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LAND VALUATION: RULES OF COURT.

AS we go to press, the Land Valuation Court Rules, 1949 (Serial No. 1949/82), have come to hand. They will come into force on July 1. As they are of importance to practitioners generally, and may not be available to them when this issue of the JOURNAL reaches them, we are using this space—which would otherwise have been occupied by a consideration of a matter of common law—to summarize these rules for their assistance.

A saving clause preserves all applications, notices, orders, and generally all acts of authority that originated under the regulations made under the Servicemen's Settlement and Land Sales Act, 1943, or in respect of objections to an Assessment Court under the Valuation of Land Act, 1925. (The Servicemen's Settlement and Land Sales Regulations, 1949 (Serial No. 1949/81), revoke the Servicemen's Settlement and Land Sales Regulations, 1943 (Serial No. 1943/162), and Amendments Nos. 1, 2, and 3 thereof (Serial Nos. 1945/44, 1946/214, and 1947/127).)

The new rules apply to all proceedings in the Land Valuation Court for which no other procedure is prescribed by any statute, or by any other rules or regulations. Proceedings pending or in progress on July 1, 1949, may be continued and completed under the new rules, which, so far as practicable, will apply to those proceedings. In so far as it is not practicable for them to be so applied, the Court or the Land Valuation Committee, as the case may be, is to deal with the case in such manner as it deems best calculated to promote the ends of justice. If any question arises as to such application of any provision of the new rules, the Court may, either on application or of its own motion, determine the question and give such directions as it thinks fit.

PROCEDURE.

Subject to the provisions of the new rules, no practice which is inconsistent with those rules may prevail in the Court or before any Committee. If any case arises for which no form of procedure is prescribed by any Act, rule, or regulation, the Court is to dispose of the case as nearly as may be practicable in accordance with the provisions of the Act or these rules affecting any similar case, and, if there is no such rule, then in such manner as the Court deems best calculated to promote the ends of justice. The Judge of the Court and the Chairman of every Committee may respectively from time to time give such directions not inconsistent with the Act or these rules as he thinks proper for regulating the conduct of business in the Court or before the Committee, as the case may be.

The offices of the Land Sales Court will be such offices as the Minister of Justice from time to time directs in designated cities and towns.

Form of Documents.—All documents prepared to be filed in any office of the Court must be clearly and legibly written, typewritten, or printed on half-sheets of foolscap paper of good quality, single or double spaced, provided that a double space must be left between paragraphs. (The reference to half-sheets of foolscap paper may be confusing, though the intention is precise description. Sheets of foolscap paper, according to the trade description, measure 13½ in. by 16½ in. A half-sheet of foolscap is, therefore, the size of paper used in offices for Supreme Court work.)

Both sides of the paper may be used, with a minimum margin of not less than 1 in. on the left-hand side of each page.

A suitably endorsed backing sheet must be attached to each claim, objection, application, or notice of motion presented for filing in any Court office, and ample room must be left for the Court's or Committee's minute to be endorsed upon the backing sheet. All documents must be folded lengthwise down the middle. Except with the leave of the Court, or of the Chairman of a Committee, or of the Registrar, no document may be received for filing which does not comply with these rules.

Every document filed or issued must be properly intituled, showing the office of the Court in which the proceedings are pending, and the distinguishing number, and the names of the parties.

There is an exception with regard to documents filed in the Court in relation to proceedings under the Servicemen's Settlement and Land Sales Act, 1943, or under the Tenancy Act, 1948. Such documents must be filed in duplicate. One copy may be a carbon copy.

Statutory Forms.—The schedule to the rules contains some fifteen forms, any one of which may be varied as the circumstances of any particular case require.

Where no form of application to the Court or a Committee is prescribed, the application may be made by notice of motion, setting out the nature of the order applied for and the grounds of the application.

Special forms are required in respect of claims for compensation under the Public Works Act, 1928 (which must be made in the form and in the manner prescribed by Part III of that statute), and claims for compensation under s. 29 of the Servicemen's Settlement and Land Sales Act, 1943, must be made in the Form No. 2 of the Land Valuation Court Rules, 1949.

Service.—The rules provide in detail for the service of documents on the parties, and the notices to be given by the Registrar to any party or other person.

Withdrawal of Proceedings.—The provisions relating to the withdrawal of proceedings are contained in r. 26, which is as follows:

(1) No proceedings under Part III of the Servicemen's Settlement and Land Sales Act, 1943, shall be withdrawn except by leave of the Court or of the Committee.

(2) An order granting leave to withdraw any such proceedings may be made by the Court or the Committee (*a*) without any formal application or notice to any party, (i) where all parties to the proceedings are present before the Court or the Committee; or (ii) by consent of all parties to the proceedings; or (*b*) upon an application made by way of notice of motion filed in the office of the Court and served by the applicant on the other parties to the proceedings fourteen clear days before the time fixed for the hearing of the notice of motion.

(3) Where any party desires to be heard in opposition to an application made pursuant to paragraph (*b*) of subclause (2) of this rule, he shall within the said period of fourteen days file in the office of the Court and serve on the other parties to the proceedings a notice of objection to the withdrawal of the proceedings stating shortly the grounds of his objection and the matters on which he desires to be heard.

Adding Parties, &c.—The Court or the Committee may, either upon or without the application of a party to the proceedings and at any stage of the proceedings, add, strike out, or substitute the name of any person as a party to the proceedings.

Death or Bankruptcy of Party.—Proceedings shall not abate by reason of the death or bankruptcy of any party if the transaction in respect of which the proceedings are taken survives or continues, and shall not become defective by the assignment, creation, change, transmission, or devolution of any interest, estate, or title during the proceedings. Whether the transaction survives or not, proceedings shall not abate by reason of the death of any party between the hearing and the sealing of an order, and an order may be made in the prescribed manner notwithstanding the death. The Court or the Committee may from time to time make such orders as may be necessary to give effect to the provisions of this rule.

Reinstatement.—Where any proceedings have been struck out for want of appearance, an application for their reinstatement may be made within fourteen days of the date of the order striking out the proceedings. The application is to be made by notice of motion, served on all other parties to the proceedings.

Enlargement or Abridgment of Time.—Subject to the provisions of the rules, any of the times fixed for taking any step in any proceedings, filing any document, or giving any notice may be enlarged or abridged by consent of all parties, or by the Court or the Committee on the application of any party. An order enlarging time may be made, although the application therefor is not made until after the expiration of the time allowed or appointed.

Applications for Court's Consent to Sale or Lease of Land.

An application for the consent of the Court to any transaction, or proposed transaction, to which Part III of the Servicemen's Settlement and Land Sales Act, 1943, or the Tenancy Act, 1948, applies, must be in the Form No. 3 in the schedule to the rules. There must be attached to every such application a copy of every agreement entered into between the parties, or any of them, in respect of the transaction or proposed transaction which is the subject of the application for the consent of the Court, or in respect of any other transaction in any way related thereto, including any ancillary or collateral agreements, and full particulars of any agreements not in writing.

The application is to be supported by a declaration by the vendor or lessor in the Form No. 4, and by a declaration by the purchaser or lessee in the Form No. 5.

An application tendered by one party to a transaction and supported by the declaration of that party only may be accepted for filing by the Registrar in any case where he is satisfied that the applicant has been unable to secure the prescribed declaration from the other party or parties to the transaction after reasonable efforts to obtain it.

Where, *within a period of two years* preceding the date of any transaction in respect of which the consent of the Court is sought to be obtained, any moneys have been paid or have been agreed to be paid by the purchaser or lessee to the vendor or lessor in respect of the land to which the transaction relates, whether as rent or as consideration for the granting of any lease or of any option or otherwise, a statement giving full particulars of the payment made or of the payments intended to be made must be included in each of the declarations to be filed with the application for the consent of the Court to the transaction.

Where any fresh or ancillary or collateral agreement is entered into by the parties to the transaction after the filing of an application and before a formal order is sealed thereon, the applicant must file in the Court and serve on the Crown Representative a copy of the agreement, or full particulars thereof if it is not in writing.

The Court or the Committee may at any time before the making of an order consenting to the transaction direct the vendor, lessor, purchaser, or lessee to file an affidavit, declaration, or statement disclosing any further particulars which the Court or the Committee requires to be disclosed.

Application for Consent to Sale to a Company.

A special regulation (r. 15) relates to an application for the consent of the Court under Part III of the Servicemen's Settlement and Land Sales Act, 1943, to a company.

Private Company to be Incorporated.—When the transaction is for the sale or lease of land, or of any interest in land, to a trustee for a private company to be incorporated, the applicant must file with the application, or at any time before it is referred to a Committee, a declaration giving full particulars of the following matters:

(*a*) the names of the persons intending to become shareholders of the proposed company, and the number and value of the shares to be allotted to each of them;

(*b*) the number of shares (if any) which are to be allotted to any such intended shareholder to be held in trust for any other person, and the names of the persons who will be beneficially interested in those shares ;

(*c*) the land or interest in land held or in course of being acquired by any intended shareholder or other person beneficially interested in the proposed company to a substantial degree ;

(*d*) the reasons for the incorporation of the proposed company and for its acquisition of the land or interest therein ;

(*e*) what negotiations (if any) have been entered into or are contemplated, or what agreements, oral or otherwise, exist between the vendor or any intended shareholder or person interested in the formation of the proposed company and any other person whereby the possession or control of the land or interest in land proposed to be acquired by the company may in effect be secured by any other person or corporation by means of a transfer of shares in the company ;

(*f*) whether the vendor or lessor or any intended shareholder in the proposed company intends either forthwith or at some future date to dispose of or to offer to dispose of his shares in the company at a price in excess of their nominal value ; and

(*g*) whether the proposed transaction is intended in whole or in part to enable the possession or control of the land or the interest therein affected by the transaction to be subsequently acquired by some other person or corporation otherwise than with the consent of the Court.

When the Court or the Committee is satisfied that the applicant is unable to declare as to any of those matters specified, it may give such directions as it thinks fit (*a*) requiring the declaration to be made by any other party to the proceedings ; or (*b*) requiring the information to be disclosed in any other manner ; or (*c*) excusing the applicant from compliance with this rule.

Unless excused by the Court or the Committee from attending, the parties to any application for consent to a sale to a trustee for an intended private company must attend before the Court or the Committee at the hearing of the application for examination by the Court or by the Committee, as the case may be, and for cross-examination by the Crown Representative.

