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LIMITATIONS OF THE PRINCIPLE OF RYLANDS v. FLETCHER.

THERE are instances in law in which liability is independent of negligence, and the liability for damage therein is established apart from proof of negligence; but, as Lord Simon recently observed, it is logically unnecessary and historically incorrect to refer to all these instances as deduced from one common principle. Consequently, he said in the course of a very interesting and important series of speeches, to which we propose to refer, that, when a plaintiff relies on the doctrine of strict liability in *Rylands* v. *Fletcher*, (1868) L.R. 3 H.L. 330, it is better to take the conditions declared by the House of Lords in that case, and to ascertain whether those conditions exist in the actual case itself, as those conditions must be strictly observed. Their Lordships' speeches also lay down the principle that, in any case, the doctrine of *Rylands* v. *Fletcher* cannot extend to an action in respect of personal injuries.

The House of Lords (Viscount Simon, Lords Macmillan, Porter, Simonds, and Uthwatt) in *Read* v. *J. Lyons and Co., Ltd.*, [1946] 2 All E.R. 471, upheld the decision of the Court of Appeal (Scott, MacKinnon, and du Parcq, L.JJ.), [1945] 1 All E.R. 106, which had reversed that of Cassels, J., [1944] 2 All E.R. 98. Their Lordships' decision is of great importance, for the reason that their speeches go far towards defining the scope and the limitations of the rule in *Rylands* v. *Fletcher*.

Lord Porter stated the case in a sentence, when, at p. 478, he said:

> Are the occupiers of a munitions factory liable to one of those working in that factory who is injured in the factory itself by an explosion occurring there without any negligence on the part of the occupiers or their servants?

In the Court of first instance, and in the Court of Appeal, the employers as one defence relied on the maxim *Volenti non fit injuria*, but this plea found no favour in either Court, and was not maintained before the House of Lords, though passing references were made to it in some of the speeches. The appellant was on the premises only because, being registered under the National Service Acts, she was required to work there. She had protested against the assignment; and, had she been a free agent, she would not have remained. Lord Simonds said: "It is not the law of England that the will of a directive official of a government department becomes the will of the unwilling citizen whom he directs."

The case for the appellant was that the factory-owners owed her an absolute duty to safeguard her from harm resulting from the dangerous business in which they were engaged. In support, the principle enunciated in *Rylands* v. *Fletcher* was invoked; and their Lordships made a careful survey of the branch of the law which has come to be associated with that case. "Nothing could be simpler," said Lord Macmillan, "than the facts of this appeal; nothing more far-reaching than the discussion of fundamental legal principles to which it has given rise." Scott, L.J., in the Court of Appeal, remarked that the case went to the roots of the common law.

Cassels, J., in ruling that the employers, in carrying on an "ultra-hazardous" activity, were under a "strict" liability to avoid causing harm to persons, whether on or off the premises, purported to apply the rule in *Rylands* v. *Fletcher*. Blackburn, J., in delivering the judgment of the Court of Exchequer Chamber in that case, laid down the proposition:

> The person who, for his own purposes brings on his lands and collects and keeps there, anything likely to do mischief if it escapes, must keep it in at his peril, and, if he does not do so, is *prima facie* answerable for all the damage which is the natural consequence of its escape.

Viscount Simon considers it has not always been sufficiently observed that in the House of Lords, when Blackburn, J.'s, pronouncement was expressly approved, Lord Cairns, L.C., emphasized another condition which must be satisfied before liability attaches without proof of negligence. This is that the defendant is putting his land to a "non-natural" use. Dr. Stallybrass in *Salmond's Law of Torts*, 10th Ed., considers that this substitutes a different principle from that adopted by Blackburn, J.; that it converts a rigid into a flexible rule; and enables the Court, by determining what is or is not a natural user of land, to give effect to its own view of social and economic needs. Viscount Simon, however, considers Blackburn, J., had made a

parenthetic reference to this sort of test when he said :

> It seems but reasonable and just that the neighbour, who has brought something on his own property, *which was not naturally there*, harmless to others so long as it is confined to his own property, but which he knows to be mischievous if it gets on his neighbour's, should be obliged to make good the damage which enures if he does not succeed in confining it to his own property.

He confesses, nevertheless, to finding this test of " non-natural " user (or of bringing on the land what was not " naturally there," which is not the same test) difficult to apply.

The appeal was disposed of on the ground that there was no escape of a dangerous thing from the defendants' premises ; but their Lordships devoted the greater part of their speeches to other and wider considerations which had been raised during argument, and took the opportunity to indicate the legitimate application of the doctrine.

Undoubtedly, many judgments expressed to be based on this rule go far beyond the pronouncements of Blackburn, J., and Lord Cairns. Lord Simonds said that after the argument he was left with the impression that it would be possible to find support, in decision, or *dictum*, or learned opinion, for almost any proposition that might be advanced.

Viscount Simon and Lord Porter both consider that much of the width of principle which has been ascribed to the rule laid down in *Rylands* v. *Fletcher* is derived not from the decision itself but from the illustrations by which Blackburn, J., supported it. Too much stress, said Lord Porter, must not be laid on these illustrations, as they are but instances of the application of the rule of strict liability, having for the most part separate historical origins ; and, though they support the view that liability may exist in cases where neither negligence, nuisance, nor trespass is to be found, yet it need not necessarily be said they form a separate coherent class in which liability is created by the same elements throughout.

The exposition of the gradual development of the law in the matter of civil liability in *6 Holdsworth's History of English Law*, 446 *et seq.*, was referred to with approval in some of the speeches. The process of evolution has been from the principle that every man acts at his peril and is liable for all the consequences of his acts to the principle that a man's freedom of action is subject only to the obligation not to infringe any duty of care which he owes to others. The emphasis formerly was on the injury sustained, and the question was whether the case fell within one of the accepted classes of common-law actions ; the emphasis now is on the conduct of the person whose act has occasioned the injury, and the question is whether it can be characterised as negligent.

The doctrine of *Rylands* v. *Fletcher*, trespass, and nuisance, are described as congeners : all are instances where a rule has survived from the old law. Another instance is the absolute liability attaching to the keeping of a wild animal ; and in the latter case one can be absolutely liable for injury caused on his own premises. Several of their Lordships approved of the warning issued by Lindley, L.J., in *Green* v. *Chelsea Waterworks Co.*, (1894) 70 L.T. 547, 549, when he said :

> That case [*Rylands* v. *Fletcher*] is not to be extended beyond the legitimate principle on which the House of Lords decided it. If it were extended as far as strict logic might require, it would be a very oppressive decision.

The appellant in her formal case stated the question thus :

> Whether the manufacturer of high explosive shells is under strict liability to prevent such shells from exploding and causing harm to persons on the premises where such manufacture is carried on as well as to persons outside such premises.

Lord Simonds considered this approach ingenious. The question thus stated assumes that, if the appellant had been outside the premises when she was injured by the explosion, she would have had a cause of action. It is evident from their Lordships' speeches, however, that, had it been necessary to decide the point, the House would have ruled that the factory-owners in making munitions had not put their land to a " non-natural " use. Viscount Simon thought that, when it becomes essential for the House to examine this question, it will be found that Lord Moulton's analysis in delivering the judgment of the Privy Council in *Richards* v. *Lothian*, [1913] A.C. 263, is of the first importance. Lord Simon, referring to *Rainham Chemical Works, Ltd.* v. *Belvedere Fish Guano Co.*, [1921] 2 A.C. 465, a case greatly relied on by the appellant, and one in which he himself (as Sir John Simon, K.C.) was leading counsel for the appellant, said that the point was not really open for argument to the contrary, as admissions had been made in the Court of first instance that the person in possession of and responsible for D.N.P. was liable under this doctrine for the consequences of its explosion. Lord Carson began his speech by stating this was not seriously argued. In further reference to this case, Viscount Simon, at p. 475, said :

> I think it not improper to put on record, with all due regard to the admission and *dicta* in that case, that if the question had hereafter to be decided whether the making of munitions in a factory at the Government's request in time of war for the purpose of helping to defeat the enemy is a " non-natural " use of land, adopted by the occupier " for his own purposes," it would not seem to me that the House would be bound by this authority to say that it was.

Lord Macmillan considered the manufacturer of high explosive shells had a strict liability imposed on him in the sense that he must exercise a high degree of care, but that was all.

An interesting and important feature of the case is the clear indication given in some of the speeches that the doctrine in *Rylands* v. *Fletcher* is limited to damage to property, and has no application in claims for personal injury. *Dicta* of Atkinson, J., in *Shiffman* v. *Order of St. John*, [1936] 1 All E.R. 557, and of Fletcher Moulton, L.J., in *Wing* v. *London General Omnibus Co.*, [1909] 2 K.B. 652, 665—to the effect that it did so apply—were referred to. Consideration, too, was given to the decision of the Court of Appeal in *Miles* v. *Forest Rock Granite Co. (Leicestershire), Ltd.*, (1918) 34 T.L.R. 500, where the doctrine was applied in support of a judgment in respect of personal injuries, although there had been a finding by the jury of negligence.

Viscount Simon observed that Blackburn, J., himself, when referring to *Rylands* v. *Fletcher* in *Cattle* v. *Stockton Waterworks Co.*, (1875) L.R. 10 Q.B. 453, treats damage to property, such as workmen's clothes and tools, as covered, but says nothing about liability for personal injuries. Lord Macmillan stated that, if the foundation of the doctrine is to be found in the injunction *Sic utere tuo ut alienum non laedas*, then it is manifest that it has nothing to do with personal injuries. The duty is to refrain from injuring not *alium* but *alienum*.

