New Zealand
Law Journal
Incorporating "Butterworth's Fortnightly Notes."
VOL. XXIV. TUESDAY, SEPTEMBER 21, 1948. No. 17

THE SKIDDING MOTOR-VEHICLE: THE RES IPSA LOQUITUR RULE.

IN an earlier number of the JOURNAL (1938) Vol. 14, p. 317), after considering this subject and the relevant cases up to the time of that writing, we concluded that the *res ipsa loquitur* rule does not apply to an accident arising out of a skid where no specific defect is either suggested or discovered to account for the accident, and the occurrence is not of an unusual nature requiring explanation. The driver is not liable where the accident arose out of a circumstance which could not reasonably have been foreseen, or from a defect in the motor-vehicle or its equipment which could not reasonably be held to have put the defendant on his guard against the possibility of accident—that is to say, out of an emergency in no way due to the driver or to any faulty condition of the vehicle or its equipment. In brief, the skid calls for some explanation, since it is not a fact but a deduction from facts.

Where, however, an accident is caused, following a skid, in such circumstances as in the ordinary course of things do not occur if those who have the management of the vehicle use proper care, the skid affords reasonable evidence, in the absence of any explanation by the defendant, that the accident arose from want of care. This is the rule of evidence known as the *res ipsa loquitur* rule, stated by Erle, C.J., in *Scott* v. *London and St. Katherine's Docks Co.*, (1865) 34 L.J. Ex. 220, 222, as follows:

> There must be reasonable evidence of negligence. But where the thing is shown to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendants, that the accident arose from want of care.

Since our last article on this topic appeared, the proposition that, *prima facie*, the fact that a motor-vehicle leaves the road and mounts a pavement raises a presumption of negligence against the defendant was considered by the Court of Appeal in England, in *Laurie* v. *Raglan Building Co., Ltd.*, [1941] 3 All E.R. 332, where the plaintiff's husband, while standing on a pavement, was killed by a passing lorry which skidded so that part of it swept across the pavement. The Court held that the fact that the accident was due to the skidding of the lorry was neutral; and the onus was upon the defendants to show that their driver, in the circumstances, was not negligent. Lord Greene, M.R., in a judgment with which Goddard and du Parcq, L.JJ. (as they then were), concurred, said that he could not see why any distinction is to be drawn, for the purposes of the rule relating to a *prima facie* case of negligence, between a case where the wheels of a vehicle actually mount the pavement and one where a portion of the vehicle sweeps across the pavement. In each case, the vehicle is in a position where it has no right to be. He added that precisely the same principle applies in a case where a portion of a vehicle puts itself into a position over the pavement where it has no right to be. At p. 336, he continued:

> That being the position, the plaintiff gave evidence which showed . . . that the position of the lorry over the pavement was due to a skid, and it is contended on behalf of the respondents that, assuming that a *prima facie* case of negligence arose, the circumstance establishing that the accident was due to a skid is sufficient to displace that *prima facie* case. In my opinion, that is not a sound proposition. The skid by itself is neutral. It may or may not be due to negligence. If, in a case where a *prima facie* case of negligence arises . . . it is shown that the accident is due to a skid, and that the skid happened without fault on the part of the driver, then the *prima facie* case is clearly displaced, but merely establishing the skid does not appear to me to be sufficient for that purpose.

The *res ipsa loquitur* rule was considered by the House of Lords more recently in *Woods* v. *Duncan*, [1946] A.C. 401, better known as "The *Thetis* case." The speeches of their Lordships showed that, where the rule applies, the defendant is not liable, although he is unable to explain how the accident happened, if he establishes that he himself was not negligent. For example, Lord Simonds, at p. 439, said:

> The accident may remain inexplicable, or at least no satisfactory explanation other than his negligence may be offered: yet, if the Court is satisfied by his evidence that he was not negligent, the plaintiff's case must fail.

Once the defendant shows that he took "due care," he can escape liability. In *Readhead* v. *Midland Railway Co.*, (1869) L.R. 4 Q.B. 379, it was said:

> "Due care," however, undoubtedly means, having reference to the nature of the contract to carry, a high degree of care, and casts on carriers the duty of exercising all vigilance to see that whatever is required for the safe conveyance of their passengers is in fit and proper order.

In the most recent case of the skidding motor-vehicle, *Barkway* v. *South Wales Transport Co., Ltd.*, [1948] 2 All E.R. 460, the Court of Appeal (Scott, Bucknill, and Asquith, L.JJ.) went to great pains to explain and demonstrate the *res ipsa loquitur* rule. The facts

were that about 6.30 a.m. on February 27, 1943, a motor-omnibus belonging to the defendants, and carrying fifty-three passengers, among whom was the plaintiff's husband, was passing through a village when the off-side front tyre burst, the omnibus went over to the off-side of the road, mounted the pavement, crashed into some railings, and fell down an embankment, killing four of the passengers, including the plaintiff's husband, and injuring others. The tyre-burst was caused by an impact fracture of the cord of the outer tyre, but there was no evidence when the fracture occurred. Evidence was given that an impact fracture was caused by a severe blow which could happen without leaving any visible mark on the outer surface of the tyre and might not be visible even if the tyre were removed from the rim and examined. The tyre, while fixed on the rim, had been examined periodically by an expert tyre fitter employed by the defendants, the last examination being three days before the accident, and it was the practice of the defendants to have tyres examined internally after every 25,000 miles when they had been running on fairly bad roads. The tyre in question had run about 23,545 miles, and about 21,750 miles since it was last taken off for examination. Before the accident occurred, the driver of the omnibus had been driving at an average speed of 32 miles an hour, and was, therefore, guilty of a breach of statutory duty, as the maximum speed for an omnibus of that type in the "black-out" (which then existed) was 20 miles an hour. He was, however, not driving at an excessive speed just before the accident occurred, and the tyre-burst was not caused by his driving too fast. The plaintiff claimed damages from the defendants on the ground that her husband's death was caused by the negligence of the defendants or their servants.

Sellars, J., had held that the defendants were guilty of negligence in their system of tyre maintenance, and gave judgment for the plaintiff. The defendant company appealed. On the question of the application of the rule of *res ipsa loquitur*, their Lordships of the Court of Appeal were in agreement. They held that the fact that the omnibus left the road and fell down the embankment raised a presumption of negligence against the defendants, requiring them to prove affirmatively that they had exercised all reasonable care; to displace the presumption, it was not sufficient for the defendants to show that the immediate cause of the accident was a tyre-burst, since a tyre-burst *per se* was equally consistent with negligence or due diligence on their part; but it was necessary for the defendants to prove either that the burst itself was due to a specific cause which did not connote negligence, or, if they could point to no such specific cause, that they had used all reasonable care in the management of their tyres.

When their Lordships came to consider the facts, they were not in agreement as to whether the defendants had discharged the burden on them by proving that they had maintained a reasonable system of inspection in regard to their tyres. Bucknill, L.J., disagreed with the majority, who found that the defendants were not negligent with regard to the maintenance of the tyre in question, and the majority held that, since the driver of the omnibus was unaware of the defect in the tyre, and the burst was not caused by fast driving on his part, the defendants had not failed to rebut the presumption of negligence arising from the fact that the drive had exceeded the legal speed limit on the journey before the accident occurred. Bucknill, L.J., considered that the accident was caused by the defendants' negligence in both respects.

Although the principles of the application of the *res ipsa loquitur* rule are well-established, it may be a convenience to our readers to reproduce here the exposition of the rule by their Lordships in *Barkway's* case.

In his judgment, Scott, L.J., at pp. 468, 469, said:

> I agree that the mounting of the omnibus on the footpath was a fact which raised the presumption expressed in the phrase *res ipsa loquitur*. That phrase, however, represents nothing more than a *prima facie* presumption of fault. It is rebuttable by the same defence as is open to any defendant accused of negligence, against whom the plaintiff's evidence has made out a *prima facie* case. When the plaintiff has done that, the *onus* is said to shift to the defendant.
>
> In a case where *res ipsa loquitur* the *onus* starts on the defendant and requires him to prove affirmatively that he has exercised all reasonable care, but that proof is very greatly facilitated if he can show that the event which caused the plaintiff damage happened through some cause for which no blame can attach to him, even though it cannot be specifically identified, and, if it can be so identified, his task is not only facilitated but achieved. If he thus succeeds in demonstrating positively the probable operation of such cause, whether specifically identifiable or not, the *onus* is then discharged, and the presumption of fault on his part ceases and the plaintiff is left in the position of having failed to prove his case. Even if he can point to no specific cause, he still discharges it if he can show that he used all reasonable care. In the present appeal, however, there was before the mounting on to the footway an anterior link in the chain of causation, *viz.*, the tyre-burst which diverted the omnibus from its course on the road on to the footway.
>
> I will assume with *Bucknill*, L.J., that the presumption of *res ipsa loquitur* is still applicable, notwithstanding the intervention of the new link in the chain of causation, although I feel by no means convinced that the prevention of a tyre-burst is within the control and management of an omnibus company in any sense or degree comparable with the case of the occupier of an upper floor in a warehouse with an open doorway in its external wall abutting on a public road, on to which a barrel, if not controlled, can roll out and fall. However, the observations which I have just made about the probative burden of the defendant in regard to the first presumption are equally applicable to the second. The precautions taken by them in tyre maintenance were reasonably careful, but a partial rupture of the inner cord (on which the power of resistance to pressure from the inflated tube depends) may happen in spite of all such precautions, and then gradually spread to the crown, without any external indication to sight or touch.
>
> The doctrine of *res ipsa loquitur* then goes out of the picture, and the Court has to decide on the balance of proof on each side. In the present case the only positive proof of negligence attempted by the plaintiff was the expert's theory that the puncture caused the burst. That was completely disproved by the defendants and rejected by the Judge, and the plaintiff was then left with the doctrine of *res ipsa loquitur* and nothing else.

His Lordship referred to Lord Simonds's observation in *Woods* v. *Duncan* (*cit. supra*), and said that he did not read it as in any way differing from that of Erle, C.J., in *Scott* v. *London Dock Co.* Of the two, he thought the earlier and leading statement of the proposition was the more directly apposite to the aspect of the doctrine of proof which he was discussing. How should the phrase of Erle, C.J. (3H. & C. 596, 601), "under the management of the defendant or his servants," be applied to the defendant company? Primarily, the servant "managing" the omnibus was its driver, but against him there can be no complaint unless it be bad driving. As against him there is a serious charge of "excessive" speed, having regard to the character of the road—its surface, gradient, and curve—and the defendants would be liable if the driving, being thus bad, thereby caused the burst. That, however, is a totally separate question and to introduce it into the issue whether some other servant of the defendants to whom the duty of tyre

maintenance was remitted was guilty of negligence would cause confusion of thought. He entirely concurred in the separation by Bucknill, L.J., of the speed issue from the question of tyre maintenance.

On a consideration of the evidence, Scott, L.J., concluded that the defendants' system of tyre maintenance seems to have been in all relevant ways careful and efficient. He could not agree with Bucknill, L.J., on the issue whether excessive speed caused the tyre-burst; because he could not find that *at the critical moment* the speed was proved to have been excessive; and still less could he find that the speed of the omnibus either caused or contributed to cause the burst. The third, and separate, issue was whether, if excessive speed did not cause the tyre-burst, it may have caused the disaster, because, on this theory, the omnibus, if at a lower speed, would have stopped short of the footway, or not plunged over the embankment. Of this issue, at p. 471, Scott, L.J., had this to say:

> My answer to that contention for the plaintiff is that it must be considered in its relation to the finding of this Court on the prior issue of negligence in relation to the burst, and, if I am right in my conclusion that the plaintiff fails on that issue, the alternative allegation of negligent speed must be judged wholly apart from the disproved allegation of speed having caused or contributed to the causing of the burst. Let me, therefore, assume that the burst had been the result of some latent defect in the manufacture of the tyre itself, which it was impossible to diagnose—just as if it had been a defect discoverable only by the eye of an X-ray before X-ray vision had been invented. On that hypothesis there was nothing to put the defendants or their driver on guard against the hidden danger, and, equally, there was no relevant act of negligence on the part of the driver in ignoring the risk of a road obstruction (because *ex hypothesi* there was none). On those premises the burst goes out of the picture altogether. How in such circumstances can he be blamed?

