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THE NEW MAGISTRATES' COURTS ACT.

II.

In the present section of this article, we propose to confine ourselves to a general survey of the jurisdiction conferred by the new statute on the Magistrates' Court.

Before embarking on that survey, it may be stated in general terms that, if the parties to an action consent, most common-law actions and many classes of equitable proceedings, irrespective of the amount or value involved, may be commenced in the Magistrates' Court, which, in their regard, has all the jurisdiction that would concurrently attach to such actions or proceedings in the Supreme Court. Failing such consent, the jurisdiction is, generally speaking, limited to the hearing and determination of actions or proceedings, legal or equitable, where the amount or value in dispute is not more than £500.

The only civil matters excluded from the Court's jurisdiction are divorce and Admiralty proceedings, probate actions, and certain actions which involve the recovery of land and those in which the validity of any devise or bequest is in question or the limitation under any will or settlement is in dispute.

The Court is vested with all the ancillary powers now exclusively conferred on the Supreme Court, including the making of orders in interlocutory proceedings in respect of the various matters that come within the jurisdiction now conferred upon the lower Court.

In addition, criminal jurisdiction is conferred for the first time on the Magistrates' Court, as such.

Criminal Jurisdiction.

From our earliest days in the law, we have become accustomed to the use of the term "Police Court" to denote the sittings of a Magistrate, in a building housing the Magistrates' Court, exercising the criminal jurisdiction conferred upon him by statutes other than the Magistrates' Courts Act for the time being current. It has long been recognized that, at best, the term was merely a colloquial or slang one, since there has never been any statutory authority for its use; and the Magistrates' Court, as such, has never possessed criminal jurisdiction.

Now, by virtue of s. 3 of the new statute, Magistrates' Courts are constituted as Courts of record "possessing civil and criminal jurisdiction." The Governor-General may from time to time appoint cities, boroughs, or other places in which the Court may be held for the exercise of civil jurisdiction only, or criminal jurisdiction only; but, in practice, the Courts of the main cities and towns will be invested with the dual jurisdiction. Section 8 repeats the former s. 14 as to the *ex officio* functions of Magistrates, including their having the powers, functions, and discretions, when sitting alone, that are exercisable by two Justices of the Peace.

Part II of the new statute is confined to the criminal jurisdiction now, for the first time, conferred on the Magistrates' Court as such. It confers on the Magistrates' Courts the jurisdiction which is given to a Magistrate or one or more Justices in respect of proceedings which may be commenced by information or complaint under the Justices of the Peace Act, 1927. It also provides for the exercise of that jurisdiction in Magistrates' Courts by a Magistrate or one or more Justices.

Unless provision is made to the contrary, the criminal jurisdiction of the Magistrates' Courts is to be exercised in a Magistrates' Court before one Justice: this repeats the existing provision: see s. 61 (2) of the Justices of the Peace Act, 1927. Where jurisdiction is given to two Justices or to a Magistrate, it is to be exercised in a Magistrates' Court held before two Justices or a Magistrate as the case may be.

The Justices of the Peace Act, 1927, contains no direction that informations be filed in the office of the Court; and informations can at present be sworn before a Justice and then held until it is decided whether or not to proceed, thereby improperly defeating the rules as to the times within which informations are to be laid. Moreover, the informant may file his information in any Court selected by him. These omissions are cured by ss. 26 and 27 of the new statute. Section 26 directs that, as soon as practicable after an information is laid or a complaint is made, the information or complaint must be filed in the office of the Court exercising criminal jurisdiction nearest by the most practicable route to the place where the offence was alleged to have been committed, or where the subject-matter of the complaint arose, or where the person filing the information believes that the defendant may be found. If all the parties agree, the information

or complaint may be filed in some other Court office. Section 27 provides that, unless a Magistrate or Justice otherwise directs, all proceedings on an information or complaint must be heard and determined in the Court in which the information or complaint is filed. Where two or more informations are laid or made against the same defendant, it is a sufficient compliance with the foregoing provisions if they are filed in the office of the Court in which any one or more of them could be filed.

The keeping of a criminal record book, prescribed by s. 74 of the Justices of the Peace Act, 1927, has been removed from that statute, and is replaced by s. 28 of the new Magistrates' Courts Act, which provides for the keeping of such a record book in every Court appointed for the exercise of criminal jurisdiction, and in the form provided in the First Schedule to the new statute.

From the foregoing summary of the sections dealing with the criminal jurisdiction of the Magistrates' Courts, it will be seen that henceforth, more than ever, the use of the term " Police Court " will be a legal solecism.

Common-law Jurisdiction.

The Magistrates' Court will, on the commencement of the new statute, have jurisdiction to hear and determine any action founded on contract or on tort where the amount in issue is not more than £500. It may also hear any action for the recovery of any moneys not exceeding £500 recoverable by virtue of any statute in force, if it is not expressly provided elsewhere that the demand is recoverable only in some other Court.

Under the present statute, actions for false imprisonment, or for illegal arrest, or for seduction or breach of promise of marriage, were withheld from the Magistrates' jurisdiction. This reservation is now removed, and any such action, where the damages claimed do not exceed £500, may be brought in the Magistrates' Court.

The Court is to have jurisdiction to hear and determine any action for the recovery of land where the rent payable in respect thereof does not exceed £320 per annum; or, if no rent is payable, where the value of the land does not exceed £4,000 in terms of the capital value appearing on the district valuation roll for the time being in force. This provision applies only in the following cases: (i) where the tenant is a tenant at will or for a term, and has neglected or refused to quit and give possession after the ending of the term by effluxion of time or on notice to quit; (ii) where the tenant is in arrears of rent entitling the landlord to a right of re-entry; and (iii) where any person is in possession of any land without right, title, or license. For the purposes of (i) above, one month's notice in writing determining a tenancy is sufficient unless the *defendant* proves that there is an agreement as to the duration of the tenancy within the meaning of s. 16 of the Property Law Act, 1908. A further ground for possession, within the limit of £320 annual rent, is given by s. 32 if the rent payable by any tenant holding any land on a weekly tenancy is in arrears for ten days, or on a monthly tenancy for twenty-one days, or on a quarterly tenancy for thirty days, or, in the case of a longer term, for forty-two days; in any such case, subject to the terms of the tenancy, the landlord will be entitled to an order for the recovery of the land without any formal demand or re-entry. Section 32 (1) proceeds:

> A tenant holding land on any tenancy shall, for the purposes of this section, be deemed to be holding the land on a monthly tenancy, unless he proves that there is an agreement for a tenancy of some other duration.

Thus the judgment in *Hodge* v. *Premier Motors, Ltd.*, [1946] N.Z.L.R. 778, which placed unnecessary burdens of proof on landlords, is nullified by this provision, and by s. 31 (2), relating to a month's notice, already referred to: see "Notices to Quit," *ante*, 206. Both s. 31 (2) and s. 32 (1) of the Magistrates' Courts Act, 1947, place the proof where it properly belongs, on the tenant, as had been the accepted position under s. 16 of the Property Law Act, 1908, until the decision in *Hodge's* case.

If a tenant holding land under a demise or written or verbal agreement is in arrears for two months in the payment of rent and deserts the property, so that there are insufficient assets upon which to distrain for the amount of rent owing, the landlord is to be entitled to an order for recovery of the land.

If, at any time before execution of a warrant issued in pursuance of an order for possession made under s. 32, the full amount of the rent due to the date of judgment and all costs are paid, the proceedings are to cease, and any warrant issued is to be withdrawn.

The Court is to have jurisdiction as to disputes between any building society and its members, or as to other matters arising under the Building Societies Act, 1908, where the amount or value does not exceed £500.

Equitable Jurisdiction and Remedies.

Under the present Magistrates' Courts Act, 1928, the jurisdiction of the Court in respect of contract was limited to cases where the cause of action was breach of contract and the remedy claimed was damages. Now, general jurisdiction is given in all common-law actions founded on contract, where the subject-matter is not more than £500.

In addition, one of the principal features of the new jurisdiction conferred on Magistrates is the jurisdiction to hear and determine proceedings for the specific performance, or for the rectification, delivery up, or cancellation of any agreement for the sale, purchase, or lease of any property, where, in the case of a sale and purchase, the purchase money, or, in the case of a lease, the value of the property, does not exceed £500. In addition, the Court may hear and determine proceedings for enforcing any charge or lien where the amount owing does not exceed that sum.

An innovation of far-reaching importance is the equitable jurisdiction conferred on the Magistrates' Court in respect of proceedings for the dissolution or winding-up of any partnership, where the whole of the assets of the partnership do not, in amount or value, exceed £500. Formerly, the civil jurisdiction of the Court in partnership matters was confined to partnership accounts and disputes between partners where the amount involved was not more than £300. Proceedings for the dissolution or winding-up of a partnership, or any order made therein, may not prevent any creditor from petitioning for an adjudication of bankruptcy against the firm or any member of it.

The Magistrates' Court is also empowered to entertain proceedings for relief against fraud or mistake, where the damage sustained or the estate or fund in

respect of which relief is sought does not exceed £500 in amount or value. Furthermore, proceedings for the recovery of any specific or pecuniary legacy or share of residue not exceeding that sum may be taken in that Court. But the Magistrates' Court cannot entertain any proceedings in which the validity of any devise or bequest is in question, or the limitations under any will or settlement are in dispute. But it has jurisdiction to hear and determine any proceedings in which the title to any corporeal or incorporeal hereditament comes into question, if the proceedings would otherwise be within its jurisdiction.

Jurisdiction Generally.

As we have seen, the Magistrates' Court is to have jurisdiction to hear and determine actions founded on contract or tort, and the various equity proceedings to which we have referred. It has, in addition, a general jurisdiction that is supplementary to the foregoing. Within the ambit of its jurisdiction, conditioned as to the amount or value in dispute, it has cognizance of almost the whole range of civil proceedings, and is vested with all the powers necessary to deal from beginning to end with any action or proceeding before it, including interlocutory applications and the like.

A great advance in jurisdiction is made by s. 41, which provides that, as regards any cause of action within its jurisdiction, every Magistrates' Court must in any proceedings, legal or equitable, before it—

> (*a*) Grant such relief, redress, or remedy, or combination of remedies, either absolute or conditional; and
> (*b*) Give such and the like effect to every ground of defence or counterclaim equitable or legal,—
> as ought to be granted or given in the like case by the Supreme Court and in as full and as ample a manner.