Viscount Simon advises plaintiffs relying on *Rylands* v. *Fletcher* to take the conditions declared by the House of Lords to be essential for liability in that case, and to ascertain whether these conditions exist in the actual case. Lord Simonds expressed much the same idea, at p. 481, when he observed :

> It avails not at all to argue that because in some respects a man acts at his peril, therefore in all respects he does so. There is not one principle only which is to be applied with rigid logic to all cases. To this result both the infinite complexity of human affairs and the historical development of the forms of action contribute.

Lord Macmillan considered their task was to decide particular cases between litigants, and that they were not called on to rationalize the law of England. That attractive, if perilous, field may well be left to other hands to cultivate. Arguments based on legal consistency are apt to mislead, and, as a great American Judge has reminded us, " the life of the law has not been logic ; it has been experience."

The doctrine in *Rylands* v. *Fletcher*, limited by the opinions of their Lordships, as expressed in this case, may be briefly summarized : One is " strictly " or " absolutely " liable for damage *to property* caused by *the escape* from a place where he has some measure of control to a place outside his control of something, *not naturally there*, which he knows to be mischievous if it escapes, and which he, *for his own purposes*, has brought to or collected or kept there, thus putting that place to a " non-natural " use.

SUMMARY OF RECENT JUDGMENTS.

KEENAN v. AUCKLAND HARBOUR BOARD.

COURT OF APPEAL. Wellington. 1946. September 24. O'LEARY, C.J. ; BLAIR, J. ; KENNEDY, J. ; FINLAY, J.

Practice—Appeals to Court of Appeal—Security for Appeal—Notice of Appeal out of Time—Appellant with Insufficient Means to find Security—Proper Course to follow—Court of Appeal Rules, RR. 19, 22.

If an appellant from a judgment in the Supreme Court, who is in poor circumstances and yet with sufficient assets to prevent him from appealing to the Court of Appeal *in forma pauperis*, is unable to find the necessary amount to lodge as security for his appeal, his proper course is to apply under R. 22 of the Court of Appeal Rules to the Court of first instance to have the amount of security reduced or waived.

Where the notice of appeal is out of time, the fact that the appellant could not find the security in time is not a ground for granting special leave to appeal under R. 19 of the said rules.

Application for special leave to appeal from the judgment of *Callan*, J., reported [1946] N.Z.L.R. 97, dismissed.

Counsel : *Johnstone*, K.C., and *A. K. Turner*, for the appellant ; *Hamer*, for the respondent.

Solicitors : *F. H. Haigh*, Auckland, for the appellant ; *Russell, McVeagh, and Co.*, Auckland, for the respondent.

GILLUM v. GILLUM.

SUPREME COURT. Christchurch. 1946. November 7, 12. SMITH, J.

Divorce and Matrimonial Causes—Costs—Ancillary Relief—Respondent Wife filing no Answer but only Address for Service—No Order for Security for Costs in Suit—Whether such Respondent may apply for Costs in Relation to Proceedings for Ancillary Relief—Divorce and Matrimonial Causes Act, 1928, s. 51—Matrimonial Causes Rules, 1943, R. 65.

A wife, who is a respondent in a divorce suit and who has filed no answer, but only an address for service in that suit, and who has then applied independently for ancillary relief, may apply for costs in relation to the proceedings for ancillary relief, although she has obtained no security for her costs in the divorce suit. Such costs in relation to the proceedings for ancillary relief are in the discretion of the Court, under s. 51 of the Divorce and Matrimonial Causes Act, 1928.

Rule 65 of the Matrimonial Causes Rules, 1943, applies only to the petitioner in the suit, and not to an application for ancillary relief in that suit.

McKinlay v. *McKinlay and McKinlay*, (1905) 24 N.Z.L.R. 981, distinguished.

Counsel : *McClelland*, for the petitioner ; *Bowie*, for the respondent.

Solicitors : *Charles S. Thomas and Thompson*, Christchurch, for the petitioner ; *Joynt, Andrews, Cottrell, and Dawson*, Christchurch, for the respondent.

TWIEHAUS v. MORRISON AND ANOTHER.

SUPREME COURT. Wellington. 1946. September 11, October 4. JOHNSTON, J.

Negligence—Road Collisions—Evidence—Motor-vehicles following one another—Following Car Colliding with Leading Car about to turn across Traffic after Signal given—Relative Obligations of Drivers—Onus of Proof—Traffic Regulations, 1936 (Serial No. 1936/86), Reg. 15 (1).

When the driver of a following motor-car, in attempting to overtake and pass the motor-car he is following, as the latter is turning across the traffic, collides with the latter, the obligations cast upon both drivers, if safety is to be ensured, must be carefully scrutinized and adjusted. The obligations of the one are tempered by the obligations of the other. The duty of an overtaking car which has the leading car under observation is to watch the latter carefully and not to pass before warning the leading car to keep to the left, and to wait until that warning is heeded.

If the onus of proof lies on the one more than the other, the overtaking car has to show that the leading car was responsible for the collision. The driver of the leading car may give his signal that he is about to turn early or late, or may give no such signal ; and yet the negligence of the driver of the overtaking car may be the *causa causans* of the accident.

Kleeman v. *Walker*, [1934] S.A.S.R. 199, applied.

Counsel : *Evans-Scott*, for the appellant ; *Gillespie*, for the respondent, Ward ; *Mazengarb*, for the respondent, Morrison.

Solicitors : *Menteath, Ward, and Evans-Scott*, Wellington, for the appellant ; *Bunny and Gillespie*, Wellington, for first respondent ; *Mazengarb, Hay, and Macalister*, Wellington, for the second respondent.

WILKINS v. MORRISON.

COMPENSATION COURT. Christchurch. 1946. September 11, 12 ; December 11. ONGLEY, J.

Workers' Compensation — Average Weekly Earnings — " Dirt-money "—Whether to be included in the Calculation of Average Weekly Earnings—Workers' Compensation Amendment Act, 1936, s. 7 (5).

" Dirt-money " is, in general, an extra payment for the nature of the work, and is not included in " any sums that are paid to a worker to cover any special expenses entailed on him [the worker] by the nature of the employment " referred to in s. 7 (5) of the Workers' Compensation Amendment Act, 1936. " Dirt-money " payment, therefore, should be included in calculating the average weekly earnings under that section.

Counsel : *T. A. Gresson*, for the plaintiff ; *C. G. Penlington*, for the defendant.

Solicitors : *Wynn Williams, Brown, and Gresson*, Christchurch, for the plaintiff ; *Harper, Pascoe, Buchanan, and Upham*, Christchurch, for the defendant.

THE SUBDIVISION OF LAND.

Subdivisions Outside a City, Borough, or Town District.

The Land Subdivision in Counties Act, 1946.

By E. C. Adams, LL.M.

During last year, 22 N.Z.L.J. 5, 178, I pointed out how the Legislature had by the Housing Improvement Act, 1945, tightened up considerably the subdividing of land within a city, borough, or town district: (1946) 22 N.Z.L.J. 5, 178. In the Session which has recently ended, it has extended its attention to subdivisions of land *outside* a city, borough, or town district, by enacting the Land Subdivision in Counties Act, 1946, which comes into operation on January 1, 1947.

As in all other restrictive statutes dealing with subdivision of land, compliance therewith is ensured in practice by statutory directions to the District Land Registrar or Registrar of Deeds, to refuse the deposit of plans and registration of instruments until he is satisfied that the statute has been complied with.

That Judge of pungent wit, the late Lord Justice Scrutton, observed in *Stumbles* v. *Whitley*, (1929) 46 T.L.R. 37, 38, that he had been brought up on *Heydon's Case*, (1584) 3 Co. Rep. 7 a. It is there laid down that, in order properly to interpret an Act, it is necessary to consider three matters: (1) how the law stood before the statute was passed, (2) what the mischief was for which the previous law did not provide, and (3) the remedy provided by the statute to cure that mischief. In this article, I propose to adopt this method of approach as far as practicable.

It may amaze young practitioners to learn that as far back as 1885 the Legislature enacted in the Land Act of that year that in all *towns* which might be laid off in or upon any Crown lands, *or upon private lands*, the main streets should be of a breadth of not less than 99 ft., and the cross or side streets not less than 66 ft. It further provided that, in all cases where town allotments, or sections, or blocks were to be sold or advertised for sale, plans of such towns, whether public or *private*, showing the streets and the width thereof respectively, and the reserves made in such towns, should be prepared by an authorized surveyor and approved by the Governor prior to sale. I suspect that, in the case of private subdivisions, this Act was found rather defective, for it did not define what was a town.

In the Land Act, 1892, however, we find "town" defined as "any parcel of land outside a borough divided into areas for building purposes." Section 18 of that Act provided that, in every case where any allotments, or sections, or blocks of land were to be sold, or advertised for sale, as a town, the proposed name of such town, whether public *or private*, together with a plan of such town, showing the streets and the width thereof respectively, and the reserves made in such town, should be prepared by an authorized surveyor and *approved of by the Governor* prior to sale.

The mere attempt to define a "town" was an improvement on the 1885 statute, but the definition itself was rather vague and unsatisfactory. The late Mr. T. F. Martin, writing in 1908, when the 1892 statute was still in force, said: "It is understood that in practice land subdivided into allotments of more than one acre each is not treated as a 'town'": *Martin's Land Laws of New Zealand*, 34. Although that has remained the general practice down to the present day, it was really at law more a matter of intention. If the dominant motive of the owner of the allotments was to sell them as sites for houses, and not for pastoral, agricultural, or other purposes, then they constituted a "town" even though the area of each or some of the allotments exceeded one acre. On the other hand, if the areas of the allotments were, say, 9 acres, it was reasonable to assume that the erection of houses thereon was only accessory to the chief or principal purpose, which was probably farming, and the subdivision escaped the net laid by the Legislature. It is always difficult to administer legislation where intention is to be ascertained and taken into consideration; this difficulty will not be experienced in the new Act, which, though setting an arbitrary limit, has the merit of *certainty*.