In his judgment, Asquith, L.J., summarized the position as to onus of proof, on the application of the *res ipsa loquitur* rule, in the following short propositions:

> (*a*) If the defendants' omnibus leaves the road and falls down an embankment, and this without more is proved, then *res ipsa loquitur*, there is a presumption that the event is caused by negligence on the part of the defendants, and the plaintiff succeeds unless the defendants can rebut this presumption.
>
> (*b*) It is no rebuttal for the defendants to show, again without more, that the immediate cause of the omnibus leaving the road is a tyre-burst, since a tyre-burst *per se* is a neutral event consistent, and equally consistent, with negligence or due diligence on the part of the defendants.
>
> When a balance has been tilted one way, you cannot redress it by adding an equal weight to each scale. The depressed scale will remain down. This is the effect of the decision in *Laurie* v. *Raglan Building Co., Ltd.* (*supra*), where not a tyre-burst but a skid was involved.
>
> (*c*) To displace the presumption, the defendants must go further and prove (or it must emerge from the evidence as a whole) either (i) that the burst itself was due to a specific cause which does not connote negligence on their part but points to its absence as more probable, or (ii), if they can point to no such specific cause, that they used all reasonable care in and about the management of their tyres: *Woods* v. *Duncan, The Thetis* (*supra*).

His Lordship added that he thought that the second limb, (ii), of the last proposition was the relevant one for the purposes of that case. He thought that this summary accorded both with the more detailed analysis in the judgment of Bucknill, L.J., and with the views expressed in slightly different language by Scott, L.J. If that was the burden on the defendants, he was of opinion, for the reasons which were given at length by Scott, L.J., and which he would not restate, that they had discharged it.

An important consideration in this class of case is the course of the trial. Lord Greene, M.R., in *Laurie* v. *Raglan Building Co., Ltd.* (*supra*), at p. 337, said that, if the counsel for the defendant submits that, on the question of liability, there is no case, the Court should not rule on this submission unless counsel for the defendant says that he is not going to call evidence. His Lordship referred with approval to the statement of the proper practice to be followed, in actions involving negligence or proof of negligence, as set out in the judgment of Goddard, L.J., as he then was, in *Parry* v. *Aluminium Corporation, Ltd.*, (1940) 162 L.T. 236, when his Lordship, at p. 237, said:

> I think that in all these cases of negligence, if a Judge is asked to rule at the end of the plaintiff's case that the plaintiff has made out no case, it is most desirable that he should adopt the practice, laid down a great many years ago in this Court, when *Mathew*, L.J., was sitting here, and since adopted by *Horridge*, J., who was a Judge of the greatest experience in these matters, that the Judge should say to counsel who is submitting no case: "Do you elect to call no evidence?" If counsel is content to leave the case where it is, then the Judge can rule. But it is very undesirable for the Judge to give a ruling in a case which may afterwards be upset by the Court of Appeal, when the defendant may be in a position to say: "I must have a new trial, because my evidence was never heard." I think that in negligence cases the right course is for the Judge to refuse to rule unless counsel says that he is going to call no evidence. *Horridge*, J., used to say, if he was sitting with a jury: "Are you going to call any evidence; or are you going to let the case stay where it is?" If counsel said: "I am not going to say whether I am going to call any evidence," then he would say: "You must call your evidence, and then I will rule whether or not, on the whole of the case, there is a case to go to the jury or not." If a Judge is sitting without a jury, he does not have to say that, because he can say he will decide at the end of the case.
>
> I think that that is the proper course to take in these cases. I do not say that it is the right course in every kind of action, because in defamation cases, for instance, I believe there is authority for saying that, if it is submitted that there is no evidence of malice, the Judge is bound to rule. Also in slander cases the Judge must rule if the submission is made that the words are not actionable without proof of special damage and no special damage is alleged. But I think that the old practice, which I believe most Judges adopted, is a sound practice, because it does prevent the chance of a defendant, unsuccessful in this Court, asking that the case should go back for a new trial to have his evidence heard.

From a consideration of the authorities, the law appears to be this:

If the defendant's motor-vehicle is found in a situation in which it has no right to be, and injury has been caused, and this without more is proved, then the *res ipsa loquitur* rule applies, and creates a presumption of fault, in that the occurrence was caused by negligence attributable to the defendant; and the plaintiff must succeed unless the defendant can rebut the presumption.

It is no rebuttal for the defendant to show, without more, that the immediate cause of the unusual occurrence was a skid; because a skid, in itself, is not evidence of due care or of negligence: *per se*, it is a neutral event consistent, and equally consistent, with negligence or due care on the defendant's part.

The defendant must go further and rebut the presumption by explaining that the occurrence was due to inevitable accident—that is, to a cause which does not connote negligence on his part, but points to its absence as more probable. If the defendant cannot explain the occurrence, then he must satisfy the Court that the accident arose, in spite of his due care, out of an emergency in no way due to the driver, or to any faulty condition of the motor-vehicle or its equipment which the defendant could not reasonably have foreseen.

The onus of proof then shifts to the plaintiff; and, in order to succeed, he must then accept the challenge

to prove affirmatively (*a*) that the skid was due to the defendant's pre-skid negligence, in that the accident was due to lack of care on the part of the defendant's driver or that it arose out of a circumstance that the defendant could reasonably have foreseen, or from a defect in the motor-vehicle or its equipment which should reasonably have put the defendant on his guard against the possibility of an accident; or (*b*) that the accident was due to the post-skid negligence of the driver due to his fault in not correcting the skid, and so preventing the motor-vehicle from getting where it did, and causing the damage of which the plaintiff complains.

SUMMARY OF RECENT LAW.

ARBITRATION.

Award—Setting Aside—Misconduct of Arbitrator—Arbitrator Party to a Valuation of Furniture and Chattels—Same Arbitrator concurring with Another Arbitrator in Award relating to Same Subject-matter made Four Months later—Increase in Later Valuation of 90 per cent.—No adequate Explanation by Arbitrator—Misconduct of One Arbitrator sufficient for Setting-aside Award. A valuation of furniture and chattels made by arbitrators (A. and G.) on December 16, 1946, was shown in their award at £913 6s. 3d. A., the arbitrator for the vendor in that valuation, was one of the arbitrators in a valuation made in April, 1947, when A. acted for the purchaser, and concurred with the other arbitrator (W.) in an award relating to the same furniture and chattels made at £1,746 10s. 6d. On a subsequent sale, in July, 1947, the then vendor received £1,238 for the same furniture and chattels which he had purchased in terms of the latter award. On an application to set aside the award for £1,746 10s. 6d., *Held*, 1. That misconduct on the part of one of the arbitrators is sufficient to entitle the Court to set aside the award. (*Blanchard* v. *Sun Fire Office*, (1890) 6 T.L.R. 365, followed.) (*Steele* v. *Evans*, *Ante*, p. 108, referred to.) 2. That, on the evidence, the award should be set aside on the ground of A.'s misconduct, as the valuation made in December, 1946, represented the real value of the furniture and chattels and the honest opinion of A., and as no adequate explanation was given by A. as to how he was able, with honesty, to justify a rise of nearly 90 per cent. in his valuation in April, 1947, and as, if he had thought his fellow-arbitrator's valuation was too high, he had not referred the matter to the umpire. *Steele* v. *Evans* (*No. 2*). (Palmerston North. September 1, 1948. Stanton, J.)

COMPANY LAW.

Companies' Accounts and Directors' Expenses. *98 Law Journal*, 479.

CONSTITUTIONAL LAW.

Ringing the Knell on Trial by Peers. *98 Law Journal*, 494.

CONTROL OF PRICES.

Right of Price Tribunal to create Class of "Producer" in addition to Wholesaler and Retailer—Price Order varying Price of Same Amount of Honey with Number of Containers in which sold—Order not Unreasonable—Control of Prices Act, 1947, s. 15 (2) (c). Section 15 (2) (c) of the Control of Prices Act, 1947, enables the Price Tribunal to go outside and beyond the classes of "wholesaler" and "retailer," as defined in the statute, and create other classes, such as "producer." Price Order No. 806 (Honey) (*1939 New Zealand Gazette*) covers all sales on honey, including honey sold in a container supplied by the buyer, and cl. 7 of that Order is not unreasonable because it controls sales of honey in such a way that the same quantity of honey will produce varied prices dependent on the number of containers in which it is sold. (*Kruse* v. *Johnson*, [1898] 2 Q.B. 91, applied.) *Kirk* v. *Alexander*. (Wanganui. August 26, 1948. Sir Humphrey O'Leary, C.J.)

CONVEYANCING.

Gifts During Widowhood. *98 Law Journal*, 496.

Innocent Misrepresentation by Vendor of Land: Rights of a Purchaser. *205 Law Times Jo.*, 313.

Power of Trustees for Sale to Invest in Land. *206 Law Times Jo.*, 21.

CRIMINAL LAW.

Court of Criminal Appeal: Power to Order New Trial. *205 Law Times Jo.*, 345.

Larceny by Finding. *205 Law Times Jo.*, 330.

Penalty for Murder. *206 Law Times Jo.*, 34.

DANGEROUS DRUGS.

Dangerous Drugs Order, 1948 (Serial No. 1948/148), under s. 3 of the Dangerous Drugs Act, 1927, declaring certain drugs, preparations, and substances to be dangerous drugs.

DESTITUTE PERSONS.

Residence in Matrimonial and Bastardy Cases. *92 Justices of the Peace Journal*, 429.

DIVORCE AND MATRIMONIAL CAUSES.

Desertion—Question of Fact whether Deserted Spouse has just Cause for not trying to bring Desertion to an End—Petitioner Husband's Adultery subsequent to Wife's Desertion had no Effect on Wife's Attitude—Onus on him to Prove such Adultery had no Effect on Wife's Desertion—Divorce and Matrimonial Causes Act, 1928, s. 10 (b). Where a husband petitions for divorce on the ground of the wife's desertion without just cause, and the continuance of such desertion without cause for three years (which are questions of fact), the onus is on the petitioner to prove both that the wife's desertion was without reasonable cause and that any subsequent adultery had had no effect on his wife's attitude towards him. (*Williams* v. *Williams*, [1943] 2 All E.R. 746, followed.) (*Tickler* v. *Tickler*, [1943] 1 All E.R. 57, applied.) Therefore, a husband petitioner was granted a *decree nisi* where he had proved desertion without just cause by his wife; and the evidence was such that the wife's knowledge of the husband's adultery during that period had no effect on her conduct, and did not induce or contribute to it. *Handcock* v. *Handcock*. (Wellington. September 9, 1948. Fair, J.)

Estoppel. *206 Law Times Jo.*, 6.

King's Proctor and Standard of Proof: Adultery. *205 Law Times Jo.*, 313, 327.

Nullity—Impotence—Petition by Impotent Spouse—Competency—Need of Repudiation of Marriage by Potent Spouse. Provided that there are no circumstances which bar him or her—*e.g.*, knowledge of the defect at the date of the marriage—an impotent spouse is entitled to petition for a decree of nullity, and the right to do so is not conditional on the repudiation of the marriage by the other spouse. (*Norton* v. *Seton*, (1819) 3 Phillim. 147; 161 E.R. 1283, explained.) (Dictum of the Lord President (*Normand*) in *F.* v. *F.*, [1945] S.C. (Ct. of Sess.) 202, 208, approved.) *Harthan* v. *Harthan*, [1948] 2 All E.R. 639 (C.A.)

As to Impotence as a Ground for Nullity, see *10 Halsbury's Laws of England*, 2nd Ed. 640–645, paras. 937–945; and for Cases, see *27 E. and E. Digest* 272, Nos. *2328–2407*.

FACTORY.

"Place" used for Purpose other than Processes carried on in Factory—Gas Works—Reconstruction of Gas Holder on Site separate from Gas Works—Site in Exclusive Possession of Contractors—"Article"—Coal Gas—Factories Act, 1937 (c. *67*), *s. 151* (*1*) (a) (c), (*xiii*), (*6*) (*Factories Act, 1946* (*N.Z.*), *ss. 2* (*1*) (d), *47* (2)). A gas company carried on its undertaking on two parcels of land separated by a public road. The east site contained all the buildings, machinery, and equipment necessary for the manufacture of the gas and also two gas holders, while the west site contained one gas holder only, which was connected with the main site by means of underground pipes. The gas holder on the west site was destroyed by enemy action and the connecting pipes sealed up. Contractors were employed by the gas company to reconstruct the damaged gas holder, and, by the terms of the contract, were given exclusive possession of the west site for the period of reconstruction. On a frosty day a steel erector in the employ of the contractors, while engaged in riveting the framework 20 ft. above the pit, which was floored with a concrete dumpling, was in the act of moving a board, which served him as a platform, when he slipped and fell on to the concrete dumpling, thereby sustaining serious injuries. No staging or other means was provided

to prevent such an accident occurring. In an action for damages the contractors and the gas company were held jointly and severally liable, the contractors for negligence at common law, and the gas company for breach of s. 26 (2) of the Factories Act, 1937 (s. 47 (2) of the Factories Act, 1946 (N.Z.)). The gas company appealed. *Held*, Coal gas was an "article" within s. 151 (*a*) and (*c*) of the Factories Act, 1937, so that any premises in which it was made or adapted for sale were a "factory" within that Act; even if the gas holder on the west site had been part of the actual gas factory and had come within s. 151 (1) (xiii) of the Act (*cf.* s. 2 (1) (*d*) of the Factories Act, 1946 (N.Z.)), it had ceased to be so when the enemy destroyed it, because thereafter it neither held nor could hold gas, and *a fortiori* when the contractors took exclusive possession of the site; and, in any event, the gas company were protected by s. 151 (6) of the Act, which provides that a place situate within the close, curtilage, or precincts forming a factory and solely used for some purpose (here, at the material date, for the purpose of engineering construction) other than the processes carried on in the factory is not to be deemed part of the factory. *Cox* v. *Cutler and Sons, Ltd., and Hampton Court Gas Co.*, [1948] 2 All E.R. 665 (C.A.).