This is subject to the provisions of the equity and good conscience section relative to cases in which the amount or value in issue does not exceed £50.

These wide powers can be exercised—for example, in making an order for accounts or inquiries, a charging order, an order such as mandamus and injunction, or an order for the appointment of a receiver—in all cases where the subject-matter is under the value of £500, or, with the parties' consent, where it is over that sum irrespective of monetary limit. This is a cardinal reform, as formerly a litigant had to seek such common-law and equitable remedies in the Supreme Court, however small the value or amount of the subject-matter.

Ancillary to these wide powers, a Magistrate is authorized to make such interlocutory orders as, if related to an action or proceeding in the Supreme Court, might be exercised by a Judge in Chambers.

Special Jurisdiction.

Where the amount claimed or in dispute in a common-law action or in an equity proceeding within its jurisdiction exceeds £500, then, irrespective of the amount, the Magistrates' Court is given jurisdiction to hear and determine that action or proceeding *if the parties* by memorandum in writing signed by them or their respective solicitors or agents *agree* that a Magistrate should hear and determine it. This jurisdiction is authorized by the statute; but, in each case, it is conferred only by the consent of both parties on the Court that is hearing the particular action or proceeding. There is no limit to the amount claimed or in issue. The Court's jurisdiction, when so conferred, is really the same jurisdiction as is possessed in like circumstances by the Supreme Court, and is concurrent therewith. Whether or not they will invoke the jurisdiction of the Supreme Court, or ask the Magistrates' Court to exercise this wide jurisdiction, is left to the free choice of the parties in agreement to decide.

Where a plaintiff has a cause of action in amount or value in excess of £500, and the opposing party does not agree to the Court's exercising the jurisdiction to which we have just referred, then, if the Magistrates' Court would have had jurisdiction if the amount had not been more than that sum, the plaintiff may abandon the excess, and the Court will then have jurisdiction to hear and determine the action.

Any jurisdiction and powers conferred on the Magistrates' Court by the new statute, or by any other Act, may be exercised by any Magistrate. To the extent authorized by the new statute, or by the Rules to be made under it, any such jurisdiction and powers may be exercised by the Registrar of the Magistrates' Court (the newly-created name for the Clerk of Court), or by any person authorized to discharge the functions of the Registrar.

In our next issue, we shall consider the provisions of the new statute relative to the transfer of proceedings to, and from, the Magistrates' Court, and the new procedure on appeals to the higher Courts, and the like matters.

SUMMARY OF RECENT JUDGMENTS.

KIRKWOOD BROTHERS, LIMITED v. **O'REILLY AND OTHERS.**

Supreme Court. New Plymouth. 1947. February 27; March 17. Cornish, J.

Court of Appeal. Wellington. 1947. June 17, 18; September 6. Blair, J.; Smith, J.; Kennedy, J.

Landlord and Tenant—Lease—Covenant to Paint—Construction—"All such painting and papering"—Whether relating to Outside as well as Inside work.

Practice—Question of Law to be argued before Trial—Question to be such that its Answer would dispose of Action—Question not to be mixed with Questions of Fact—Code of Civil Procedure, R. 154.

The appellant leased an hotel to the first respondent, who subsequently assigned his interest therein to the second respondents, who covenanted by deed with the appellant to observe and perform all the covenants in the lease as if they were the original lessees under the lease as modified or altered by such deed of covenant.

The said lease contained, *inter alia*, the following covenants by the lessee:

> "4. That the lessee shall and will at all times during the "continuance of the said term at his own cost and charges "keep and maintain the leased premises and the said hotel "and all buildings and erections now or for the time being "thereon together with all alterations improvements addi- "tions and fixtures by and with all and all manner of needful "and necessary reparations whatsoever as well outside as "inside in good and tenantable repair and the same and "every part thereof shall and will at the end "or sooner determination of the said term in the like good and "tenantable repair quietly and peaceably surrender and "yield up unto the lessor Provided that under the provisions "of this paragraph the lessee shall not be bound or liable

" to expend a greater sum than £10 in respect of any one " item of repair or reparation (except in painting and paper- " ing to be done by the lessee at his own expense before the " expiration of the fourth year of the said term as set out " in cl. 6 hereof) which has been rendered necessary through " fair wear and tear consistent with reasonable and careful " user by the lessee.

" 6. That the lessee shall and will before the expiration " of the fourth year of the term hereby created (*a*) paint all " outside woodwork and ironwork previously painted with " two coats of oil colours and the roof of the said premises " with one coat of suitable paint approved by the lessor " (*b*) paint or varnish all inside woodwork and also execute " any necessary repapering of rooms and passages of the " said hotel premises and the specifications for all such paint- " ing and papering shall be prepared by an architect in- " structed by the lessor and the architect shall supervise the " carrying out of the said work and the fee payable to the " architect shall be included in the cost of such painting " and papering and shall be paid by the lessee. The said " paper shall be of quality costing not less than 3s. a roll " for sitting and public rooms and passages and not less than " 2s. a roll for bedrooms."

After certain evidence had been taken during the trial of an action by the appellant against all the respondents claiming damages for breaches of covenants, counsel agreed that the Court should decide the construction of the meaning of the term " painting " in cl. 6 of the said lease, on the ground that the decision of the Court in favour of the first appellant would substantially reduce the matters to be considered in the action.

The learned Judge decided that the term " painting " related to outside as well as to inside work. On notice of appeal from the said judgment having been given, counsel for the parties agreed, *inter alia*, as follows:

" In order that the same facts may be before the Court of " Appeal as before the Supreme Court, the evidence given at " the trial and which was then before the trial Judge, in- " cluding interrogatories on behalf of the defendants admitted " for consideration during counsel's submissions, shall be " printed in the case on appeal.

" That whatever the result of the appeal, on the continua- " tion of the trial, the plaintiff shall not in any way be pre- " vented or estopped from calling further evidence and finally " presenting the plaintiff's case, but the question of con- " struction of cl. 6 will be finally concluded if the appeal is " dismissed."

On appeal from the judgment,

Held, allowing the appeal, 1. That cl. 6 creates an obligation in respect of the exterior work which is defined in that part of the sentence which occurs between " (*a*) " and "(*b*) " in that clause and which is independent of the obligation in respect of the interior work which is defined by the rest of the sentence beginning with "(*b*) "; and, consequently, the words " the " specifications for all such painting and papering," &c., refer to the interior work mentioned in " (*b*) " and the words " the " said work " in the phrase " and the architect shall supervise the carrying out of the said work " refer to the interior work.

2. That the words " painting and papering " in the exception set out in cl. 4 apply to both the outside and inside painting, but they do not purport to define in detail the obligations created by cl. 6, which are to be gathered from cl. 6 itself, as construed.

3. That, for the reasons given in the respective judgments, it was not a condition precedent to the liability of the respondents to paint the outside woodwork and ironwork previously painted and the roof of the hotel premises, that specifications should be prepared by the architect instructed by the appellant, and that the architect should supervise the carrying out of that work.

Eastern Counties and London and Blackwall Railway Companies v. *Marriage*, (1860) 9 H.L. Cas. 32; 11 E.R. 639, and *Watson* v. *Haggitt*, [1928] A.C. 127, referred to.

On the question of counsel's agreement during the trial to ask the Court to decide the question of construction, and to include facts and interrogatories in the case on appeal,

Per *Smith* and *Kennedy*, JJ., That the course adopted by counsel was irregular and inconvenient, and a question of law should not be decided in that way unless it constituted a question of law which the Court would order to be argued before trial pursuant to R. 154, in which event, the question of law could not be mixed up with questions of fact; and the answer to the question would, in general, be such as would satisfactorily dispose of the action.

Counsel: *Croker*, for the appellant; *L. M. Moss*, for the first respondent; *P. Grey*, for the second respondents.

Solicitors: *Croker, McCormick, and Greiner*, New Plymouth, for the appellant; *Moss and Jamieson*, New Plymouth, for the first respondent; *P. Grey*, New Plymouth, for the second respondents.

NEW ZEALAND REFRIGERATING COMPANY, LIMITED v. BLANCHARD.

SUPREME COURT. Christchurch. 1947. September 11, 15. FLEMING, J.

Annual Holidays—Holiday Pay—Shift-workers—Firemen working Engines on a Roster Covering Four-weekly Period—Work on Shifts on Every Day of Week—Each Shift of Eight Hours only—Computation of " Normal Weekly number of hours "—Average of Hours worked during Four-weekly Period—" Ordinary pay "—All Shifts worked at Award Rates prescribed for Respective Days—No Overtime worked—Annual Holidays Act, 1944, ss. 2 (1), 3 (1).

Where workers under an award were employed on shift-work extending over seven days of the week, and the roster covering four-weekly periods of work was the regular and normal system of work which had been in force for many years, an average of hours worked during that four-weekly period can be taken as the basis of arriving at " the worker's normal weekly number of hours " for the purpose of ascertaining his ordinary pay for the purposes of s. 3 (1) of the Annual Holidays Act, 1944.

Moon v. *Kent's Bakeries, Ltd.*, [1946] N.Z.L.R. 476. applied.

Under the terms of the relevant award, all shifts worked under the roster system consisted of eight hours only, to be worked at the ordinary-time rates of pay for night work and for work on weekdays, Saturdays, and Sundays, respectively. Consequently, the rates of wages provided by the award were all ordinary rates for the particular periods of the week involved, and no question of overtime or perquisites arose.

Counsel: *S. G. Stephenson*, for the appellant; *M. J. Gresson* and *Barrer*, for the respondent.

Solicitors: *Harper, Pascoe, Buchanan, and Upham*, Christchurch, for the appellant; *Wynn-Williams, Brown, and Gresson*, Christchurch, for the respondent.

SMITH v. THE KING.

COMPENSATION COURT. Wellington. 1946. September 9, 30. 1947. August 8. ONGLEY, J.

Workers' Compensation—Accident arising out of and in the Course of the Employment—Coronary Thrombosis—Evidence that Deceased Worker had Coronary Artery Disease and Died therefrom—Onus of Proof that Death resulted from Effort—Workers' Compensation Act, 1922, s. 3.