By the Land Laws Amendment Act, 1913, land in a town district was removed from the ambit of the principal Act: from then until the coming into operation of the Municipal Corporations Act, 1920, there were no restrictions on the subdivision of land in a town district save those imposed by the enactments then in force corresponding to ss. 125 and 128 of the Public Works Act, 1928, providing for road frontage to each allotment and the widening of streets less than one chain in width.

By the Land Laws Amendment Act, 1914, the approval of the Minister of Lands was substituted for that of the Governor in Council. Thus, law in this respect was made to conform to practice.

Section 17 of the Land Laws Amendment Act, 1920, provided that all *reserves* shown on a scheme plan of a town duly approved by the Minister should, on the deposit of the plan in the Land and Deeds Registry Office, vest in His Majesty the King, free of all encumbrances, and be set apart for the purposes indicated on that plan, and be subject to the provisions of the Public Reserves and Domains Act, 1908 (now the Public Reserves, Domains, and National Parks Act, 1928). There was rather a curious *casus omissus* in this section: it made no provision for the consent of the owner of a subsidiary estate or interest—*e.g.*, mortgagee or lessee. This has been remedied in the Land Subdivision in Counties Act, 1946, s. 13 (2).

Our narration would not be complete without mention of the wide effect of ss. 20 and 21 of the Public Works Amendment Act, 1900, which are now represented by ss. 125 and 128 of the Public Works Act, 1928. Section 125 provides that, where any owner sells any *part* of his land, he shall, unless such part has a frontage

to an existing public road or street, provide and dedicate as a public road or street a strip of land not less than 66 ft. in width giving access to an existing public highway. Section 128 provides that, where land having a frontage to an existing road or street of less than 66 ft. in width is subdivided into allotments for the purpose of sale, the owner shall set back the frontage of the land to a distance of at least 33 ft. from the centre-line of the road or street and dedicate such strip, unless he manages to get the narrow road or street exempted by Order in Council, and such an exemption now invariably entails the imposition of a building-line restriction. Section 17 of the Land Subdivision in Counties Act, 1946, provides that the provisions of ss. 125 and 128 of the Public Works Act, 1928, shall not apply to the subdivision of any land in accordance with a scheme plan approved by the Minister of Lands. At first sight, this partial repeal of these sections appears a retrograde step, but in reality it is not. The new Act provides that all roads and proposed roads must be shown on a scheme plan; owners may be required to dedicate strips of land to widen existing roads; all new roads must be dedicated, and the instrument of dedication must not be registered until they have all been formed and completely constructed to the satisfaction of the controlling authority, which may even require the owner to provide and lay necessary pipes for water-supply and sewage and construct footpaths and drains to the satisfaction of the local authority. The Minister of Lands is not likely to approve of any scheme plan showing any allotment without adequate public road or street frontage.

Until the coming into operation of the Land Subdivision in Counties Act, 1946, the relevant law as to the subdivision of land outside a city, borough, or town district was to be found in ss. 125 and 128 of the Public Works Act, 1928, and ss. 16 and 17 of the Land Act, 1924. Section 22 of the new statute specifically repeals ss. 16 and 17 of the Land Act, 1924.

From a town-planning point of view, ss. 16 and 17 of the Land Act, 1924, had at least two defects in addition to those mentioned above. This apparently did not prevent the subdivision of land piecemeal. Allotments could be sold from time to time for building purposes, to meet the requirements of purchasers, provided such isolated sales were not in accordance with any prearranged scheme of subdivision: the principle of *Palmer's* case, (1903) 23 N.Z.L.R. 1013, apparently applied. Of course, the evidence or the surrounding circumstances—*e.g.*, the tendering for deposit of a plan showing two or more allotments—often disclosed an intention to subdivide, and then the sections had to be enforced by the officials: at other times, when there was no such evidence, the owner was simply asked to make a statutory declaration that he had no intention of selling the residue of his land or any part thereof for building purposes. Fortunately, that unsatisfactory position is now rectified: s. 2 (2) of the new Act provides that, for the purposes of the Act, any division of land, whether into two or more allotments, shall be deemed to be a subdivision of that land for the purposes of *sale* (which is comprehensively defined as hereinafter mentioned) if at least one of those allotments is intended for sale.

Secondly, ss. 16 and 17 of the Land Act, 1924, as regards *private* subdivisions, caught only the owner of the fee simple: in the opinion of Reed, J., who decided *Commissioner of Crown Lands* v. *Mills*, [1935] N.Z.L.R. 1049, no one with less interest in the land than owner of the freehold could subdivide it for *sale*. Thus, dispositions by a lessee of land (whether by way of assignment or sublease) were not caught. This, too, has been remedied, for in s. 2 there will be found the following comprehensive definitions:—

> "Owner," in respect of any land or interest therein, includes an owner thereof, whether beneficially or as trustee, and a mortgagee acting in exercise of power of sale, the Public Trustee, and any local authority, Board, or other body or authority, howsoever designated, constituted, or appointed, having power to dispose of the land or interest therein by way of sale:
>
> "Sale" includes exchange, gift, devise, or other disposition affecting the fee-simple, and lease for any term (including renewals under the lease) of not less than three years; and also includes any disposition affecting the leasehold interest under any such lease as aforesaid.

Practitioners will immediately observe that s. 2 goes much farther than s. 125 of the Public Works Act, 1928. The new provision catches a subdivision effected by a testator (a devise of land); but it was held in *Plimmer* v. *District Land Registrar*, (1908) 27 N.Z.L.R. 1134, that the previous provision corresponding to s. 125 did not catch a devise; in the writer's opinion, that was a very grave defect in the law, and it is indeed remarkable that nothing had been done in the interim to remedy that defect. It may also be mentioned in passing that s. 2 of the Land Subdivision in Counties Act, 1946, will catch a *partition* of land: *Knight* v. *District Land Registrar of Wellington*, (1907) 27 N.Z.L.R. 243.

The dominant section is s. 3, which provides that, where any land outside a borough or town district is subdivided into allotments for the purposes of *sale* or for building purposes, and any allotment, whether it is intended to be sold or not, has an area of less than 10 acres, a scheme plan showing the proposed subdivision shall, unless the Minister, with the approval of the local authority, otherwise determines, be prepared by a surveyor and submitted to the Minister for his approval.

There is to be especially observed the words, "has an area of less than ten acres." The previous practice has been, as explained above, to stick up only allotments of one acre or less. In this respect, therefore, the new Act, besides giving *certainty* to the administration of the law, has considerably widened its scope.

Now, there is an interesting proviso to s. 3 (1):

> Provided that nothing in this subsection shall apply to any subdivision effected by orders of the Native Land Court for the purpose of providing Natives, within the meaning of the Native Housing Act, 1935, with sites for dwellings.

It has always been a moot point as to whether ss. 16 and 17 of the Land Act, 1924, applied to subdivisions effected by means of Native Land Court orders: this proviso suggests that such subdivisions, except where specifically excepted, are within the purview of the new Act.

Subsection 5 of s. 3 provides that the Minister may refuse to approve any scheme plan:

> (*a*) If in his opinion closer subdivision or settlement of the land shown on the scheme plan is not in the public interest or the land for any other reason whatsoever is not suitable for subdivision:

(*b*) If in his opinion adequate provision has not been made for the drainage of any allotment or the disposal of sewage therefrom :

(*c*) If the subdivision would in his opinion interfere with or render more difficult or costly the carrying-out of any public work or scheme of development which is proposed or contemplated by the Minister of Works or by any local authority :

(*d*) If in his opinion the proposed subdivision does not conform to recognized principles of town-planning.

Against the Minister's decision a right of appeal is conferred to a Board of three members, to be appointed in that behalf by the Governor-General ; a Magistrate is to be the Chairman.

Where there is any approved town-planning or extra-urban planning scheme under the Town-planning Act, 1926, affecting any locality, no scheme plan of land in that locality shall be approved of or varied under the new Act, nor shall any conditions be imposed or varied, if the scheme plan or the conditions, or any variations thereof, are inconsistent with the approved town-planning or extra-urban planning scheme.

Section 5 appears to introduce an entirely new principle into New Zealand : the imposition of *conditions restricting the use of all or any* of the allotments shown on the plan. At common law, on the sale of land, restrictive covenants as to the use of land cannot be imposed so as to run with the land ; in equity they may be imposed and enforced as against assigns *with notice* ; they cannot be enforced against assigns without notice, and there must be a dominant tenement, in whose favour the restrictive covenant enures : *Staples and Co., Ltd.* v. *Corby and District Land Registrar*, (1900) 19 N.Z.L.R. 517, 536, and *Re Ballard's Conveyance*, [1937] 2 All E.R. 691.

Under the Land Subdivision in Counties Act, 1946, the only conditions which can be registered against the title are building-line restrictions. Every scheme plan approved by the Minister, together with any notice of conditions restricting the use of any land, shall be held by the Chief Surveyor. Excepting building-line restrictions, restrictive conditions imposed by the Minister will not affect the legal title to the land, but compliance with these restrictive uses appears to have been effected indirectly by the penal sections in the Act : ss. 20 and 21. It appears to the writer that these penal sections, so far as restrictive uses are concerned, affect not only the original owner but also assigns. It would appear, therefore, that in future every person who proposes to deal with an allotment in a " town " approved by the Minister under the new Act will, for his own safety, have to make a search in the office of the Chief Surveyor as well as in the Land and Deeds Registry Office.