Incorporated Private Company.—When an application for the consent of the Court under Part III of the Servicemen's Settlement and Land Sales Act, 1943, relates to a transaction for the sale or lease of any land or any interest therein to an incorporated private company, the solicitor or other person acting on behalf of the company must disclose to the Court or to the Committee, in such manner as the Court or the Committee requires, the names of the shareholders and other persons beneficially interested in the company's shares, and particulars of the land held by any shareholder or other person having the control, or a substantial share of the control, of the company. In any such case, the Court or the Committee may require further or other information to be disclosed as to the matters referred to as (*a*) to (*g*), above, and may direct the attendance of any person for examination and cross-examination.

Where, in any application before the Court or before a Committee, any question arises under (*c*) as to whether any intended shareholder or other person is beneficially interested in a proposed company to a substantial degree, or where in any such application in respect of a sale to an incorporated private company any question arises as to whether any shareholder or other person has the control, or a substantial share of the control, of any company, that question shall be decided by the Court or by the Committee, as the case may be.

Public Company.—Where the application for the consent of the Court under Part III of the Servicemen's Settlement and Land Sales Act, 1943, relates to a transaction for the sale or lease of land or any interest therein to a public company or to a trustee for a public company to be incorporated, the Court or the Committee may give such directions as it thinks fit as to the matters required to be disclosed and as to the manner in which that disclosure shall be made.

When any party refuses or fails to comply with any of the foregoing provisions of r. 15, or with any directions given by the Court or the Committee in pursuance of this rule, or where any party having attended pursuant to the provision of this rule respecting a sale to an incorporated private company at a hearing by the Court or by the Committee refuses to be sworn or to answer any lawful question, the Court or the Committee, as the case may be, may refuse to grant its consent to the transaction without proceeding further with the application, or may refuse to grant its consent to the transaction until its requirements in that behalf are complied with.

Application for Provisional Consent by Trustee or Mortgagee.

A declaration that the trustee or mortgagee has power to enter into the transaction must accompany every application to the Court by a trustee or mortgagee for a provisional order consenting to a proposed transaction under s. 14 of the Servicemen's Settlement and Land Sales Amendment Act, 1946.

Objections to Valuations.

All objections to valuations under the Valuation of Land Act, 1925, must be laid before the Court in the form and the manner prescribed by that Act, and the regulations thereunder. The list of objections required to be filed pursuant to s. 25 of that statute must be filed in duplicate, but it is not necessary that a copy of the objections referred to in the list should be attached to the duplicate copy.

Appeals against Valuations of Land for Death Duty, &c.

A form (No. 6) is provided in the rules for an appeal to the Court under s. 70 of the Death Duties Act, 1921, or under s. 74 of the Stamp Duties Act, 1923, or under s. 43 of the Valuation of Land Act, 1925.

The appellant must serve a copy of the notice of appeal on the Valuer-General.

Hearing of Proceedings.

Consent without Hearing.—In determining whether it should grant consent to an application under s. 50 (1) of the Servicemen's Settlement and Land Sales Act, 1943 (which relates to farm land suitable for the settlement of one or more discharged servicemen), the Committee, without calling on the applicant or hearing evidence, may have regard to any report of the Crown Representative. Where the Committee makes an order under that section, it must give notice to the parties in the prescribed form. The provisions of this rule apply, with the necessary modifications, to any application to the Court under s. 19 of the Tenancy Act, 1948.

In all other proceedings, the Registrar must appoint a time and place for the hearing of proceedings by the Committee, and he must give notice thereof to all parties.

Mode of Taking Evidence.—The evidence of witnesses at any hearing may be taken on oath or affirmation, or by affidavit, declaration, or otherwise, as the Court or the Committee thinks fit.

Where it is intended in any proceedings to produce statements of account, farm budgets, or statements or documents of a technical nature, copies of the documents intended to be produced must be delivered to the other parties or exchanged between parties a reasonable time before the time fixed for the hearing of the proceedings. Where it is made to appear to the Courts or the Committee that a party to the proceedings has been unduly prejudiced in the conduct of his case by the failure of any other party to comply with that provision, the Court or the Committee may grant an adjournment of the proceedings, subject to such terms and conditions as it thinks fit.

Examination of Witnesses out of Court.—Where in any proceedings any party desires to have the evidence of himself or of any witness taken otherwise than at the time and place appointed or to be appointed for the hearing of the proceedings by reason of the fact that the party or the witness (*a*) is resident more than fifty miles from the place where the hearing of the proceedings is appointed to be held; or (*b*) is about to go and remain beyond that distance until after the hearing; or (*c*) is or is likely to be unable to attend the hearing through sickness or other reasonable cause, the Court or the Committee may, upon application by that party, order that the evidence of that party or of the witness be taken before any member of a Committee or before any Registrar (in this rule referred to as "the examiner").

Where any such order is made, the proceedings must be adjourned pending the receipt of the depositions from the examiner, or of his certificate that at the time and place appointed for the taking of the evidence the applicant or the witness, as the case may be, did not appear or that the applicant did not desire to proceed with the taking of the evidence.

Upon the receipt of a copy of the order for examination as aforesaid, the examiner is to appoint a time and place for the examination and give notice to the Registrar of the office of the Court in which the proceedings are filed and to all parties.

The examiner may administer an oath to each witness examined, and each witness may be examined, cross-examined, and re-examined as at the hearing of proceedings. The examiner must cause to be put down in writing the evidence tendered at the examination, together with notes as to any objections to the evidence. The depositions, when taken, must be sent without delay to the office of the Court in which the proceedings are filed.

If at any time and place appointed for the examination there is no appearance by or on behalf of the applicant or witness, or if at that time and place the applicant intimates that it is not intended to proceed with the taking of the evidence, the examiner is to forward a certificate to that effect to the office of the Court in which the proceedings are filed.

Any party may, on application to the Registrar, inspect any depositions taken under this rule and make copies thereof or extracts therefrom.

Committee's Notes.—At the hearing of any proceedings before a Committee, the Chairman or some other member of the Committee must make or cause to be made a note (*a*) of the facts given in evidence; (*b*) of any question of law raised at the hearing; and (*c*) of the Committee's decision on that question of law. The Chairman (whether the Committee's order has been appealed from or not) must, on the application upon reasonable grounds of any party to the proceedings, cause him to be furnished by the Registrar with a copy of the said note.

Appearance of Parties.

Where one party to any proceedings appears, but no other party appears, the Court or the Committee must, subject to the right of the party appearing to apply to have the proceedings struck out for want of appearance, hear his evidence and any submissions made on his behalf. Where two or more parties to any proceedings appear, the Judge or the Chairman, as the case may be, is to decide which party shall have the right to begin or to reply, and as to the order and number of addresses by counsel.

In any proceedings under the Servicemen's Settlement and Land Sales Act, 1943, or under the Tenancy Act, 1948, the Court or the Committee may in its discretion require any party or any other person to give oral evidence and to be cross-examined as to any matter arising in the proceedings or to produce any documents in his possession or control, and for that purpose may direct the issue of a witness summons under r. 35, and may adjourn the hearing for the purpose of taking that evidence.

The Court or the Committee may in its discretion, either of its own motion or at the request of any party, direct that written submissions be made either in addition to or instead of addresses by or on behalf of the parties.

Right of Audience.—Any party to any proceedings may appear and act personally or by a barrister or solicitor. Where a party is absent from New Zealand, any person holding a power of attorney from that party authorizing him to act generally for that party or to appear in any Court for and in the name of the party may appear for and represent the party in any proceedings before the Court or the Committee. A corporation may appear by any officer, attorney, or duly authorized agent of the corporation.

Orders.

Notice of Order.—Notice of the making of a final order by a Committee (except an order under s. 50 (1) of the Servicemen's Settlement and Land Sales Act, 1943) is to be given by the Registrar to the parties to the proceedings on the appropriate forms.

Committees' Orders.—In proceedings other than in relation to objections to valuations under the Valuation of Land Act, 1925, the order is to be prepared by the Registrar and signed by the Chairman, or a member of the Committee, or by the Registrar. If such an order is not appealed from within the time prescribed by s. 26 (2) of the Land Valuation Act, 1948, the Registrar is to have the formal order sealed with the Court's seal, but the formal order is not to be sealed in any case where, before the time prescribed for sealing the order, an application is pending in, or has been granted by, the Court for an extension of the time within which to appeal, or where the Court has directed, pursuant to s. 26 (3), that the order be reviewed, or that the matter be referred to the Committee for further consideration.

Orders on Objections to Valuations.—At the expiration of the time allowed for appeals against the decisions of a Committee upon objections to valuations under

the Valuation of Land Act, 1925, the Registrar is to strike off the list of objections every entry in respect of which an appeal has been lodged or in respect of which an application for reinstatement is pending under r. 29, or which has been reinstated under that rule, and shall make a note against that entry to the effect that the decision is the subject of an appeal or of an application or order for reinstatement, as the case may be. The list of objections must be annexed to an order in the Form No. 13, which is to be signed and sealed in the manner prescribed by the last preceding rule hereof.

Where, at the time of the sealing of the order of a Committee upon objections to valuations under the Valuation of Land Act, 1925, an application for reinstatement of any one or more of those objections is pending under r. 29 hereof, or any one or more of those objections has been reinstated under that rule, the Valuer-General must forthwith lodge in the Court a fresh list in duplicate of objections containing copies of the entries in the original list of objections in respect of which an application for reinstatement is so pending or has been granted, as the case may be. One copy may be a carbon copy, and it shall not be necessary to attach to the duplicate copy a copy of the objections referred to in the list.

APPEALS.

An appeal to the Court from the final order of a Committee must be brought by notice of motion, setting out the grounds upon which the appeal is based and the relief sought, and it must be filed in the office of the Court in which the proceedings are filed. A copy of the notice of motion on appeal must be served by the appellant on all other parties to the proceedings. Where any party other than the appellant desires to contend on the hearing of any appeal that the order appealed from should be varied or discharged, he must file in the Court and serve on the appellant and on the other parties to the proceedings a notice of appeal in accordance with this rule.

The prescribed time for appeal may be extended under s. 26 (1) of the Land Valuation Act, 1948, and an application for such extension is to be made by notice of motion setting out the grounds upon which it is based. A copy of the notice of motion is to be served on all of the parties of the proceedings, with an endorsed notice that any party opposing the application must, within seven days after service, lodge an objection with the Registrar.

The Chairman of a Committee from whose order an appeal is lodged must prepare for the Land Valuation Court a report setting out the reasons for his Committee's decision. Such reasons are available to the appellant, and any other party affected by the order. A decision of the Court may be delivered by the Judge or by the Registrar after he has notified the appointed time to the parties.

COSTS.