Where in an action for compensation by the widow or representative of a deceased worker, the evidence proves that the deceased had coronary artery disease, and that death resulted from that disease, there is a known cause of disease for what happened, and it is for the plaintiff to prove circumstances leading to an inference that death was in fact premature; or was in some way inconsistent with the usual course of disease.

Where the evidence does not show that the death of deceased resulted from effort, the Court cannot find that the death of deceased resulted from his work.

Counsel: *E. D. Blundell*, for the suppliant; *F. A. Kitchingham*, for the Crown.

Solicitors: *Bell, Gully, and Co.*, Wellington, for the suppliant; *F. A. Kitchingham*, Greymouth, for the Crown.

EASTLAKE v. WELSH.

COMPENSATION COURT. Auckland. 1947. April 22; July 30. ONGLEY, J.

Workers' Compensation—Accident arising out of and in the Course of the Employment—Motor-driver splashing Petrol on Sleeve while refilling Tank—Petrol subsequently catching

Fire from Match Struck by him to light Cigarette, and injuring him—Whether "In the Course of" the Employment—Workers' Compensation Act, 1922, s. 3.

A worker cannot increase the responsibility of the employer under the Workers' Compensation Act, 1922, by doing something for his own purposes and not necessary or reasonable for the proper discharge of his duties; and, if he be injured in such circumstances, he is not entitled to compensation.

Payne v. *New Plymouth Sash and Door Co., Ltd.* ((1932)New Plymouth: Frazer, J.), followed.

The plaintiff, a motor-driver, while putting petrol in his tank, splashed some of the petrol on his sleeve. He subsequently showed another person in a shed behind his truck where the oil and other things were kept. While doing so, he struck a match to light a cigarette. The petrol on his sleeve caught fire and injured him.

Held, That the issue was one of fact—*i.e.*, whether, in the circumstances, striking the match to light the cigarette was or was not an incident of the employment—and, applying the above-stated principle, the plaintiff's case failed.

Dorn v. *W. T. Carmichael, Ltd.*, (1943) 17 W.C.R. (N.S.W.) 86, and *Whiting-Mead Commercial Co.* v. *Industrial Accident Commission of California*, (1918) 5 A.L.R. 1518, referred to.

Counsel: *F. H. Haigh*, for the plaintiff; *A. K. North*, for the defendant.

Solicitors: *F. H. Haigh*, Auckland, for the plaintiff; *Earl, Kent, Stanton, Massey, North, and Palmer*, Auckland, for the defendant.

ROAD TRANSPORT LAWS.

XVIII.—Recent Changes and Cases

By R. T. Dixon.

The issue of new Emergency Regulations is almost a thing of the past, but it appears to the writer that some interest may be found in a continuation of the series (see article in (1946) 22 New Zealand Law Journal, 179) broadened to cover all changes in the road-transport laws, and with notes on some interesting cases determined in this country and overseas.

Because most practitioners will have access to the *Road Traffic Laws of New Zealand* and its Supplement No. 3, the beginning of this year, 1947, will serve as a suitable date to review the changes in the laws; but, as some interesting decisions were promulgated last year, and these necessarily did not receive full review in the Supplement, the consideration of the cases includes those heard from the commencement of 1946.

First to be dealt with will be the changes in the laws. It so happens that no fresh Emergency Regulations or Orders were issued and none was revoked or amended (affecting road transport) between the date of the above article and the beginning of 1947, so this article will serve as a continuation of the previous above-mentioned series dealing with changes in the Emergency Regulations connected with road transport.

Revocation of the Warrant of Fitness Emergency Order, 1944 (No. 2) (Serial No. 1947/53).—The principal effect of this order is to put back all warrants of fitness onto a six-months basis. During the war, petrol-rationing restricted the use of motor-vehicles, and especially of private cars. On that account, the warrants of fitness for the latter were given a term of twelve months instead of the six-months terms applicable for all other motor-vehicles. This revocation order cancels this arrangement.

The only other change worthy of note is that the original cl. (4) of Reg. 11 becomes operative instead of the cl. (4) substituted by the Order (Serial No. 1944/168) now revoked. Some difference in the wording of the two clauses will be noted, and an explanation may avoid some puzzlement on the part of a practitioner looking for a loophole defence. As a war measure, all heavy trucks were made subject to transport licensing even when not plying for hire (*vide* Regs. Serial No. 1943/17), but were exempted from the certificate of fitness requirements. The wording of the original (and present) cl. (4) thus provided an ingenious defence when the owner of such a truck was charged with having no warrant of fitness for it, the defence being that the vehicle was "lawfully used in terms of a license," and therefore was exempted by cl. (4) from the requirement. This point would not now be relevant, as the above-mentioned regulations *re* heavy trucks (Serial No. 1943/17) have been revoked, but this explains the changed wording of cl. (4) as contained in the Emergency Order (Serial No. 1944/168) now revoked.

Motor-vehicles Registration Emergency Regulations, 1947 (Serial No. 1947/75).—Owing to the world-wide shortage of steel, it has been found necessary to revert to the license-label system instead of the annual change of number-plates. These regulations implement this by reviving the Motor-vehicles Registration Emergency Regulations, 1942 (Serial No. 1942/152), and by suspending the Motor-vehicles Registration Regulations, 1946 (Serial No. 1946/78). In doing so, certain amendments are effected to the former regulations (Serial No. 1942/152), and several of these amendments go beyond what is consequential.

Regulation 4 of Serial No. 1947/75 provides that Amendments Nos. 1 and 2 of the revived regulations are not themselves to be deemed revived. Amendment No 1 (Serial No. 1943/48) provided to local authorities a system for disposing of abandoned motor-vehicles. Amendment No. 2 (Serial No. 1944/80) provided that for "business cars" a special B.C. sticker should be issued, presumably to help enforce the petrol-rationing.

Regulation 5 of Serial No. 1947/75 effects, *inter alia*, the following policy amendments. A new system is issued for the number-plates of Legation cars, and these are now issued with plates bearing the letters DPL. followed by numbers. There is no revival of the war-time reduction of the car license fee from £2 to £1 15s. Certain obligations relating to the supply of information to the Post Office concerning tyres or producer-gas vehicles are not restored.

With the above amendments, and subject otherwise only to minor consequential changes, the Motor-vehicles Registration Emergency Regulations, 1942 (Serial No. 1942/152), are now restored to active legal life.

(To be continued.)

EXTENSION OF MEMORANDA OF LEASE.

Bringing forward of Mortgages and other interests on Renewed and Substituted Land Transfer Leases.

By E. C. ADAMS, LL.M.

(*Concluded from p. 278.*)

Bringing forward of Mortgages on Renewed or Substituted Leases.—This is provided for by s. 5 of the Land Transfer Amendment Act, 1939. Unfortunately, the section is rather involved, and in practice it is sometimes overlooked that the new lease must be registered not later than one year after the expiry or surrender of the prior lease, and the lessee (*not* the mortgagee of the lease, be it noted) must specially request that there be stated in the memorial of the new lease that it is in renewal of, or in substitution for, the prior lease. There is no particular form of request prescribed, and Precedent No. 5 contains a suitable form.

The writer of this article can never understand why the bringing forward of encumbrances, liens, and other interests on renewed leases was not made automatic, as it is in mortgages of Crown leases and in mortgages to most State lending-departments; for a list of these special statutes, see *Ball on Mortgages*, 128. These statutory provisions cited by *Ball* all work very well in practice; they do not form any trap for the unwary conveyancer, and they save the expense of drawing up new mortgages. In equity, a mortgagee of a renewable lease has an equitable mortgage of the new lease when renewed, and he has a caveatable interest: see *Boundy* v. *Bennett*, [1946] N.Z.L.R. 69, *23 Halsbury's Laws of England*, 2nd Ed. 283, para. 415. Why not, then, give him a legal mortgage of the renewed lease and be done with it? It would be much simpler and safer, both for the practitioner and the Land Transfer Department.

To sum up, before the section operates, the District Land Registrar must be satisfied that the new lease is in renewal of, or in substitution for, a lease previously registered, that it is to the same lessee, and that it is registered not later than one year after the expiry or surrender of the prior lease.

The Land Transfer Department (quite properly, I think) gives a broad interpretation to the words "*in renewal* of a lease previously registered." The object of the section is to save lessees the expense involved in the preparation and registration of new mortgages. The principle of *Dunedin City Corporation* v. *Commissioner of Stamp Duties*, [1944] N.Z.L.R. 851 (a case under the Servicemen's Settlement and Land Sales Act, 1943), applies to s. 5 of the Land Transfer Amendment Act, 1939. The words of the section apply where the new lease granted by the lessor is pursuant to the obligation created by a covenant in the original lease, whether the renewal is compulsory on both landlord and tenant or whether it is, as is more usual, at the tenant's option. The section applies even if, by the terms of the original lease, the new lease has to be put up to auction, and the tenant has at such auction no higher right than any other member of the public. The point is that the new lease is a true renewal, because *the tenant has a contractual right to require the auction*, and the landlord is bound to submit the property and to accept the tenant's bid, if it should be the highest or only bid at least equal to the upset rental. As pointed out in the case just cited, most leases authorized by local-body legislation in New Zealand are leases in which the option to renew is given to the tenant. All such renewed leases come within the scope of s. 5 of the Land Transfer Amendment Act, 1939, which embraces also leases usually referred to as "Glasgow" leases, and leases renewed under the Public Bodies Leases Act, 1908, whether pursuant to the First or Second Schedule of that Act.

Bringing forward of Incumbrances, &c.—Section 4 (2) of the Land Transfer Amendment Act, 1939, provides that, upon the registration of the memorandum of extension, the estate of the lessee thereunder shall be deemed to be subject to *all incumbrances, liens, and interests to which the lease is subject* at the time of the registration of the memorandum of extension. Section 5 (1) provides that in every such case the new lease shall be deemed to be subject to *all incumbrances, liens, and interests* to which the prior lease is subject at the time of the registration of the new lease or at the time of the expiry or surrender of the prior lease, whichever is the earlier. In both sections the words "and interests" are not interpreted *ejusdem generis*; for example, the Land Transfer Department holds that they are sufficiently wide to include an easement. But, although an extension of a lease and a renewed or substituted lease, in respect of which the necessary notice is given to the District Land Registrar, are *subject to the burden* of any easement to which the original lease is subject, they will not carry *the benefit* of any easement which ran in favour of the original lease. If such benefit is desired to accrue to the benefit of any extension of lease or any renewed or substituted lease, fresh grants must be drawn up and registered. This is rather awkward where two leases are subject to and have appurtenant mutual easements—*e.g.*, grant of party-wall rights.