As is to be expected, provision must be made for the setting aside of *Reserves* " where the Minister is of opinion that the subdivision shown on a scheme plan is for building purposes." Subsection 2 of s. 12 reads as follows :

Subject to the provisions of this section an area of land shall be set aside as reserved for public purposes amounting to not less than four perches for each allotment on the plan available for building purposes :

Provided that in the case of any allotment with an area of more than one rood which in the opinion of the Minister will be used for business or industrial purposes the area to be set aside as aforesaid shall amount to not less than one-tenth of the area of the allotment :

Provided also that if on any other subdivision of any land, whether before or after the commencement of this Act, the owner has set aside in the same locality as reserves for public purposes an area in excess of the area that was required under the foregoing provisions of this subsection, or that would have been so required if this subsection had then been in force, or if the owner has otherwise given land in the same locality as reserves for public purposes, the area required to be set aside as a reserve for public purposes under the foregoing provisions of this subsection may, if the Minister thinks fit, be reduced by the amount of the excess area set aside on that other subdivision or, as the case may be, by the area of the land otherwise given for public purposes.

A new provision (s. 12) provides for reserves one chain in width along seashore and banks of lakes and rivers, thus bringing the law as to private subdivisions into harmony with subdivisions of Crown land : see s. 14 of the Land Act, 1924. Subdivisions of Native land (as defined in the Native Land Act, 1931), however, are exempted from this requirement.

Another important provision authorizes the creation of " access-ways," which are public highways for pedestrians only. These are found necessary in many modern town-planning schemes. Every access-way shall be of a width approved by the Minister, and must be completely formed and constructed to the satisfaction of the local authority. Every access-way must be transferred to the Crown by a duly registered instrument.

As regards rights of way, one rather awkward provision of the 1924 Act has, fortunately, not been perpetuated. Few practitioners know that, under the 1924 Act, every right of way in a " town " (approved by the Minister), save with the consent of the Minister, must not be less than 66 ft. One result of this was that the owner of an allotment in a " town " (approved by the Minister) could not grant a right of way over part of his allotment to the owner of an adjoining allotment without the consent of the Minister, if the right of way was less than one chain in width. The new Act simply provides that land shown in the scheme plan as being land over which it is proposed to grant or reserve a right of way shall be of such width and length as may be approved by the Minister : s. 9 (5). Apparently a purchaser of an allotment on a scheme plan may in future grant rights of way thereover without any restriction whatsoever : thus, a trap to the conveyancer has been removed.

Finally, a few words as to the principles of interpretation to be applied to the new Act. Being a remedial statute, the Land Subdivision in Counties Act, 1946, must be given a beneficial interpretation : per Sir Robert Stout, C.J., in *Plimmer* v. *District Land Registrar*, (1908) 27 N.Z.L.R. 1134, 1141 ; and see s. 5 (*j*) of the Acts Interpretation Act, 1924.

At the same time, however, as it is in derogation of private rights, one must not interpret the statute so as to take away rights which already existed before the statute was passed, unless there are plain words which indicate that such was the intention of the Legislature: *Plimmer's* case, *supra*, *per* Edwards, J., at p. 1147.

It has been judicially observed that the object of similar legislation is to prevent the creation of fresh slums, such as narrow lanes: *Peers* v. *McMenamin*, (1908) 27 N.Z.L.R. 833, 838, 846. Public opinion, however, as to the requisites of sound town-planning, has considerably advanced during the last forty years, and it is obvious that one of the objects of the new Act is to give back to the public some of the rights which the *jus naturale* would not deny to it, such as the right to enjoy ample and sufficient reserves for recreation and other public purposes. The legislation constitutes a partial interference with the private owner's rights to subdivide his land, and subordinates his rights to those of the public; the private owner is not prevented from subdividing his land, but, if he does, he must act in accordance with modern ideas of town-planning.

ADVERTISING AND THE LAW.

The Regulation of Signs.

By J. R. Marshall, LL.M.

Concluded from p. 37.

Statute Law in New Zealand.

The control of advertising in New Zealand is in the hands of the local authorities who are empowered to make by-laws and to make provision in town and extra-urban planning schemes for that purpose.

Control by by-law.—The Municipal Corporations Act, 1933, s. 364 (16) provides:

> The Council may from time to time make such by-laws as it thinks fit for all or any of the following purposes:—
>
> (16) Regulating, controlling, or prohibiting the display or continuance of the display, upon or over public buildings or bridges, or upon or over buildings, walls, fences, lamp-posts, pavements, or hoardings, situated in or upon or adjoining any land or street the property of the Corporation or under the control of the Council, or the display or continuance of the display, in any manner so that it shall be visible from any such street or public place, of posters, placards, handbills, writings, pictures, or devices for advertising or other purposes.

The authority for the charging of a license fee is contained in s. 367—

> With respect to by-laws under this Act the following provisions shall apply:—
>
> (*c*) A by-law may provide for the licensing of persons and property and for the payment of reasonable license fees . . . .
>
> (*d*) A by-law may provide for the payment of reasonable fees for inspections and other services.

The provision for the control of advertising contained in s. 364 (16) was first introduced in the Municipal Corporations Amendment Act, 1903, s. 16 (*f*), and consequently ante-dates any similar general power for the control of advertising in England. But prior to the granting of the specific power for the control of advertising by Municipal Corporations, by-laws had been made under the general powers of the Corporation to make by-laws for any purpose in relation to streets or for the abatement of a nuisance. An example of such a by-law is seen in *In re Lorie*, (1900) 19 N.Z.L.R. 400, where Williams, J., upheld a conviction for the breach of a by-law prohibiting the placing of an advertisement upon any veranda.

By-laws made under the specific powers contained in s. 364 (16) have been considered by the Courts from time to time. In *Porter* v. *Mayor, &c., of Wellington*, (1913) 32 N.Z.L.R. 761, Chapman, J., upheld a by-law prohibiting the use of hoardings for advertising purposes, when visible from any street unless licensed by the Council, for which license a fee of 10s. per 100 ft. of advertising space was charged. This case is an authority for the proposition that annual license fees may be more than a nominal fee to cover the cost of inspection and supervision and may, in fact, be used as a means of raising revenue, and consequently, as a deterrent to the unrestrained use of hoardings for advertising.

The control of advertising in Counties is a matter for County Councils. The Counties Amendment Act 1927, s. 9 (2) reads:

> A Council may also make by-laws—
>
> (*a*) For the regulation and control of hoardings and similar structures used or intended to be used for the purpose of advertising:
>
> (*b*) For regulating, restricting, or prohibiting the exhibition of advertisements in such places and in such manner or by such means as to affect injuriously the amenities of any public place used by the public for purposes of recreation or enjoyment, or to disfigure or injuriously affect the natural beauty of a landscape, or the view of rural scenery from any public place:
>
> Provided that a Council in making any by-laws under this subsection shall provide for the exemption from the restrictive provisions thereof for such period, not being less than five years from the commencement of the by-laws as the Council thinks fit, of any hoardings and similar structures then in use for advertising purposes, and of any advertisements then being exhibited.

It will be seen that these provisions are based on the Advertisements Regulation Acts, 1907, and 1925 (Imp.)

Control by Town-planning.—The provisions of the Town Planning Act, 1926, and of the Town Planning Amendment Act, 1929, do not contain specific provisions relating to advertising similar to those found in the English statutes. The schedule to the Town Planning Act, 1926, provides that matters to be dealt with in town and extra-urban planning shall include provision for amenities. The second schedule of the

Town Planning Amendment Act, 1929, provides that matters to be dealt with in regional planning schemes shall include recommendations for the control of outdoor advertising. Any such recommendations are merely for the guidance of local authorities in preparing town or extra-urban planning schemes for areas within the region. But provision is in fact usually made in such schemes for the control of advertising.

The New Zealand Standard Code of Clauses for Town-planning Schemes, issued by the New Zealand Standards Institute contains two clauses dealing with advertising. These clauses form the basis of the actual schemes adopted by local authorities for the control of advertising from the point of view of town-planning. As over sixty local authorities have in operation approved of interim town-planning schemes, it may be of some value to set out the model clauses which give an indication of what may be contained in specific schemes already in operation :

32. Control of Advertising.

(1) For the purpose of this clause—

" Poster " includes any poster, placard, handbill, writing, picture, or device for advertising or other similar purpose, or any painting, engraving, carving, illuminated sign, or other device for any such purpose as aforesaid whether affixed to or incorporated with the exterior or interior of any building or to or with a part of any building or other erection and whether permanently or temporarily so affixed.

" Signboard " means a board, hoarding, signboard, billboard, or other erection primarily intended or adapted for the display of posters ; and includes any poster displayed on a signboard.

(2) This clause shall not apply to any poster or signboard not visible from a street or other public place.

(3) This clause shall not apply to any poster or signboard of reasonable size and serving only to denote the street, number of any premises, the name of any residential building, or the name, character, or purpose of any public or other institution or premises.

(4) No person shall erect or construct or display or cause or permit to be erected or constructed or displayed in any residential district any signboard or poster ; nor shall any such sign be erected in any district so as to be obtrusively visible from a residential district except—

(*a*) Signboards not exceeding square feet in area erected in connection with a church, school, public museum, library, hospital, nursing home, or convalescent home.

NOTE :—A maximum of 12 square feet is recommended.

(*b*) Signboards none of which exceeds square feet in area appertaining to the disposal of the land or premises on which it is situated.

NOTE :—A maximum of 6 square feet is recommended.

(*c*) Signboards none of which exceeds square feet in area attached to a residential building used for professional or business purposes, and bearing only the name, occupation, and hours of attendance or business of a person so using such building.

NOTE :—A maximum of 2 square feet is recommended.

(*d*) Signboards relating to an auction sale to be held on the premises on which the signboard is erected and so erected and displayed on the day of such auction or any of the seven next preceding days.

(5) Notwithstanding any of the foregoing provisions, the Council shall have power to control the number and design of signboards displayed on any building or site.