FAMILY PROTECTION.

Daughters of Testator claiming—Husbands able to Support them—Not disentitled to Further Provision out of Estate—Family Protection Act, 1908, s. 33. Where a testator gave his daughters a good upbringing and gave each a legacy of £200, the facts that they have husbands well able to support them and were away from home and had not been dependent on their father for many years do not disentitle them to consideration for further provision out of his estate. *In re Balich (deceased), Knezovich and Another* v. *Buljon and Others.* (Auckland. July 14, 1948. Gresson, J.)

FOOD AND DRUGS.

Food and Drugs Regulations, 1946, Amendment No. 2 (Serial No. 1948/147), restricting the retail sale of penicillin and its salts, and streptomycin and its salts, &c.

HONEY MARKETING.

Honey-marketing Committee Regulations, 1948 (Serial No. 1948/144), setting up, under the Marketing Act, 1936, and the Agriculture (Emergency Powers) Act, 1934, a Honey-marketing Committee, consisting of two Government nominees, and three producers' representatives nominated by the New Zealand Honey Control Board, the National Beekeepers' Association of New Zealand (Inc.), and the New Zealand Honey Suppliers' Association.

INCOME TAX.

Alteration of Reliefs. *98 Law Journal*, 483.
Cost of Litigation. *98 Law Journal*, 491.

JUDICIAL CHANGES.

Mr. Justice Henn-Collins, of the King's Bench Division, has resigned.

Mr. G. O. Slade, K.C., has been appointed to succeed him.

LOCAL ELECTIONS AND POLLS.

Medical Practitioner engaged by Hospital Board to serve as a Member of the Staff under Contract of Service—"Employment" by Board—Not Disqualified for Election as Board Member—"Notwithstanding anything to the contrary in this or any other Act"—Local Elections and Polls Amendment Act, 1944, s. 10 (1)—Hospitals and Charitable Institutions Act, 1926, s. 23 (1) (e)—Local Authorities (Members' Contracts) Act, 1934, s. 3. The word "employment" in s. 10 (1) of the Local Elections and Polls Amendment Act, 1944, which is as follows, "Notwithstanding anything to the contrary in this or any other Act, no person shall be incapable of being elected or appointed as or of being a member of any local authority by reason of his employment by that local authority," must be given its ordinary meaning, a contract for personal service wherein the relationship of master and servant exists; so that, if employment is proved, the provisions of other statutes disqualifying the person employed from election or appointment must be disregarded. Such employment exists between a Hospital Board and a member of its medical staff, where the engagement of the latter is the subject of a written agreement whereby the former agreed to employ the latter and the latter to serve the former as one of its medical staff for a period (and the former agreed to pay the latter a salary at a certain rate per annum), and which contains a clause requiring the latter during this period of his employment "to fulfil obey and comply with all by-laws rules and regulations of the Board and with the lawful orders and directions of the Board and of all persons duly authorized by the Board and to keep such records as the Board may require him to keep." (*Re Bland Brothers and Inglewood Borough Council (No. 2)*, [1920] V.L.R. 522, *Heydon's Case*, (1584) 3 Co. Rep. 7a; 76 E.R. 637, and *Christie* v. *Hastie, Bull, and Pickering, Ltd.*, [1921] N.Z.L.R. 1, applied.) Once such a practitioner is found to be in the employment of such a Board, the provisions of the Local Authorities (Members' Contracts) Act, 1934, or of any other statute, disqualifying him from election or appointment as a member of a Hospital Board—*e.g.*, as "a person who holds any office or place of profit under or in the gift of the Board"—are nullified by the opening words of s. 10 (1) of the Local Elections and Polls Amendment Act, 1944. (*Lindsey County Council* v. *Marshall*, [1937] A.C. 97; [1936] 2 All E.R. 1076, applied.) (*Hillyer* v. *St. Bartholomew's Hospital (Governors)*, [1909] 2 K.B. 820, distinguished.) Per *Kennedy*, J., That there is room for the operation of the words of disqualification retained in s. 23 (1) (*e*) of the Hospitals and Charitable Institutions Act, 1926, if the office or place of profit under or in the gift of the Board does not lie in employment in the service of a Hospital Board. *Rix* v. *Controller and Auditor-General.* (Wellington. June 25, 1948. Sir Humphrey O'Leary, C.J., Kennedy, Cornish, Stanton, JJ.) (S.C. & C.A.)

MOTOR-VEHICLES.

Warrant of Fitness—Responsibility of Person authorized to issue such Warrant—Examination of Steering-gear of Motor-car not within ambit of Examiner for Warrant of Fitness—No Duty on Examiner for Issue of Warrant of Fitness involving Liability to a Motor-car Owner arising from Contract for such Examination—Traffic Regulations, 1936 (Serial No. 1936/86), Reg. 11. Under a contract to examine a motor-car for the purpose of issuing a warrant of fitness required under the Traffic Regulations, 1936, no duty lies on the examiner involving personal liability to the owner of the car if the warrant of fitness were issued negligently or improperly. (*Le Lievre* v. *Gould*, [1893] 1 Q.B. 491, applied.) Such a warrant of fitness is issued for the purposes of the Traffic Regulations, 1936, exclusively, thus excluding any conception of warranty, guarantee, or responsibility to the car-owner: all that is required is that the examiner should satisfy himself that the car complies with the regulations, and his duty does not extend beyond that; and the regulations impose no duty to examine the steering-gear, and the warrant itself does not so extend to the steering assembly of the car. (*Harward* v. *Hackney Union and Frost*, (1898) 14 T.L.R. 306, referred to.) *Maxwell* v. *Johns Garage, Ltd.* (Whangarei. August 27, 1948. Finlay, J.)

NUISANCE.

Premises adjoining Highway—Coke Ovens—Smoke and Steam escaping across Highway. The second defendants owned and operated coke ovens situate 50 yards away from a road. The process of manufacturing coke involved the production at intervals of clouds of smoke and steam which, under certain conditions of wind and weather, passed low over the road so as to obscure the view of passengers thereon. While one of these clouds was so passing, a collision occurred between a motor-car and a motor-omnibus driven by a servant of the first defendants, both of which vehicles were travelling along the road, two passengers in the car sustaining fatal injuries. It was found that the omnibus was being driven negligently at the time of the accident. *Held*, The discharge of smoke and steam across the road on the occasion of the accident was a nuisance caused by the second defendants, and the second defendants were also guilty of negligence in not posting a man at each end of the area affected to warn approaching vehicles as soon as a discharge was imminent. (*Dollman* v. *Hillman, Ltd.*, [1941] 1 All E.R. 355, and observations of the *Earl of Birkenhead*, L.C., in *Admiralty Commissioners* v. *S.S. Volute*, [1922] 1 A.C. 129, applied.) *Holling and Another* v. *Yorkshire Traction Co., Ltd., and Others*, [1948] 2 All E.R. 662.

As to Nuisance from User of Property, see *24 Halsbury's Laws of England*, 2nd Ed. 49, para. 85; and for Cases, see *36 E. and E. Digest*, 186, Nos. *295–300*.

RATIONING.

Rationing Emergency Regulations, 1942, Amendment No. 5 (Serial No. 1948/142), revoking the Sugar Rationing Order, 1942, and the Sugar Rationing Order, 1945, as from August 30, 1948.

RENT RESTRICTION (BUSINESS PREMISES).

Non-resident Tenant. *205 Law Times Jo.*, 314.

Payment to Outgoing Tenant by Incoming Tenant—Agreement to Pay Excessive Price for Chattels in Consideration of Tenant's Vacation of Premises—Illegal Consideration—"Any other chattels"—"Dwellinghouse"—Economic Stabilization Emergency Regulations, 1942 (Serial Nos. 1942/335, 1948/64), Reg. 20 (1) (d) (e). The word "chattels" as used in the phrase "or for any other chattels" in Reg. 20 (1) (*e*) of the Economic Stabilization Emergency Regulations, 1942, includes a chattel in business premises (and so "not of a dwellinghouse"), which the tenant might require his assignee to buy at a price in excess of its fair selling value. Consequently, the consideration for the sale of chattels, which an outgoing tenant of business premises required the incoming tenant to pay as a condition of the former's vacation of the premises, at a price in excess of their fair selling value, is an illegal consideration. *Semble*, Regulation 20 (1) (*d*) applies only to a landlord or person acting on behalf of the landlord, either by appointment or by operation of law. Observations on the use of the word "dwellinghouse" as used in Reg. 20 (1) (*d*). *Smith* v. *Rickard*. (Auckland. September 9, 1948. Luxford, S.M.)

Restrictions on Sub-letting: Need for Landlord's Consent. *205 Law Times Jo.*, 355.

STOCK-FOODS.

Stock-foods Regulations, 1948 (Serial No. 1948/145), under the Stock-foods Act, 1946.

WILL.

Construction—Direction for Division of Income of Estate into Stated Shares until Death of Last Surviving Child—Time of Vesting and Accumulation of such Shares—Destination of Capital—Payment to Testator's Living Children and the Issue of Deceased Children—"Issue" restricted to Testator's Grandchildren—Shares of Capital payable on Shares as directed for Payment of Income. The testator, by his will, after certain provisions for the benefit of his widow and of an unmarried daughter, directed his trustees to divide the balance of the income of his estate into eleven equal shares and to pay three of those shares to his son Robert, two of them to his son John, and one share to each of his six daughters. He further directed that the balance of income should be divided into eleven equal shares every year until the death of his last surviving child. The testator directed that, "in the event of any child of mine being dead at the date of my death leaving issue then the issue of such deceased child shall take as tenants in common by way of substitution the share which their his or her parent would have taken, if living," but the will did not contain any express provision for the subsequent disposition of the several shares of income enjoyed by his children who should die during the interval between the testator's death and the death of his last surviving child. The will made provision for the distribution of capital in the following clause: "Upon the death of the survivor of my said children I direct my said trustees and executors . . . to pay and divide the capital of my estate into between and amongst all the issue then living of my said children, the issue of every child of mine taking as tenants in common the share only which their his or her parent was entitled to under this my will." The testator's widow survived him; and her will provided that all her lands were to be conveyed to her husband's trustees "to hold the same upon the same trusts and for the same purposes as they held the lands of my husband John Kerr as trustees and executors of his will." Between the death of the husband and the date of the widow's will, the children as beneficiaries under the husband's will had executed a deed of family arrangement, to which the widow was not a party, providing that, if any of the children should die, their children should take their share of the income until the death of the last surviving child. On an originating summons for the interpretation of both wills as affected by the deed of family arrangement, which deed, however, did not affect the questions decided by the learned Judge relating to the interpretation of the husband's will, *Held*, 1. That each of the children of the testator took, on the testator's death, a vested interest in his or her share of income; hence, on the death of any child of the deceased, that child's share of income accruing year by year until the death of the last surviving child of the testator became an asset of his or her estate. 2. That the word "issue" as used throughout the will of the testator was restricted to grandchildren of the testator, and did not include remoter issue. (*Perrin* v. *Morgan*, [1943] A.C. 399; [1943] 1 All E.R. 187, and *In re Allan (deceased)*, *Allan* v. *Hutchison*, [1937] N.Z.L.R. 106, applied.) (*Guardian, Trust, and Executors Co. of New Zealand, Ltd.* v. *Ramage*, [1927] N.Z.L.R. 289 *Sibley* v. *Perry*, (1802) 7 Ves. 522; 32 E.R. 211, *In re Birks*, *Kenyon* v. *Birks*, [1900] 1 Ch. 417, and *Clifford* v. *Koe*, (1880) 5 App. Cas. 447, referred to.) 3. That, on reading the will as a whole, the clause disposing of the capital of the estate should, in order to avoid an intestacy, be read as follows: "Upon the death of the survivor of my children I direct my trustees . . . to pay and divide the capital of my estate . . . amongst all the issue then living of my said children the issue of every child of mine taking as tenants in common a share or fraction of capital *equal to that share or fraction of income* which their his or her parent was entitled to under this my will." (*In re Harrison, Turner* v. *Hellard*, (1885) 30 Ch.D. 390, applied.) 4. That the capital moneys representing the proceeds of sale of the land owned by the widow and the income arising therefrom were distributable in the same manner as the capital and income of the husband's estate. *In re Kerr (deceased)*, *Public Trustee* v. *Gray and Others*. (Nelson. June 23, 1948. Christie, J.)