Special Clause in Memoranda of Mortgage of Lease.—The practice is now growing up of inserting in memoranda of mortgages of leasehold land special clauses binding the mortgagors to take the necessary steps to comply with the provisions of s. 4 or 5 of the Land Transfer Amendment Act, 1939. Precedent No. 6 is taken from a form recently approved by the Registrar-General of Land.

Stamping and Registration Fees.—A memorandum of extension of a lease is subject to the same stamp duty, and same registration fee, as a memorandum of lease.

There is no fee charged for the request to bring forward incumbrances on new leases pursuant to s. 5 of the Land Transfer Amendment Act, 1939.

PRECEDENT NO. 1.

MEMORANDUM OF EXTENSION OF LEASE.

IN THE MATTER of the Land Transfer Act 1915 and its Amendments.

AND

IN THE MATTER of Memorandum of Lease Registered Number from A. B. as lessor to C. D. as lessee and affecting all the land in Certificate of Title Volume Folio and Volume Folio in the District Land Registry.

1. The term of the abovementioned lease Registered Number is hereby extended to the day of 1950.

2. The covenants conditions and restrictions contained or implied in the said lease are hereby varied as follows :—

(*a*) That notwithstanding anything contained in paragraph 4 of the said lease the lessee shall have the right to alter and if necessary pull down and re-erect the dwelling-house on the said lands and to use in such work any suitable material in the old cottage erected on the said lands provided that such work is carried out in a good and workmanlike manner and to the satisfaction of the lessor and PROVIDED FURTHER that the lessee insures against all workers' charges under the Workers' Compensation Act 1922 and effects the requisite Builders' Risk during the period of such alteration and hands the policies therefor to the lessor.

(*b*) That the purchase price for the fee simple contained in the optional purchasing clause in the said lease is hereby reduced from £11 an acre to £9 10s. an acre but in all other respects the provisions of the said clause remain the same and the said clause *mutatis mutandis* shall be deemed to be included in this memorandum of extension.

DATED this day of 1947.

SIGNED by the said A. B. as lessor in the presence of : } A. B., LESSOR.

E. F.,
Postmaster, Petone.

SIGNED by the said C. D. as lessee in the presence of : } C. D., LESSEE.

G. H.,
Solicitor, Napier.

Correct for the purposes of the Land Transfer Act.
, Solicitor for the lessee.

PRECEDENT NO. 2.

MEMORANDUM OF EXTENSION OF LEASE.

IN THE MATTER of the Land Transfer Act 1915.

AND

IN THE MATTER of the Land Transfer Amendment Act 1939.

AND

IN THE MATTER of Memorandum of Lease Registered Number , Registry from A. B. of Wellington tobacconist to C. D. of Wellington spinster (now vested in E. F. of Wellington tobacconist).

THE TERM of lease Number is hereby extended to the day of one thousand nine hundred and fifty-five (1955).

The covenants conditions and restrictions contained or implied in the said lease are hereby varied as follows :—

The rental payable under the said lease is reduced from the sum of twelve pounds (£12) per week to the sum of ten pounds (£10) per week as from the day of One thousand nine hundred and forty-seven (1947).

DATED at Wellington this day of 1947.

SIGNED by the said A. B. as lessor in the presence of : } A. B.

G. H.,
Solicitor, Wellington.

SIGNED by the said E. F. as lessee in the presence of : } E. F.

G. J.,
Solicitor, Wellington.

SIGNED by the said C. D. as original lessee. C. D.

K. L.,
Solicitor, Auckland.

Correct for the purposes of the Land Transfer Act.
G. J., *Solicitor for the lessee.*

N.B.—*In this case, although the lease has been transferred, the original lessee has executed the extension ; this is rather unusual in practice.*

PRECEDENT NO. 3.

MEMORANDUM OF EXTENSION OF LEASE.

THE TERM of lease Number is hereby extended to the day of one thousand nine hundred and fifty-four.

The covenants conditions and restrictions contained or implied in the said lease are hereby varied as follows :—

1. The lessor shall permit the lessee to deduct and the lessee shall deduct from the yearly rental of seven hundred pounds (£700) payable under the said lease a sum at the rate of one hundred and fifty pounds (£150) per annum commencing as from the day of one thousand nine hundred *and forty-seven and continuing throughout the said term* so extended.

2. The lessee shall expend so far as the same shall be necessary the sum so deducted from the annual rent in the repair and maintenance of the demised premises including painting and in making reasonable alterations additions and improvements to the structure of the buildings on the demised premises. The lessee shall keep a detailed account of all such expenditure and from time to time furnish the lessor with a copy of the same accompanied by all such vouchers and receipts as shall be necessary to verify the correctness thereof. Any balance of the amount so deducted that may remain unexpended at the expiration of the term as hereby extended shall belong to the lessor and be forthwith paid to him by the lessee.

3. Any structural alterations additions or improvements made as aforesaid shall be made in such a manner that the same shall be and remain of permanent value to the demised premises and the lessee shall not be called upon by the lessor to expend a greater sum than the amount so deducted from the said rent in performing and observing the covenants conditions and provisions of the lease and in making such structural alterations additions or improvements.

4. The lessee shall not call upon the lessor to contribute further to the cost of the maintenance and repair of the demised premises and/or of making any structural alterations additions or improvements thereto save that this clause shall not be construed as affecting the covenants and provisos of the said lease relating to damage by fire.

5. This memorandum of extension of the said lease shall take effect in substitution for the exercise of the right of renewal contained in the said lease and shall not confer any right to a further renewal at the expiration of the term as hereby extended.

6. The covenants conditions provisions and restrictions contained and implied in the said lease shall be read and construed subject to the covenants conditions provisions and restrictions herein contained and shall where necessary be modified or varied accordingly.

DATED this day of one thousand nine hundred and forty-seven.

SIGNED by A. B. as lessor in the presence of : } A. B., LESSOR.

E. F.,
Solicitor, Palmerston North.

THE COMMON SEAL of LIMITED as lessee was hereto affixed by order of the Board of Directors of the said company by and in the presence of : } (L.S.), LESSEE.

C. D. } DIRECTORS.
G. H. }
I. J., SECRETARY.

Correct for the purposes of the Land Transfer Act.
K. L., *Solicitor for the lessee.*

PRECEDENT NO. 4.

MEMORANDUM OF EXTENSION OF LEASE.

THE TERM of lease Number is hereby extended to the day of one thousand nine hundred and fifty-five (1955). The covenants conditions agreements and restrictions contained and implied in the said lease are hereby varied as follows :—

(*a*) The agreement on the part of the lessor to grant to the lessee a renewed lease of the premises demised by the said lease Number for a further term shall not be a term of the extended lease.

(*b*) The lessee shall prior to the day of one thousand nine hundred and forty-eight (1948) paint with two coats at least of good oil paint in a workmanlike manner such parts as are proper or usual to be painted of the buildings and erections on the land demised by the said lease Number and such parts as aforesaid of such buildings and erections as might hereafter be erected thereon and of all additions thereto as are proper to be painted.

(*c*) The covenants on the part of the lessee to paint in clause 4 of the lessee's covenants in the said lease Number contained shall no longer apply.

DATED this day of , 1947.

THE COMMON SEAL of COMPANY OF NEW ZEALAND LIMITED as lessor was hereto affixed at a meeting of the Board of Directors in the presence of: (Seal.)
A. B. } DIRECTORS.
C. D. }
E. F., GENERAL MANAGER.

SIGNED by G. H. as lessor in the presence of:— G. H., LESSOR.
I. J.,
Bank Accountant, Auckland.

THE COMMON SEAL of LIMITED was hereto affixed in the presence of: (Seal.)
K. L. } DIRECTORS.
M. N. }
, LESSEE.

THE BANK OF NEW ZEALAND the mortgagee named and described in memorandum of mortgage Registered Number affecting the lands described in the written memorandum of extension of lease DOTH HEREBY CONSENT thereto without prejudice however to its rights powers and remedies under the said memorandum of mortgage.

DATED at Wellington this day of 1947.

THE COMMON SEAL of THE BANK OF NEW ZEALAND was hereunto affixed pursuant to an order of the Board of Directors in the presence of:
O. P. }
Q. R. } DIRECTORS.
S. T. }
U. V. }
W. X., GENERAL MANAGER.

Correct for the purposes of the Land Transfer Act.
Y. Z., *Solicitor for the lessee.*

PRECEDENT NO. 5.

REQUEST TO DISTRICT LAND REGISTRAR TO BRING DOWN INCUMBRANCES ON RENEWED OR SUBSTITUTED LEASES.

To
THE DISTRICT LAND REGISTRAR,

THE COMPANY LIMITED the lessee named in the within-written memorandum of lease being also the lessee named in memorandum of lease Registered Number and the proprietor thereof at the time of its expiry DOTH HEREBY REQUEST that the within-written memorandum of lease be registered subject to all encumbrances liens and interests to which the said memorandum of lease Registered Number was subject at the time of its expiry AND THAT in the memorial of the within-written memorandum of lease it shall be so stated accordingly UPON THE GROUND that the within-written memorandum of lease is in renewal of [or in substitution for] the said memorandum of lease Registered Number and was made and executed pursuant to the provisions in that behalf therein contained.

THE COMMON SEAL of THE COMPANY LIMITED was hereunto affixed by and in the presence of: L. S.
A. B. } DIRECTORS.
C. D. }
E. F., SECRETARY.

PRECEDENT NO. 6.

SPECIAL CLAUSE, IN A MEMORANDUM OF MORTGAGE OF LEASE, DEALING WITH RENEWALS.

