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ASSESSMENT OF DAMAGES IN FATAL ACCIDENTS.

II

THE main question now to be considered is the nature of the cause of action which was vested in the deceased worker at the time of his death, and which, by virtue of s. 55 of the Workers' Compensation Act, 1922, survives for the benefit of his estate. Consequent upon that, some consideration must be given to the basis upon which damages in such an action should be assessed.

THE NATURE OF THE CAUSE OF ACTION UNDER S. 55 OF THE WORKERS' COMPENSATION ACT, 1922.

In *Rose* v. *Ford*, [1937] A.C. 826; [1937] 3 All E.R. 359, the House of Lords were unanimous in their opinion that a cause of action for loss of expectation of life vested in the deceased before his death and survived to the personal representative; and that it was quite a separate cause of action from any pain or suffering. In that case, the father of the deceased girl, her administrator, sued in two capacities: first, to recover damages for himself and his wife as dependants under the Fatal Accidents Act, 1846-1908 (our Deaths by Accidents Compensation Act, 1908), second, to recover damages for the benefit of the estate of his daughter under the provisions of the Law Reform (Miscellaneous Provisions) Act, 1934 (which was reproduced as s. 3 of the Law Reform Act, 1936, as originally enacted, and is, in effect, the same as s. 55 of the Workers' Compensation Act, 1922).

It must be pointed out that in *Flint* v. *Lovell*, [1935] 1 K.B. 354, the plaintiff was alive at the trial, and it was there held that, if a person suffered personal injuries from negligence, there could be included in the estimate of damages consideration of the fact that, by the wrongful injury, his normal expectation of life had been shortened; and this, in the opinion of the House of Lords in *Rose* v. *Ford*, had always been a usual element in the assessment of damages in such cases. If, therefore, a living person could claim damages for loss of expectation of life, that right is vested in him in life, and on his death, under s. 55, it passes to his personal representative for the benefit of his estate.

THE WORD "WORKER" IN S. 55 OF THE WORKERS' COMPENSATION ACT, 1922.

It may be as well to repeat here the terms of s. 55 of the Workers' Compensation Act, 1922, which is as follows:

> The right to recover compensation under this Act or to recover damages independently of this Act in respect of an accident to a worker shall survive notwithstanding the death either of the employer or other person liable to pay the compensation or damages or of the worker, and all proceedings for the enforcement of such right may be begun or continued by or against the representative of the deceased person.

The word "worker" used in that section is an ambiguous one, and doubt has been expressed as to its precise meaning.

If the word is given the definition enacted in s. 2, that does not carry the matter much further: the doubt is not whether the word "worker" in s. 55 means "*any person* who has entered into or works under a contract of service with an employer." The problem is whether the personal representatives of any such employed person can take advantage of s. 55 to sue for damages in respect of injuries sustained by such a deceased person in an accident outside the scope of his work, as the result of the negligent act of a person who was *not* his employer.

The right to recover compensation or damages given by s. 55 relates to an "accident"; but the familiar qualifying words "arising out of and in the course of the employment" (used in s. 3) are not added to that word.

At first glance, it may seem to appear that, by using the word "worker" without qualification in a section framed in such general terms, a cause of action which was vested in anyone who was working at the time of his death for an employer survives for the benefit of his estate against a person (other than his employer) "liable to pay the compensation or damages."

On the other hand, a different conclusion may be reached if s. 55 be taken in its setting in the Workers' Compensation Act, 1922, which, in its application generally, is designed to deal with the rights of a worker against his employer only. The opinion has been expressed that the words in s. 55 "or other person liable to pay the compensation or damages" are not referable to any member of the public at large, but are confined to a person who, as an indemnifier, may become liable to pay the damages or compensation for which an employer is primarily liable. The term "person" includes a corporation sole, and also a body of persons, whether corporate or unincorporate: Acts Interpretation Act, 1924, s. 4; and see the use of the word "person" in s. 68 of the Workers' Compensation Act, 1922. The matter can be properly settled only

by an authoritative decision of the Court; and, in the meantime, the doubt is one of the main reasons given for the total repeal of s. 55 by those who advocate such repeal; and see, thereon, *Post*, p. 272.

The matter has been the subject of some judicial observations.

