'s budget to be the one most closely related to the actual carrying capacity of the land and the Court has arrived at the same conclusion. We agree in substance with the contention of the Crown that in his allowances for carrying capacity and for the quantity and quality of farm products available for sale, Mr. McK. has been fair, if not indeed generous, to the property and that conclusion was not seriously disputed by counsel for the claimant. In total, Mr. McK. credited the farm with an average annual income of £7,973, an amount considerably in excess of the income estimated by Mr. W. and but little below that envisaged by Mr. M. It is, moreover, of interest to note by way of comparison that the accounts presented by Mr. S. in respect of the actual working of the property for the year ending June 30, 1945, notwithstanding the increase in export prices between 1942 and 1945, showed a gross income of only £7,049. It seems to be clear, therefore, that on the income side of his budget Mr. McK. has made due allowance for any under-stocking of the property by Mr. S., and for such increase in income as might reasonably be expected from a more intensive and progressive method of farming. Notwithstanding the alternative budgets of Messrs. W. and M., counsel for the claimant appeared quite ready to accept the estimate of income proposed by Mr. McK. and directed his criticism of the latter's budget only to certain items on the expenditure side which were claimed to be too high. The Crown, on the other hand, contended that it was unfair to assume that the property could produce the high rate of income forseen by Mr. McK. except by a more liberal policy of expenditure. The Court agrees with the Committee that it is proper to accept the budget put forward by the Crown as a basis for the determination of the productive value.

" It now becomes necessary to consider the various items upon the expenditure side of the budget which were challenged by Mr. O'Leary K.C. on behalf of the claimant. These and our findings in respect thereof are as follows :—

" 1. *Management Reward.*—For this Mr. McK. allowed £550 together with £40 for travelling expenses, but the claimant claimed £500 was a sufficient reward. Evidence was called to show that a suitable working-manager could have been obtained for £500 per annum and Mr. O'Leary contended strongly that under the wording of s. 53 (5) the Court is limited to allowing such remuneration as would be a reasonable reward for the work of a working-manager. The Court does not accept this view. The section speaks of remuneration for the work performed by 'the farmer' and in the opinion of the Court the term *prima facie* relates to a farmer who is also the owner of the property and that such reward must be provided for in the budget as would be reasonably sought by a working-owner (in addition to interest at 4½ per cent. upon his capital) as his reward for farming the property and for determining and administering a proper farming policy: see *Case No. 66.—B. v. The King.* Having regard to the area and to the capital investment involved, the management reward proposed by the Crown is by no means an excessive reward for a working owner and is therefore adopted.

" 2. *Casual Shepherds.*—The Court accepts the view that the period of employment of the casual shepherd may properly be reduced from twenty to thirteen weeks with a consequential reduction in wages from £140 to £104.

" 3. *General-hand and Scrub-cutter.*—For each of these workers the Crown allows a total of £6 per week. On the evidence it would seem that each may properly be reduced to £5 10s., making a total consequential reduction of £52.

" 4. *Bulls.*—The annual charge for bulls is reduced to £31 10s. on the basis of a four-year life.

" 5. *Rams.*—The Court accepts the evidence of the Crown witnesses that rams of a higher than average quality are reasonable required to ensure the anticipated productive income, and no alteration is made in the budgetted items for purchase of rams.

" 6. *Hay-making.*—The Court agrees that hay-making need not be done by contract and that an allowance of £50 for casual labour is sufficient in lieu of £105 for contract labour, effecting a reduction of £55. Consequential upon this alteration in farming practice suitable farm implements to the extent of £200 must be provided and added to the stock and plant.

" 7. *General Farm Stores.*—The total sum of £142 debited under this heading appears to be reasonable and notwithstanding the criticism directed to three of the individual items listed, the Court is of opinion that this amount should stand.

" 8. *Fencing.*—The amount of £219 allowed for fencing materials seems a little high and is reduced to £200.