THAT the mortgagor will immediately after obtaining any lease granted in renewal extension or substitution as aforesaid do all things necessary to comply with the provisions of sections 4 and/or 5 of the Land Transfer Amendment Act 1939 (so far as either or both of the said sections shall apply) and will procure the registration of such lease within the time or times prescribed in the said sections and in particular where the said section 5 of the said Act shall apply will duly and punctually make perform and do and concur in making performing and doing all the requests acts and things prescribed thereunder to satisfy the District Land Registrar and to ensure the proper entry and completion of the memorials and records therein prescribed relating to such lease and the continuance of this present security thereover as a first mortage AND FURTHER that if by reason of the refusal or neglect of the mortgagor to comply with the provisions of the said the Land Transfer Amendment Act 1939 or all or any of them or for any other cause this present security shall not be registered or recorded as a first mortage against any such lease the mortgagor will immediately execute in favour of the mortgagee a new first mortgage thereof to secure payment to the mortgagee of the said principal sum and interest such mortage to be at the mortgagor's expense and to contain similar covenants (including this present covenant) as are herein contained AND FURTHER that if the mortgagor shall refuse or neglect to make give do or perform all or any of the aforesaid appointments notices requests acts matters or things or to comply with all or any of the provisions of the said the Land Transfer Amendment Act 1939 or all or any of the foregoing provisions hereof for the purpose of procuring any such renewal or extension as aforesaid or the continuance of this present security over any lease granted in renewal extension or substitution as aforesaid or for any of the purposes hereinbefore mentioned or to pay the fines costs and fees attending all or any of the aforesaid acts matters and things it shall be lawful for but not obligatory upon the mortgagee on behalf of the mortgagor to make do and perform all or any of the said appointments notices requests acts matters and things and to do all other acts matters and things necessary or incidental to the attainment of the aforesaid purposes or any of them and to pay all costs and expenses incidental thereto and for all the purposes aforesaid including the obtaining and mortgaging as aforesaid of any lease granted in renewal extension or substitution as aforesaid the mortgagor doth hereby irrevocably appoint the Chairman of the New Zealand Board of Directors and the Manager or Acting Manager for the time being of the mortgagee in New Zealand jointly and each of them separately the attorneys or attorney of the mortgagor in the name and on behalf of the mortgagor if and when and so soon as the mortgagee shall think proper to make execute and do or concur in making executing and doing all such appointments requests contracts notices references leases mortgages assurances acts and things as they or he shall deem expedient.

LEGAL LITERATURE.

Mercantile Law in New Zealand, by D. A. S. Ward, B.A., LL.B., and H. R. C. Wild, LL.M. Pp. 240 and Index. Wellington: Whitcombe and Tombs, Ltd.

This is a students' book. Within its professed limits, it amply fills the need for a short but comprehensive treatise covering the prescriptions for examinations in this subject. After an able summary of the general principles of contract, the authors then proceed to explain and illustrate the special contracts dealt with in mercantile law. This work is notable for its clear and succinct definitions, and the lucidity of its explanations and its applications of them.

The authors have reduced the subject of frustration of contract, always a difficult matter for students, to simple terms, easy of assimilation. In treating the subject of void and illegal contracts, the law relating to wagers in New Zealand is most competently covered in a few pages.

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. 116.—*Ex parte* T. TRUSTEES.

Trustees—Provisional Order—Proposed Subdivisional Sale—Application by Trustees to fix Basic Values of Sections in Subdivision—Discretion of Committee—Servicemen's Settlement and Land Sales Amendment Act, 1946, s. 14.

Appeal against the refusal of the Auckland Urban Land Sales Committee to deal with an application filed by the trustees of the late Professor Sir A. P. W. Thomas, deceased, to fix basic values for the sections comprised in a subdivision belonging to the estate.

The Court said: "As the sections in question have now been sold and are the subject of individual applications to the Court, the purpose of the present application has lapsed, and the appeal may therefore be struck out.

"It may be of assistance to trustees in general, however, if the opinion of the Court as to the intention of s. 14 of the Servicemen's Settlement and Land Sales Amendment Act, 1946, is put on record. The section provides as follows:

(1) Where any trustee is about to enter as vendor or lessor into any transaction to which Part III of the principal Act applies and which the trustee has power to enter into, application for the consent of the Court to the proposed transaction may be made in accordance with section forty-eight of the principal Act, notwithstanding that the name of the proposed purchaser or lessee is not known.

(2) In any such case the Land Sales Committee, if it thinks fit, may make a provisional order consenting to the proposed transaction subject to the approval by the Committee of the purchaser or lessee, and after the transaction has been entered into, if the Committee approves the purchaser or lessee, may make a final order consenting to the transaction.

"The Committee took the view that the section contemplates a transaction from which the only thing lacking is the name of the proposed purchaser or lessee, and that, in the absence of proof of an actual transaction or proposed transaction, an application under the section should be refused. We think the Committee has taken too restricted a view of the intention of the section. It is a matter of common knowledge that, since the enactment of the Land Sales Act, trustees have been in the difficult position that, on the one hand, their duty might appear to require them to dispose of property by auction, while, on the other hand, if at an auction ill-advised bidding is carried on to unreasonable lengths, consent to the consequent sale is likely to be refused by the Court. We are of opinion that the object of the amendment above-quoted was to enable trustees genuinely desirous of disposing of trust property in accordance with the trusts affecting the same to ascertain from a Land Sales Committee, prior to entering into a specific contract of sale, the basic value at which consent to a sale to an approved purchaser will be granted, so that the trustees may then proceed with a sale at the basic value so fixed without danger of being charged with selling at an under-value.

"Before a Committee is justified in making a provisional order under the section, it must be satisfied that the vendor is a trustee and that he proposes to enter into a transaction to which Part III of the Act applies and in accordance with his powers under the trust. The Committee must also be satisfied as to the terms of the proposed transaction, so that in practice, therefore, it is necessary for the applicant to file a proposed contract and to indicate what he deems to be a proper price or rent. We do not think, however, that it is necessary for the purposes of an application under s. 14 that a particular purchaser or lessee should be in contemplation.

"It is necessary, of course, for the Committee to be satisfied that the application is made in good faith and for the purpose of facilitating a sale in the proper exercise by the applicants of their functions as trustees, and it is no doubt in order to prevent the possibility of the section being used for some ulterior purpose that the making of an order is left by subs. (2) within the discretion of the Committee. Where, however, the application appears to be *bona fide* and in order, we think that a Committee should exercise its discretion in favour of the applicants."

No. 117.—G. TO F.: W. TO F.

Aggregation—Company to be formed to acquire and hold Land—Trustee Purchaser for Proposed Company holding other Properties—Largest intended Shareholder therein—Considerations for Committee.

Appeal by the Crown against the grant by the Wellington Urban Land Sales Committee of consent to the sale for £2,900 of two adjoining sections in Brougham Street, Wellington, to one John Faine as agent for a company to be formed for the purpose of erecting residential flats thereon. The Crown claims that consent should have been refused on the ground of aggregation, by reason of the fact that Mr. Faine, being already the owner of twenty-three properties, will be substantially interested in the new company. It is claimed by the purchaser, on the other hand, that, as the company will be a distinct legal entity, and as Mr. Faine will not have a controlling interest in its shares, his personal landholdings are irrelevant and were properly disregarded by the Committee.

The Court said: "In its original form, the Servicemen's Settlement and Land Sales Act, 1943, was not so drawn as to make its provisions applicable to the sale of shares in companies holding land nor to vest in the Land Sales Court any direct control over such companies. A reference to shareholdings in companies is found in the Amending Act of 1946, where, for the purpose of ss. 9 and 10 of the Amending Act, it is provided that a company of which any member is entitled to a majority of votes at general meetings is deemed to be the same person as that member. We are of opinion, however that no inference as to the powers of the Court in respect of companies under the principal Act can be drawn from these provisions of the Amending Act, which are obviously intended to apply only to the matters referred to in the sections in question.

"While it is true that this Court is not concerned with company shareholders as such, it is concerned with the prevention of undue aggregation of land in the wide sense in which the use of the term in the Land Sales Act was recently interpreted by *Cornish*, J., in *Engelberger* v. *Ongley*, [1947] N.Z.L.R. 65. The learned Judge there held that for the purpose of the Land Sales Act 'undue aggregation' is a mischief by whomsoever or for whomsoever effected, and that this Court is entitled to refuse consent to a sale and purchase of land if the effect of the purchaser's acquisition of the land would, in its opinion, result in 'undue aggregation of land by any person at all.' He held further that aggregation may be *de facto* based on use, and need not necessarily be *de jure* in the sense that it is based on ownership, that aggregation is increasing the area over which a person has control, and that this need not be legal control, but may be based on ownership of contractual right, or merely on sentiment. It follows, therefore, that, if the result of a purchase be that one person gets power to control the use of more land than is considered by this Court necessary for the requirements of himself and his dependants, then it is competent for the case to be regarded as one of undue aggregation. In conclusion, and referring to the duty of Land Sales Committees and the Land Sales Court, *Cornish*, J., said, at p. 69: 'In my opinion, these tribunals are entitled, in the performance of that duty, to treat as "undue aggregation" any control over land—whether *de facto* or *de jure*—which, in their opinion, is disproportionate to the reasonable needs of any individual, and to refuse consent to any acquisition which would result in such control.'

In *Engelberger* v. *Ongley*, consent to a proposed purchase of farm land by a daughter was refused on the ground that the transaction would permit *de facto* aggregation of land by the mother of the nominal purchaser, who, it was held, would be in *de facto* control of the land notwithstanding that the contract gave her no legal interest therein.

If, as has been held in *Engelberger* v. *Ongley*, it is possible for a person having no legal interest in land to infringe against the principle of the Land Sales Act by obtaining indirect and *de facto* control of such land, we are of the opinion that the

acquisition of land by a company may properly be held to conflict with those principles if it is found on the evidence that such acquisition is likely to result in the effective control of the land passing into the hands of a person or persons who would be precluded by his or their existing landholdings from purchasing further land. In what is commonly, though inaccurately, known as a one-man company, the control of the company's assets is usually found to be vested in the principal shareholder, but we do not think it necessarily follows that a person holding less than half the shares in a company cannot be in *de facto* control of the company's affairs. The degree of control exercised or likely to be exercised by any person interested, whether as shareholder, manager debenture-holder or otherwise, in a company is, in our opinion, a matter of fact, which should be capable of determination after due inquiry into the company's affairs.