In *Forrest* v. *Kaitangata Coal Co., Ltd.*, [1939] N.Z.L.R. 910, 915, Blair, J., seemed to take for granted that, when the Legislature enacted the Law Reform Act, 1936, it must be presumed to have known that workers, "by virtue of s. 55, already enjoyed certain benefits relating to the survival as against their employers of causes of action."

In *O'Meara* v. *Westfield Freezing Co., Ltd.*, [1947] N.Z.L.R. 253, the learned Chief Justice, at pp. 266, 267, observed:

> This section broadly provided that the right to recover compensation under the Act or damages independently of the Act survived notwithstanding the death of any person liable to pay compensation or damages or of the worker.
>
> It was restricted and limited in its application to accident to workers—obviously accidents in the course of their employs ment—and, whilst the making of a claim for compensation would be limited in time by the Workers' Compensation Act, there was no limitation for bringing an action for damages.

Mr. Justice Finlay said in the same case, at pp. 276, 277, that by s. 55 the *actio personalis* rule is, in respect of a limited class of persons, revoked in general terms and without qualification or supplementation. He added that the Legislature has left persons of a particular description in enjoyment of the right so conferred by s. 55. (This pronouncement carefully leaves wide open the question now under consideration.)

In each of the reported cases *Miller* v. *Union Steam Ship Co. of New Zealand, Ltd.*, [1918] N.Z.L.R. 247, *Forrest* v. *Kaitangata Coal Co., Ltd.*, [1939] N.Z.L.R. 910, and *O'Meara* v. *Westfield Freezing Co., Ltd.* (*supra*), the deceased worker's personal representatives received the advantage of s. 55 of the Workers' Compensation Act, 1922, in respect of injuries received by the deceased while he was working for the defendant whose negligence was alleged. Consequently, the need for interpretation of the meaning of the word "worker" as used in that section did not arise; and the observations just cited (with the exception of that of Finlay, J.) are *obiter*.

Speaking generally, Finlay, J., in his judgment in *O'Meara's* case to which reference has been made, at p. 278, said:

> The comment is unavoidable that s. 55 creates to-day a somewhat anomalous state of affairs. When it first found its way into our legislation, *Flint* v. *Lovell*, [1935] 1 K.B. 354, and *Rose* v. *Ford*, [1937] A.C. 826, [1937] 3 All E.R. 359, had not been decided, and it is doubtful if any one then conceived that it would have the effect which, in virtue of those cases, it now has.

The Form of Action: One Writ or Two.

It is sometimes difficult to know whether a personal representative of a deceased worker should claim damages under s. 55 of the Workers' Compensation Act, 1922, and damages under the Deaths by Accidents Compensation Act, 1908, in the one action, or whether he should claim them in separate writs. (We do not refer to any matter of election of remedies, in respect of which other considerations arise.)

The different causes of action must first be examined.

Under s. 55 of the Workers' Compensation Act, 1922, as we have seen, if a worker is injured by accident due to the negligence of another person, his cause of action in a claim for damages does not abate at his death, but survives for the benefit of his estate, and can be enforced in an action brought by his personal representative against the negligent defendant, or against the defendant's personal representative if the defendant has since died. If the injuries for which the defendant is responsible are so severe that the victim dies of them before the action is brought, or, at any rate, before judgment, then the element of damages which is often described as "loss of expectation of life" and damages for pain and suffering for the deceased are equally admissible if the action is brought by his personal representative.

The cause of action under the Deaths by Accidents Compensation Act, 1908, is a different cause of action from that which the injured person would have had if he had lived; it benefits his dependants, and not his estate: *British Columbia Electric Railway Co., Ltd.* v. *Gentile*, [1914] A.C. 1034, *Union Steam Ship Co. of New Zealand, Ltd.* v. *Robin*, (1920) N.Z.P.C.C. 131, and *Rose* v. *Ford*, [1937] A.C. 826; [1937] 3 All E.R. 359.

In *Rose* v. *Ford*, [1937] A.C. 826; [1937] 3 All E.R. 359, the personal representative of the deceased girl, bringing an action under the section corresponding with our s. 3 (1) of the Law Reform Act, 1936, as originally enacted, sued for damages for the benefit of her estate under two heads—*viz.*, (*a*) special damages, including funeral expenses, and (*b*) £500 for pain and suffering, including the loss of a leg. The deceased's personal representative also sued for the benefit of the deceased's dependants under the Fatal Accidents Acts.