" 9. *Rates.*—On the evidence, the amount allowed for rates was £7 in excess of the actual rates payable for the year 1942, and this amount is therefore deducted.

" The result of the foregoing adjustments is that a total sum of £179 10s. has to be deducted from the expenditure envisaged by Mr. McK.

" On the other hand the Court is of opinion that the charges for maintenance and depreciation are inaccurately computed and must be increased. Maintenance and depreciation are charged at 2 per cent. upon £3,786, being what is known as 'the average annual value' of the buildings as computed by Mr. McK. This sum is arrived at by taking two-thirds of the sum of £5,680 which Mr. McK. has computed as the value of the buildings which would normally be required upon the property in question to enable the net annual income to be earned by an average efficient farmer. It is customary and proper in preparing a budget to consider only the 'hypothetical buildings' which would be 'normally required' upon the property, without reference to the actual buildings which may be there, but in the view of the Court depreciation and maintenance for the purposes of the budget should be calculated upon the full estimated value of the hypothetical buildings at a rate appropriate to their hypothetical life and construction. In the present case it is thought that a rate of 1½ per cent. in each case should be adequate for depreciation and maintenance but charged upon £5,680, involving an amendment of the budget by an addition of £9 for maintenance and a similar amount for depreciation.

" It is further considered that Mr. McK. is wrong in his assessment of implements and plant and of the maintenance and depreciation thereon. In a list set out on page three of his report Mr. McK. values the necessary implements and plant at £355 and he has proceeded to charge maintenance and depreciation upon two-thirds of this sum, namely on £236. His statement, however, shows that in addition to the £355 a further sum of £194 is required for tools, harness, &c., and in the opinion of the Court a further sum of £200 should be allowed for agricultural implements. The total of these sums, £355, £194 and £200 amounts, in round figures, to £750 and this sum, in the view of the Court should be allowed for implements and plant. It is therefore upon this sum that maintenance and depreciation should be calculated. The Court agrees that maintenance may properly be charged at 2 per cent. and depreciation at 7½ per cent., but when calculated upon £750 the result shows that a consequential addition of £25 10s. for maintenance and £32 for depreciation, must be made to the amounts debited in the budget. A further effect of this addition to plant is to increase the total value of stock and plant by £200 and as a consequence the charge for interest at 5 per cent. upon the capitalized cost of stock and plant is increased by £10.

"To sum up, therefore, amounts totalling £85 10s. must be added to the expenditure side of the Crown's budget, as against amounts totalling £179 10s. to be deducted, leaving a net sum of £94 by which the expenditure envisaged by Mr. McK. should be reduced. In consequence, the surplus shown in the Crown's budget is increased from £1,670 to £1,764 which, when capitalized at 4½ per cent. gives a productive value of £39,200.

"It is now necessary to consider whether the productive value so ascertained should be increased or reduced in order to make it a fair value in accordance with s. 53 of the Act. In this regard the addition of several substantial sums was sought on behalf of the claimant, but the Crown, on the other hand, claimed a substantial deduction by reason of what it claimed to be a deficiency in the normal value of buildings. It is proposed to deal in order with each of the matters in dispute.

"*Plantations.*—It was agreed that the sum of £340 should be allowed for plantations. (*To be concluded.*)

OBITUARY

Mr. F. I. Cowlishaw, Christchurch.

The death occurred suddenly, in Christchurch, on August 22, of Mr. Francis Ion Cowlishaw, senior partner in the firm of Messrs. Garrick, Cowlishaw, and Co. Mr. Cowlishaw, as President of the Royal Humane Society, a position he held since 1941, was speaking at a presentation at the Phillipstown School, when he collapsed. An ambulance was called, but he died before the hospital was reached. He was seventy-seven years of age.

Mr. Cowlishaw was born in Christchurch. He was educated at Christ's College, Rugby, and Oxford University.