No Court fees are payable in respect of any proceedings in the Land Valuation Court, or before any Committee. Where costs are awarded to any party by the Court or the Committee, the amount of those costs and the party or parties by whom they are payable must be stated in the order.

SUMMARY OF RECENT LAW.

BIRTHDAY HONOURS.

His Honour Mr. Justice Northcroft, of Christchurch, received the honour of Knight Bachelor.

CHILD WELFARE.

Child Welfare (Immigrant Children) Regulations, 1949 (Serial No. 1949/74).

COMMON LAW.

Points in Practice. *99 Law Journal*, 159, 285.

COMPANY LAW.

Invalid Notices of Company Meetings. *99 Law Journal*, 213.

The Twilight of Preference Shareholders. *99 Law Journal*, 283.

CONTEMPT OF COURT.

Contempt of Court. *207 Law Times Jo.*, 225.

CONVEYANCING.

Covenant to Settle After-acquired Property. *99 Law Journal*, 313.

Restraint upon Anticipation within Statutory Exception. *99 Law Journal*, 284.

Trustees for Sale: Power to Invest in Land. *207 Law Times Jo.*, 227.

CRIMINAL LAW.

Points in Practice. *99 Law Journal*, 312.

Similar Acts in Criminal Cases. (E. C. McHugh.) *22 Australian Law Journal*, 502, 551.

DIVORCE AND MATRIMONIAL CAUSES.

Desertion—Divorce Suit on Grounds of Desertion—Petitioner's Adultery during Desertion Period—Effect on Continuance of Desertion—Proof of Respondent's Knowledge of Such Adultery and of Influence on Respondent's Conduct—Divorce and Matrimonial Causes Act, 1928, s. 10 (b). The principles to be applied in considering an allegation of adultery against a petitioner in answer to a petition based on desertion for three years and upwards are those stated in *Earnshaw* v. *Earnshaw*, [1939] 2 All E.R. 698, as follows: "If a spouse commits adultery after he or she has been deserted, the desertion is not necessarily terminated as a matter of law, regardless of the question whether the deserting spouse knew of the adultery or whether it had any influence on his or her conduct. If it is left in doubt whether the respondent knew of the adultery, or, if known, whether his or her conduct was affected by it, the petitioner would fail to discharge the burden of proof. The question is to be determined according to the circumstances of each case." (*Earnshaw* v. *Earnshaw*, [1939] 2 All E.R. 698, and *Herod* v. *Herod*, [1939] P. 11; [1938] 3 All E.R. 722, followed.) (*Burgess* v. *Burgess*, [1917] N.Z.L.R. 563, and *Watkins* v. *Watkins*, [1944] N.Z.L.R. 911, referred to.) Appeal from the judgment of *Fair*, J., [1948] N.Z.L.R. 1083, allowed, decree *nisi* set aside, and petition referred back to the Supreme Court for hearing and determination. *Handcock* v. *Handcock*. (C.A. Wellington. April 1, 1949. O'Leary, C.J., Northcroft, Cornish, Stanton, JJ.)

Desertion—Three Years' Period broken by Return to Cohabitation with Subsequent Separation—Revival of Condoned Offences not Applicable—"Continuously"—Divorce and Matrimonial Causes Act, 1928, s. 10 (b). Before a decree *nisi* can be granted, there must be proof of a continuous period of desertion extending over at least three years. Consequently, the principle of reviving condoned offences cannot be applied to cases of desertion, where, within the three years' period, there has been a reconciliation and return to cohabitation followed by further desertion. *Campbell* v. *Campbell*. (New Plymouth. June 13, 1949. Stanton, J.)

Joint Tenancies treated as Marriage Settlements. (Trevor Martin.) *23 Australian Law Journal*, 7.

A Note on Cruelty. (D. H. Laidlaw.) *22 Australian Law Journal*, 560.

Points in Practice. *99 Law Journal*, 200.

HUSBAND AND WIFE.

Marriage under a False Name. *99 Law Journal*, 299.

IMMIGRATION.

Immigration Restriction Regulations, 1930 (Reprint) (Serial No. 1949/44).

INDUSTRIAL CONCILIATION AND ARBITRATION.

Industrial Conciliation and Arbitration Amendment Regulations, 1949 (Serial No. 1949/40), amending Reg. 7 by omitting the words " a copy " and substituting the words " three copies," and omitting from Reg. 66 (3) the expression " £1 12s. 6d." and substituting the expression " £1 17s. 6d."

JUDICIAL CHANGES.

Lord Greene, M.R., and Sir Cyril Radcliffe, K.C., have been appointed Lords of Appeal in Ordinary (in succession to Lords Uthwatt and du Parcq recently deceased).

Lord Justice Evershed, who has been a Lord Justice of Appeal since 1947, succeeds Lord Greene as Master of the Rolls.

Mr. Justice Jenkins becomes a Lord Justice of Appeal.

Mr. Harold Otto Danckwerts, who has been Junior Counsel to the Treasury and the Board of Trade in Chancery matters and Junior Counsel to the Attorney-General in charity matters since 1941, has been appointed to the Chancery Division.

JURY.

Our Dearest and Best Inheritance. (E. E. Jay.) *23 Australian Law Journal*, 6.

LAND VALUATION.

Land Valuation Court Rules, 1949 (Serial No. 1949/82).

LANDLORD AND TENANT.

Tenancy by Estoppel. *207 Law Times Jo.*, 201.

LAW DRAFTING.

Legislative Drafting. (E. A. Driedger.) *27 Canadian Bar Review*, 291.

LAW PRACTITIONERS.

New Horizons for the Bar. (Governor Robert F. Bradford.) *27 Canadian Bar Review*, 318.

Report on the Legal Profession in Victoria: Survey of Incomes and Future Prospects in the Profession. *23 Law Institute Journal*, 75.

LEGAL EDUCATION.

The Problem of Legal Education. (G. W. Keeton.) *27 Canadian Bar Review*, 283.

MAGISTRATES' COURT.

Judicial Valour and Its Better Part. *113 Justices of the Peace Jo.*, 230.

MOTOR-VEHICLES INSURANCE.

Motor-vehicles Insurance (Third-party Risks) Regulations, 1939, Amendment No. 8 (Serial No. 1949/59), fixing the annual premiums payable under the Motor-vehicles Insurance (Third-party Risks) Act, 1928, for the licence year commencing on July 1, 1949.

NEGLIGENCE.

Breach of Statutory Duty: Defective Condition of Factory Premises. *207 Law Times Jo.*, 200.

The Duty of " The Driver on the Right." (N. E. Burbank.) *22 Australian Law Journal*, 558.

Negligence and Drunkenness. (J. P. Burke.) *23 Australian Law Journal*, 2.

NUISANCE.

Injunction — Public Nuisance — Cattle Saleyards — Offensive Smells and Attracting of Flies and Mosquitoes likely to affect Health of Nearby Residents—Matters not constituting Defence to Injunction Proceedings but relevant to Form of Injunction—Terms of Injunction granted—Nature of Statutory Injunction restraining Nuisance dangerous to Health—Health Act, 1920, ss. 26, 28. The sheep and cattle saleyards of the defendants in one of the principal streets of Johnsonville, and within the area of the Johnsonville Town Board, had been in use for more than sixty years, from a time when Johnsonville was a village isolated in rural land, until the commencement of these proceedings, when the town had a population of between 3,000 and 4,000, including the residents of a State housing area in the vicinity of the yards. A great number of sheep and cattle were brought thereto by rail or road, the yards being used for the disposal of nearly all the stock required by butchers for retail sales in the City of Wellington, and there stock were slaughtered at the Wellington City abattoirs. Stock sales took place in the yards regularly three times in each fortnight. From 1938 onwards, there were complaints that the use of the yards constituted a public nuisance on account of, *inter alia*, the insanitary condition of the yards and pens giving rise to unpleasant odours, and their constituting a breeding-ground for flies and mosquitoes. The saleyards had never complied with the Health Act, 1920, and the regulations made thereunder relating to saleyards, and they were never registered as thereby required, because the supply of water available from the relator, the Johnsonville Town Board, itself was inadequate, and the owners of the saleyards considered it useless to incur the expense of doing the work necessary to put them into, and keep them in, a sanitary condition by concreting the floor and supplying proper drains so long as an adequate supply of water was lacking to enable them to flush the yards properly. The result had been, as the evidence (for the most part uncontradicted) showed, a continuing condition constituting a nuisance likely to affect the health of the people in the vicinity. The defendants, the Town Board, and the Government authorities had had several meetings, and much correspondence had passed between them with a view to finding another suitable site to which the saleyards could be removed, because the closing of the saleyards, without a satisfactory substitute being found, could greatly inconvenience the farmers, the Railways, and the City authorities (as was admitted). Eventually, when the matter could be taken no further by negotiations or agreement, the Attorney-General, on the relation of the Johnsonville Town Board, sought an injunction restraining the defendants from using the saleyards or permitting them to be used as stock and cattle saleyards, on the ground that their use constituted a public nuisance. In the Supreme Court, *Christie*, J., assumed from the evidence that the use of the saleyards constituted, in the circumstances, a public nuisance; but, in the exercise of his discretion, he refused an injunction. On appeal from that judgment, *Held, per totam curiam*, 1. That the insanitary condition of the saleyards—offensive odours from unremoved manure and stagnant urine,and the attracting of flies and mosquitoes—constituted a nuisance likely so generally to affect, or to be a danger to, the health of all residents in the vicinity as to amount to a public nuisance, in that it was a sensible interference with their common right as the King's subjects to the enjoyment of life and property and the ordinary comfort of human existence. (*Polsue and Alfieri, Ltd.* v. *Rushmer*, [1907] A.C. 121; affg., [1906] 1 Ch. 234, *Crump* v. *Lambert*, (1867) L.R. 3 Eq. 409, *Walter* v. *Selfe*, (1851) 4 DeG. & Sm. 315; 64 E.R. 849, and *Soltau* v. *De Held*, (1851) 2 Sim.N.S. 133; 61 E.R. 291, applied.) 2. That, as an injunction was the only adequate remedy for the plaintiff, certain considerations (as set out in the several judgments—for example, circumstances of hardship and convenience, and the public interest) might be relevant in settling the form of relief to be given, especially as to the time and opportunities which should be given the defendants for finding a way out of their difficulty, but those considerations were irrelevant to any legal aspects of the position, and constituted no defence to the proceedings to deprive the plaintiff of his right to have the injunction. (*Attorney-General* v. *Colney Hatch Lunatic Asylum*, (1868) L.R. 4 Ch. App. 146, *St. Helen's Smelting Co.* v. *Tipping*, (1865) 11 H.L. Cas. 642; 11 E.R. 1483, *Stollmeyer* v. *Trinidad Lake Petroleum Co., Ltd.*, [1918] A.C. 485, *Shelfer* v. *City of London Electric Lighting Co.*, [1895] 1 Ch. 287, *Price's Patent Candle Co., Ltd.* v. *London County Council*, [1908] 2 Ch. 526, and *Attorney-General* v. *Cole and Son*, [1901] 1 Ch. 205, applied.) (*Attorney-General* v. *Sheffield Gas Consumers Co.*, (1853) 22 L.J. Ch. 811, *Attorney-General* v. *Cambridge Consumers' Gas Co.*, (1868) 38 L.J. Ch. 94, and *Attorney-General* v. *Grand Junction Canal Co.*, [1909] 2 Ch. 505, distinguished.) (*Bamford* v. *Turnley*, (1862) 3 B. & S. 66; 122 E.R. 27, referred to.) 3. That an injunction should be granted restraining the defendants from using or permitting the land in question to be used as a stock and cattle saleyards in an offensive or insanitary condition so as to occasion a nuisance to the residents of Johnsonville, the injunction to be suspended for twelve months with liberty to apply (if thought fit) to a Judge for an extension of the period of suspension. Per *Kennedy*, *Gresson*, and *Hutchison*, JJ., That, with respect to the allegations of noise from the stock and cattle, and the danger from their passage through the township on the way to and from the saleyards, the evidence did not prove something in the nature of a public nuisance. Per *Kennedy* and *Finlay*, JJ., That (without deciding whether a remedy lies by way of injunction to restrain a nuisance merely declared to be such by the Health Act, 1920, or for a breach of that statute and the regulations thereunder) the saleyards would be a nuisance within s. 26 of that statute as amended by