In *Miller* v. *Union Steam Ship Co. of New Zealand, Ltd.*, [1918] N.Z.L.R. 247, the plaintiff, who was a wharf labourer, claimed damages at common law, but died after the trial, and advantage was taken of s. 10 of the Workers' Compensation Amendment Act, 1911 (now s. 55 of the Workers' Compensation Act, 1922), to continue the proceedings in the name of his widow and executrix.

In *Forrest* v. *Kaitangata Coal Co., Ltd.*, [1939] N.Z.L.R. 910, the claim made by the deceased worker's father, his administrator, was for £1,500 damages at common law for loss of expectation of life in respect of injuries arising out of his employment, and it was especially stated that it was founded upon s. 55 of the Workers' Compensation Act, 1922. In the same writ, there was an alternative cause of action founded on the Deaths by Accidents Compensation Act, 1908, and the Coalmines Act, 1928, but such alternative basis of claim was limited to the claim for funeral expenses and £501 as general damages. The general-damages claim was brought for the benefit of the father and mother of the deceased, who had lost all expectation of future pecuniary benefits from the deceased.

In *O'Meara* v. *Westfield Freezing Co., Ltd.* (*supra*), the mother of the deceased worker, as executrix of his estate, brought an action claiming £750 damages for loss of expectation of life of the deceased. Damages were assessed at £500. There was no separate action claiming under the Deaths by Accidents Compensation Act, 1908.

Since the decision in *Rose* v. *Ford*, the current English practice seems to be that there should be two separate writs, in one of which the personal representative claims

damages for the benefit of the estate under the Law Reform (Miscellaneous Provisions) Act, 1934, while in the other he claims compensation under the Fatal Accidents Acts. This may be inferred from *Winfield on Torts*, 4th Ed. 193, 201, and in *Salmond on Torts*, 10th Ed. 73, it is accepted as the normal procedure. From the practical viewpoint, this would seem to be the better practice.

Of course, if there is no executor or administrator of the deceased worker appointed, there is no one in whom the right of action under s. 55 can vest. On the other hand, while actions under the Deaths by Accidents Compensation Act, 1908, must be brought in the name of the personal representative, if it happens that there is no executor or administrator of the deceased worker appointed by the Court, then, under s. 10, the action may be brought by and in the names of the persons for whose benefit the action is maintainable.

It is unnecessary, when it is decided to take action against the deceased worker's employer as above, under separate writs, to file a claim for workers' compensation in the Compensation Court. It must always be remembered that, as Blair, J., put it in *Forrest* v. *Kaitangata Coal Co., Ltd.*, [1939] N.Z.L.R. 910, 914 :

> The whole framework of the Workers' Compensation Act is to provide workmen with insurance against industrial accidents whether pure accidents or arising from negligence on the employer's part. And everyone knows that this liability of employers is now an inevitable incident to the relationship of employer and worker and is invariably insured against by the employer and treated by him as naturally incidental to the employment of workers.

It follows that, if the personal representative of the deceased worker does not succeed in his action under the Deaths by Accidents Compensation Act, 1908, then, under s. 52 of the Workers' Compensation Act, 1922, the plaintiff may apply for assessment of workers' compensation, and the Judge may hear such further evidence, if any, as he thinks fit, as if the hearing of the application for assessment of compensation were the trial of an action for compensation in the Compensation Court ; and the award of compensation, made by the Supreme Court up to £1,750, is made under the Workers' Compensation Act, 1922 ; and a certificate as to the amount assessed given by the presiding Judge in that Court is filed in the Compensation Court.

If, on the other hand, the personal representative of the deceased worker succeeds in his action under the Deaths by Accidents Compensation Act, 1908, then s. 49 of the Workers' Compensation Act, 1922, applies, and the sum received by way of compensation for the same accident is deducted from the award of damages, or *vice versa*.

Of course, if the cause of action under the Deaths by Accidents Compensation Act, 1908, lies against a person other than the employer of the deceased worker, and if a claim against the latter's employer under the Workers' Compensation Act, 1922, is maintainable against him, that claim must be lodged, within the prescribed time, in the Compensation Court.

The Quantum of Damages Recoverable.