Devisees and Legatees—Adoption of Children—Direction in Will that Term "grandchildren" to include "only lawful issue of any son or daughter" of Testator—Grandchild "lawful issue" if adopted by Son or Daughter before Will made—Not "lawful issue" if adopted subsequently—"Lawful issue"—Infants Act, 1908, s. 21. The words "lawful issue" used by a testator, legally speaking, include an adopted child by virtue of s. 21 of the Infants Act, 1908; and a child adopted before the date of the will, though not in fact "issue," must *prima facie* be included in the words "lawful issue" as contained in such a will. Consequently, where a testator directs that the term "grandchildren" wherever used in his will "shall include only the lawful issue of any son or daughter of mine," and there is no indication in the will that the term "lawful issue" is not to include an adopted child, an adopted child of the son or daughter is "lawful issue" except where the adoption is subsequent to the will, in which case such child is excluded by s. 21 (1) (*a*) of the Infants Act, 1908. *In re Allen (deceased)*, *Miller* v. *Allen*. (Auckland. September 2, 1948. Gresson, J.)

WORKERS' COMPENSATION.

Accident arising out of and in the Course of the Employment—Intra-vertebral Disc Injury—Attacks of Backache and Acute Lumbago—Pre-accident Disc Lesion exacerbated while Lifting Iron Plate—Relationship of Sciatica and Lumbago to Rheumatism, Fibrositis, and Disc Disease—Relationship of Trauma to Disc Disease—Factors required for Accurate Diagnosis—Workers' Compensation Act, 1922, s. 3—Workers' Compensation Amendment Act, 1943, s. 3 (1). The plaintiff alleged that he suffered injury as the result of a strain on October 17, 1945, while lifting an iron plate, resulting in a sprain of the muscles in his back and other injury to his back, including disc injury. He started a light-work job on January 2, 1946. The Court submitted the medical evidence to medical referees for their report, and they reported that the plaintiff had had a disc lesion, and some degree of disc trouble, for some unspecified time before the lifting incident, and such lesion suffered an exacerbation caused by the lift. *Held*, That the plaintiff was entitled to full compensation until January 2, 1946; but, as the evidence before the Court did not apply to the position as ascertained by the reports of the medical referees, the parties should have an opportunity to direct evidence to meet the ascertained position; and the case should be adjourned to allow the parties to call further evidence if they should wish to do so. Reports of medical referees (Dr. Anthony James and Dr. Murray Falconer) as to disc lesions, with observations on the factors required for accurate diagnosis as to whether a lesion is a disc lesion; the relationship of sciatica and lumbago to rheumatism, fibrositis, and disc disease; and the relationship of trauma to disc disease. *Clark* v. *Thomson*. (New Plymouth. June 18, 1948. Ongley, J.) (Comp. Ct.)

Assessment of Compensation—Drover—Basis of Assessment of Full Working Week's Earnings—Permanent Stiff Knee—Quantum of Compensation—Workers' Compensation Amendment Act, 1936, s. 7 (2) (c). A drover, employed by stock and station agents, suffered injury arising out of and in the course of his employment, while trying to head off a beast on a road. His wages were £1 15s. 4d. per day, and found. He claimed weekly compensation, and a lump sum. *Held*, 1. That the basis on which to assess compensation in the case of a drover for "a full working week's earnings" within the meaning of that term as used in s. 7 (1) of the Workers' Compensation Amendment Act, 1936, is that provided in s. 7 (2) (*c*)—namely, a five-day week, in this case, two-thirds of £8 16s. 8d., or £5 17s. 9d. 2. That, where a worker's injury is such that he can do anything which does not require him to bend his knee more than a right angle, the basis of assessment of compensation should not be based on a loss of earnings

estimated on the difference between the minimum wage under the Minimum Wage Amendment Act, 1947, and the worker's earnings at the time of the accident; but his compensation should be based on loss of earnings in accord with his disability and the fact that there is some work that he will be unable to do. 3. That, on the evidence, the loss of earnings was fixed at 15 per cent.—*i.e.*, 10 per cent. of £5 17s. 9d. (his five-day week earnings at the time of the accident) commuted into a lump sum. *Laurenson* v. *Dalgety and Co., Ltd.* (Wanganui. June 30, 1948. Ongley, J.) (Comp. Ct.)

CONSTITUTIONAL PRINCIPLES.

The Importance of Maintaining Them.

In a recent address to the Wadestown and Highland Park Men's Society on "Fifty Years at the Bar and on the Bench," the Rt. Hon. Sir Michael Myers, formerly Chief Justice of New Zealand, after relating various incidents of his career, interspersed with diverting anecdotes, emphasized the primary right of every subject of the Crown to access to the ordinary civil Courts in matters affecting his liberty or his property, and protested against the encroachments that have been made by statute and regulations upon the jurisdiction of the Courts, and particularly of the Supreme Court.

Sir Michael (as reported by the *Evening Post* (Wellington)) also explained various constitutional principles affecting the administration of justice and the judiciary. In emphasizing the status, dignity, responsibility, and duties of the judicial office, he said that it was a trite saying that the administration of justice must not only be pure, but must also seem pure, because, without the appearance, the public might not believe in the reality.

"So with the independence of the judiciary—not only must it be completely independent of the Executive Government and all other bodies and authorities, but it must have the appearance of independence," he said.

"That independence is the one safeguard of the rights and liberties of the subject, and its appearance as well as its reality should be protected at all costs."

Extra-judicial Work.

It was the duty of a Judge at times to perform extra-judicial work such as membership of Royal Commissions and Commissions of Inquiry on matters of public importance, subject to this qualification—that they were not of such a nature as to be incompatible with his position as a Judge and with the traditions attaching to his high and dignified office.

On the question of asking a Judge to perform extra-judicial inquiries, it was the duty of the Attorney-General to advise the Government, but, if he were not cognizant of constitutional principle, or, being aware of it, were unable to hold the pass against his lay colleagues, then it was left to the Judges themselves to hold it, and, in doing so, they might be sure of the unqualified support of law societies, Press, and public.

Sir Michael said that the recent incident of the Mountpark presented constitutional implications and involved constitutional principles of very great importance, fundamental principles, indeed, of general concern.

To begin with, a Minister of the Crown, according to his own statement as published in the Press, made an offer to the union to set up a committee under the Strike and Lockout Emergency Regulations, with a Judge as chairman, not an Arbitration Court Judge, of whom, with deputies, there were five in all—and this was an industrial matter—but a Judge of the Supreme Court. After the union's acceptance of the offer, an approach was made (according to the Minister's published statement) to the employers concerned, who agreed, "following which the Attorney-General was requested to approach the Chief Justice with a view to a Supreme Court Judge being made available."

That was all contrary to constitutional principle. The Judges should have been approached first, before any offer was made, to ascertain whether the inquiry was one which it was considered proper for a Judge to undertake.

Judge's Right to Refuse.

A Judge had the undoubted right to refuse to act even on a Commission of Inquiry if he thought that the subject-matter was such that he should not participate in it.

Sir Michael said that there were three instances within his own knowledge where there had been such a refusal of requests made by different Governments because the subject-matter of the proposed inquiry was of a controversial political nature, and he knew of a similar refusal in Victoria some years ago.

In the present case, the Minister made a statement which was calculated to cause embarrassment, and it was calculated to lead the public to the belief, an entirely erroneous belief, that the Government had only to ask, and a Judge would have to obey. It was all contrary to constitutional principle and wrong.

A refusal would be a severe rebuff to the Government: an acceptance liable to give rise to adverse comment or even possibly misconstruction.

The Tribunal was not even a Royal Commission or Commission of Inquiry, but a mere committee of five men appointed under the hand of the Minister to decide matters which, it might be suggested, had acquired a strong political flavour: and, if (so the regulations provided) any member, which expression included the chairman, failed without reasonable excuse (the burden of proving which should be on him) to attend any meeting, he committed an offence against the regulations.

That was a position which would appear to be clearly contrary to constitutional principle for any of his Majesty's Judges to be placed in.

The Constitutional Method.

There was a simple and constitutional method which could, and should, have been adopted. What the union desired was in substance that their members should be able to bring an action for wages and/or damages in the Supreme Court—presumably against both the shipping company and the Waterfront Control Commission.

It had apparently been advised that that was barred by reason of the finality of a decision of the Waterfront Control Commission. Whether that was a right or a wrong view was immaterial. If there were any doubt about the matter, and it was just that the men should be able to sue for wages or damages, Parliament was in session and a short Act could have been passed giving the men the right to bring their actions in the Supreme Court, and enacting that the decision of the Waterfront Control Commission should not be pleaded in bar or be available as a defence to the action.

That was the proper and constitutional course to take. Constitutional principles were involved, and the matter was one for Parliament itself, not for a single Minister or even the Executive. Had that been done and an Act passed, a Judge would, of course, have been bound to act upon it, but Parliament would have itself taken the responsibility, and the Judges would have been immune from any possibility of adverse comment. The case would then have come before the Court as an ordinary action under the ordinary rules of the Court in the ordinary course of the business of the Court.

There was another feature of the matter which called for notice. It would seem that there was always the possibility with a committee of the kind that had been set up that a Judge might have to give a decision the effect of which might be that some of the very men with whom he had been sitting as a colleague might have been themselves guilty of offences against the law and liable to prosecution accordingly. It would hardly be said that a Judge's membership of a committee with such possibilities was in accordance with sound constitutional principle.

"All these possible embarrassments are created by departure from constitutional principle and would be avoided by adherence to principle and practice and the adoption of proper constitutional methods," said Sir Michael.

"STATUS OF A SUPREME COURT JUDGE."

But there was still another objectionable feature, that of a Judge (certainly not a Judge of the Supreme Court, but a person having what is called the status of a Supreme Court Judge) having to give evidence and submit to cross-examination to justify his actions. To say that he was giving evidence as chairman of the Waterfront Control Commission and not as a Judge was not a valid answer to the objection that it was contrary to both public policy and constitutional principle that a person holding high judicial office with the status of a Judge of the Supreme Court should be placed in a position involving such an indignity.

Sir Michael said that he ventured to hope that the happenings in the Mountpark case would not be regarded in the future as precedents to be followed.

THE NEW LAND TRANSFER REGULATIONS.

A General Review and Explanation.

By E. C. ADAMS, LL.M.

(*Concluded from p. 244.*)

CORRECTION OF ERRORS IN INSTRUMENTS AND APPLICATIONS.

The well-known provisions as to corrections have been continued—for example, that the Registrar may refuse to register any instrument containing an erasure or alteration. Mistakes should be corrected by drawing the pen through the words or figures written in error, and writing the correct words or figures over them. Any such correction and interlineation or addition should be initialed by the persons executing the instrument and by the attesting witness. It is often overlooked by conveyancers that a witness to the execution of a dealing is not, by reason of that fact alone, competent to make any material alteration or addition; nor is the solicitor certifying the instrument correct for the purposes of the Land Transfer Act. Under the general law, the principle is that a material unauthorized addition or alteration to an instrument voids it: *Thornes* v. *Eyre*, (1915) 34 N.Z.L.R. 651. And this drastic effect has been held to apply *inter partes* to an instrument registered under the Land Transfer Act: *De Chateau* v. *Child*, [1928] N.Z.L.R. 63. But it is permissible for a person presenting an instrument for registration to indorse the necessary memorandum of encumbrances, liens, &c.: *Barker* v. *Weld*, (1884) N.Z.L.R. 3 S.C. 104.

As to the amendment of description of parcels, this may be effected by a short memorandum in lieu of executing a new instrument, but some new provisions have been inserted, and these I have indicated in italics.