"We are therefore of opinion that the acknowledged facts —first, that Mr. Faine will have no legal interest in the land in question if it is duly transferred to the proposed company, and, secondly, that his nominal shareholding in the company is less than 50 per cent—do not conclusively prove that he will not in due course be found to be in *de facto* control of the land which is now proposed to be purchased in his name on the company's behalf. The fact that he is the nominal purchaser as trustee for the company, and that, as stated to the Committee, he will be the largest individual shareholder therein, though holding only 200 out of 500 £1 shares, raises a presumption that he will at least have a substantial interest in the company's affairs and a substantial degree of control of the business which it is the company's intention to carry on on the land purchased. Whether that degree of control is sufficient to justify the Committee in refusing the application upon the ground of undue aggregation is a matter for the Committee's consideration after due inquiry.

"Even assuming that Mr. Faine's present holdings of land are such that an application to acquire further land in his own name would be rightly refused on the ground of aggregation, it by no means follows that a purchase of land by a company of which he is a shareholder should necessarily be refused. Such a refusal is justified only if the Committee s satisfied that the purchase by the company is likely to result in such a degree of *de facto* control of the land in question by Mr. Faine as would be contrary to the public interest, having regard to his present landholdings and to the purposes of the Land Sales Act. We are in agreement with the Crown that the Committee would have been justified in calling for further evidence as to the proposed company's intentions, with a view to satisfying itself as to whether Mr. Faine's association with the company would be such as to justify a refusal of the present application on the ground of undue aggregation. As the Committee does not appear to have fully appreciated its powers and duties in this respect, we propose to refer the matter back to it for further consideration. In the event of the Committee deciding eventually to grant the application but wishing to ensure that the property is transferred to the proposed company in due course, we think it would be competent and desirable for it to impose a condition that a transfer by Mr. Faine to the company shall be registered contemporaneously with the transfer pursuant to the contract which is the subject of the present application."

No. 118.—T. Trustees to D.

Urban Land—Subdivision into Sections—Access Road constructed since 1942—Increased Roading Costs—Proper Method of Valuation.

Appeal and several related appeals concerning sections at Withiel Drive, Epsom, sold to various purchasers by the trustees of the late Professor Sir A. P. W. Thomas. The sections comprise part of the grounds occupied by the late owner for many years. In order to give them access, a private right-of-way was originally proposed, but, by arrangement with the Auckland City Council, a public road is now to be constructed. At a hearing before the Auckland Urban Land Sales Committee agreement was reached between the valuers as to the amounts which the respective sections would have been worth in December, 1942, had the land been subdivided and the road constructed at that date. The Committee gave its consent to the various sales at the values so agreed on. The appellant trustees now claimed, however, that certain further amounts should be allowed by reason of the increase in roading costs since 1942 and of losses in rates and interest incurred since 1942 by the trustees. They contended that the aggregate of these amounts should have been divided *pro rata* between the sections and added to the basic values respectively fixed for the same. In support of these contentions, the trustees relied on *No. 91.—B. to J.*, (1946) 22 N.Z.L.J. 290.

The Court said: "It should be noted that the method of assessment applied in *No. 91.—B. to J.*, is not intended to be applied in all cases where land has been subdivided since December 15, 1942. This is made clear early in the judgment, where *Ongley*, J., says, at p. 290: 'No difficulty arises where the value of all the sections in a new subdivision assessed by the usual method of comparable sales enables the vendor to recover the fair value of the property as at December 15, 1942, and his cost of subdivision, including a reasonable profit.'

"Where, therefore, the foregoing requirements are met by an assessment by the usual method of comparable sales, no further inquiry into costs is required, and the vendor is entitled to the prices so assessed and to no more.

"The judgment proceeds to point out, however, that there is a second class of case in which an inquiry into subdivisional costs and an allowance over and above the prices ascertainable by reference to comparable sales may properly be made. In the words of the judgment, at p. 290: 'Where, however, the total value of all the sections assessed in this manner will not enable the vendor to do this, a question of public interest arises, because an owner will not subdivide unless he can recover the value of his property and his costs . . . It therefore becomes a question of primary importance in each case to determine whether or not it is in the public interest to consent to sales of sections in a new subdivision at amounts higher than the basic values fixed by the usual method, so that the subdivision can proceed on a basis that will enable the owner to recover the value of his property as at December 15, 1942, plus fair and reasonable subdivisional costs and a fair and reasonable margin of profit, according to the circumstances of each particular case.'

"There are, therefore, two separate and alternative methods applicable to the valuation of land subdivided since December, 1942. The first is by reference to comparable sales precisely as if the subdivision had been completed prior to 1942. This method is applicable unless the vendor is able to satisfy the Committee that the total realization upon such a basis would be insufficient to return to him the fair value of his land as it then was—*i.e.*, as an undivided block—in December, 1942, together with his reasonable costs and profit on subdivision. Only when it is so satisfied is it incumbent upon the Committee to apply the second and more cumbersome method described in *No. 91.—B. to J.* The onus of satisfying the Committee that this method should be adopted is upon the vendor. Where, however, a vendor seeks to have this method applied, his starting-point is to establish the value of the land as an undivided block in December, 1942. That is the value to which he is entitled to add his reasonable costs and profit.

"In their presentation of the present case to the Committee, the appellants appear to have confused the two methods of valuation above described. They called no evidence as to the value of the land in its undivided state, but set out to show (and did in fact establish) the value of the sections as subdivided sections in December, 1942. This was in accordance with the first method of valuation above described, and, if it is accepted as the proper basis of valuation, the appellants are precluded from claiming any further amount on account of their subdivisional costs. If, on the other hand, they seek to have their case dealt with in the manner described in *No. 91.—B. to J.*, they should start with the 1942 value of the land as an undivided whole. To this they would then be entitled to ask the Committee to add their reasonable costs and a reasonable profit on their undertaking. They are not justified, however, in seeking to debit rates or interest for a longer period than that normally required for subdividing the land and disposing of the sections, while credit should be given for all payments or other benefits received from the City Council in connection with the subdivision. Losses incurred as a result of unreasonable delays on the part either of the vendors or of the City Council cannot, in our opinion, be propely charged against the land.

"As the appellants may have failed to present their case to the best advantage in accordance with the foregoing principles, we propose to refer all these cases back to the Committee for further consideration. In the event of the appellants being unable to justify an increase in the prices already approved by the Committee, the basic values already fixed should, of course, be confirmed."

MR. JUSTICE GRESSON.

Christchurch Practitioners' Farewell.

The Grey Room at Beath's, Christchurch, was thronged on the afternoon of September 30, when the Canterbury District Law Society held an afternoon-tea as a tribute to the appointment of Mr. K. M. Gresson to the Supreme Court Bench of New Zealand. The attendance was a record, every practitioner of the city and district being present or accounted for.

Mr. Justice Fleming, Mr. H. P. Lawry, S.M., Mr. Raymond Ferner, S.M., and Mr. F. F. Reid, S.M., were present as guests of the Society.

Tributes to the New Judge.

The President of the Canterbury Law Society, Mr. W. R. Lascelles, explained that, in ordinary circumstances, the Society would have been delighted to honour their guest with a formal dress dinner with sparkling bowl and fragrant cigar*. Mr. Gresson had almost insisted on the function being of simpler nature, more suited to the austerity of the times.

In congratulating Mr. Gresson upon his appointment to the Judgeship, he assured him the appointment was a popular one and felt to be entirely well-merited and in the best interests of justice. His fellow-practitioners had for long held his character and learning in high regard. They had appreciated his service to the Society and the profession, to the Army, the University, and the Church; and they now looked with confidence to years of distinguished service in that more elevated sphere to which he had now been called.

In days when the tendency was to overlook the life and service of women, they were not unmindful that Mrs. Gresson deserved and should receive their congratulations.

Mr. Justice Fleming congratulated Mr. Gresson upon his elevation to the Supreme Court Bench. His Honour said that during his Sittings in Christchurch he had been impressed with the thoroughness, the ability, and the extensive legal knowledge which Mr. Gresson had exhibited in the masterly presentation of the cases in which he had appeared.

Returning, as His Honour had just done, from the North Island, he could assure Mr. Gresson and the profession in Christchurch as a whole that there was very wide approbation indeed of this latest appointment to a Judgeship. This approbation was common to the Bench and Bar alike.

He wished Mr. Gresson a happy career in the important sphere of duty now assigned to him.

Mr. A. F. Wright expressed the general pleasure felt by the profession in Canterbury at Mr. Gresson's appointment to the Supreme Court Bench. Over many years of practice, members had increasingly appreciated his wide knowledge of the law, his strength of character, and his great service to the profession. These fine qualities well fitted him for the high position to which he had been called, and, it was felt, would ensure to him a distinguished judicial career.

Mr. Gresson had filled with distinction the important office of Dean of the Faculty of Law at the Canterbury University College, where his keen interest in the advancement of legal education had enabled him to further an important work to which he had devoted much time and careful study. His work at the College would long be remembered, especially by the younger members of the profession in Christchurch, many of whose legal foundations had been well and truly laid under his kindly help and sympathetic direction. He had always been a great help to students of the law and his ability and interest in the law had found a further field of excellent service as a member of the Law Revision Committee, which had performed in recent years much valuable work.

The new Judge's service was not limited to the profession alone. He had rendered signal service to the Army, and he had also carried out important duties as Chancellor of the Diocese.

It was an especial pleasure that a grandson of one of our earliest Judges was now to carry on the family tradition of high service to the Profession of the Law.

Mr. A. T. Donnelly spoke on behalf of the Christchurch Bar. He said that this was a time of trouble and unrest, when old beliefs and institutions were being challenged and in many places overturned. It was a time, therefore, when the function of the Judiciary, Judges and Magistrates, was as important as at any time in our history to protect the rights of individuals from the erosion of those rights which was biting in from all sides.

Mr. Gresson had the essential judicial qualities. First of all, he was a man of courage; he was one of the Main Body in the first World War and was seriously wounded on Gallipoli, and still suffered from that wound. He shared with other great soldiers the unusual experience of refusing to obey an order in the interests of the lives of his men. He had in one sense gone down in the world, because he had ceased to be a Chancellor and had become a mere Judge.

During his years of practice, he was one of those men who had lived for his profession instead of merely living on it, and had played a great part in the work and development of the profession outside his ordinary work. He had spent many years as Dean of the Faculty of Law, in which he had been a conspicuous success. His work at the University had been marked by quiet, modest thoroughness, and many men now well established in the profession were indebted to him for his sound training. He had given important service to the remedy of imperfections in the law on the Law Revision Committee.