s. 15 (2) of the Statutes Amendment Act, 1943. Per *Gresson*, J., That the evidence established (in addition to a material interference with the comfort and convenience of life of the persons residing or coming within the sphere of influence of the saleyards, which amounted to a public nuisance) a statutory nuisance within the meaning of s. 26 of the Health Act, 1920, in respect of which an injunction would be the appropriate remedy; and that s. 28 of that statute leaves the remedy by way of injunction at common law unbridged and unaffected. Appeal from the order of *Christie*, J., allowed, the injunction to be granted on terms, as above. *Attorney-General* v. *Abraham and Williams, Ltd., and Another*. (C.A. Wellington. April 6, 1949. O'Leary, C.J., Kennedy, Finlay, Gresson, Hutchison, JJ.)

PRACTICE.

The Modern Appeal in Civil Cases. (Hon. C. H. O'Halloran.) *27 Canadian Bar Review*, 259.

Rules Committee. The Right Hon. the Chief Justice has appointed as members of the Rules Committee Mr. Justice Kennedy, Mr. Justice Callan, Mr. Justice Gresson, Mr. Justice Hutchison, and Messrs. W. J. Sim, K.C., T. P. Cleary, and W. P. Shorland, each to hold office until December 31, 1951. (*1949 New Zealand Gazette*, 884.)

PUBLIC REVENUE.

Social Security—Trustee resident in New Zealand—Deduction from Trust Income to reimburse Trustee for Legal Costs and Other Expenses of Administration of Trust—Such Amount liable for Social Security Charge and National Security Tax—"Resident in New Zealand"—Social Security Act, 1938, ss. 110, 124—Finance Act, 1940, ss. 16, 17. The appellant was the sole trustee of an estate, the income of which under the testator's will was to be held on trust for one P., deceased, absolutely, subject to the payment thereout of certain annuities. During the income year ended March 31, 1945, the income for the purposes of the Social Security Act, 1938, amounted to £1,036 8s. 1d., of which £85 2s. 10d. was retained by the trustee to reimburse himself for expenditure by way of legal and other expenses incurred in administering the trusts of the will. It was common ground between the parties that the last-mentioned sum was not also income derived by a beneficiary entitled in possession to the receipt thereof under the trust during the same income year, and was not, and never had been, held by the trustee for a beneficiary whose interest therein was vested, and who would not be personally liable for the charge imposed by the Act on that income if it had been paid to him in the year in which it was derived by the trustee. The Commissioner of Taxes, pursuant to s. 124 of the Social Security Act, 1938, and Part II of the Finance Act, 1940, assessed the appellant for Social Security charge and National Security tax on £85 2s. 10d. On appeal by way of case stated pursuant to s. 35 of the Land and Income Tax Act, 1923, *Held*, dismissing the appeal, That, as the appellant trustee was resident in New Zealand, and the sum of £85 2s. 10d. was properly included in the income derived by him, such sum attracted, pursuant to s. 124 (1) of the Social Security Act, 1938, and Part II of the Finance Act, 1940, the charge thereby imposed. (*Commissioner of Taxes* v. *Johnson and Maeder*, [1946] N.Z.L.R. 446, followed.) *Brown* v. *Commissioner of Taxes*. (Wanganui. May 24, 1949. Hay, J.)

SERVICEMEN'S SETTLEMENT AND LAND SALES.

Servicemen's Settlement and Land Sales Regulations, 1949 (Serial No. 1949/81). The Servicemen's Settlement and Land Sales Regulations, 1943, and Amendments Nos. 1, 2, and 3 are revoked. The new Regulations provide that nothing in Part III of the Servicemen's Settlement and Land Sales Act, 1943, shall apply with respect to (*a*) any transaction with respect to coal-mining rights for which the consent of the Minister of Mines is required under s. 26 of the Coal-mines Act, 1925; (*b*) any contract or agreement for the sale, transfer, or subleasing of the whole or any part of the estate or interest created by a coal lease granted by the Minister of Mines under s. 173 of the Coal-mines Act, 1925; (*c*) any contract or agreement whereby there is created or transferred a *profit à prendre* under which there is vested in any person the right to cut down and remove standing timber or trees, if the contract or agreement confers on the grantee or transferee no interest in any land, other than the interest which he obtains by reason of the *profit à prendre* becoming vested in him.

TRANSPORT LICENSING.

Grant of Licence—Statutory Preference given to Minister of Railways and Others—Extent of Such Preference—Preference not extending to Route in part covered by existing Transport Service—"Preference"—"Extension"—Transport Licensing Act, 1931, ss. 27, 28. The preference to be given over all other applications pursuant to s. 27 of the Transport Licensing Act, 1931, to an application on behalf of the Minister of Railways, *inter alios*, for a passenger-service licence extends to a route not covered by an existing transport service; but such preference does not extend to a route in part covered by an existing transport service. If s. 27, which merely gives a preference over competing applications, applies, the Minister of Railways is entitled to preference, but the section does not go as far as giving him an absolute right to the grant of a licence, as all applications, including the application on behalf of the Minister, must be judged by the tests which the statute provides. Consequently, the Licensing Authority has power, under s. 28 (1), to refuse a licence to the Minister for precisely the same reasons as would justify him in refusing a licence to any other person. *So held* by *Kennedy*, *Finlay*, and *Hutchison*, JJ., in answer to certain of the questions asked on the case stated by the Transport Appeal Authority for the opinion of the Supreme Court. Per *Finlay*, J., That a transport service ceases to be an extended service within the meaning of the word "extension" as used in s. 27 (*b*) if it is designed or calculated to do more than extend to a point or points within the area serviced generally by the existing service. (*In re Lewis Pass Application*, (1947) *Dixon's Transport Appeal Decisions*, 190, approved.) (*Newman Bros., Ltd.* v. *Allum and S.O.S. Motors, Ltd.*, [1934] N.Z.L.R. 694, and *Shanghai Corporation* v. *McMurray*, (1900) 69 L.J. P.C. 19, referred to.) Per *Gresson*, J., 1. That s. 27 of the Transport Licensing Act, 1931, subject to the Licensing Authority being satisfied as to the matters referred to in s. 27 (*c*), entitles the Minister of Railways to a statutory preference in respect of applications made by him. A preference is to be given only if certain conditions are fulfilled; and it must, therefore, on this aspect of the matter, always be a matter of weighing the favour the Legislature has shown to the Minister against any unfairness that may result. In the absence of any unfair competition by the proposed service with an existing service to the same locality by another route, the licence must go to the favoured applicant, provided the other conditions set out in paras. (*a*), (*b*), and (*d*) of s. 27 are complied with; and whether or not these conditions are fulfilled is a question of fact. 2. That the preference given by s. 27 (*a*) does not apply to a proposed route merely because some part of that route is not traversed by an existing transport service; and preference is not necessarily excluded because a route is in part traversed by an existing transport service. It is a question of fact and of degree, and a matter to be decided (subject to appeal) by the Licensing Authority. 3. That it is not practicable to lay down any definition of the word "extension" in s. 27 (*b*) which will meet every case: it is substantially a question of fact to be determined by the Licensing Authority, or to be considered by the Transport Appeal Authority on appeal. Per *Hutchison*, J., That the word "extension" as used in s. 27 (*b*) of the Transport Licensing Act, 1931, is something that is supplementary to an existing service, or (if a branch) is something that serves the area generally served by the existing service, and is small relatively to the existing service, and so far as it may open up a new area, its object is to assist an existing service. Consequently, the term "extension" as so used means one only over a piece of road on which there is no existing transport service, and not one over a length of road that in part is traversed by an existing service, though, as to the rest of it, it is not traversed by an existing service. (*In re Lewis Pass Application*, (1947) *Dixon's Transport Appeal Decisions*, 190, adopted.) *In re Hawke's Bay Motor Co., Ltd., and Minister of Railways*. (F.C. Wellington. March 25, 1949. Kennedy, Finlay, Gresson, Hutchison, JJ.)

TRUSTS AND TRUSTEES.

Trustees' Powers of Investment. *207 Law Times Jo.*, 201.

TRUSTEE SAVINGS BANKS.

Trustee Savings Banks Regulations, 1949 (Serial No. 1949/38).

Trustee Savings Banks (Remunerations) Regulations, 1949 (Serial No. 1949/39).

WAR EMERGENCY REGULATIONS.

Emergency Regulations Defence Areas (Farming) Emergency Regulations Revocation Order, 1949 (Serial No. 1949/58), revoking the Defence Areas (Farming) Emergency Regulations, 1944.

War Service Gratuities Emergency Regulations, 1945, Amendment No 2 (Serial No. 1949/45).

LAND TRANSFER: CHAIN OF REPRESENTATION OF TITLE ON TRANSMISSION.

Section 4 of the Administration Act, 1908.*

By E. C. ADAMS, LL.M.