Regulation 21 provides that every amended description shall be expressed to be by way of substitution for the original description, and shall refer to the original application or instrument by name and number, and shall *be signed by the applicant or the persons executing such instrument. It shall also be endorsed with the certificate that the same is correct as prescribed by s. 175 of the Act.*

A perusal of *De Chateau* v. *Child*, [1928] N.Z.L.R. 63, will show the need for these new provisions. In this case, at the request of the vendors a memorandum of transfer was altered without the consent of the purchaser, subsequently to the execution thereof and subsequently to the endorsement thereon by the purchaser's solicitor of the certificate of correctness, by the insertion therein of an additional covenant, and thereafter registered along with a mortgage by the purchaser to the vendor for the balance of purchase moneys. The Supreme Court held that the material alteration in the transfer rendered it void, and that the certificate endorsed thereon did not comply with the requirements of s. 175 of the Land Transfer Act, 1915, and that the registration thereof, along with the mortgage, was in consequence wrongfully obtained, and that the mortgagor was entitled to have the Land Transfer Register rectified by removing the entries of such registration. Dealing with the certificate of correctness, MacGregor, J., at p. 66, said:

> From the evidence it appeared that Mr. T., who was himself a solicitor, was a clerk in the employment of the firm of solicitors originally acting for both vendors and purchaser. Shortly after the transfer was executed, on November 27, 1925, Mr. T. signed the above certificate. Before registration was effected he had left the employment of the firm. Mr. T.'s certificate was, of course, signed long before the alteration was made in the transfer, so that the instrument he certified as "correct" was not the same instrument as that presented to the Registrar on September 8, 1927. In these circumstances I do not think there was any real compliance with the terms of s. 175. The instrument of transfer was certainly not signed nor approved of by the purchaser herself, nor do I think it was (in the language of s. 175) signed by "a solicitor of the Supreme Court employed by" her.

CAVEATS.

There are several new provisions dealing with caveats, which form an integral part of our Torrens system.

Some of the previous provisions (which some have considered *ultra vires*, and which were certainly of doubtful validity) have been quite rightly dropped. But the important provision that every caveat against dealings shall show how the estate or interest claimed is derived from the "*registered proprietor*" has been retained.

The term "*registered proprietor*" does not necessarily mean the registered proprietor of the fee simple. By s. 2 of the Act, "proprietor" means any person seised or possessed of any estate or interest in land, at law or in equity, in possession or expectancy. In Reg. 32 of the Land Transfer Regulations, 1948, therefore, the term "*registered* proprietor" means the registered proprietor of the particular estate or interest caveated. Thus, if A (the registered proprietor of the fee simple) mortgages to B, and B agrees to transfer his mortgage to C, and C desires to protect his agreement by caveat, he must show in the caveat how he derives his claim, not from A, but from B, the registered proprietor of the mortgage.

Regulation 34 is new, and provides for change of address for service of a caveator; this is intended to remedy a defect in the caveat system which has been noticed both in Australia and in New Zealand. In (*1938*) *12 Australian Law Journal*, 6, in reply to an article by Mr. E. L. Piesse in (*1937*) *11 Australian Law Journal*, 465, I pointed out that it was almost the universal practice in New Zealand for a solicitor's office to be stated as the address for service of the caveator; and that in the bigger cities, such as Auckland, law firms changed their personnel frequently and solicitors often moved to other offices. When a dealing was presented for registration, it might well be that the address for service given in the caveat would not enable the Post Office to find the caveator. Accordingly, I suggested that provision should be made enabling caveators to change their address for service. As Reg. 34 has been designed to improve the efficacy of the system of caveats, it is to be hoped that solicitors will advise their clients to make full use of this new provision.

Another difficulty has been experienced with regard to untraceable caveators. A caveator may die; as a caveat confers no interest, there is no such thing as registration of a transmission against a caveat. Moreover, administration may not be taken out in respect of the estate of a deceased caveator. Accordingly, Reg. 35 provides as follows:

> If a caveator dies while the caveat is still in force the caveat may be withdrawn or a consent in terms of section 156 of the Act may be given by the legal personal representatives of the caveator, and if there are no such representatives, by the person or persons who appear to the Registrar to be properly entitled to the estate or interest protected by the caveat, subject, if the Registrar so requires, to his receiving a satisfactory indemnity against claims against the Crown or the Registrar arising out of his acceptance of the withdrawal or consent so given.

Deposit of Plans.

A plan is not a title, and, with a few exceptions, the mere deposit of a plan does not confer title. The exceptions relate mostly to subdivisional plans; reserves shown thereon on deposit of the plan automatically vest in the Crown, if the land is in a County, or the local body, if it is in a Town Board District, Borough, or City. Recent legislation has, however, tightened up the law with respect to subdivisions, as witness the Housing Improvement Act, 1945, and the Land Subdivision in Counties Act, 1946. Accordingly, it has been found convenient to prevent the formal deposit of a plan until the provisions of the relevant Acts restricting subdivision of land have been complied with Regulation 46 reads as follows:

> No plan by way of subdivision and no plan showing new roads, streets, or rights-of-way shall be deposited until all necessary consents of public officers or of local bodies have been given and all requirements of the Public Works Act, 1928, the Municipal Corporations Act, 1933, the Land Subdivision in Counties Act, 1946, and other Acts regulating the subdivision of land, the laying out, dedication, formation, or widening of roads and streets, have been complied with.

Regulation 47 is new, and provides that, before accepting a plan for deposit, the Registrar may, at his discretion, require the registered proprietor to take out one or more new certificates of title in respect of the land comprised in such plan. The purpose of this regulation is to make easier the searching of partially cancelled titles, and to facilitate the work of the Land Registry Office by reducing checking to a minimum and thus hastening the issue of new certificates of title. If, as it is confidently anticipated, this design is accomplished, the regulation will have been worthwhile.

Merger.

The position at common law was that, whenever a greater estate or interest and a less one coincided and met in one and the same person, without any intermediate estate, the less was immediately annihilated or merged in the greater. This rule of common law, however, was modified in equity: the question of merger or no merger was there held to depend on the *intention*, actual or presumed, of the person in whom the greater and less estates or interests had become vested. In the absence of express intention, a Court of equity looks to the benefit of the person in whom the two estates or interests have become vested: *Symons* v. *Southern Railway Co.*, (1935) 153 L.T. 98, and *Ewington* v. *Potter*, (1912) 32 N.Z.L.R. 230. In New Zealand, the equitable rule prevails by virtue of s. 11 of the Property Law Act, 1908.

The equitable doctrine of merger applies to land under the Land Transfer Act, 1915: *Smith* v. *Davy*, (1884) N.Z.L.R. 2 S.C. 398, and *Bevan* v. *Dobson*, (1906) 26 N.Z.L.R. 69. But the doctrine or merger will not be applied to the prejudice of a third party, such as a mortgagee of the less estate or interest, or a beneficiary. Thus, where a lease under the Land Transfer Act has been mortaged or agreed to be mortgaged, and the lessee acquires the fee simple, the lease does not merge in the fee simple during the subsistence of the mortgage or agreement to mortgage. Thus, also, where two estates or interests vest in the same person in *different* rights, there will be no merger: *Garrow's Law of Real Property in New Zealand*, 3rd Ed. 504. For example, A leases land to B; B is in fact a trustee, but that fact cannot be noted on the Land Transfer Register or in the lease. B afterwards, during the subsistence of the lease, acquires the fee simple in his own right in such circumstances that a Court of equity would not regard him as holding the fee simple as a constructive trustee. There is no merger of the lease.

The District Land Registrar, therefore, cannot *presume* a merger. Accordingly, Reg. 56 (which is new) provides as follows:

> The registered proprietor of any estate or interest claiming that such estate or interest has merged in a greater estate or interest of which he is also the registered proprietor may make an application to the Registrar to note the merger of the lesser estate or interest, and the application shall be supported by the statutory declaration of the registered proprietor or such other evidence as the Registrar deems neces-

sary. The Registrar, on being satisfied that the merger has been effected at law and in equity, and on payment of the prescribed fee, shall notify it upon the Register-book and upon the appropriate instruments of title.

It is not anticipated that Registrars will as a rule require a statutory declaration: a certificate by the proprietor that there are no outstanding equities to prevent merger is often accepted in practice. But a statutory declaration will probably be required if the outstanding instrument creating the less estate or interest is not produced for noting of the merger.

Correction and Change of Name.

It is pointed out in *Goodall's Conveyancing in New Zealand*, 387, that no provision has been made for registering the change of name of a registered proprietor. In practice, most Registrars have by analogy used the provisions as to transmissions to cover a change of name. Regulation 57 (which is new) now authorizes the correction of names in the Land Transfer records.

If a company has changed its name, a copy of the new certificate of incorporation issued by the Assistant Registrar of Companies, should be produced, and the managing director or secretary should make a statutory declaration as to the facts. If a natural person has changed his name, produce the deed poll evidencing the changing of the name, and accompany it also by a similar statutory declaration. An error in the name of a registered proprietor in the instrument by which he was registered likewise should be corrected by a similar declaration. Regulation 57 reads as follows:

> Where it appears to the satisfaction of the Registrar that a registered proprietor has changed his, her, or its name, or that the name of a registered proprietor is incorrectly stated in the Registrar's records, the Registrar may, on payment of the prescribed fee, endorse a memorial of such change of name or make the necessary corrections in his records, as the case may be:
>
> Provided that no fee shall be payable where the correction of the Registrar's records is rendered necessary by reason of a mistake made by the Registrar or by any of his officers.

Fees.

Appended to the regulations is a Schedule of Fees payable to District Land Registrars: this Schedule should be consulted by all who do any registering of instruments under the Land Transfer Act. For example, a new fee of 5s. has been prescribed for recording on a new lease the encumbrances, liens, and interests to which it is deemed to be subject under the provisions of s. 5 of the Land Transfer Amendment Act, 1939, or any other enactment.

I think that all conveyancers will agree that these new Land Transfer Regulations are a great improvement on the former ones: they are concisely drafted, and appear to deal adequately with all procedural and subsidiary matters not contained in the Land Transfer Act itself.

MR. E. A. LEE, S.M.

Christchurch Practitioners' Appreciation.

A week after the members of the Canterbury District Law Society had met to congratulate one of their members, Mr. Justice Hutchison, on his appointment to the Supreme Court Bench, they gathered to farewell Mr. E. A. Lee, of the firm of Messrs. Lee and Jones, who had been appointed a Stipendiary Magistrate.

After welcoming Their Worships Mr. Reid, S.M., and Mr. Ferner, S.M., and Judge Archer (Judge of the Land Sales Court and a former member of the Canterbury Bar), and also welcoming Mr. R. C. Abernethy, S.M., who had just arrived from Invercargill to take up his duties as Magistrate in Christchurch, the President, Mr. L. J. H. Hensley, said:

"We are opening this week with an entire change of programme and new artists. Last Thursday, as your representative, I attended the Protest Meeting held in the Civic Theatre regarding the alleged neglect of the South Island. I was grateful that His Worship the Mayor did not call upon me to speak on behalf of the legal profession, because I feel that what we are suffering from here is not so much neglect as rather an embarrassing amount of attention on the part of the Attorney-General. In fact, I would ask any gentleman here present who has any hope, however remote, of judicial preferment, to advise me, so that, if necessary, these very pleasant weekly functions can be continued for the rest of the winter.

"The appointment which we are honouring here to-day is, of course, most popular and well deserved. I know that, in the last seven or eight days since the announcement was made, our guest, Mr. Lee, has been overwhelmed by congratulations and messages of goodwill, so that he may now be pardoned for imagining that this is one of the most noteworthy appointments since the Emperor Caligula made his horse a Consul. This was not always so. I heard the news some day or two before it was released, and I rang 'Ernie' (as he will hereafter be known where the context shall so permit), and he was then at the 'cold feet' stage. You can imagine how this was—the appointment was still secret, he was unsupported by the congratulations of his friends, and he was beset with doubts. In fact, he even stated to me that he wondered whether he was really fit for the position. I, of course, had to deal with this, and deal with it quickly. I reminded Ernie that he had frequently sought my opinion and advice in the past, and on some occassions had even paid me for it—though never adequately. On this occasion, I gave him my opinion unasked and without fee, and I think I succeeded in reversing his first judgment.

"On Tuesday evening, when the appointment was released, I listened in to the nine o'clock news, as I thought some reference might be made to it. Sure enough, reference was made, but sandwiched in between a statement of Mr. Barnes's opening the case for the watersiders in the *Mountpark* Tribunal and an account of the progress of whaling in Tory Channel, so there was Ernie between — Mr. Barnes and the deep sea.

"Last week I referred to the noteworthy achievement of our profession in Christchurch in contributing two Judges to the Supreme Court Bench within a space of ten months. This, however, has been surpassed by our contribution of a Supreme Court Judge and a Stipendiary Magistrate within three days, an achievement which must go down in history as the Great Canterbury Double.

"And talking of doubles leads me back to Mr. Lee. I refer, of course, only to tennis and trotting, the two sports to which he has devoted so much of his leisure time. It is remarkable how analogies can be drawn from a man's career and his sporting activities. Last week, you will remember, reference was made to Mr. Justice Hutchison and boxing. I propose to deal with Mr. Lee and trotting.

"Now, as most of you are aware, my knowledge of trotting is so academic that it might well be taken straight out of *Halsbury*. I am reliably informed, however, that those affluent gentlemen who acquire trotting horses—and we number some of them among our profession—very cunningly race them at the start in country places such as Cheviot and Methven before bringing them along to that paddock at Addington which is controlled by our friend Charlie Thomas. And so it was with Ernie. You will remember his very meritorious performance some years ago in the 'Mortgage Adjustment Stakes,' followed by an equally convincing style in the 'Armed Forces Appeal Handicap.' And now he has crowned his career by winning the 'Magisterial Free for All,'—and a stake of 1,100 sovs.