33. Saving for Existing Hoardings.

Nothing in the last preceding clause shall prevent the continued use of hoardings or similar structures erected or in use for advertising purposes at the date of the approval of this scheme, or the display of any poster thereon, for years from the date of the approval of this scheme.

NOTE :—The period recommended is not less than two years nor more than five years from the date of approval.

A recent amendment to the law which affects advertising by means of hoardings outside boroughs and town districts is contained in the Land Subdivision in Counties Act, 1946. The purpose of this Act is to provide for the approval of subdivisions by the Minister of Lands. Such approval may be subject to certain conditions, including conditions as to the erection of hoardings : see s. 5. Section 20 of the Act provides that, where a hoarding has been erected contrary to any provision imposed by the Minister, a Magistrate may, on the application of the chief surveyor or the local authority, order the owner to remove the hoarding at his own expense, and, if he fails to do so, the Minister or local authority may remove it and recover the cost from the owner.

From the above review of the law it is clear that local authorities in New Zealand already have, if they wish to exercise them, adequate powers for the control of advertising and that the proposed action referred to at the beginning of this article is within the scope of such powers.

PRACTICE POINT.

A Correction.

Owing to an omission in printing, the note appearing *Ante* p. 12, was not complete, as " K.C.M.G." was omitted in the last line. This is an essential part of the title of the Chief Justice in probates.

The note, as complete, is now printed as it should originally have appeared :

The correct manner of reference to His Honour the Chief Justice in Court documents is as follows :

In Court Orders : " Before the Honourable the Chief Justice."

In Judge's Orders : as above ; or " Before the Honourable Sir Humphrey Francis O'Leary, K.C.M.G., Chief Justice of New Zealand."

In Probates : " The Honourable Sir Humphrey Francis O'Leary, K.C.M.G., Chief Justice of New Zealand."

LAND SALES COURT.

Summary of Judgments.

The summarized judgments of the Land 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. 97.—L. TO N.Z.S.C., LTD.

Urban Land—Business Premises—Application for Consent to Sale without fixing Basic Value—No Evidence as to Value—No Discretion to exempt Specific Transactions from operation of Statute — Servicemen's Settlement and Land Sales Act, 1943, s. 50 (4).

Appeal relating to a leasehold office building in Dunedin which the New Zealand Shipping Co., Ltd., desired to purchase for £7,700. Upon an application for consent having been filed in the usual way, the Crown obtained a valuation of £3,540. Mr. *Haggitt*, for the purchaser, thereupon requested the Committee to grant consent to the transaction at the full price of £7,700 without fixing a basic value. In support of this application, Mr. *Haggitt* called evidence to show that office accommodation in Dunedin was almost impossible to procure, and that the New Zealand Shipping Co., Ltd., which would probably have to vacate its present premises at an early date, intended, on acquiring the premises under consideration, to expend a considerable sum in renovation and improvements. He contended that it was greatly in the public interest for substantial commercial concerns to purchase or build their own premises in the city, and that the progress of the city would be impeded, and commercial development would be embarrassed, should a firm such as the New Zealand Shipping Co., Ltd., be prevented, by reason of the operation of the Land Sales Act, from acquiring the property which it desired to purchase, and which it claimed to be the only suitable and available property which could be found. Notwithstanding these representations, which were not contested by the Crown, the Otago Land Sales Committee considered it had no jurisdiction to consent to the transaction without fixing a basic value, and refused the application accordingly.

The Court (per *Archer*, J.) said: " On appeal, Mr. Haggitt elaborated his submissions to the Committee, and contended that the application might properly have been granted under s. 50 (4) of the Servicemen's Settlement and Land Sales Act, 1943. He submits that, while one of the principal purposes of the Land Sales Act is to prevent undue increases in the price of land, the Court is not precluded from granting consent at a price above the basic value in individual and exceptional cases, and in particular where to refuse consent would impede commercial development. He claims that the first clause of s. 50 (4) is expressly intended to give Land Sales Committees a discretion to grant consent at a price which is above the basic value in exceptional cases where the Committee may think fit to exercise such discretion.

" Mr. Hampton, for the Crown, points out that the Land Sales Act has been so designed as to make it applicable to all types of property, and that no exception has been made by the Legislature in respect of commercial properties, notwithstanding that such properties might easily have been exempted from the operation of the Act had it been deemed desirable. He points out that, while purporting to restrict the price of land to the basic value, the Act specifically provides that the basic value is in all cases to be a fair value having regard to the circumstances of the particular case and all relevant considerations. A vendor is, therefore, entitled to receive and a purchaser to pay a fair value without the necessity of invoking any special power or discretion to be granted consent without the fixing of a basic value. It follows that, unless the price is recognised to be in excess of a fair value, the parties need not be apprehensive of the fixing of a basic value. From the fact that the parties in the present case have called no evidence as to the value, and have opposed the fixing of a basic value, the Crown invites the Court to draw the inference that the parties desire consent at a price which is in fact above the fair value of the property concerned.

" The Crown submits that for the Court to consent to the purchase of business premises by large commercial firms without fixing a basic value would have the effect of exempting business premises in general from the operation of the Land Sales Act.

" To deal first with the point last mentioned, it seems quite clear that, if the order now sought is made in favour of the New Zealand Shipping Co., Ltd., a substantial case for similar treatment could be made by many, if not most, other purchasers of business premises, and the controlling authority of the Court, insofar as business premises are concerned, would be rendered almost, if not entirely, ineffective. The urgent need of office premises is not peculiar to the present purchaser, but is shared by many other business firms. If, indeed, the New Zealand Shipping Co., Ltd., has to vacate its present premises, other tenants in the same building will be similarly affected, and each of them will have an equal claim to the favourable consideration of the Court if desirous of purchasing new premises. We cannot but feel that, if the Legislature intended that business premises should be exempted, either generally or in special circumstances, from the application of the Land Sales Act, it would have said so in specific terms. There is nothing in the Act to suggest any such intention.

" Bearing in mind the general applicability of the Act and the absence of any specific provision vesting in Committees a discretion to exempt specific transactions from the operation of the Act, we are unable to accept Mr. Haggitt's contention that the opening words of s. 50 (4) are intended to give Committees such a discretion. Section 50 (4) reads as follows:

> Except in cases where the Land Sales Committee decides that it is not necessary to determine the basic value or basic rent, no application for the consent of the Court to any transaction shall be granted if the purchase-money, rent, or other consideration exceeds the basic value or basic rent of the land, as the case may be.

The operative words of the subsection provide in mandatory terms that no application shall be granted if the purchase money or other consideration exceeds the basic value of the land.

" The governing words in the exception contained in subs. (4) are the words " not necessary," and Mr. Haggitt must, therefore, satisfy us, before he is entitled to a grant of consent without fixing a basic value, that, in terms of the exception and in the circumstances of the present case, " it is not necessary to determine the basic value." The Act unfortunately gives us little guidance as to the circumstances in which a Committee may properly decide that it is not necessary to determine a basic value. We think, however, that the words must be construed by reference to the general purposes of the Act, and in particular to the obligation of the Committee to prevent undue increases in the price of land and to refuse consent if the purchase money or other consideration exceeds the basic value. We conceive that it is the duty of a Land Sales Committee to determine the basic value in every case where the Committee has reason to believe that the purchase price or other consideration is, or may be, above the basic value. The submission that the words are intended to give a general and undefined discretion to a Committee to consent to a transaction which it knows or believes to be in conflict with the general purpose of the Legislature to restrict the price to the basic value involves, in our opinion, an unreasonably and unnecessarily wide interpretation of the subsection.

" Cases in which it is not necessary to determine the basic value include every case coming under subs. (1) of s. 50 where the Committee, being satisfied that an application should be granted, is authorised to make an order consenting to the transaction without calling on the applicant or hearing evidence. Similarly, it is not necessary to determine a basic value when, after a hearing, the Committee is satisfied that the application should be granted by reason of the fact that the purchase money or consideration is below the basic value.

" We cannot agree that the present case is one in which it is not necessary to determine a basic value. To do so is patently necessary in order to ascertain whether the transaction involves an undue increase in the price of the land sold. The effect of granting the purchaser's application would be to establish a precedent applicable to most, if not all, business premises, and would be tantamount to exempting such properties from the controlling operation of the Land Sales Act. Such a course would, in our opinion, be contrary to the expressed intention of the Legislature, and we cannot find in the terms of s. 50 (4) authority to warrant so radical a limitation in the effective operation of the Act.

" We are, therefore, of opinion that the decision of the Committee was right, and the appeal is dismissed. In case the parties may desire to call further evidence with a view to having the basic value determined, the application will be referred back to the Committee under s. 21 (3) for its further consideration."

No. 98.—C. TO A.M.P. SOCIETY.

Urban Land—Undue Aggregation—Block of Flats—Acquisition by Life Insurance Company for Investment Purposes—Whether "undue aggregation of land"—Whether prejudicial to the Public Interest—Principles to be applied.

Appeal by the Australian Mutual Provident Society against an order of the Wellington Urban Land Sales Committee refusing consent on the ground of undue aggregation to an agreement to purchase a block of flats in the city of Wellington for the sum of £19,500.

The Society is one of the largest life assurance societies operating in New Zealand. It has no private shareholders and the whole of its assets belong to its policy-holders. Its total funds are in the vicinity of £30,000,000 invested in the main in New Zealand Government securities and local body loans, but to a lesser degree in loans on mortgage and on policies, and as to some £650,000 in office premises and other real property. Mr. Christie, for the Society, stated frankly that the reduced income earning capacity of its investments was a source of some concern to the Society and that it desired for that reason to invest a portion of its available funds in real property, from which it hoped to obtain a net return of not less than 4 per cent. He claimed that the Society would be an ideal landlord, that its acquisition of flats would not deprive any tenant of accommodation, and that no discharged serviceman would be detrimentally affected. Mr. Christie submitted that any project which would tend to maintain the bonuses of the thousands of small policy-holders who were in effect the proprietors of the Society's undertaking should be encouraged, and should be preferred to the interests of wealthy investors who might be interested in the acquisition of a property of this type. He agreed that in some degree the application might properly be treated as a test case, as the Society was anxious to know to what extent it might embark upon a programme involving the investment of a reasonable portion of its surplus funds in similar properties.