In (1944) 20 NEW ZEALAND LAW JOURNAL, 79, I pointed out that the legal estate vested in an administrator did not pass to his executor, nor did the legal estate vested in an executor pass to the administrator of such executor; in both cases, the chain of representation of title was broken, and a fresh grant *re* the original estate was necessary. Perhaps I should have added that in 1912, in an unreported case, His Honour Mr. Justice Williams held that, where a testator appoints A and his executors and administrators as executors of testator's will, then, if A dies intestate, the administrator of his estate is the executor of such testator's will, and a fresh grant is not necessary.

Let us consider for a moment the well-known case of *In re Clover*, [1919] N.Z.L.R. 103. Emma Clover died intestate, and Samuel Clover was appointed her administrator by the Court. Later, Samuel Clover died, and administration in his estate was granted to his executors.

After stating that, in his opinion, the executors of Samuel Clover *did not represent for all purposes* the estate of Emma Clover of which he was administrator, Hosking, J., said, at pp. 103, 104:

> As regards real estate it is provided by s. 4 of the Administration Act, 1908, that, immediately upon the granting of dministration of the estate of any deceased person, all the eal estate then unadministered of such person, whether held by him beneficially or in trust, shall vest in the administrator to whom such administration is granted for all the estate therein of such person. This provision, no doubt, by virtue of the interpretation section, applies both to the case of an executor and to that of an administrator as distinct from an executor; but in my opinion it has not the effect of transmitting the office of administrator to the executor of a deceased administrator. If that were the meaning one would not expect to find the vesting confined to unadministered real estate without mentioning unadministered personal estate. The provision for the vesting of the real estate was obviously desirable for the purpose of carrying out the assimilation for the purposes of the Act of real estate to personal estate, and for vesting the real estate in the same person and at the same time as the personal estate.

It must be pointed out, however, that, at the time of the application to the Court in *In re Clover* (*supra*), the original estate, that of Emma Clover deceased, had not been cleared: there was still owing a mortgage debt which had been created by Emma Clover. (Similarly, there was a mortgage debt owing in *In re Hepburn*, [1918] N.Z.L.R. 190, where the last surviving executor of the original estate died intestate.) This case, therefore, is not exactly on all fours with many which crop up in practice, where all the debts have been paid. But note His Honour's remarks, in *In re Clover*, [1919] N.Z.L.R. 103, 105, that, when the object of obtaining a fresh administration is merely to enable title to land to be given or perfected, administration limited to that particular purpose may be applied for.

The same point of conveyancing law and procedure has recently been troubling our Australian brethren.

A firm of solicitors in Bathurst has criticized the note to s. 45 of the Wills, Probate, and Administration Act, 1898 (N.S.W.), in *Hastings and Weir's Probate Practice*: this criticism is published in (1948) *22 Australian Law Journal*, 316, and the same number also contains the clear reply of one of the joint authors, Mr. Hastings. The spectacle of a law text-book writer dealing with his critics is indeed a rare but refreshing one.

The firm of solicitors contends that, although the legal representative of a deceased administrator is not clothed with the powers of the administrator, nevertheless, until the appointment of an administrator *de bonis non*, the bare legal estate does pass to such legal representative by virtue of s. 45 of the Wills, Probate, and Administration Act, 1898, which appears to be to the same effect as s. 4 of our Administration Act, 1908. Now, if the position were as stated by the Australian firm of solicitors, and that position also prevailed in New Zealand, the expense and delay of obtaining letters of administration *de bonis non* or appointment of a new administrator under s. 37 of the Administration Act, 1908, would often be avoided. The legal representative of the administrator, or the administrator of the last surviving executor, could get on to the Register Book by transmission, and then could deal with the land as if it were his own: s. 124 (2) of the Land Transfer Act, 1915. In the absence of a caveat lodged by a beneficiary or the Registrar, the Registrar could not question such a dealing, if it appeared to be in order. In the absence of *fraud* (which means actual dishonesty) on his part, the purchaser, lessee, or mortgagee, on registration of his dealing, would get an indefeasible title: *Boyd* v. *Mayor, &c., of Wellington*, [1924] N.Z.L.R. 1174, *In re Fairbrother to Allen*, (1896) 15 N.Z.L.R. 196, and *Burke* v. *Dawes*, (1938) 59 C.L.R. 1. But unfortunately that is not the present position in New Zealand: *Public Trustee* v. *Registrar-General of Land*, [1927] N.Z.L.R. 839, which establishes that a fresh grant of administration *re* the original estate is necessary.

Mr. Hastings, the author, in his reply to the solicitors, at p. 317, admits that in *In the Estate of Davis*, (1898) 19 N.S.W.L.R. (B. and P.) 18, Mr. Justice Simpson expressed the view that the bare legal estate vested in the representative of a deceased executor. In 1907, however, the same Judge reconsidered the question in *Re Estate of Webb*, 24 N.S.W. W.N. 208, and expressed doubt whether the estate vested in the executor of the deceased administrator or in the Chief Justice under s. 61. The decision in *In the Estate of Hall*, (1896) 17 N.S.W.L.R. (B. and P.) 12, in Mr. Hastings's opinion, should also be considered as not supporting *In the Estate of Davis* (*supra*). Mr. Hastings also states:

> In the notes, we have given, with authorities, the general law regarding the chain of administration only and advise the taking out of administration *de bonis non* where the chain is broken . . . Various experienced solicitors with whom the question has been discussed would not accept title without administration *de bonis non*.

* Readers may refer to the contrary opinion expressed in (1946) 23 NEW ZEALAND LAW JOURNAL, 192, 312.

In the next number of (1948) *22 Australian Law Journal*, at p. 371, the debate is wound up by a correspondent in favour of the authors. The correspondent correctly points out that in *Maddock* v. *Registrar of Titles of the State of Victoria*, (1915) 19 C.L.R. 681, which turned on Victorian legislation in identical language to the New South Wales Wills, Probate, and Administration Act, 1898, s. 45, the High Court held that the legal estate vested in an administrator did not pass on his death to his executor, but vested without any transfer in the administrator *de bonis non* of the original deceased.

Now, as *Maddock* v. *Registrar of Titles of the State of Victoria* (*supra*) is one of the cases relied on by Sir Charles Skerrett, C.J., in the leading New Zealand case of *Public Trustee* v. *Registrar-General of Land* (*supra*), a close examination of these two cases is necessary for a sound appreciation of the legal principles involved.

Maddock v. *Registrar of Titles of the State of Victoria* (*supra*) was an application by transmission by the executors of a deceased administrator *cum testamento annexo*. The original deceased had died in 1907, and on March 11, 1908, had by transmission become registered as proprietor, as administrator—*i.e.*, in a representative capacity as representing the original deceased. The administrator had died on June 24, 1913, and probate of his will had been granted to his executors on August 15, 1913.

There is nothing in the report of the facts to show whether or not the administrator at the date of his death had paid the deceased's debts and the legacies payable under deceased's will; apparently this point was considered immaterial.

The highest Court in Australia unanimously held that the application for transmission must be rejected.

The view of Sir Samuel Griffith, C.J., as expressed at p. 689, was that the Legislature, by the various sections of the Acts in that case considered (which legislation has its counterpart in New Zealand), had not purported to alter the character of the office of executor or administrator, *but, taking those offices as it found them*, it vested in the holder of the office the real as well as the personal estate of the deceased, and cast upon them identical duties with respect to both. At p. 689, he summarized the position thus:

> In the case of an executor, since the office of executor is transmissible, the estate of the testator unadministered at the death of the executor is, if the chain is unbroken, transmitted at his death to his executor, if any. In the case of an administrator, the office not being transmissible, a fresh grant must be made as to the hereditaments "then unadministered."

In *Public Trustee* v. *Registrar-General of Land* (*supra*), Sir Charles Skerrett, C.J., goes even further than this, and specifically includes a case where the administrator had completed his administration at his death. This case is binding on the Land Transfer Department, and appears to show that, with reference to land under the Land Transfer Act, the definition of "transmission" in that Act, as amended by the Amendment Act, 1925, must be considered. The remarkable fact about this judgment is that nowhere is s. 4 of the Administration Act, 1908, mentioned, but it is not to be supposed that such an eminent Judge as Sir Charles Skerrett, C.J., overlooked that section. He bases his judgment to a great extent on *Maddock's* case (*supra*), and in that case the New South Wales counterpart of s. 4 of the Administration Act, 1908, is examined carefully and minutely analysed by a very strong Bench, including Sir Samuel Griffith, C.J., and (as he then was) Mr. Justice Isaacs.

In *Public Trustee* v. *Registrar-General of Land*, [1927] N.Z.L.R. 839, one Jack had died intestate, leaving (*inter alia*) a parcel of land under the Land Transfer Act. Administration of his estate was granted to Mrs. Jack, his widow, who had caused herself to be registered by transmission as the owner of an estate in fee simple of and in her husband's land. Mrs. Jack, the administratrix, died after having paid all the debts in her husband's estate and collected all his assets. Mrs. Jack left a will, probate whereof was granted to the Public Trustee, as appointee of the executor therein named. The Public Trustee therefore became the executor of Mrs. Jack. In these circumstances, he claimed by transmission to be registered as proprietor of Mr. Jack's land.

The leading and the essential feature of our Land Transfer system is that title is given by registration. No person but the proprietor appearing on the official Register is recognized as the owner or proprietor of the land affected by it.

With a few exceptions, authorized by other statutes, all derivative estates and interests must be derived from a registered proprietor. Thus, a transfer or lease of the land must be from the proprietor actually on the Register. (This is why a lease of land by the life tenant under the Settled Land Act must be executed also by the registered proprietor for the time being: *In re Real, McDowell* v. *Real*, (1914) 33 N.Z.L.R. 1342, 1346.)

At p. 841, Sir Charles Skerrett, C.J., continues as follows, very much along the lines of *Maddock's* case (*supra*):

> The first thing to be done in the present case is to ascertain who is the registered proprietor of the land in question. The registered proprietor is the administratrix, Mary Ann Jack, under letters of administration of the estate of her husband granted by the Supreme Court. It is clear that the executor of her will is not entitled to represent the administratrix of the original intestate. A grant *de bonis non* or a grant under s. 37 of the Administration Act is necessary to enable a person to represent the estate and interest of the original intestate.

It will be recollected that the application of the Public Trustee to be registered as proprietor of Mr. Jack's land was by *transmission*. Under the Land Transfer Act, 1915, as amended by the Amendment Act, 1925, "transmission" means the acquirement of title to an estate or interest by *operation of law*. The definition of "transmission" in *Maddock's* case (*supra*) was certainly different, but, as one of the Judges in that case interprets it as meaning a passing of the statutory registered estate by *operation of law*, the difference in the definitions, for the purposes of the precise point now under consideration, is, as Sir Charles Skerrett, C.J., impliedly decides, quite immaterial.