After being called in 1893, at the Inner Temple, he joined the firm of Messrs. Garrick and Co., which his father had founded in 1863. The late Mr. Justice Alpers was associated with Mr. Cowlishaw in the firm known later as Garrick, Cowlishaw, and Co. The firm drafted the original Christchurch District Drainage Act, 1876, and has handled the legal affairs of the Drainage Board ever since.

Mr. Cowlishaw was a leading athlete in his youth, taking a particularly keen interest in rowing. With J. Y. Daly, he won the New Zealand pairs championship in 1896. He had a prominent association with the Canterbury Rowing Club, the oldest rowing club in Australia or New Zealand. He was club captain from 1898 to 1903, vice-president in 1903 and 1904, and president from 1904 until the time of his death. At Rugby, he was a member of the Oxford University Rugby fifteen, and was an Oxford Rugby blue from 1890 to 1892. He was one of the few surviving holders of a pass in perpetuity to Lancaster Park, a privilege given in acknowledgment of assistance given in saving the Park.

Mr. Cowlishaw is survived by three sons, including Messrs. F. W. M. Cowlishaw and F. I. Cowlishaw, who were in partnership with him, at the time of his death.

Mr. James McVeagh, Auckland.

Mr. James McVeagh, a member of the firm of Messrs. McVeagh, Fleming, and Fleming, died on August 1, in a private hospital. He was born at Cambridge, in 1867 and, with his brother, the late Robert McVeagh, he studied law at Auckland University College. At the age of nineteen Mr. McVeagh passed the examinations for admission to the Bar as a solicitor, and was admitted in 1889.

After his admission, Mr. McVeagh went to Australia and joined a Melbourne legal firm, with which he practised for some years. He returned to New Zealand in 1895 and practised at Paeroa, specializing in mining law. On the decline of gold mining, he went to Eltham, and practised there in partnership with the late Colonel Malone, until 1915, when he went to Auckland. In 1918 he was joined in partnership by Mr. T. J. Fleming, and recently by Mr. Hugh Fleming. With one exception, Mr. McVeagh was the senior solicitor in practice in Auckland. He took a keen interest in Maori history and was a member of the anthropology and Maori race section of the Auckland Institute. He is survived by his wife, two sons and one daughter.

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. Social Security.—*Age-Benefit—Husband and Wife—Property owned—Method of Computation—Deductions relating to Property.* QUESTION: We are asked to advise two clients who are husband (66) and wife (61). The husband has £1,000 in stock at 3 per cent. The wife has £1,000 in the Post Office Savings-bank, and she owns a house (the capital value of which is £800 unencumbered) for which she gets £1 10s. a week rent. The regular outgoings on the wife's house total £17 10s. per annum. Can you compute for us the amount of deductions that will be made in respect of these people from an age-benefit of £104 per annum each

ANSWER: In answering this question it should be remembered that although there is both an income deduction and a property deduction for age-benefits, no double deduction is made both in respect of the property and the income earned from such property

Here, the couple has £1,000 in the Post Office Savings-bank, on which amount the usual interest will be payable. Also, there is £1,000 in stock at 3 per cent. Because there is a greater reduction in respect of property no account will be taken of the interest earned on these moneys in computing the benefit. While the house itself is not charged on a property basis, the rent being £78—*i.e.*, £1 10s. a week—less £17 10s. outgoings, the net amount of £60 10s. a year would be taken into account.

First of all there would be computed the tax adjustment on the net rent—*i.e.*, the tax paid on the amount over £52, a sum of £8 10s., or 17s. in all, leaving chargeable income of £59 13s. The benefit, therefore, would be computed as follows:—

	£ s. d.	£ s. d.
Maximum benefit—		104 0 0
Chargeable Income	59 13 0	
Less Exemption	52 0 0	
Excess income	£7 13 0	
Deduction on account of excess income: 10s. for each complete pound ..		3 10 0
	£	
Total property	2,000	
Chargeable property each half of £2,000	1,000	
Less exemption	500	
Excess property	£500	
Deduction on account of excess property: £1 for each complete £10		50 0 0
Benefit payable to each		£50 10 0