Mr. Gresson felt that there were gaps in his knowledge and experience, but the days of the all-round men were past, and there was nothing in his judicial duties which would trouble him, even if some of the work was new.

Mr. Donnelly then dealt with some of the problems facing the guest of honour in respect of criminal procedure. He felt sure that, now Mr. Gresson had gone upstairs, he would never forget the ordinary practitioner he had left on the ground floor. The judiciary shared one peril in common with the leaders of the Church, the Army, and the Cabinet. People in offices justly entitled to deference always ran the risk of believing all they heard, but the Society's guest would protect himself in that respect. Mr. Gresson was a Christian gentleman, a good lawyer, a good judge of human nature, and a man of the highest standards of character and principle, and these qualities would enable him to serve the country well in the distinguished office to which he had now been called.

The Guest's Reply.

Mr. Gresson, who received a great ovation on rising to reply, expressed himself as overwhelmed by the congratulations and good wishes he had received, culminating in the present magnificent send-off. His address he found somewhat of an ordeal—perhaps only the first of others to follow: for example, the weighing by learned counsel of every word uttered in a summing-up, furious note-taking when he strayed, and later a merciless dissection of the whole thing on a motion for a new trial. The present ordeal was of a different character—how adequately to convey his deep appreciation of such a flood of felicitations.

He asked those present to accept his reply as acknowledgment of the many letters he had received from them, his professional brethren. There were many from other parts of New Zealand to which he must send a written acknowledgment, including welcoming letters from the Judges, a cordial greeting from the Chief Justice, warm congratulations from Sir Michael Myers, and from Sir Archibald Blair three pages, full of helpful counsel from the "old 'un" to the "young 'un." Never was "new boy" more reassured; but perhaps the bullying would begin later.

However, it was their letters and all that they had said, jointly and severally, that he valued most. After making due allowance for the exuberance of the moment, much overstatement, and after a still further discounting, he felt there remained a nett residue which fairly constituted an adequate provision for his proper maintenance and support. Possibly an annual contribution of goodwill, in addition to the lump sum provided, might be hoped for.

He found it sad to leave them, with whom he had for so long and so happily been intimately associated. He was not unmindful of the high honour that had been conferred upon him, but the price was high. To the grim prospect of finding a house was added the leaving of a happy professional home. Life in Christchurch had been so very pleasant, strenuous always and hectic sometimes, but what a happy crowd they were! Surely there was a camaraderie and goodfellowship peculiar to Christchurch between all, whether counsel, solicitors, or clerks. Perhaps it should not be carried to such lengths as Arthur Donnelly had on one occasion taken it, when, on request for inspection of documents, he had handed over his brief and file of papers with the mere admonition, "Don't look at anything you're not entitled to see." He believed there were some professional brethren who would be shocked to the core by that, but it was very delightful and very precious.

*The Canterbury Law Society has cancelled this year's Annual Dinner, and, in lieu thereof, is dispatching a consignment of food parcels to the Law Society in London.

Kind references had been made to his teaching of Law. It had been arduous, but always full of interest, and not without "knocks." If it was true that a prophet was without honour in his own country, it was certainly true that a teacher of Law was without honour in his own family. His own son had gone to sea, but, of three nephews who had turned to Law, not one would receive tuition at his hands. The first, after a few lectures, forsook Law for Medicine. What were the implications of that? Another, well-known to them all, had gone overseas, at no small expense, to some School of Law they had at Cambridge, and, he was bound to admit, was now making some progress in the profession. A third did pursue his studies in New Zealand, but as an exempted student. What was poor old uncle to make of that?

His professional brethren, however, past and present, had not been so lacking in confidence. They had sent their sons in abundance, and it had been a great interest to watch these sons develop, to see traits of the father appearing, and sometimes to see something reappearing of a father no longer with them. Might he mention some? There was the distinguished soldier son of ————; dear old ———— had sent his son; there was a young ————, who, after years of strenuous campaigning, got his head down to books with surprising readiness, as indeed did all the soldiers from the war returning, though they had revolted against Roman Law, and it had been no small struggle with the University to get them excused. There was the son of ————, who, in a lamentably short judicial career had yet left us some gems—a witty examination of the differences between the public and the private bar, and, in *Tasman Fruit-packing Association, Ltd.* v. *The King*, a scholarly and colourful exposition of the prerogative of the Crown. There was ———— the younger, whose father, one hoped, had taught him what there wasn't time for in the classroom—the importance of the bill of costs. Some have even sent their daughters, though it could not be said he had ever encouraged women in the Law course. Anyhow, most of them eventually graduated into matrimony. He mentioned someone in particular, ————, as outstanding as she was charming, who had proceeded overseas to a real University—Oxford. He did not doubt that she had passed on to appreciative dons there his ideas on this and that. She, too, had fallen for marriage, but had been careful to insist upon a high standard, and had refused to accept anything less than a Rhodes Scholar.

It was because the personal side was uppermost with him that he had indulged in these perhaps impertinent personal references, but another he must make was to "Arthur"—no surname was necessary. Surely Arthur was the "big brother" of them all—big in body, big in mind, and biggest of all in heart. To whom would one rather go in any sort of difficulty or trouble? He felt that it was Arthur, more than any other single one of them, who had been responsible for the goodwill and the happy atmosphere in which they lived, and he hoped that, upon his frequent visits to Wellington, Arthur would seek him out in the semi-cloistered life in which he understood he would have to live, and bring him news of them all, whether ———— was still overworking, and ———— continuing to take things too easily; whether ———— had lost his diffidence and timidity, and generally all the gossip of Hereford Street and the chit-chat of the ———— Tearooms. It would be a real tonic.

Mr. Gresson concluded by asking them to recognize the fact that he was to some extent what they had made him, for it was undeniable that contacts with one's fellows moulded one. Except for some war years, all his adult life had been spent amongst them—dominated by some, influenced by all. In a measure, therefore, he represented them when he departed hence. He would try not to let them down. But, if some unfortunate utterance of his should be Press Association telegraphed from Auckland to the Bluff, or if he should earn a newspaper headline, "Judge Makes Blunder," or if a judgment of his was torn to shreds in the Court of Appeal, they too were in it. On the other hand, if he put up a good show, they would have some proprietary interest.

He thanked them for a truly magnificent send-off, by which he had been deeply moved.

LAND AND INCOME TAX PRACTICE.

Voluntary Disclosure of Evasion.—The Taxation Department is now decentralised into a number of branches throughout the country, and income tax inspectors are now conducting many more investigations than during the war years. The Department is thus taking extensive measures to detect false returns. The penalties which may be imposed comprise a fine on conviction in Court, penal tax equivalent to three times the deficient tax assessed as a result of the investigation, and publication in the *Gazette* of the taxpayer's name and other details associated with the case. It has been asked whether there would be any prosecution if taxpayers voluntarily went to the Department and confessed to making incorrect returns. The Commissioner has stated that a taxpayer who makes the first approach and confesses will not be prosecuted. This does not mean that penal tax may not be imposed, but the person who makes a voluntary disclosure will obtain more lenient treatment than if evasion is detected by an inspector's investigation.

Family Partnerships.—From a perusal of an article in an American financial journal, it has come to our notice that the United States Bureau of Internal Revenue has recently issued a regulation dealing with family partnerships for taxation purposes. The Federal authorities are apparently convinced that many partnerships have been formed with a view to tax avoidance, and steps have been taken to ensure that partnerships are given approval by the Revenue Bureau only after careful investigation. There are indications that the New Zealand revenue officials are following the same line of thought.

Practitioners who are asked to draw up a deed of partnership should bear in mind the provisions of s. 170 of the Land and Income Tax Act, which appears to have a fairly wide scope. The tests being applied in the United States may be a useful guide to considerations in the minds of our own tax officers—(i) the degree to which services are in reality rendered to the partnership business by each nominal partner, (ii) the real extent of each partner's share in the management and control of the business, (iii) the financial structure of the partnership, including the capital (and its source) introduced by each member, and the necessity for such capital, and (iv) the provisions of the agreement as covering division of profits and losses, and whether those provisions are in fact being adhered to.

It is known that the Tax Department is requiring a copy of new partnership deeds, together with a *précis* thereof, and it is safe to assume that the documents are being considered in conjunction with the partnership accounts. In husband-and-wife partnerships, particularly those relating to farming partnerships, it is reasonable to assume that the Department will want to see evidence that, in return for a share of profit, a wife is providing real consideration, either in the form of services or capital, or both, and a tangible evidence that a wife stands to accumulate profits or suffer losses in her own separate estate.

Return Forms prepared by Taxpayer's Agent.—There have been cases where accountants or solicitors acting for several taxpayers prepare returns and forward them to the Department bearing printed, typed, or facsimile stamp signatures. This procedure does not comply with the requirements of the tax legislation, and the Commissioner states that all tax returns must bear the personal signature of the taxpayer himself, or the written signature of the person acting as agent or trustee. It is understood that officers of the Department will in future scrutinize returns to ensure that unsigned forms are returned to the taxpayer or his agent for proper signature.

Legal Expenses: Bureau of Industry.—Legal and other expenses incurred in appearing before the Bureau of Industry in defence of a license under the Industrial Efficiency Act are not considered to be exclusively incurred in the production of assessable income relating to the year in which the expenses were incurred, and are not deductible. Similarly, any expenses incurred in opposing applications for licenses are not deductible; they are in the nature of capital expenditure.

Depreciation Rate: Tow Motors.—A tow motor is a vehicle driven by an engine, used for lifting and transporting goods in warehouses. The Department allows depreciation on these and any similar motor-driven vehicles used in stores at 20 per cent. of the diminishing value.

IN YOUR ARMCHAIR—AND MINE.

By Scriblex.