The very kernel of the decision in *Public Trustee* v. *Registrar-General of Land* (*supra*) is that the definition of "transmission" in our Land Transfer Act must be read as meaning the acquirement of title to an estate or interest of the last person whose name is entered in the ordinary way as the proprietor of the estate or interest *in his own right*.

A person who gets on to the Register by transmission, as an executor or administrator, is not registered in his own right, but in a representative capacity, as representing the original deceased registered proprietor.

Sir Charles Skerrett, C.J., continues, at p. 843 :

> In the present circumstances the Public Trustee is not the representative of the intestate nor of the last proprietor of the land named in the title. By reason of the grant of probate of the will of the administratrix the Public Trustee does not succeed by operation of law or otherwise to the estate of the original intestate, or to the estate, right, or interest of the widow as administratrix appointed under the order of the Court. The Public Trustee in no way represents the original owner of the land. There is, therefore, no power or jurisdiction, in my opinion, which would justify the Registrar-General of Land in entering the name of the Public Trustee on the certificate of title as the registered proprietor of the land by transmission.

The last paragraph of the judgment is also most important. Even assuming that Mrs. Jack, after completion of her duties as administratrix, had effectively declared a trust of the surplus assets of Mr. Jack (including this parcel of land under the Land Transfer Act) in favour of Mr. Jack's next-of-kin, there was no machinery by which the Public Trustee could procure himself to be registered as proprietor. He did not succeed *by operation of law* to Mr. Jack's property as in any way representing Mr. Jack, and s. 80 of the Land Transfer Act does not apply to land under the Land Transfer Act. It is in this respect (the assumption that Mrs. Jack had made an effective declaration of trust) that this case goes further than *In re Clover*, [1919] N.Z.L.R. 103, and any Australian case which I have had an opportunity of reading, and it is in this respect that the learned Chief Justice impliedly deals with any argument which could be based on the rather puzzling wording of s. 4 of the Administration Act, 1908.

There is, of course, a vast difference between the registration under the Land Transfer Act of a person by virtue of a transmission in a representative capacity, and the registration of a person as proprietor under a memorandum of transfer: *Wolfson* v. *Registrar-General of New South Wales*, (1934) 51 C.L.R. 300, and *In re Mangatainoka 1 Bc No. 2*, (1913) 33 N.Z.L.R. 23.

A person registered by virtue of a transfer must be deemed to be registered in his own right, for no notice of trust may be noted on the Register. Thus, if an executor purchases land on behalf of the estate, he gets on to the Land Transfer Register by transfer, and, on his death intestate, the registered statutory estate would pass to his administrator; any such transmission would be registered without question. *A fortiori*, a trustee purchasing land and getting on to the Register by transfer would have his registered estate transmitted to his administrator by virtue of s. 4 of the Administration Act, 1908.

MR. JUSTICE NORTHCROFT'S KNIGHTHOOD.

Congratulations from the Bar.

Members of the profession in Christchurch and the staff of the Supreme Court gathered on the morning of June 10 to congratulate Mr. Justice Northcroft on the knighthood conferred upon him in the Birthday Honours.

The President of the Canterbury District Law Society, Mr. E. S. Bowie, said :

" The large attendance of the Bar to-day signifies the wish of the legal profession in the Canterbury district to tender respectful congratulations to you on the honour conferred on you by His Majesty the King.

" It is not customary on such an occasion for long addresses to be delivered ; but brevity in speech cannot diminish the warmth of our pleasure or the sincerity of our congratulations."

His Honour said he was deeply sensible of the honour that His Majesty the King had done him. He was equally sensible and deeply appreciative of the gathering.

LAND VALUATION COURT.

Summary of Judgments.

The passing of the Land Valuation Act, 1948, and the concentration in the Land Valuation Court of cases under the Servicemen's Settlement and Land Sales Act, 1943, have rendered it necessary to commence a new series like the summary of the judgments previously given by the Land Sales Court, which has ceased to function.

The judgments of the Land Valuation Court are not intended to be treated as reports of judgments binding on the Court in future applications, each one of which must be considered on its own particular facts. The reasons for the Court's conclusions in any one appeal may, however, be found to be of use as a guide to the presentation of a future appeal, and as an indication of the Court's method of considering and determining values. All judgments of the Land Valuation Court which are considered to be of value to the profession will appear in this place in future copies of the JOURNAL.

No. 3.—J. TO J.

Rural Land—Dwelling erected in 1947—Method of Valuation—Whether based on 1943 Costs or Costs at Date of Erection—" Fair value "—Principles applied to Town and Country Buildings—Servicemen's Settlement and Land Sales Act, 1943, ss. 53 (2) (d), 54—Servicemen's Settlement and Land Sales Amendment Act, 1946, s. 6.

Case relating to the sale of a farm property. The Wellington Rural Land Valuation Committee sought directions whether a new house, erected in 1947, should be valued on the basis of 1942 costs or on the basis of costs ruling at the date of erection.

April 11, 1949. The Court directed : " In the case of a house built in 1947 on urban land, no difficulty arises, as it is the acknowledged practice of the Court to value town buildings erected since 1942 on the basis of costs ruling at the date of erection. As it is now contended by the Crown, however, that a different principle should be applied to new buildings erected upon farms, it is desirable to examine the reasons for the practice adopted in the case of town properties. By s. 54 of the Servicemen's Settlement and Land Sales Act, 1943, it is provided that the basic value of urban land shall be the value thereof as at December 15, 1942, ' increased or reduced by such amount as the Committee deems necessary to make it a fair value

for the purposes of the Act.' By s. 54 (2) (*b*) (now repealed), it was provided that, in determining whether it was necessary to make any such increase or reduction, the Committee should consider (*inter alia*) any increase or reduction since December 15, 1942, in the value of the improvements on the land. Acting under the statute in its original form, Committees and the Court deemed it necessary, in order to arrive at a fair value in the case of new houses on town properties, to have regard to the costs ruling at the date of erection. This view was not challenged by the Crown, and was subsequently given statutory authority by s. 6 of the Servicemen's Settlement and Land Sales Amendment Act, 1946, which replaced the original subs. 2 (*b*) of s. 54. This amendment was not intended, it is conceived, to change the method of valuation of buildings erected since 1942 (as to which the Court's existing practice was confirmed), but was intended to make clear that buildings in existence in 1942 were not to be deemed to have appreciated in value on account of increases in the cost of building since that date. The position, then, in respect of urban buildings erected since 1942 is that the Court has always deemed it necessary to have regard to costs ruling at the date of erection in order to arrive at the fair value which it is its duty to find under s. 54 of the original Act, and the propriety of this practice has now been acknowledged by the Legislature.

"The assessment of a basic value in the case of farm land is governed by s. 53 of the principal Act, and differs from the case of urban land in that it is based on productive value, instead of on market value. Apart, however, from its provisions relating specifically to productive value and its assessment, the general structure of s. 53 has much in common with s. 54. Under each section, the ultimate obligation imposed on the Committee is to determine a 'fair value' for the purposes of the Act. In each case, the assessment is envisaged as one of two steps. Under s. 53, and in respect of farm land, the Committee has first to find the productive value. Under s. 54, in respect of urban land, it must first find the market value. In each case, this stage of its assessment is tied to costs, prices, and values ruling at December 15, 1942. Then, and also in each case, the Committee is both empowered and enjoined to make such additions to or deductions from the productive value, or market value, as the case may be, as may be necessary in order to arrive at a fair value for the purposes of the Act.

"Notwithstanding the similar construction of the two sections, and the interpretation placed on s. 54 in respect of town buildings erected since 1942, the Crown claims that, in the case of new buildings on farm lands, the cost of erection must be disregarded, and the buildings valued on the basis of 1942 costs. Two arguments are advanced in support of this contention. The first is that to have regard to the actual cost of buildings erected since 1942 is inconsistent with the general principle that the basic value of a farm property is its productive value in December, 1942. The second relates to the difference in wording between s. 53 (2) (*b*) and s. 54 (2) (*b*) in its original form.

"The first of these arguments confuses 'basic value' and 'productive value.' The productive value, assessed by reference to 1942 costs and prices, is the first thing which the Committee is required to find. It does not follow, however, that the productive value is necessarily the basic value. The basic value of farm land is the fair value which results when all necessary adjustments to the productive value have been made. It is begging the question, therefore, to contend that on principle no adjustment which involves an addition to the productive value may be contemplated.

"As to the second point, we are unable to find in the wording of s. 53 (2) (*b*) anything which necessitates the application to farm properties of a principle diametrically opposed to that which has been applied to urban properties under the corresponding s. 54 (2) (*b*). In any case, the erection since 1942 of new buildings is, in our opinion, a matter affecting the land, and one, therefore, to which the Committee is entitled to have regard under s. 53 (2) (*d*).

"Shorn of technical objections, the real issue is whether it is fair to a farmer to fix the basic value of his land on the assumption that a house erected in 1947 was built at 1942 costs. On this fundamental issue, we see no reason why a farmer should be deprived of the benefit of the method of assessment which it has been deemed necessary to apply in the case of urban lands on grounds of fairness and equity. That the contrary view leads to unreasonable results is illustrated by a simple calculation, based on facts similar to those in the present case:

A and B in partnership buy farm land in 1945 at approved price of		£12,000
A and B erect buildings in 1947 to value (based upon 1947 costs) of		3,000
Total partnership investment		£15,000
Share of capital provided by each partner ..		£7,500
A now wishes to sell his share to B for ..		£7,500
But the Crown claims to value the property at purchase price 1945 ..	£12,000	
New buildings at 1942 costs	2,000	
	£14,000	
Value of A's half-share		£7,000

"The Crown says, in effect, that, on a dissolution of partnership, A, who, in common with B, has put £7,500 into the joint property, is entitled to £7,000 only for his share. If, however, the partnership property had been a city block, the Crown would not question A's right to receive £7,500.

"We find no justification for applying different principles to town and country buildings, and are of opinion that in each case it is necessary, where new buildings have been erected since December, 1942, to have regard to the costs ruling at the date of erection in order to arrive at the fair value of the property concerned.

"The Court's direction to the Wellington Rural Land Valuation Committee is that, in considering the value of improvements on farm lands, it should value buildings erected since 1942 on the basis of costs ruling at the date of erection, but subject to the costs incurred being reasonable and the buildings suitable for the property intended to be served, and to a proper allowance (if necessary) for depreciation and maintenance. If the value as so assessed discloses an excess in the value of buildings, it will then be for the Committee to determine the extent to which, in accordance with the Court's decision in *No. 88.—In re B.*, (1946) 22 N.Z.L.J. 262, it is reasonable to increase the productive value on that account in order to make the basic value a fair value as between the parties and having regard to the purposes of the Land Sales Act."