The Court (per *Archer*, J.,) said: " Mr. Barnett, for the Crown, opposed the application. He admitted all that had been said as to the merits of the appellant Society, and that it might be expected to be a model landlord. He pointed out, however, that there are some sixteen life-assurance corporations operating in New Zealand, together with some fifty or more insurance companies of other types, all having substantial funds becoming available for investment from year to year. In addition, trust companies, banks and other financial undertakings (whose normal business includes the investment of moneys), and many other commercial firms, have surplus moneys for disposal. The annual premium of the Australian Mutual Provident Society alone amounts to nearly £3,000,000 per annum in New Zealand, said Mr. Barnett, and the total amount annually available for investment by similar Corporations in New Zealand is probably not less than £10,000,000. He contended that it would be contrary to the public interest for the Court to permit the entry of corporations of almost unlimited resources into the business of acquiring blocks of flats for investment purposes and that the Committee was right in refusing the application on the ground of undue aggregation.

" The Court is satisfied that no imputation can be made against the conduct or good faith of the Australian Mutual Provident Society in proposing to acquire the present and similar properties for investment purposes. Investment in real property is authorized by its constitution, and, in normal times, it would be competent for the Society to apply some portion of its funds in the manner now proposed, should it so desire. It is nevertheless clear that the Society in normal times preferred gilt-edged securities and less hazardous types of investment, and was satisfied to accept the ruling return from such investments in preference to the higher returns which might probably have been obtained by the purchase and letting of real property. It is also clear that the Society, and any other incorporated body with moneys to invest, is bound by the provisions of the Land Sales Act in the same manner as an individual who for a similar purpose may desire to acquire and hold real property. We see no reason to suppose that when the Legislature deemed it necessary to place restrictions upon the aggregation of land it contemplated any distinction being drawn in principle between aggregation by individuals and aggregation by corporations.

" In case *No. 21, F. to S.*, Mr. Justice *Finlay* said, with reference to 'undue aggregation': 'It is apprehended that the phrase will extend to cover the ownership of such a number of properties as, judged by ordinary and reasonable standards, would be considered excessive or inordinate, or such number as would be contrary to the public interest. What would be regarded as ordinary or reasonable must necessarily be determined in relation to the whole body of circumstances attendant upon each particular application.'

" In any matter where the issue of undue aggregation is raised it is necessary to give due weight to the circumstances, needs, and qualifications of the purchaser, and to the character of the property sold and the hardship (if any) which might be imposed on the vendor by the refusal of consent to the sale. Subject to such considerations, the determining factor in every case is whether the proposed aggregation of land is prejudicial to the public interest.

" In the present case the appellant Society has no compelling need to acquire this property; but on the other hand no objection can be raised to its qualifications as a prospective landlord of flats. There is no evidence that the property would be difficult to dispose of in the open market, and therefore no question of hardship to the vendor need be taken into account. It remains only to consider whether the public interest will be best served by the grant or refusal of consent to the transaction.

" We think it important to remember that the Land Sales Act was passed for the purpose of correcting certain tendencies or avoiding certain consequences likely to follow from abnormal conditions due to the war. It was the abnormal shortage of houses and an unprecedented abundance of money, in combination with an exceptional demand due to the return of our soldiers to civil life, which tended to increase the price of land to a dangerous degree. It appears to be inevitable that prices will rise when normal sources of supply are unable to meet an abnormal demand, and such a situation in a time of exceptional prosperity might well lead to a degree of inflation which would be highly detrimental to the economic welfare of the people as a whole.

" The Act was passed, in short, to curb inflationary tendencies due to abnormal circumstances. From the fact that such legislative interference with ordinary private rights was deemed to be necessary in the public interest, it follows that any proposed course of action, which, if developed to its logical extent, would tend to increase the demand for real property without a corresponding increase in the supply, is contrary to the public interest. We think that the proposal of the Australian Mutual Provident Society to invest to a substantial degree in real property falls within that category.

" It is clear that notwithstanding the huge sums which assurance societies and the like corporations have available for investment from time to time, they have not in the past sought to enter the field of real property ownership, save to a moderate degree as the owners of office-buildings. It is solely because abnormal conditions have reduced the average return from their more usual types of investment, and have made such investments more difficult to find, that they desire to enter the field of real property investment to-day. The bulk of their available funds must still of necessity be invested in other securities so that the effect upon their total income of the returns from such properties as they might be able to acquire on the present property market would be very small indeed. On the other hand, the appropriation of a comparatively small proportion of the moneys annually available for investment by such societies to the purchase of real property, would substantially affect the property-market and would undoubtedly increase the demand for real property, and tend to increase its price. The entry into an already overcrowded market of competitors with unlimited resources and consequential advantages might well render it almost impossible for buyers of limited means to compete successfully for such properties as are on the market for sale. It would certainly increase the

present unsatisfied demand for land and would accentuate the disharmony between supply and demand which is at the root of the mischief which it is the intention of the Land Sales Act to prevent. It is conceived that one of the objects of the Legislature was to ensure that in a limited market the available land would be distributed as widely as possible among a diversity of owners.

"It is true that the aggregation against which the Act is directed is 'undue aggregation,' but we are of opinion that in every case where a purchaser already possesses sufficient land for his own use and for the reasonable requirements of his business, the acquisition of further land must be deemed to be undue aggregation unless it can be justified by reference to special circumstances. To that extent each case must be considered on its own merits. Thus, a growing firm may properly extend its business premises, a builder may properly acquire building sections on which to build houses for sale, and the acquisition of real property for investment has been permitted in special cases where the purchaser was genuinely dependent upon the income from a limited amount of capital.

"No such special circumstances are applicable to the present case. The acquisition of flats is not part of the necessary or customary business practice of the Australian Mutual Provident Society which still has open to it all the avenues of investment with which it was satisfied in normal times. Its entry into the property market is the direct result of an abnormal economic situation and is likely to aggravate the evils which it is the intention of the Land Sales Act to mitigate or prevent. If, as we believe, the introduction of such a policy is contrary to the interests of the general public we cannot agree that it ought to be permitted by reason of its advantages to the Society's policy-holders, numerous and individually deserving though they may be. In view of its existing holdings of real property, we cannot but think that the acquisition of further property by the Australian Mutual Provident Society amounts to the aggregation of land, and for the reasons given we hold it to be undue aggregation within the meaning of the Act.

"The reasoning which we have adopted will not necessarily apply to every type of property in which the Society or any other Corporation may desire to invest its funds. It applies specifically to houses and blocks of flats and generally to properties for which there is a keen demand. Different considerations may be applicable to properties for which the demand is strictly limited, and to business premises, or land purchased for building purposes. The determining factor in each case must be the effect of the proposed transaction upon the public interest.

"In the present case the Court is of opinion that the Committee was right in refusing the application on the ground of undue aggregation and the appeal is therefore dismissed."

NEW ZEALAND LAW SOCIETY.

Meeting of Council.

A meeting of the Council of the New Zealand Law Society was held on Friday, December 6, 1946.

The following Societies were represented: Auckland, Messrs. A. H. Johnstone, K.C., and L. P. Leary; Canterbury, Messrs. L. D. Cotterill and E. A. Lee; Gisborne, Mr. J. G. Nolan; Hamilton, Mr. D. J. Lundon (proxy); Hawke's Bay, Mr. W. G. Wood; Marlborough, Mr. W. Churchward; Nelson, Mr. V. R. Fletcher; Otago, Mr. S. J. D. Rolfe; Southland, Mr. L. F. Moller; Taranaki, Mr. R. J. Brokenshire; Wanganui, Mr. R. S. Withers; and Wellington, Messrs. P. B. Cooke, K.C., J. R. E. Bennett, W. P. Shorland, and G. G. G. Watson.

The President, Mr. P. B. Cooke, K.C., occupied the Chair. Mr. A. T. Young (Treasurer) was also present.

The Chief Justice.—In acknowledging the resolution passed by the Council at the September meeting, the Chief Justice wrote as follows:—

"I have received the Vice-President's letter of September 25, conveying to me the contents of the resolution passed at the recent meeting of the Council of the Society. I thank the Council for its cordial message of congratulations to me on my appointment as Chief Justice, and I would add that I will treasure very much its appreciation of any services that I have been fortunate enough to render to the profession during my period as a member of the Council and as President."

The Vice-President, Mr. A. H. Johnstone, K.C., reported that he had received from the retired Chief Justice, the Rt. Hon. Sir Michael Myers, G.C.M.G., a letter of thanks for the resolution of the Council.

Mr. C. H. Weston, K.C.—The President referred to the death of the late Mr. C. H. Weston, K.C. The following resolution was passed, members standing in silence as a mark of respect:—

"That this Council learnt with the deepest regret of the death of Mr. Claude Horace Weston, K.C., who was not only a distinguished member of the Bar, but who for many years gave invaluable service to the Society and to the profession as a member of the Disciplinary Committee, as a member of the Conveyancing Committee, and in many other ways."

Conveyancing Committee.—A vacancy having occurred in the Conveyancing Committee owing to the death of Mr. C. H. Weston, K.C., Mr. S. J. Castle was duly elected a member.

New Zealand Council of Law Reporting.—It was reported that the resignation had been received of Mr. P. B. Cooke, K.C., as an appointed member of the New Zealand Council of Law Reporting, although he remains a member of that Council by virtue of the fact that he is President of the New Zealand Society. Mr. W. P. Shorland was duly appointed a member of the Council of Law Reporting.