"This may well end what is called his 'track record.' Like many of his equine prototypes, he is now taken on tour. He will stand a season in Wellington and then will stand at Timaru, and it is gratifying to know that, if he is able to stand to the age of sixty-eight, a grateful and benevolent Government will then pension him off, and he will not necessarily meet the same fate as befell Harold Logan.

"Now, I have been frivolous at the expense of my very old friend, Ernie Lee; but he, I know, will take nothing I have

said amiss. In serious vein, I would like now to make some reference to Mr. Lee's work on the Council of the Canterbury Law Society. He served on the Council in all for some eight years, and, as you will remember, was President in 1945. I served with him on the Council for some five years, and I can well remember the balanced judgment that he always brought to bear on the various and many problems, and the valued contributions that he made from time to time to our work.

"Reverting now again to his judicial appointment, I feel that it can be summed up with 'A good wine needs no bush,' and a well-merited appointment such as this really needs no recommendation from me. We are all agreed that Mr. Lee will more than adequately fill the important office to which he has been called. We know how important it is to have men of the right temperament, knowledge, experience, and calibre to assume judicial functions. Mr. Lee is such a man, and, in bidding him farewell, and in bestowing on him our good wishes, we feel confident that the administration of justice will not suffer at his hands."

Mr. C. S. Thomas, in a breezy speech, supported the remarks of the President.

Mr. Lee suitably replied.

MR. R. C. ABERNETHY, S.M.

Departure from Invercargill.

Mr. R. C. Abernethy, S.M., who has been transferred to Christchurch, was the guest of the Southland District Law Society at a farewell function held at Elmwood Garden. Mr. J. H. B. Scholefield presided, and members of the Police and the Invercargill Court staff were also present.

Mr. Scholefield expressed the deep regret of the members of the Bar at losing a Magistrate who had been on the Bench in Invercargill for ten years. They had been a happy ten years—certainly from the point of view of the profession—and remarkably free from friction and those disagreements that cropped up from time to time. They felt they must congratulate the Christchurch Bar on Mr. Abernethy's transfer to that town. He was returning to the district where he was well known in the days of his practice, and he would not be sitting on a Bench among strangers.

Mr. S. M. Macalister spoke of His Worship's many qualities.

Appreciative references were also made by Mr. A. L. Tressider, Registrar of the Supreme Court and Clerk of the Magistrates' Court, and by Senior-Sergeant Irwin on behalf of the Police.

"Any Magistrate who does not know something about the frailties of human nature does not know his own job." said Mr. Abernethy in reply. "A Magistrate should be a potential offender in most things—he not only should be, but he probably has been at some stage in his career, and, if that does not help him to some stronger fellow-feeling for some unfortunate who appears before him in the Court, then it's a poor lookout."

Mr. Abernethy added that he could say with complete confidence that he could regard the Bar in Invercargill as a sound Bar, and one that did a tradesmanlike job. Any young counsel who prepared a case fully, who went to seemingly unnecessary trouble, and came forward with a thoroughly digested case, and knew his law, would find that he had cast his bread upon the waters. It had been gratifying to see young counsel coming forward, particularly returned men, who were doing a workmanlike job. He concluded: "I have had a pleasant association, not only with the Bar, but also with the Police. I am very grateful indeed to you for your assistance in the Court."

Before leaving the district, he was farewelled on his last visits to the country Courts by practitioners in Gore, Wyndham, Winton, and Otautau.

OBITUARY.

Mr. F. W. Johnston (Christchurch).

Mr. Frederick William Johnston died at Christchurch on August 17, at the age of seventy-eight. At the age of nineteen, Mr. Johnston passed his law examination, and he began practice as a solicitor in Christchurch in 1892. He was in recent years a partner in the firm of Johnston and Fraser, Rangiora.

Apart from his practice, Mr. Johnston had many interests, chief of which was probably motoring, although he did not confine his recreation to that. In 1914-15 he was president of the Automobile Association (Canterbury), of which he had been a member since 1904, later he was vice-president of the New Zealand Motor Union, and in 1921, when the South Island Motor Union was formed, he became its first president.

Apart from the administrative side of motoring, Mr. Johnston took an active part in reliability driving trials. He was the winner in the private owners' class at the first hill-climbing competition on Hackthorne Road. When the first motor gymkhana was held, he won seven out of the eight events on the programme.

For many years Mr. Johnston was a member of the Canterbury Jockey Club and the New Zealand Metropolitan Trotting Club. He owned several well-known pacers and trotters, and was a member of the Committee of the Trotting Club.

Other sports to attract his interest were swimming, boxing, amateur athletics, rowing, and bowls. At the age of eighteen, he was captain of the East Christchurch Swimming Club. Several times he won life-saving competitions for his club, and he captained and played first forward for his club team in the first New Zealand water polo championships, in 1892.

Mr. Johnston was a member of the council of the New Zealand Boxing Association for twenty-five years, and for several years was on the New Zealand Amateur Athletic Council. At bowls, he was a past president of the New Zealand Bowling Council and of the Canterbury Bowling Centre. Twice as a youth he was a member of the winning four at Lake Forsyth regattas.

There was a large attendance of the profession at the Supreme Court on August 19 to pay tribute to the memory of Mr. Johnston. The Wellington Bar were represented by Messrs. G. G. G. Watson and T. P. Cleary.

The President, Mr. L. J. H. Hensley, reviewed Mr. Johnston's career at the Bar, referring particularly to Mr. Johnston's attention to the Rangiora practice in the interests of his former partner, Sir Howard Kippenberger. On this point, he said:

"In the year 1941, when he had attained man's allotted span, and when, having completed practically fifty years in active practice, he might fairly have chosen retirement and leisure, he nevertheless decided, in the absence on war service of his partner, Howard Kippenberger (now Major-General Sir Howard Kippenberger), to take over the conduct of the practice at Rangiora to ensure that that practice would be kept up and be available for General Kippenberger when he returned. During those years, Mr. Johnston visited Rangiora regularly and worked assiduously in the interests of his absent partner, and although, as circumstances turned out, Sir Howard Kippenberger decided not to resume practice, both he and the profession generally realized the loyalty, sacrifice, and devotion to duty that Mr. Johnston had displayed.

"But such was the nature of the man. To the end he showed, in spite of illness and failing health, that indefatigable industry which had always marked his career. He added to a sound knowledge of the law and a ripe and experienced judgment, an alert mind, a courageous outlook, and to the last a youthful spirit. Throughout the whole of his career, nothing dishonourable, nothing mean, and nothing petty was ever associated with F. W Johnston.

"His life was a full one. He had lived life's full cycle and had served his profession and the community for over half a century. He had well and faithfully done his duty, and in asking that our deep and respectful sympathy be proffered to his widow and to his son and daughter, we would say of their husband and father that he will be missed indeed from our numbers, but that his memory will always remain fresh with those of us who knew him."

Mr. L. B. Freeman (Christchurch).

Mr. L. B. Freeman, Chairman of the Christchurch Urban Land Sales Committee, died on August 5, having presided over the Committee on the day before his death.

Mr. Freeman was born in Christchurch, and was educated at the Papanui District Primary School and the West Christchurch High School. He graduated at Canterbury University College. He was employed in the Public Trust Office before he served in France during the 1914-18 War. He had practised in Christchurch for about twenty-five years.

Mr. Freeman was a member of the Canterbury Grand Lodge of Druids for many years, and was Grand President in 1935. He is survived by his wife and two daughters.

NEW ZEALAND LAW SOCIETY.

Meeting of Council.

A Meeting of the Council of the New Zealand Law Society was held on June 18, 1948.

The following Societies were represented: Auckland, Messrs. C. J. Garand (Proxy), V. N. Hubble, J. B. Johnston, and L. P. Leary; Canterbury, Messrs. L. J. Hensley and A. C. Perry (Proxy); Gisborne, Mr. G. J. Jeune; Hamilton, Mr. E. F. Clayton-Greene; Hawke's Bay, Mr. A. E. Lawry; Marlborough, Mr. A. M. Gascoigne; Nelson, Mr. K. E. Knapp; Otago, Messrs. J. B. Deaker and C. B. Barrowclough; Southland, Mr. J. H. B. Scholefield; Taranaki, Mr. H. S. T. Weston; and Wellington, Messrs. P. B. Cooke, K.C., J. R. E. Bennett, W. E. Leicester, and G. C. Phillips.

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

Standing Committee.—The following letter was received from the Hamilton Society:

"I was instructed by the Annual General Meeting of this Society to write and express its appreciation of the valuable and onerous work done by the President and Standing Committee of the New Zealand Law Society in Wellington."

Special March Examinations.—The following letter was received from the Registrar of the University of New Zealand:

"June 3, 1948.

"The Committee of the Senate, at its recent meeting, gave serious consideration to various requests for the continuance of March special examinations for servicemen and also for extension of concessions based upon the examinations already held in March, Every member of the War Concessions Committee was present at this meeting of the Executive Committee and consideration was also given to previous recommendations by the Standing Committee of the Academic Board, the Council of Legal Education, the War Concessions Committee, and the full Executive of the Senate. The Committee resolved to re-affirm the conditions announced last September to govern the March examinations of 1948, and the decision that the examinations of March, 1948, would be the final special examinations for ex-servicemen."

Latin.—The following letter was received from the Registrar of the University of New Zealand:

"On June 23 of last year you wrote to me regarding the position and the teaching of Latin in the post-primary schools.

The Senate has now approved a suggestion by the Academic Board that a Special Committee be set up within the University to report on this topic. The Committee is now making investigation and the report will probably be available towards the end of the present year."

Actions against the Crown.—The President reported that reports had been received from some of the District Societies and had been considered by the sub-committee, and said that, in the view of the sub-committee, the report received from Auckland was particularly valuable. The President also said that the Secretary of the Law Society in England had been communicated with, and in reply he had forwarded copies of the Crown Proceedings Act and of the Rules made thereunder and had written a letter, which the President read, mentioning two matters that the Law Society regarded as of prime importance.

The President said that the Law Revision Committee was to meet on July 1, when the Bill would be considered.

A report on the Bill by the sub-committee of the Society was received, and it was resolved that the sub-committee should make representations in accordance therewith, and also make any other representations it might consider desirable.

Transport Law Amendment Bill, 1948.—The following report was forwarded to the Commissioner of Transport:

"March 12, 1948

"As requested by the Council of the Otago Society we have considered the above Bill and have the following recommendations to make to your Council:—

1. We do not consider it within our province to discuss the Bill so far as it relates to the extension of control over the transport industry which is a matter of Government policy, but feel, with the one exception detailed in para. 12 below, that we should confine our attentions to such matters as we feel might lead to increased efficiency in the administration of the Act.

2. We consider that the Bill should provide for written notice of objections to applications, We feel this would lead to the saving of much time in the hearing of cases as in many instances the parties with a knowledge of pending objections would negotiate and clear away the difficulties prior to the hearing. The Authority would need of course to have power to allow late objections where leave to that end is sought. Such a provision would require consequential amendment in the way of extending the time limit within which applications can be heard after advertising. We would suggest that fourteen days be the minimum time and that notice of objection should reach the applicant five clear days before the hearing.

3. We consider the Act should contain provision for the compulsory attendance of witnesses.

4. We recommend provision for giving the Authority the right to award costs against a party making a frivolous or vexatious application or objection.

5. We recommend adequate provisions for rehearing of applications on proper grounds.

6. It is felt that the Act should impose a time limit within which no application may be repeated after it has once been declined by the Licensing Authority under a decision which is not disturbed on appeal.

7. Section 15 of the 1936 Act does not make it clear whether or not that section has application in the case of a grant of a temporary license. We feel that in a situation covered by s. 15 there should be power for the Authority to grant a temporary license designed to meet an unusual situation or contingency without the prior consent of the Minister.

9. We feel it would be an advantage for the Authority to have all the powers given under the Commission of Enquiry Act, 1908. In the situation as it stands at present the latter Act is incorporated for a limited purpose only under s. 36 of the 1931 Act.

10. We would recommend that s. 30 of the 1931 Act be clarified. At the present time subs. (*g*) of that section is so wide as to be vague and uncertain. We feel that its wording should be more specifically limited or the vague discretion granted to the authority completely removed.

11. It is considered that proper procedure on appeal is most necessary and in the Act as it stands there is no adequate provision in this regard. We would suggest that appeals should follow the same procedure as that provided by the Magistrates Court Act.