FAREWELL TO MR. A. M. GOULDING, S.M.

On his Appointment to the Licensing Commission.

On May 30, on the eve of his completing his magisterial duties in Wellington, Mr. A. M. Goulding, S.M., who has been appointed Chairman of the Licensing Commission, was farewelled by the profession, the Police, and the Court staff.

The large Magistrates' Court was filled with the great attendance of local practitioners who had come to say farewell to their Senior Magistrate, and to express their unanimous appreciation of his fitness for the responsible position to which he had been called.

On the Bench with Mr. Goulding were Mr. A. A. McLachlan, S.M., who succeeds Mr. Goulding as Senior Magistrate, and Mr. J. L. Hanna, S.M.

THE LAW SOCIETY.

The first speaker was the President of the Wellington District Law Society, Mr. W. E. Leicester, who, addressing Mr. Goulding, said:

"The very large attendance of members of the Wellington District Law Society this morning is in itself an eloquent testimony to your worth. On their behalf, I desire to express to you our regret at your relinquishment, for the present, of the magisterial duties which you have carried out so successfully, and to convey to you our congratulations and good wishes on your appointment as Chairman of the Licensing Commission.

"You came to us in 1938, after having had a short but distinguished career in the Army, and the advantage of private

practice, and after having been a lecturer in Law for some nine years at the Auckland University College. These assets of leadership and legal knowledge enabled you immediately to sidestep, if not to avoid altogether, those pitfalls which usually confront a newly made Magistrate. We soon found that, while you listened with patience to tall stories and specious arguments, they availed practitioners but little in your Court. Sometimes we could have wished that a sentence might have been lighter or a judgment different; but I can say in all sincerity that your unfailing courtesy, your ability, and your strict impartiality have won the admiration of us all. Furthermore, you have not overlooked the important fact that, despite extended jurisdiction, this Court will always remain the people's Court, and, when you found that some injustice in law had been done to individuals, you never hesitated to say so.

"These sterling qualities will stand you in good stead in your new sphere of activity. If the transition from the Magistrates' Court Bench to the Licensing Commission appears to be novel, then perhaps you may say that there is a precedent in the language of the Air Force—"baled out into the drink." The administration of laws and controls in hotels will give you an opportunity to exercise wisely those judicial functions which you have exercised so very well here. It has been said that the pub is the true symbol of British democracy, and Dr. Johnson once sagely said that there is nothing yet designed by man by which so much happiness can be produced as a good tavern. The problem of the hotelkeeper in the last few years, especially on the accommodation side, has been a very difficult one in this era of rising costs and shortage of labour, and much remains to be done if the national interest is to be developed by increasing the tourist trade in this country.

"Whatever may be the difficulties, we all of us feel that you will readily surmount them, and that you will bring to them the same qualities you exercised as a Magistrate, and will do ably and well in your new position."

The Police and Court Staff.

Inspector J. Abel said that, as representative of the Police Department, he had come to bid Mr. Goulding farewell, and to wish him the best of health and luck and prosperity in the new position he was taking up, a position which would be more varied than the present one. "You will be meeting different conditions in hotels," the Inspector added. "You will be able to see the inside workings of a lot of things you heard about in Court and of which you had no experience otherwise." He then thanked Mr. Goulding for the way in which he had carried out his duties as far as the Police were concerned, and for his impartiality and fairness.

Inspector J. Thompson, on behalf of the members of the Wellington District Detective Staff, said that he wished to endorse the remarks made by the earlier speakers. He continued: "I wish to thank you for the great kindness shown in conducting prosecutions, and for the help to members of the prosecution staff. We did not always altogether agree with your decisions, but, generally, we had to acknowledge that your decisions were correct."

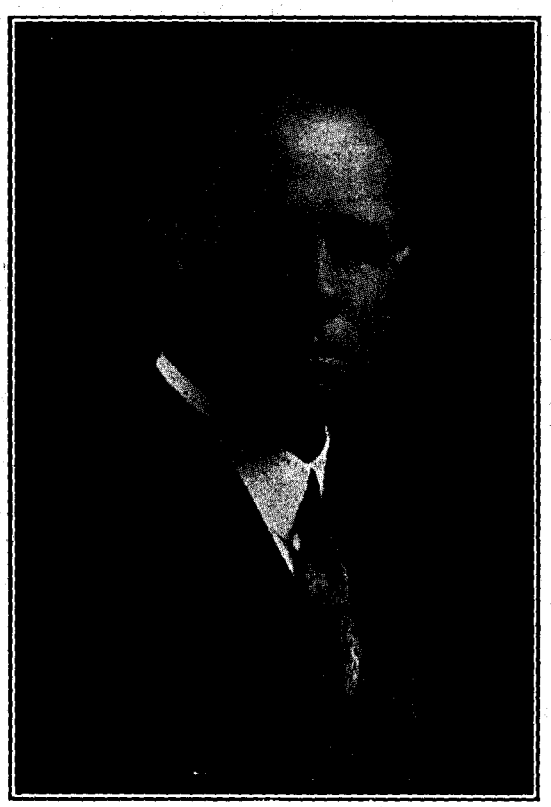
Mr. F. B. Jamieson, Registrar of the Magistrates' Court, Wellington, said that he wished to associate himself, on behalf of the members of the staff, with the remarks made by the previous speakers. "It was a distinctly unpleasant shock to hear that you were breaking your association with the Courts, and particularly with the Courts in Wellington," the speaker proceeded. "During the years you have been a Magistrate in Wellington, you have won the respect and affection of every member of the staff. Nobody hesitated to approach you for advice and help in any problem affecting the office. Your help was given in such a way as to make us feel that it was a pleasure for you, and you went to a lot of trouble. I wish to express the pleasure it has given to each of us to hear of your recent appointment as Chairman of a very important Commission, and our regrets that you no longer will be the Senior Magistrate. I only wish that your services in the future may be as much appreciated as your services have been as a Magistrate in Wellington."

Mr. Goulding's Reply.

Mr. Goulding, S.M., in reply, said: "I am very greatly honoured by the gathering I see before me this morning, and I am moved by the tributes which have been paid to me.

"Just over eleven years ago, I came on this very same Bench one morning, under the paternal care of Mr. Worthington, then the third Clerk in Wellington. My advent here followed the departure of one who had won a great reputation for himself throughout New Zealand as an outstanding Magistrate, and afterwards as a Judge in the Arbitration Court: I refer to Mr. Edward Page. His was an example well worth following. I do not know whether that morning I pleased Mr. Worthington completely, because I departed on one occasion from his whispered instructions that they usually gave so-and-so fourteen days, and discharged the accused. I expect Mr. Worthington was right and I was wrong, but at least I felt I was making my first declaration of independence.

"I had that morning taken an oath of office, 'That I will do right to all manner of people without fear or favour, affection or ill will, according to the laws and usages of New Zealand.' In those few simple and inspiring English words I think lies the kernel of all that is best in the administration of justice in this Court and in all other Courts in the British Commonwealth. To do right, to seek the truth, to apply the rules of law and equity, and at the same time to apply mercy—those are the ultimate aims of justice. And 'to all manner of people': in an ever-increasing sphere there come before the Magistrate all kinds of people, and he is called upon daily to determine, not only the liberties, but also the rights of property, the domestic status of husband, wife, and child, and the innumerable



Mr. A. M. Goulding.

affairs of poor and rich, high and low, not excluding the rights and duties of powerful corporations, influential local bodies, and even Departments of State. And, in so doing, the Magistrate is called upon to act 'without fear or favour, affection or ill will.' Therein lies the most difficult of all things, to preserve complete independence of action and judgment, to be entirely unswayed by burning political or local issues, or popular clamour of this or that, to put aside all questions of creed or class or race, to remain, at times, unmoved by ordinary human emotions. That is the ideal of complete and fearless impartiality laid upon those who sit in judgment. Small wonder one sometimes fails.

Important Developments.

"The years I have sat here have been interesting; at times they have been arduous. There have been important developments, including a substantial increase of jurisdiction. Whether or not this increase in monetary jurisdiction is largely illusory is a matter that requires careful watching. There have been other changes in jurisdiction that are important. There has been given to many people recently a right of appeal under the Justices of the Peace Act, 1927, which was formerly denied to them. More recently, there has been restored the right to appeal under the Tenancy Act, 1948. These are good things. I think that, except in trifling matters, the right of appeal in

the lower Court is one never to be denied to any litigant. Magistrates' Court decisions have to be arrived at speedily. In the higher Court, where matters move at a more moderate tempo, these things receive more consideration, and then the illumination cast upon him may serve to emphasize the wisdom of the Magistrate or to reveal to him the error of his ways; but, whatever the result, the litigant must at least feel comforted that he can go to a higher Court, and that justice will not be denied.

"During the war, the volume of restrictions and controls brought much additional work to the Courts. That was inevitable, but it leaves an effect that does not disappear with peace. War would appear to engender in some a spirit of lawlessness. People are compelled to do things they do not wish to do. A large proportion of the public obey those restrictions, in the national welfare, but many do not. For various reasons, they seek escape from compulsion, and they break the laws. Some are caught, but far more are not caught. And from that a certain disrespect for law follows.

Since the war, some controls and restrictions have gone, while others remain, and there are fresh ones. I am conscious, as are most lawyers, I believe, that the same disrespect for some of these laws has not disappeared. I doubt whether it will, so long as breaches of law go undetected. Many reputable people see no great wrong in breaking such laws. They practise deceit and lend themselves to forms of dishonesty—all comforting themselves that they are doing nothing morally wrong. It is not my intention to examine the ethics of such matters. But I think there follows from that sort of disrespect for law some disrespect for the Courts of law, because Courts tend to be held in contempt when they appear powerless to stem the breaking of law.

Remission of Penalties.

"Another thing I have noticed is the growing tendency on the part of the offenders who have been dealt with in the Courts to appeal to the Crown for the exercise of the Royal prerogative of mercy under the Remission of Fines and Penalties Act. I venture to say that thirty or forty years ago it is doubtful if any such application in respect of a fine or other penalty would have been made without the litigant first exhausting his other legal remedies—*e.g.*, appeal or rehearing. To-day, it is a common practice.