United Nations League of Lawyers.—The President reported that a cable had been sent to Mr. J. S. Reid asking him to convey to the League the best wishes of the New Zealand Law Society for a successful meeting of the Conference.

Dominion Legal Conference, 1947.—Mr. Bennett reported that preparations for the Conference were now well advanced, and asked that District Societies should continue to give publicity among their members, to the subject of the Conference. It was decided that the District Societies be asked to assist in conveying invitations to attend to any members of the profession in Australia who might happen to be in New Zealand at Easter.

Habeas Corpus Procedure.—The following letter was received from the Law Revision Committee:—

"I have to acknowledge the receipt of your letter of October 2, forwarding a suggestion from the Hamilton District Law Society that the Infants Act, 1908, or the Guardianship of Infants Act, 1926, be suitably amended to simplify the procedure necessary to obtain the custody of an infant when the question arises otherwise than in a matrimonial cause.

"The matter will be included on the agenda for the next meeting of the Law Revision Committee."

Conveyancing Scale: Costs of Transmission.—The Conveyancing Committee furnished the following report:—

"The members of the Committee respectfully agree with the statement of the law set out in Decision No. 142 on the cost of transmission on the death of a trustee mortgagee. The general rule is stated in *23 Halsbury's Laws of England*, 2nd Ed. 511, paragraph 759, and the only exception to the general rule that the costs of . . . reconveyance fall on the mortgagor seems to be in the case of a lunatic mortgagee, and this exception has been the subject of adverse comment: *Re Townsend*, (1847) 2 Ph. 348, 41 E.R. 977; *Re Stuart, Ex p. Marshall*, (1859) 4 De G. & J. 317, 45 E.R. 123.

"The distinction mentioned that the notice of marriage is made necessary by the act of the mortgagee in marrying does not seem to the members of the Committee to warrant any departure from the general rule. The only obligation placed by the Land Transfer Act on the mortgagee on the repayment of the mortgage is to hand over the mortgage with a receipt endorsed. The receipt of the mortgagee in her married name is a sufficient release as between mortgagor and mortgagee. The additional step of registering the notice of marriage is taken by the mortgagor to show that the mortgage has been discharged by the proper person. The Committee respectfully agrees with the principle of the general rule as stated by *Parker*, J., in *Webb* v. *Crosse*, [1912] 1 Ch. 323, 329: 'It may, of course, be suggested that where, 'since the mortgage, the title has become complicated by the

'acts or omissions of the mortgagee, it is hard on the mortgagor 'that he should bear the extra costs. But it must be 'remembered that the mortgagor is asking to be relieved in 'equity from the legal consequences of his own act.'

"The undersigned had the advantage of discussing the question with Mr. C. H. Weston, K.C., and he agreed with the result reported above although he had no opportunity of perusing the actual report.

"A. B. BUXTON.
"E. P. HAY."

It was resolved that the report be adopted.

Conveyancing Scale: Consolidation.—Mr. Shorland drew attention to the fact that the New Zealand Law Society Conveyancing Scale was approved and printed in 1927. Since then, various amendments and additions had been made, and he proposed that the Scale should be brought up to date and made available to the profession. The Council agreed with the suggestion, and it was decided that the Standing Committee should make arrangements for the consolidation of the Conveyancing Scale.

Consolidation of Rulings.—The Secretary reported that the task had been much greater than at first anticipated, but that the index was now being concluded and the book would go to the printer early in the new year. The Standing Committee and the Treasurer were empowered to consider the question of payment for services in connection with the consolidation.

Digests: Changes in Law.—The Secretary reported that, according to the arrangements previously made with the Rehabilitation Department and the Post War Aid Committee of the New Zealand Law Society, eighty-one copies of the Digest had now been sold, and the result was that a sum of £30 7s. 6d. was held.

The Committee proposed that the University should be asked to arrange for annual £10 prizes to be given to the overseas ex-servicemen who secured the highest marks in the Senior Scholarship in Law (Property and Contract). This proposal was approved by the Council, subject to the confirmation by the Rehabilitation Department.

Status of a Supreme Court Judge.—The following resolutions were carried:—

"(*a*) That the Council of the New Zealand Law Society make representation to the Government expressing disapproval of the growing practice of conferring by statute the status of a Supreme Court Judge upon persons appointed to preside over Courts or Tribunals other than the Supreme Court, as the Council is of the opinion that such practice results in the lowering of the prestige and dignity which should attach to the office of a Supreme Court Judge.

"(*b*) That the Council also make representation to the Government with a view to obtaining a proper differentiation in salary between the Judges of the Supreme Court and other persons who hold some office to which the status of a Supreme Court Judge has been attached by statute.

"(*c*) That copies of resolutions (*a*) and (*b*) above be sent to the Government and handed to the Press."

Conference Bulletin No. 3.

DOMINION LEGAL CONFERENCE, 1947.

Progress Report.

The Conference will be officially opened at the Concert Chamber, Town Hall, Wellington, at 10 a.m. on April 9, when visitors will be welcomed by the Deputy Mayor, Mr. Martin Luckie, and an address will be given by the Hon. the Attorney-General, Mr. H. G. R. Mason, K.C. It is expected that about one hundred Wellington practitioners will attend, while there will be 143 visiting practitioners, 120 of whom will be accompanied by their wives. Two lady practitioners will also be attending.

Apart from the Papers mentioned in the last Bulletin, the following remits will be discussed:

(1) "That the profession views with apprehension threats to the impartial and unfettered administration of justice."

(2) "That the necessary steps be taken to secure amendments to the Law Practitioners Act, 1931, providing as follows:
(*a*) That no President of the New Zealand Law Society shall hold office as such for any continuous period of more than three years:
(*b*) That the next President shall be one whose work is mainly that of a solicitor, and that thereafter the office of President shall be filled alternately by one whose work is mainly that of a solicitor:
(*c*) That there shall be three Vice-Presidents of the New Zealand Law Society, two being resident in the North Island and one resident in the South Island."

Arrangements for the Ball on the Wednesday evening, and the two dinners on the Thursday evening, are well in hand.

Tournaments are being arranged in all the sports, and the following entries have been received:

Golf	81
Bowls	32
Yankee Tennis Tournament	34

All visiting ladies are welcome to play in the mixed Yankee Tennis Tournament on the Friday.

On Wednesday, the ladies will be the guests of the Attorney-General for morning-tea at Parliament House, and on Thursday there will be a drive to Paraparaumu and Akatarawa for the ladies.

All will foregather at Miramar, on the Friday afternoon, after the sports, as the guests of the President of the New Zealand Law Society, Mr. P. B. Cooke, K.C., and the President of the Wellington Law Society, Mr. J. R. E. Bennett.

Intending visitors who find that they cannot attend the Conference will assist greatly by advising the Secretaries of their change of plan.

RULES AND REGULATIONS.

Revocation of the Control of Shipbuilding Notice, 1942. (Supply Control Emergency Regulations, 1939, and Munitions Emergency Regulations, 1941.) No. 1947/11.

Fertilizer Control Order, 1946, Amendment No. 1. (Primary Industries Emergency Regulations Act, 1939.) No. 1947/12.

Waterfront Industry Emergency Regulations, 1946, Amendment No. 2. (Emergency Regulations Act, 1939.) No. 1947/13.

Matrimonial Causes (War Marriages) Emergency Regulations, 1946, Amendment No. 1. (Emergency Regulations Act, 1939.) No. 1947/14.

Pickled Sheep and Lamb Pelt Emergency Regulations, 1947. (Emergency Regulations Act, 1939.) No. 1947/15.

Shipping and Seamen Amendment Act, 1946, Commencement Order, 1947. (New Zealand Constitution Act, 1852 (Imp.), Merchant Shipping Act, 1894 (Imp.), and Shipping and Seamen Amendment Act, 1946.) No. 1947/16.

Public Service Remuneration Order, 1947. (Finance Act, 1938.) No. 1947/17.

New Zealand National Airways Regulations, 1947. (New Zealand National Airways Act, 1945.) No. 1947/18.

Industry Licensing (Paua Shell) Amendment Notice, 1947. (Industrial Efficiency Act, 1936.) No. 1947/19.

New Zealand Government Stores Control Board Regulations, 1925, Amendment No. 5. (Public Revenues Act, 1926.) No. 1947/20.

Plumbers Regulations, 1931, Amendment No. 11. (Plumbers Registration Act, 1912.) No. 1947/21.

Tram-drivers Regulations, 1947. (Statutes Amendment Act, 1946.) No. 1947/22.

Tires and Tubes Control Notice, 1942, Amendment No. 8. (Supply Control Emergency Regulations, 1941.) No. 1947/23.

IN YOUR ARMCHAIR—AND MINE.

By SCRIBLEX.

An Excess of Politeness.—Although he did not suffer fools gladly, and could on occasion show an acid displeasure, Salmond, J., was always polite to counsel, and showed a sympathetic understanding when one, through inadvertence, fell into error. Once, when a solicitor-witness in a probate action was explaining how he had decided too late to advise the testator against the opinion he had formed of one of the beneficiaries, Salmond, J., recalled the incident when Graham, J., had had brought before him a prisoner upon whom he had mistakenly a few minutes before passed a sentence of transportation. Apologising most handsomely, and in the most courteous terms, for his error, he proceeded to rectify it by notifying the condemned, man in the prescribed form, that he would be hanged by the neck until he was dead and buried within the precincts of the prison; and might the Lord have mercy upon his soul!