12. Clause 7 of Part 11 of the Bill purports to deal with the exemption in certain cases from transport licensing in cases of an owner carrying his own goods. We would recommend the inclusion of a suitable provision permitting generally any owner of goods to carry his own goods without restriction.

13. We most strongly recommend that consideration should be given to the inclusion of provisions requiring that any person hereafter appointed as a Licensing Authority should be a qualified barrister. We feel that there is no need to elaborate on this suggestion.

14. We refer to cl. 19 of the Bill which provides for the establishment of a new Tribunal therein described. We feel it is not competent for us to express an opinion as to the desirability or otherwise of such a tribunal but we would suggest again for obvious reasons that cl. 19 (2) (*a*) should be amended to provide that the Chairman shall be a Stipendiary Magistrate."

Property Law Amendment Act, 1939, s. 8 (3).—The Southland Society wrote as follows:

"February 27, 1948.

"The following letter has been received from one of the local practitioners:—

'Section 8 (3) of the Property Law Amendment Act, 1939, makes it necessary for the mortgagee to apply to the Supreme Court and not to the Magistrates' Court for an order for directions as to service or for an order dispensing with service in certain circumstances and it appears to us that the Magistrates' Court should be given powers similar to the Supreme Court in cases of mortgages up to a specified amount. If you agree with our contention perhaps you would put forward this suggestion to the Law Revision Committee.'"

It was resolved that representations should be made to the Law Revision Committee for the amendment of s. 8 (3) of the Property Law Amendment Act, 1939, along the lines of the Southland proposal.

Mortgagees' Sales.—The following letter was received from Hawke's Bay:

"I have received the following letter from a firm of solicitors practising in Hawke's Bay.

Re Mortgagees' Sales. 'Some little time ago a client of ours wished to exercise his power of sale under a mortgage. Default had been made in payment of interest and principal and the mortgagor was dead, leaving no personal representative.

'At that time the Mortgages Extension Emergency Regulations, 1940, were in force and under Reg. 6 (3) thereof, s. 7 of the Mortgagors' and Lessees' Rehabilitation Amendment Act, 1937, and s. 3 of the Property Law Amendment Act, 1939, did not apply.

'We could not prove abandonment in terms of Reg. 6 (2) (*b*) of the above regulation and naturally could not obtain a consent as provided by Reg. 15 thereof.

'This meant that we had to obtain the leave of the Court to sell under Reg. 6 aforesaid, and before we could apply we had to obtain directions as to service. As the mortgage secured less than £2,000, we applied to the Magistrates' Court and as a result we obtained first an order giving directions as to service, and secondly (after service) an order giving leave to sell.

'The proposed sale fell through but another prospective purchaser was found later. The mortgagee then approached us when we had to advise him that the the aforesaid regulations were revoked. We also advised him that s. 3 of the Property Law Amendment Act, 1939, again applied to his mortgage as from the revocation of the regulations (s. 7 of the Mortgagors' and Lessees' Rehabilitation Act, 1937, did not apply in this case as the mortgage had not been "adjusted").

'We advised him that despite the order held he would have to give one month's notice under s. 3 of the Property Law Amendment Act, 1939, and that he would first have to apply for directions as to service or to dispense with same under s. 8 of that amendment. Application would have to be made to the "Court" which by virtue of s. 2 of the Property Law Act, 1908, means the Supreme Court. We are now making this application.

'In view of the above we would suggest that the law should be amended so that a mortgagee need not give notice under s. 3 of the Property Law Amendment Act, 1939, or (if it applies) under s. 7 of the Mortgagors' and Lessees' Rehabilitation Amendment Act, 1937, if:—

'(*a*) He holds an order under the aforesaid regulations giving leave; or

'(*b*) He holds the mortgagor's special consent to exercise remedies given under the regulations and while they were in force.

'We would also like to point out that while the regulations were in force (and ss. 3 and 7 as aforesaid did not apply) no order for leave to exercise powers was necessary if "abandonment" by the mortgagor could be properly proved to a District Land Registrar. Section 3 of the Property Law Amendment Act, 1939 (which applies to all mortgages), and s. 7 of the Mortgagors' and Lessees' Rehabilitation Act, 1937 (which applies to some mortgages), are now again in force and notices have to be given (we suggest) even if "abandonment" can be proved. We suggest that the law should be amended so that such notices are not required in cases where "abandonment" can be proved in lieu thereof.

'Whilst going into this matter it struck us that the whole question of "notices" should be reviewed with a view to obtaining amending legislation to save inconvenience and needless expense. Mortgagees in certain cases may find it necessary to give three notices as follows:—

'(*a*) Three months' notice under s. 68 of the Property Law Act, 1908; and

'(*b*) One month's notice under s. 3 of the Property Law Amendment Act, 1939; and

'(*c*) One month's notice under s. 7 of the Mortgagors' and Lessees' Rehabilitation Amendment Act, 1937.

'Ostler, J., suggested in 'H. *v.* I., [1940] N.Z.L.R. 235, that (*b*) and (*c*) could be combined, and we feel that there could be no objection to all three notices being combined in one notice, properly intituled on the three matters and giving three months' notice throughout. This is cumbersome and should probably be remedied, but it is not a grave matter (from the point of view of expense) until a mortgagee finds it necessary in certain circumstances to obtain directions as to service or leave to dispense with service. Here he will have to apply to the Supreme Court in every such case, as s. 3 of the Property Law Amendment Act, 1939, applies to all mortgages. He will also have to apply to the Supreme Court if s. 68 of the Property Law Act, 1908, applies to his mortgage and he needs directions, &c.

'Finally, if s. 7 of the Mortgagors' and Lessees' Rehabilitation Amendment Act, 1937, applies and he needs directions, &c., he will have to apply to the Court of Review: see s. 61 of the Mortgagors' and Lessees' Rehabilitation Act, 1936, and the definition of "Court" in that Act. We assume that there are no "Adjustment Commissions" in existence as applications can be made to the Court or an Adjustment Commission.

'Our suggestions to remedy the above and save considerable time and expense are:—

'(*a*) Section 7 of the Mortgagors' and Lessees' Rehabilitation Amendment Act, 1937, should be repealed.

'Section 3 of the Property Law Amendment Act, 1937, gives same protection and in practically the same words to all mortgagors.

'(*b*) Whether the said section is or is not repealed application should only have to be made to one Court for directions (or to dispense) whether under s. 68, s. 3 or s. 7 aforesaid.

'(*c*) The Court should be the Magistrates' Court.

'(*d*) If (*c*) appears to give too wide a jurisdiction to the Magistrates' Court then we suggest the Magistrates' Court (in the case of mortgages securing not more than £2,000) and otherwise the Supreme Court. We adopt this figure of £2,000 on the basis of Reg. 9 of the Mortgages Extension Regulations, 1940.

'We would be grateful if your Council would consider the questions raised.'

"As these matters appear to be worthy of consideration, I am instructed to submit same to the New Zealand Society."

It was resolved that representations should be made to the Law Revision Committee for the repeal of s. 7 of the Mortgagors and Lessees' Rehabilitation Amendment Act, 1937, and for amendments to the law to the effect that notices under s. 3 of the Property Law Amendment Act, 1939, and s. 68 of the Property Law Act, 1908, could run concurrently.

Housing Accommodation Problem: Properties for Ex-Servicemen.—(*a*) The following letter was received from the General Secretary, New Zealand Returned Services Association:

"April 27, 1948.

"The desperately acute position so far as Housing throughout New Zealand (as well as throughout the world) is concerned has been given earnest consideration by many organizations and bodies, as well as by the Government, and the last Dominion Council of this Association adopted the following resolution:—

'That in view of the increasing number of house properties offered for sale by public auction and public tender and the fact that returned service personnel depending on the grant of Rehabilitation loans are seriously handicapped in bidding or tendering in such cases, it be suggested to the New Zealand Law Society, the Public Trustee, the Real Estate Institute of New Zealand, and the various Trustee Corporations operating in the Dominion that in appropriate cases preference be given returned service personnel by ballot among them.'

"It would be greatly appreciated if you would arrange for this resolution to be given earnest consideration and, in due course, inform this Association of the decision arrived at. It is hoped that circumstances will permit of a reply to these representations in the near future.

"In submitting the above decision of the Dominion Council, it is emphasized that the N.Z.R.S.A. does not overlook that fact that there are a considerable number of most deserving citizens throughout New Zealand in dire straits in regard to their housing facilities but it respectfully submits that so far as returned service personnel are concerned the majority of them have come back to this Dominion during the years 1945-46, when the problem of housing accommodation began to deteriorate from being serious to superlatively desperate: with this in mind the Association feels that it is reasonable in seeking the practical co-operation of the bodies referred to in the resolution."

(*b*) The following letter was received from the Director of Rehabilitation:

"May 21, 1948.

"On December 8, 1944, you advised me that your Council had authorized you to bring to the notice of legal firms my request that advice be given to Rehabilitation Officers of any properties which might come into their hands for sale, and which would be suitable for ex-servicemen, and that where possible arrangements be made for ex-servicemen to be given the opportunity of purchasing before the general public.

"The Department recognized at the time that when solicitors were acting as trustees in the selling of property they were, in many cases, obliged to sell by auction or to seek public tenders. In some cases the terms of the trust instrument may bind the trustee to sell in this manner, but in others it has no doubt been done to enable the trustee to discharge his obligation to ensure that the best possible price is obtained.

"Although the price at which a property could be sold is ultimately limited by the Land Sales Court when application for its consent is made, it was realized that the figure at which a sale would be approved by the Land Sales Court was not available at the time a sale contract was entered into.

"Since the time the Serivcemen's Settlement and Land Sales Amendment Act, 1946, has been passed, s. 14 of which enables a trustee to obtain a pre-valuation and a provisional consent to a proposed sale, notwithstanding that the name of the purchaser is not known. Under this provision he is enabled to ensure that he obtains the highest possible price without the necessity for submitting the property to auction, and at the same time he has the opportunity of exercising his discretion in the selection of a purchaser.

"The Department has appreciated your Society's action in bringing its previous request to the notice of its members and the latter's co-operation. There are, however, still very many ex-servicemen in need of homes and farms for the successful rehabilitation. Consequently any further assistance legal practitioners can render would be gladly accepted, and I would suggest that this could be done by their taking advantage of the Amendment to the Act, where, as trustees, they are selling properties which are suitable for the rehabilitation of ex-servicemen.

"Rehabilitation Officers, on being advised that a property is available for sale, will have an investigation made as to its suitability and arrange for an eligible ex-serviceman to be put in touch with the vendor with a view to concluding a contract.

"I shall be glad to learn whether it would be possible for you to again bring to the attention of legal firms the Department's request for their further co-operation in selling properties to ex-servicemen and the suggestion that when selling as trustees they should so far as possible take advantage of s. 14 of the Land Sales Amendment Act to enable them to give preference to ex-servicemen."

(*a*) It was resolved that the resolution of the Dominion Council of the Returned Services Association should be supported that the District Societies should be informed accordingly, and that, if they approve, they should bring the matter to the attention of legal firms in their district.

(*b*) It was resolved that the Council comply with the request of the Director of Rehabilitation as contained in the last paragraph of his letter by asking District Societies to bring the matter to the attention of legal firms in their district.

Workers Compensation Act: Land and Income Tax Act.—The Otago Society wrote as follows:

"June 10, 1948.

"A practitioner in this district has written asking that my Council should make representations to have the Workers' Compensation Act and the Land and Income Tax Act reprinted.

"Both these statutes are in continual use, and while there are text-books and supplements in respect of each, it would be a very great convenience to have a reprinted Act to which one could refer.

"My Council has instructed me to refer the matter to the New Zealand Law Society for support."

It was resolved that representations should be made to have the above statutes reprinted.

UNIVERSITY OF NEW ZEALAND.

March Examinations for Ex-servicemen.

The University Senate has resolved that for those ex-servicemen who were mobilized for more than three full years, special March examinations will be held in 1949 and 1950 in the subjects of the Solicitors' Professional, Divisions II., III. and IV, and of the Accountancy Professional.

The detailed conditions and dates for the examinations are still to be settled by the War Concessions Committee, but servicemen can assume that the conditions will follow closely upon those conditions which ruled in 1948, save for the additional fact that marks concessions will be available to those servicemen who sit the examinations, not having been at that time demobilized for more than two academic years, and who are not sitting single subjects by special concession.

NEW BOOKS AND PUBLICATIONS.

Interpretation of Deeds and Statutes in a Nutshell, 1948, by Barry Chedlow. London: Sweet and Maxwell. Price 7s.

Crown Proceedings, by Glanville L. Williams. London: Stevens and Sons. Price 17s. 6d.

Butterworth's Yearly Digest of Reported Cases, 1947. Edited by Phillip F. Skottowe, LL.B. London: Butterworth and Co. (Publishers), Ltd. Price 44s.