Zimmermann's Case.—To the average practitioner, the case of *Zimmermann* v. *The King*, [1927] N.Z.L.R. 114, is simply an authority for the proposition that it is not fitting to the dignity of the Crown that a co-defendant should be joined as a tortfeasor in a petition of right. But behind these ordinary facts, as writers on crime-fiction have it, lies quite a story. In his notice under the Crown Suits Act, the suppliant alleged that some three years before he had purchased from the representative of the Commissioner of Crown Lands at New Plymouth for the sum of £23 what was said to be a pedigree Jersey bull bearing the noble name of "Sir Galahad." This had been used by the suppliant with his dairy herd of sixty-four cows on his farm at Napier, but the results had so shattered the idyll that he had made enquiries, only to discover that the pedigree supplied with the bull was fictitious. Claiming to be a victim of fraud and deceit, he sought £550 in damages from the Crown, which pleaded that the "pedigree" was in fact a hoax.

Taurian Debrett.—The pedigree of "Sir Galahad," which did not find its way into the reports of the case, is as follows :—

Sire	*Dam*
Jupiter	Venus
Zeus	Europa
Rhadamanthus	Alcmene
Poisedon	Aphrodite
Ahab	Jezebel
Jehoshaphat	Athaliah
Pluto	Persephone
Nilanion	Atalanta
Ulysses	Circe
Mark Anthony	Cleopatra
Raleigh	Elizabeth
Napoleon	Josephine
Ivanhoe	Bride of Lammermoor
Rob Roy	Joan of Arc
Hercules	Megara
Copperfield	Little Dorritt
Jason	Niobe
Sherlock Holmes	Lady Watson
Agamemnon	Clytæmnestra
Orestes	Hermione
Lloyd-George	Sylvia Pankhurst
Orion	Diana
Oscar Wilde	Lady Windermere
Bismarck	Wilhelmina
Eugene Aram	Maid of Perth
Launcelot	Elaine.

From this impressive document, it is clear that, even in farming articles, a little bull can go a very long way.

Ancient Preambles.—An article in the *Local Government Review* (2.8.47) draws attention to queer preambles and clauses in statutes of earlier times. There is, for example, the preamble of James I c. 1, in which Parliament gave assurance that "upon the knees of their hearts they agnize their constant faith, obedience, and loyalty to His Majesty and His Royal progeny." The preambles of statutes of Tudor times often have quaint eloquence. For instance, an Act in the reign of Henry VIII begins: "We, the people of this realm, have, for the most part of us, so lived under His Majesty's sure protection, and yet so live, out of all fear and danger, as if there were no warre at all, even as the small fishes of the sea, in the most tempestuous and stormie weather doe lie quietly under the rocke or bankside, and are not moved with the surges of the water nor stirred out of their quiet place, howsoever the wind bloweth." In an Act for "laying an additional duty on tea and coffee" will be found regulations regarding the transmission of petitions to Members of Parliament. A very important alteration in the law affecting the division of property of persons dying intestate was tucked into an Act "for the revival and continuance of several Acts of Parliament." The preamble of 10 Anne c. 18 recited that "great loss hath happened of the duties already laid upon stamped vellum, parchment, and paper; and other inconveniences daily grown from clandestine marriages."

Regimented Eating.—"Take care to keep well, and the easiest way to do this is to dine out," writes Cicero in a letter to Papirius Paetus. Now, nearly two thousand years later, the Health Department seems to have caught up with the same idea. Clause 16 of the proposed new regulations governing the conduct of eating-houses provides (*inter alia*) that every person preparing, handling, or serving food in an eating-house (i) shall not serve food with his fingers but shall use a fork or other suitable implement for every such purpose, and (ii) shall not apply his fingers to his mouth, eye, ear, or nose during the serving of any cooked food. The phrase "or other suitable implement" has not been defined, but Scriblex hopes this includes the humble "pusher," for which he has had a nostalgic yearning since the days when he found that depositing food on the floor around him was a simple but effective mode of culinary criticism. The provision against the server applying his fingers to his mouth is designed no doubt to prevent the customer being unfairly influenced in his choice. Nothing is more annoying than attention being drawn to the supposed merit of some course by loud and succulent noises, which should signify satisfaction rather than selection. There seems no reason why the server should not put his finger in his own eye, if he derives any pleasure from this sort of thing, and to deprive him of the right to put it to his ear or nose would appear to amount to an invasion of the right of the liberty of the server to ignore, or show his attitude towards, complaint of any description. In a world of want, he may well consider that the customer is lucky to be served at all.

From My Notebook.—"A defendant cannot be committed for contempt of Court for breach of an undertaking according to one of two possible constructions of it": Jenkins, J., in *Redwing, Ltd.* v. *Redwing Forest Products, Ltd.*, (1947) 204 L.T. Jo. 12. . . . "This is a most unusual letter. Here is a wife who writes to her husband trying to instigate him to get on with divorce proceedings by promising to send him half-a-dozen eggs": Pilcher, J. . . . The Magistrates' Association, in September, arranged a week-end school for some 150 Magistrates from all parts of England, lectures being given on various aspects of magisterial work. This is the first of its kind, and a good time was had by all.

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.—*Executor's Commission—Liability of Residuary Legatee for same.*

QUESTION: A will provides for the payment by the executor of debts, funeral and testamentary expenses, and then devises and bequeaths certain realty and personalty, and leaves the balance of all moneys that may then remain to X.

Is X liable to pay whatever commission may be allowed or agreed upon for the executor and trustee?

ANSWER: The question does not sufficiently recite the terms of the will to enable a very definite answer to be given. Assuming that the will simply directs payment by the executor of debts funeral and testamentary expenses, and then goes on to make separate provision for the specific gifts and the disposition of residue, it is considered that the debts, funeral and testamentary expenses would be payable in the usual way out of the residuary personal estate and that X would be liable for commission earned by the executor *qua* executor: *In re Kerr (deceased), Johnston* v. *Kerr*, [1929] N.Z.L.R. 689, 694. Executor's commission is a testamentary expense: *In re Ross*, (1906) 25 N.Z.L.R. 189.

If on the other hand, the will devises and bequeaths the whole of the estate to the trustee upon trust to pay thereout the debts, funeral and testamentary expenses and to hold the residue as to certain specific items for named beneficiaries and as to the balance for X, it could be argued that the specific items formed part of the general fund devised and bequeathed for payment of the debts, funeral and testamentary expenses, and would therefore be liable for an appropriate portion of these debts and expenses: see *Guardian, Trust, and Executors Co. of New Zealand, Ltd.* v. *Styles*, [1939] N.Z.L.R. 484. This case concerned death duties, but the reasoning could be applied to debts and testamentary expenses also.

The position may be different with regard to the commission earned by the nominated executor in his capacity not as executor but as trustee, if, after his duties as executor had been performed, he had active duties to perform as trustee with regard to the specifically devised and bequeathed realty and personalty: *In re Kerr* (*supra*) shows that, as regards remuneration payable to a trustee, the Court has, subject to the terms of the will, a discretionary power to apportion liability for the same against the respective component parts of deceased's estate including specific devises: see also *In re Widdowson (deceased)*, [1947] N.Z.L.R. 345, 350 S.X.2.

2. Workers' Compensation.—*Worker normally Left-handed—Injury to Fingers of Left hand—Whether entitled to Compensation on Right-Hand Schedule Basis.*

QUESTION: A worker who is left-handed at his occupation sustains a Schedule injury to his left hand involving the loss of certain fingers. The injury would have been sustained to his right hand had he been the usual right-handed worker. Is there any authority whereby he could receive the percentage of compensation for the injury to his left-hand fingers which would be payable for a similar injury to his right-hand fingers?

ANSWER: So far as is known, there is no authority for the proposition set out in the question. The compensation scale in the Second Schedule to the Workers' Compensation Act, 1922, is a statutory one, and is not open to the suggested construction. The question does not specify the fingers for which compensation is sought. But it may be pointed out that, as the loss is of fingers of the left hand, the differentiation in the Schedule applies only to the whole hand or five fingers thereof, or the forefinger. Compensation for the loss of up to three other fingers (or the joints of these fingers) is the same for both hands.

B.2.

3. Incorporated Societies.—*Rules—Objection by Assistant Registrar to Proposed Rule—No Objection given—Incorporated Societies Act, 1908, s. 24.*

QUESTION: In Precedent No. 2 for Incorporated Societies, in *Goodall's Conveyancing in New Zealand*, 226, the following rule (No. 38) appears:

> The Band shall not be voluntarily wound up so long as there remain the number of members required by law and six playing members are opposed to such winding up.

Can you state whether there is any legal decision or other authority, or any valid grounds whatever, upon which an objection to this rule can be sustained The rule has been adopted by a society desiring to be incorporated, but an Assistant-Registrar has objected to it.

Your attention is drawn to a similar rule (No. 31) in the *New Zealand Supplement to the Encyclopaedia of Forms and Precedents*, Vol. 1, 83.

ANSWER: Section 24 of the Incorporated Societies Act, 1908, is permissive, and it is difficult to understand why the society cannot select its own rules. It would be advisable to ask the Assistant-Registrar to formulate his reasons for the objection. Having obtained those reasons, the matter can then be considered in the light of authority.

B.2.

RULES AND REGULATIONS.

Patents (Union of South Africa) Regulations, 1947. (Patents, Designs, and Trade-marks Amendment Act, 1943.) No. 1947/150.

Patents, and Designs (United States of America) Regulations, 1947, Amendment No. 1. (Patents, Designs, and Trade-marks Amendment Act, 1943.) No. 1947/151.

Food and Drug Regulations, 1946, Amendment No. 1. (Food and Drugs Act, 1947.) No. 1947/152.

Survey Regulations, 1947. (Surveyors Act, 1938.) No. 1947/153.

Samoa Legislative Council (Elective Membership) Amendment Order, 1947. (Samoa Act, 1921.) No. 1947/154.

Matrimonial Causes (War Marriages) Order, 1947. (Matrimonial Causes (War Marriages) Act, 1947.) No. 1947/155.

Destitute Persons (Crown Moneys) Order, 1945, Amendment No. 1. (Statutes Amendment Act, 1942.) No. 1947/156.

Destitute Persons (Crown Servants) Attachment Order, 1940, Amendment No. 1. (Domestic Proceedings Act, 1939.) No. 1947/157.

Cheese Subsidy Removal Emergency Regulations, 1947. (Emergency Regulations Act, 1939.) No. 1947/158.

Cargo Control Emergency Regulations, 1947. (Emergency Regulations Act, 1939.) No. 1947/159.

Strike and Lockout Emergency Regulations, 1939, Amendment No. 4. (Emergency Regulations Act, 1939.) No. 1947/160.