The Intrusive Schoolboys.—Counsel in a receiving case recently heard by Cornish, J., had made several references to the fact that the accused had three young boys. The expression by the Bench of complete puzzlement at the continued introduction into the Criminal Courts of this phase of the domestic life of the accused was neatly side-stepped by counsel, who, a little later, seemed drawn to it with the relentless lure of iron to a magnet. "Where were your boys when this happened?" he asked his client during his examination-in-chief. "They were at school," was the reply. "Good," observed Cornish, J., with obvious relief, "and let's keep them there for the rest of this trial."

The Denning Report.—The final report of the Committee on Reforms in Divorce Procedure, presided over by Mr. Justice Denning, now issued as a White Paper, suggests some twenty-seven improvements. Some of the recommendations will commend themselves to authorities in this country; others may not. The appointment of Court Welfare Officers to give advice and guidance to those resorting to the Divorce Court, particularly with a view to reconciliation, would appear here to be of doubtful wisdom. There is a finality about a petition in divorce that does not necessarily apply to a summons for a separation: experience proves that persuasion which brings about a further trial usually postpones the evil day until the first serious difference results in a harsh review *inter partes* of all the facts, real or imaginary. A more practical approach to the problem of marital maladjustment is to be found in the recommendation that the form of Registry Office marriages should be revised so as to emphasize the solemnity of the occasion, and to express clearly the fundamental principle of marriage. The abolition of the rule in *Russell* v. *Russell* ([1924] A.C. 687)—that neither husband nor wife is allowed to give evidence in matrimonial cases tending to bastardize a child *prima facie* born in wedlock—is long overdue, as the tooth of time seems to have eaten into it with a series of exceptions. We have been none the worse since its abolition in New Zealand by s. 15 of the Evidence Amendment Act, in 1945, following (if Scriblex remembers rightly) a similar measure in Tasmania two years before. One phase, however, of the committee's work is worthy of the highest praise: this is the quickness with which it has grappled with its many knotty problems. The chairman, Sir Alfred Denning, was one of the youngest members of the Bench on his appointment at forty-seven. He specialized in ecclesiastical law, and had a great professional reputation for energy and speed.

Lord Haw-Haw.—*The Trial of William Joyce* (1946) is a splendid addition to the *Notable British Trials* series, written by some of the outstanding English and Scots criminologists. Its author, J. W. Hall, M.A., B.C.L. (Oxon.), of the Middle Temple, has given us the *verbatim* record of the trial at the Central Criminal Court, the appeals to the Court of Criminal Appeal and to the House of Lords, and then, for full measure, a transcript of shorthand notes taken at the B.B.C. studios, specimens of Joyce's broadcasts and their effects, and biographical notes of all Judges and counsel. Not the least interesting section of the volume is a thirty-six-page introduction in which the author records that Mr. Jonah Barrington, then of the *Daily Express* (London), invented the name "Lord Haw-Haw," giving an imaginary pen-picture of the broadcaster as a brainless idiot of the type of "Bertie Wooster," familiar to the admirers of the works of P. G. Wodehouse. It seems that the name "caught on": the Press used it generally and its "onlie begetter" records "with joy that on October 17, 1939, the French newspaper, *Paris-Midi*, in a burst of enthusiastic inexactitude, reported that there was a new radio traitor called 'Lord Ah! Oh! whose real name was Jonah Barrington.'"

Local Knowledge.—According to the records, Daniel O'Connell appeared at certain criminal sessions for a man charged with murder. The circumstantial evidence was so overwhelming that the jury treated the efforts of the defence with obvious disdain, and appeared fairly itching to record the inevitable verdict and return to their bogs. Then, smiling broadly, and not a whit abashed, appeared in Court the man who, according to the evidence, had been foully murdered and was deader than a doornail. The jury were hastily told to return the only possible verdict in the circumstances. They returned one of "Guilty," whereupon His Lordship expressed the opinion that in the confusion they had inadvertently omitted the negative. "'Guilty,' we say," said the foreman, "and 'Guilty' it is. He's guilty all right. Why, it was less than three years ago that he stole my mare."

From My Notebook.—"Good digestion is certainly necessary for the Bar. If you have not inherited it from your parents, then you can improve what you have got or make it worse, according as you govern your lives."—Mr. Justice Roche (afterwards Lord Roche).

"We will deal with all the charges against the prisoner together, so that his moral bankruptcy may be finally wound up on his discharge."—Mathew, L.J.

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. Executors and Administrators.—*Devolution of Legal Title on intestacy of Executor and Trustee—Land compulsorily brought under Land Transfer Act.*

QUESTION: The devisees of a parcel of land are clamouring for title. A search discloses that the land was compulsorily brought under the Land Transfer Act in 1930, and the registered proprietor is A. The land is unencumbered. A. was previously registered under the "old system" by virtue of D.'s probate. D. died in 1928, leaving A. his executor and trustee; the land was devised to W. for life (and he has just died), with remainder to D.'s three children. A. recently died intestate, and letters of administration in his estate have been granted to Z. Can Z. transfer to the three devisees, or must letters of administration *de bonis non* be taken out *re* D.'s estate? Reference is made to *Public Trustee* v. *Registrar-General of Land*, [1927] N.Z.L.R. 839.

ANSWER: If all the debts in D.'s estate were not paid or otherwise extinguished at A.'s death, then at his death his executoria functions had not been completed, and letters of administration *de bonis non*, or appointment of a new executor, *quoad* D.'s estate, under s. 37 of the Administration Act, 1908, is necessary: *In re Clover*, [1919] N.Z.L.R. 103, and *In re Hepburn*, [1918] N.Z.L.R. 190.

On the other hand, if D.'s estate had been cleared by A. by payment of all legacies, death duty, and debts, it is considered that Z. can procure himself to be registered by transmission (there appears to have been a vesting, subject to registration, of the legal estate in him by virtue of s. 4 of the Administration Act, 1908), and then transfer to the three devisees. *Public Trustee* v. *Registrar-General of Land* (*supra*) is distinguishable in two respects: (i) A. was expressly made a trustee by testator. Reliance has not to be made on an oral trust. (ii) A. was never registered under the Land Transfer Act by virtue of a transmission. A. is entered in the ordinary way as registered proprietor.

A case which appears to support this view is *In re Anderson*, [1921] N.Z.L.R. 770.

X1.

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2. Land Transfer.—*Transfer from Racing Club to Agricultural and Pastoral Association—Rights retained by Racing Club.*

QUESTION: A racing club, which is the registered proprietor of a parcel of land under the Land Transfer Act, has agreed to sell the land to an agricultural and pastoral association for a pecuniary consideration. On the land a racecourse is laid out, and the sale is subject to the following conditions:—

1. That the course be available free of cost to the racing club for racing and training purposes every day not required by the agricultural and pastoral association and for not less than 300 days in each year.
2. That no buildings of any description be erected in the centre of the course, with the exception of uncovered stock-pens.
3. That the race-track be left at one chain in width and that the racing club retain the right to rail the inner circle of the track at any time it is found necessary, and to construct a 10 ft. wide dirt-track around the inside of the inner rails.
4. That only sheep be grazed on the property.
5. That all sheep be removed from the race-track seven days before any race-meeting.

(*a*) What is the best method of completing the transaction without causing any undue difficulties for the future with regard to the title? (*b*) Is a memorandum of transfer registrable from the racing club to the agricultural and pastoral association containing the conditions above set out? If not, can the conditions be protected by caveat registered by the racing club after the transfer? (*c*) What stamp duty will the transfer be liable to? (*d*) Is the consent of the Land Sales Court necessary to the transaction?

ANSWER: (*a*) The best method appears to be to register a simple transfer from the racing club to the agricultural and pastoral association. The parties contemporaneously should enter into a deed of covenant to observe the conditions of the sale, which, though not affecting the title, would be good *inter partes*. In such deed, it may be necessary to guard against the rule against perpetuities. A body such as an agricultural and pastoral association is not likely to sell the land in disregard of the conditions, but, if further protection is considered necessary, the performance of the covenants could be secured by execution of a memorandum of encumbrance by the agricultural and pastoral association in favour of the racing club, to secure an annual penal sum to be reduced to one peppercorn, if the conditions are not broken: Form F, Schedule II to the Land Transfer Act: *Mahony* v. *Hoshen*, (1912) 14 C.L.R. 379.

(*b*) A memorandum of transfer containing such conditions would not be registrable, nor could such conditions be protected by a caveat: see *Boswell* v. *Reid*, [1917] N.Z.L.R. 225, *Staples* v. *Mackay*, (1892) 11 N.Z.L.R. 258, and *Staples and Co., Ltd.* v. *Corby and District Land Registrar*, (1900) 19 N.Z.L.R. 517.

(*c*) The transfer will be exempt from *ad valorem* conveyance duty, and will be liable to 15s. as a deed not otherwise chargeable. It has been held that such an association as the purchaser is at law a charity: *Inland Revenue Commissioners* v. *Yorkshire Agricultural Society*, [1928] 1 K.B. 611: see ss. 81 (*f*), 168 of the Stamp Duties Act, 1923.

(*d*) The consent of the Land Sales Court is now necessary to such a sale, for s. 43 (2) (*g*) of the Servicemen's Settlement and Land Sales Act, 1943, was repealed by the Amendment Act, 1945.

X1.

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3. Land Act.—*Aggregation of Area—Acquisition of land subject to Aggregation-of-area provisions—Proposed purchaser barred.*

QUESTION: My client, who already owns more than 5,000 acres (not subject to any aggregation-of-area provisions), desires to purchase 60 acres adjoining, which he has rented for some time. It forms an economic unit with my client's farm, and he desires now to purchase it; but unfortunately the title is subject to Part XIII of the Land Act, 1924, dealing with aggregation of area. Is there any way out of the difficulty?

ANSWER: Yes. The Governor-General may authorize the proposed alienation, under s. 41 of the Statutes Amendment Act, 1945. This section, it is understood, is administered by the Head Office of the Lands Department, Wellington.

X1.