Year Book of World Affairs, 1948. Edited by George W. Keeton and George Schwarzenberger. London: Stevens and Sons. Price 27s.

Shaw's Restatement of the Town and Country Planning Act, 1947, by Neville Hobson and Pater Dow, M.A. London: Shaw and Sons. Price 25s.

Current Law Year Book, 1947. General Editor: John Burke. Year Book Editor: Clifford Walsh, LL.B. London: Sweet and Maxwell (issued free to Subscribers of 1947 issues of Current Law). Price 35s.

Rivington's Epitome of the Twenty-third Edition of Snell's Equity, by Oliver Lodge, M.A. (Cantab.). London: Sweet and Maxwell. Price 15s.

Supplement to the Fourth Edition of Hill's Complete Law of Housing, by John Montgomerie, B.A. London: Butterworth and Co. (Publishers), Ltd. Price 7s. 6d. (Book and Supplement, 45s.)

Guide to Company Balance Sheets and Profits and Loss Accounts, by Frank Jones. Cambridge: Heffer and Sons, Ltd. Price 15s.

Transport Act, 1947, by David Karmel and Richard Beddington. Consulting Editor, The Rt. Hon. Sir David Maxwell Fyfe, K.C. London: Butterworth and Co. (Publishers), Ltd. Price 21s.

My Court Case Book, by Maurice Wiggin. Drawings by Robert Turner. London: Sylvan Press. Price 10s. 6d.

Conflict of Laws, by R. H. Graveson, Ph.D., S.J.D., LL.M. London: Sweet and Maxwell. Price 30s.

Current Law Statutes, 1948. London: Stevens and Sons. Price 30s.

Principles of Planning Law, 2nd Ed., 1948, by J. Charlesworth, LL.D. London: Stevens and Sons. Price 12s. 6d.

The Devil Knoweth Not, by R. Gottschalk. London: Stevens and Sons. Price 7s. 6d.

IN YOUR ARMCHAIR—AND MINE.

By Scriblex.

An Expensive Dog.—A note of warning to over-enthusiastic counsel is provided by *Dring* v. *Mann*, heard by the King's Bench Division in April last. The appellant charged the respondent, Rosa Jane Mann, with being the owner of a dangerous dog not kept under proper control. She appeared and was represented by a solicitor. It emerged in the course of the hearing that in the information and summons her first name appeared as "Rose," and objection was taken that the information and summons were bad on that ground. The Justices, after consulting their clerk, upheld the objection on the assumption that, though they had power to make the necessary amendment before the hearing, they had no power to do so once the hearing had begun. In allowing the appeal, Lord Goddard, L.C.J., stated that he found it very difficult to understand how a clerk of the Justices could have given the advice that he did, and that the only result of the foolish point which was taken by the defendant's advocate was that "not only has he now involved his client in the costs of two hearings, but she must also pay the costs of this appeal."

Serjeants-at-Law.—Lord Lindley, who died in 1921 at the ripe age of ninety-three, was the last surviving serjeant-at-law and member of that ancient order of advocates, the Order of the Coif, which at one time monopolized the Court of Common Pleas. In the Middle Ages, the serjeants took rank as the highest in the legal profession, and from them the King selected certain of their number to represent him in his Courts. Judges were appointed exclusively from their ranks; they lodged together at Serjeants' Inn; and they were almost of an equality. According to Fortescue, Chief Justice of the King's Bench in 1442, the newly-created serjeants gave "a sumptuous feast, like that at a Coronation," lasting seven days, and innumerable rings were distributed. During the seventeenth century, the rise in importance of the Attorney-General and the Solicitor-General, assisted by the new order of King's Counsel, forced the serjeants into the background. Lord Brougham endeavoured to get rid of the Order of the Coif in 1834. The Court of Common Pleas held that his action was ineffective. However, in 1846 there was passed an Act (9 and 10 Vict., c. 54) "to extend to all barristers practising in the Superior Courts at Westminster the privileges of serjeants-at-law in the Court of Common Pleas."

Down to this time, the serjeants retained the monopoly of audience as pleaders at the Common Pleas Bar and it was thus necessary for Mrs. Bardell and Mr. Pickwick to retain serjeants to represent them. As is well known, the choice was Serjeant Buzfuz and Serjeant Snubbin. It is doubtful whether the latter ever really became interested in his client's case. When Pickwick visited his Chambers, he handed him over to his junior, Phunky, and proceeded to immerse himself in the case before him, "which arose out of an interminable lawsuit, originating in the act of an individual, deceased a century or so ago, who had stopped up a pathway leading from some place which nobody came from, to some other place which nobody ever went to."

Note on Collaboration.—Described as a very fine old gentleman, free from self-consciousness and never embarrassed by finicking thoughts of his own dignity, Boyd, J., was once asked by an old man at the Limerick Assizes to be excused from jury service. There then proceeded the following conversation between them: "B: You look very well. Why should I excuse you? O.M.: I'm sixty-nine years, my Lord. B.: I'm seventy-nine. O.M.: I'm deaf, my Lord. B.: So am I. O.M.: I'm very stupid, my Lord. B.: You're not half as stupid as I am, and the Government pay me £4,000 a year. Get into the box, my friend. Between us we will make a fine job of this case."

Lord Alverstone's Habits.—Scriblex confesses that he is not an avid reader of religious reminiscences, but his roving eye lit the other day upon *Cassock and Surplusage*, by the Rev. Canon Stevens, a recent T. Werner Laurie, Ltd., publication. He tells the story of the inquisitive visitor who asked the verger of Kensington Church whether it was a fact, as indeed it was, that the Lord Chief Justice (Lord Alverstone) sang in the choir there. "I can't tell you anything about our singers," he replied. "If they behave themselves, then we ask no questions about their antecedents." To this admirable habit of Lord Alverstone, there must be added another: he was an early riser. He once said that, when he and Sir Edward Clarke were Law Officers of the Crown together, their only difference occurred through his having fixed a consultation at half-past nine in the morning. "My dear Attorney," answered Sir Edward, "I will do anything in the world for you, but I won't get up in the middle of the night."

Student's Note.—The late Sir Hugh Fraser used to tell this story of one of his most brilliant pupils. He had been left to prepare the draft of a separation when his principal was in Court. The student had all the academic qualifications for his task, as he knew his subject well; but a pressing evening engagement proved a disturbing factor. On his return, the principal found an incomplete draft on his desk, to which was appended a reference: "See Macbeth, Act III, Sc. 1, line i." On consulting his Shakespeare, he found the words referred to read as follows: "I cannot do this bloody deed."

Stenographers' Memo.—The most recent *Law List* not being readily available, Scriblex noticed that in the Law List for 1785, Silks were then described as "King's Council," although a few years later the spelling now in use, "Counsel," was substituted. The matter is mentioned merely for the convenience of stenographers, who, in the pressure of work, have overlooked the change.

Observations.—"The three primary requisites of a judgment are that it should be dignified, as emanating from the Bench; that it should be convincing, so that justice may appear to be done; and that it should be clear": Lord Macmillan.

"One man's life is as valuable as another's; and, if it is right to retain the death penalty in order to protect the lives of Police officers, so also it will be right to retain it in order to protect the lives of other citizens": Viscount Simon.

"It does not become any man in a judicial situation to look at the conduct of the parties with reference to any other consideration than the legal effects of it": Lord Eldon.

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. Right of Way.—*Town approved under Land Act, 1924—Grant of Right of Way over Allotment therein—Consents and Conditions required.*

QUESTION: A is the registered proprietor of an allotment in a town duly approved as a town by the Minister of Lands in 1924. A now proposes to grant a right of way appurtenant to the adjoining section over part of his allotment. Is any consent required, and will the grant be subject to any conditions?

ANSWER: If the land is still situate outside a city, borough, or Town Board district, the precedent consent of the Minister of Lands will be necessary to the grant of right of way. If, on the other hand, the land is now in a city, borough, or Town Board district, the right of way must be consented to by the local body, it must not exceed 20 ft. in width, and the local body may impose conditions: s. 16 of the Land Laws Amendment Act, 1947, and ss. 183-186 of the Municipal Corporations Act, 1933. X.1.

2. Rent Restriction.—*Dwellinghouse owned by Local Body—Letting to Employee—Occupation not Condition of Service—Contracting-out—Fair Rents Act, 1936, s. 21.*

QUESTION: We act for an electric-power board, which employs "trouble men," who are required by the board to reside at various points in the board's district. The term "trouble man" indicates the nature and importance of the duties of the employee. One of the board's trouble men is having difficulty in obtaining reasonable living accommodation at the place where he is required by the board to live. Therefore, the board has decided to purchase a dwellinghouse at that place of which it can get immediate vacant possession, and to let this house to its trouble man at a reasonable rental. The board wants to be in a position to obtain quick possession of the dwellinghouse if the trouble man tenant ceases to be employed by the board. It is obvious that the proposed tenancy will not be a "service tenancy" and will be covered by the Fair Rents Act, 1936, as the "occupation" will not be a "condition of the service or necessary for its performance." The employee will give an undertaking to deliver up possession if his employment with the board ceases, but such an undertaking is, of course, worthless in law. Can you suggest any course which will assist our client board?

ANSWER: The admission that it is not a service tenancy appears to be well made: *Ramsbottom* v. *Snelson*, [1948] 1 All E.R. 201; *Parade Bakery, Ltd.* v. *Adams*, (1947) 5 M.C.D. 380; *Pickup* v. *Greenaway*, (1947) 5 M.C.D. 484; *cf. The King* v. *Osmond*, (1948) 24 N.Z.L.J. 142. Therefore, the undertaking given by trouble men has no force or effect: s. 21 of the Fair Rents Act, 1936. As s. 25 of the Statutes Amendment Act, 1945, does not apply, no suggestion is made in terms of the question. X.2.

POSTSCRIPT.

The Legal Person.

Before inquiring what are the legal rights of "persons," we must know what we mean by a person and what kinds of persons there may be. In law, a man and a "person" are not synonymous words.

Mankind is made up of all human beings, whether or not members of an organized society, whatever their rank, their age, or their sex.

But a person is a human being considered in relation to his place or position in society, with all the rights which assure him his position, and all the duties which his position imposes upon him. Thus, when we speak of the law of persons, we think of a man only in terms of his status, of the part he plays in society—not of the man behind the legal personality.

The word "person," in its primitive and natural meaning, signified the mask covering the head of actors who played parts in the dramatic representations at Rome and in Greece. The plays were performed in public places and later in amphitheatres so vast that it was impossible for the actors' voices to be heard by all the spectators. So they used the art of suggestion: they covered each actor's head with a mask representing or suggesting his role, so contrived that the opening through which he spoke made the voice clearer and more resonant—*vox personabat* (in the sense of the voice resounding *through*); and hence *persona*, the name given to the instrument or mask which amplified the voice.

The word "*persona*" came in time to be applied to the role itself which the actor played, because the face of the mask was likened to the age and character of him who was assumed to be speaking, and might, indeed, be a portrait of him.

It is in this latter sense of character, part, or role that the word "*persona*" is used in law, in opposition to "man," *homo*. When it speaks of "a person," it intends only the status of a man, the role he plays in society—not of the individual man *qua* man. "Status" and "person" are thus correlative words—*Toullier, Le Droit Civil Francais*, 4th Ed. (1834), 133, 134 (Translation).

Rolls Without Butter.

It is well over a century ago since Lord John Russell became Premier for the first time, and appointed Lord Cottenham as Lord Chancellor—ten years after Lord Cottenham's first elevation to the Woolsack. He had been previously Master of the Rolls, and had relinquished that office for the Chancellorship with genuine reluctance. When, in 1850, Lord Cottenham finally resigned, owing to ill-health, Lord Langdale was offered the Chancellorship. He was then holding the office of Master of the Rolls, as Lord Cottenham had been, and, like him, had no wish to exchange the Rolls for the Woolsack. He consented to discharge the duties of Chancellor during Lord Cottenham's illness, however, and his own health was irredeemably ruined by the extra work which this task entailed. In fact, Lord Cottenham survived him, although only by eleven days, both dying in April in the following year. It was said that when the Woolsack was offered to Lord Langdale some handsome compliments were paid to him by Lord Russell, but that Lord Langdale replied: "It is useless talking, my lord. So long as I enjoy the Rolls, I care nothing for your butter!" Others had made play on the words of the title Master of the Rolls before this time. Samuel Derrick once invited Goldsmith to the Robin Hood debating society in Temple Bar, of which the President was one Caleb Jeacocke, who was a baker (and insurance director), and was said to have been more eloquent than Burke. Jeacocke was a man of imposing presence, and Goldsmith observed to Derrick that nature had surely intended such a personage for a Lord Chancellor. "No," replied Derrick, who knew that Jeacocke was a baker, "only for a Master of the Rolls!" (*Law Journal*, London.)