"When an offender is dealt with in the Court, he is dealt with openly and publicly, in accordance with the traditions of British justice. While it is elementary that the exercise of the Royal prerogative must be unfettered, it appears to me that the fact that it has been exercised should also be made public; by that I mean a simple statement of the fact. That would be, in my view, in accord with the golden rule that not only should justice be done, but it should also appear to be done. I draw attention to this matter because I think it has repercussions that may well bring the Courts into disrespect.

"As an instance, there has been a good deal of publicity concerning the restoration, by this procedure, of driving-licences to motorists convicted of being intoxicated in charge of motor-vehicles. If grounds do arise for restoring a licence in such a case—and they may well do so—then, would it not be better to amend the law by giving the motorist the right to apply to the Court publicly (preferably not to the Magistrate who dealt with the matter in the first case) for the restoration of the licence?

Other Matters.

"Two other smaller matters I suggest as worthy of consideration. The first is the taking of evidence, both in the Supreme Court and in the more important cases in the Magistrates' Court. This matter is not satisfactory. No Magistrate in the country is capable of taking an accurate and adequate record of evidence in a long case. Thereby the litigant himself is sometimes denied justice. The same thing may be said as to ordinary depositions in criminal cases. They cannot be typed accurately. Once I had to write over 200 foolscap pages of notes in seven days, and I would not pretend that that was in any sense an accurate record. I do not think it any answer that the question is one of expense. Justice should be placed above questions of expense.

"As to the other matter, I have often wondered why we put the accused in a pen on one side and the witness in another pen on the other side. They stand there, glaring at one another, until the Court allows the prisoner to sit down, but the witness is not allowed to sit down. Steps should be taken whereby all witnesses should give evidence sitting down. This procedure has been adopted in Australia. A witness seated comfortably gives evidence much more at ease than he does under the present system.

"I have thought it right to speak of these matters at this my last appearance before you all as a Magistrate. The Law Societies and the legal profession in this country occupy an honourable and important position in the community, as they do in all English-speaking countries. Particularly is it so in connection with the Courts and the administration of justice. From the ranks of the profession come all the Judges of the Supreme Court and most of the Magistrates. The higher the standard they attain, the better the standard and the response from the Bench. The public is entitled to look to the legal profession for a lead in these things. It is their duty to be always on watch and on guard, and at all times to speak fearlessly and openly—and, if need be, publicly—against anything which may even tend to weaken respect for the law and the Courts, which, in the end, are the last bulwark of all who seek justice and redress.

Thanks and Farewell.

"Gentlemen of the Bar, if I have won your respect and esteem, you also have won mine for the high standard of conduct, the work, and the care and skill you have always displayed. Sometimes a little less skill on your part would have saved me a great deal of work and trouble in giving judgments! I have enjoyed and appreciated greatly your kind friendliness and courtesy at all times, and, in saying farewell, I am happy to think that in my new sphere I shall not altogether lose touch with you. Whatever the result of my labours there with my fellow-commissioners may be, the experience I have gained as a Magistrate in Wellington will be invaluable. I just want to say that I leave the ferment and turmoil of this Court to go into the fermentation and turmoil of the Commission. Whether or not we succeed in our great task I must leave to the future to decide.

"To my two fellow-Magistrates I extend my heartfelt sympathy. They will continue to work before you, and I give them both my thanks for all their help. I shall miss—and no doubt they too will miss—the discussions of problems that are always arising, when each seeks assistance from the other, and the mutual friendliness and respect that arise out of that happy and constant association.

"As to the members of the Police and Detective Forces, long before I came on the Bench, I knew the Police to be fair and fearless in their desire to uphold law and order. In their many duties they exercise qualities of tact, kindness, and patience much above the ordinary. In their work before the Courts, though they are so much the prosecutors of offenders, I have never found them to be persecutors. With very rare exceptions, I have never known them to take unfair advantage. In the exacting work they are often called upon, at short notice, to undertake in the Courts, their constant endeavour is to see that the Court is placed fairly in possession of all the information it should have. And I have never known them complain in defeat. To them, also, I extend my thanks for all the help they have given me.

"As to the staff, to them, one and all, I extend my thanks, and appreciation. At all times they have been more than helpful and entirely loyal. Only a Magistrate can know how often members of the staff have saved the day for him. There is always a loophole or a pitfall into which he may fall, and the members of the staff are ever ready to help in those difficulties. Many law clerks and practitioners will bear me out in that, and be grateful for the help they have had. The work does involve a great responsibility, much greater than the public as a whole realizes. They have always had my confidence and respect for their zeal and the high standard of their work. One member of the staff, Mr. Vernon, who unfortunately cannot be here, will not be able to return to his work. His illness was largely brought about by his strenuous work during the war years.

"Lastly, a word to the gentlemen of the Press. They have a difficult, and sometimes dangerous, task. I need not say how dangerous it can be for a gentleman of the Press to report that X. has been sent for a six months' tour when in fact he has been acquitted. I appreciate the fair nature of their reports, and their readiness to make corrections where necessary. They also have an important part to play in the critical and constructive sphere. I believe that they, in pursuance of the freedom of the Press, will carry out their duties and responsibilities in regard to the matters spoken of, and see that justice continues to be done as it ought to be done in this country."

IN YOUR ARMCHAIR—AND MINE.

By Scriblex.

Youth will be Served.—Lord Greene, whose age is 66 and who has held the office of Master of the Rolls since 1937, has been appointed a Lord of Appeal in Ordinary. Sir Cyril Radcliffe, K.C., who was called to the Bar in 1924 and took silk in 1935, has also been appointed a Lord of Appeal, an appointment direct from the Bar which recalls Lord Macnaghten's similar appointment in 1887. Lord Greene is succeeded as Master of the Rolls by Lord Justice Evershed. There are five Lords Justices senior in appointment, their ages being from 58 to 68, but Lord Justice Evershed, who went to the Court of Appeal in 1947, is aged 49, and he thus shares with Denning, L.J., the distinction of being the most youthful member of the Court. The new appointment to the Court of Appeal is Mr. Justice Jenkins from the Chancery Division, whose age is also 49; and, with the exception of Wynn-Parry, J., 49, Devlin, J., 43, and Pearce, J., 47, he is one of the most youthful of the High Court Judges. Another interesting point, which may not be irrelevant in considering appointments to the suggested permanent Court of Appeal in New Zealand, is the fact that no attention has been paid to seniority. The new Master of the Rolls was sixth (out of eight) in the Court of Appeal, and Mr. Justice Jenkins was fifth (out of six) in the Chancery Division. The ages of the other members of the Court of Appeal are Tucker, L.J., 60, Bucknill, L.J., 68, Somervell, L.J., 59, Asquith, L.J., 58, Cohen, L.J., 60, Singleton, L.J., 63, and Denning, L.J., 49. The oldest member of the High Court is Humphreys, J., who is 81, followed by Wallington, J., 73, Goddard, L.C.J., 72, Vaisey, J., 71, Cassels, J., 71, Lord Merriman, P., 69, and Croom-Johnson, J., 69, while the remainder are 65 and under.

Strong Disapproval.—Prominence was given in the cabled news some weeks ago of the committal to prison of the editor of the *Daily Mirror* for contempt of Court in the Haigh murder case. The motions for writs of attachment revealed the publication of articles, photographs, and headlines of the largest possible type, and of a character which Lord Goddard described as a disgrace to English journalism, as violating every principle of justice and fair play "which it had been the pride of this country to extend to the worst of criminals." It was a case, in Lord Hardwicke's language in the case of *St. James's Evening Post* (1742), "of prejudicing mankind before their case was heard." The judgment stated that in the long history of this class of case there had never been one of such gravity, or one of such a scandalous and wicked character:

> It was of the utmost importance that the Court should vindicate the common principles of justice, and, in the public interest, see that condign punishment was meted out to persons guilty of such conduct. What had been done was not, in the opinion of the Court, the result of an error of judgment. It had been done as a matter of policy in pandering to sensationalism for the purpose of increasing the circulation of the newspaper.

Indeed, so grave a view of the matter did the Court take, that the proprietors of the newspaper were ordered to come before it, and Lord Goddard administered the following warning to them: "Let the directors beware. If, for the purpose of increasing the circulation of their paper, they should again venture to publish such matter as this, the directors themselves might find that the arm of the Court was long enough to reach them and to deal with them individually." The company was fined £10,000, and was ordered to pay the costs of the proceedings. In this particular case, the Attorney-General did not himself take the initiative of bringing the offenders before the Court, but, as the *Law Journal* (London) points out, it was left to a person in custody on a charge of murder to move for a writ of attachment against the editor on the ground that the *Daily Mirror* contained prominently placed paragraphs, which appeared in several issues, accusing the applicant, not only of the murder in respect of which he was remanded in custody, but also of other murders in horrifying circumstances. Surely, it adds, the preferable course would have been for the Attorney-General to have moved for the writ of attachment, and, having done so, himself to lead for the prosecution at the future trial of the accused, so as to show that everything possible was done in the public interest to ensure that prejudice was eliminated.

Pannage.—During the recent relayed broadcast of an Empire "quiz" competition between Australia and New Zealand in connection with a Security Loan, one of the questions asked was: What was the name given to the right of a man to feed his swine in certain forests? The correct answer (given by the Australian contestant, who was not a lawyer) was "pannage," which seems to be a right vested by express or implied grant in the owner of pigs to go into the woods of the grantor and to allow his pigs to eat acorns which have fallen from the trees. Long before pearls became short, Scriblex had ceased to keep swine, and confesses at once that he would not have fared as well as New Zealand's representative—a Senior Sergeant of Police—who wrongly answered "seizin," which, curiously enough, had a measure of accuracy about it, as an assize of "novel disseizin" was, by the Statute of Westminster the Second (13 Edw. I, 1285), granted for the right of "pannage." Seizin, which is a right to the possession of land, is, of course, a horse of another colour.

Topical Item.—*Scene*: Gathering in the Magistrates' Court at Wellington of sundry solicitors and officers of the Courts and Justice Department at an unofficial farewell to A. M. Goulding, S.M., on his appointment as Chairman of the Licensing Control Commission. Enter S., a local practitioner, late, as is his usual custom. He approaches the guest of honour and holds him in converse.

Voice (with a distinct O'Regan intonation, and from a distance): "Faith, it's the first time S. has ever appeared before Goulding without first asking for an adjournment!"

Odds and Ends.—In *Hunt* v. *Morgan* (December 2, 1948), a Divisional Court (Lord Goddard, L.C.J., and Hilbery and Birkett, JJ.) has decided that the driver of a taxi-cab proceeding along the road with a sign that he is available for hire is not bound to accept a fare. This obligation is confined to the cabman on the rank.