Guidance may be obtained from the judgment of Hodson, J., in *Bishop* v. *Cunard White Star, Ltd.*, *Appleby* v. *Same*, [1950] 2 All E.R. 22, as to the quantum of damages that may be awarded where a claim is made under s. 55 of the Workers' Compensation Act, 1922, in respect of loss of expectation of life and for pain and suffering, and a claim is also made under the Deaths by Accidents Compensation Act, 1908.

His Lordship said that the claims based on loss of expectation of life must be dealt with in the light of the judgment of the House of Lords contained in the opinion of Viscount Simon, L.C., in the leading authority, *Benham* v. *Gambling*, [1941] 1 All E.R. 7, which may be said to have put a brake on a tendency to award high damages under this head by reducing the damages actually awarded from £1,200 to £200. His Lordship said that, when considering the age of the victim of an accident, the right conclusion to be drawn from the Lord Chancellor's speech in that case (at p. 12) is that, where men in the prime of life are concerned, the measure of damages does not vary with the number of years of the allotted span which may be said to lie in front of the deceased persons.

In the two cases before Hodson, J., one of the deceased was thirty-nine years of age when he died and the other was nineteen and a half ; and, in the former case, the Registrar awarded £350 and in the latter case £500. If, therefore, the Registrar had varied the amount simply because of the difference in age of the two men, he was in error. His Lordship added that it does not, of course, follow that the figure in each case must necessarily be the same, and that he would not be prepared to say that either of these figures was wrong in itself, or, in particular, that either figure was too high in the light of the judgment of the House of Lords in *Benham* v. *Gambling* (*supra*). The accident occurred in the year following the House of Lords judgment, and it had to be approached from the point of view of the time of the accident, when the damage crystallized ; any consideration of the change in the value of money meanwhile did not materially affect the awards in these cases.

In respect of a claim for damages under the head of pain and suffering, His Lordship said that, in the absence of clear evidence of reasonably prolonged suffering, there should be no award under this head. This conclusion, he thought, was consistent with the view taken by the Court of Appeal in *Rose* v. *Ford*, [1936] 1 K.B. 90, and confirmed on this point by the House of Lords. In that case, the plaintiff survived the accident for four days, during the greater part of which she was in a state of coma, and damages under this head were fixed at the sum of £20.

In his speech in *Rose* v. *Ford*, [1937] 3 All E.R. 359, Lord Wright, in considering the question of the element of damages for the shortening of life or for the loss of the normal expectancy of life, suggested the proper direction to be given to the jury. He said, at p. 373 :

> The jury should be directed that they are entitled to take it into consideration along with other relevant elements of damage, using their common sense to give what is fair and moderate, in view of all the uncertainties and contingencies of human life. Special cases may occur, such as that of an infant, or an imbecile, or an incurable invalid, or a person involved in hopeless difficulties. The Judge or jury must do the best they can, in the circumstances, in this as in other cases.

In assessing damages under the Fatal Accidents Acts, 1846 to 1908 (our Deaths by Accidents Compensation Act, 1908), Hodson, J., said that it is convenient to start with a sum calculated in accordance with the principles enunciated by Lord Wright in *Davies* v. *Powell Duffryn Associated Collieries, Ltd.*, [1942] 1 All E.R. 657, where, at p. 665, he said :

> It is a hard matter of pounds, shillings and pence, subject to the element of reasonable future probabilities. The starting point is the amount of wages which the deceased was earning, the ascertainment of which to some extent may depend on the regularity of his employment. Then there is an estimate of how much was required or expended for his own personal and living expenses. The balance will give a datum or basic figure which will generally be turned into a lump sum by taking a certain number of years' purchase. That sum, however, has to be taxed down by having due regard to uncertainties, for instance, that the widow might have again married and thus ceased to be dependent, and other like matters of speculation and doubt.

In that judgment, the number of years' purchase is left fluid, but Hodson, J., was of the opinion that that number was not to be materially reduced by consideration of the hazardous nature of the occupation of the deceased. (In the case before him, the deceased were seamen; and during the last war the hazards of life at sea were not conspicuously greater than risks run by many other persons on shore.) He concluded that, when the necessary deductions from the starting sum had been made, the resulting total should be apportioned amongst the family, taking the family as the unit, when claims were made in respect of more than one dependant.

In England, but not in New Zealand, there may be a deduction from the amount of damages awarded under the statutes corresponding to our Deaths by Accidents Compensation Act, 1908, of the sums awarded under the section corresponding to s. 55 of the Workers' Compensation Act, 1922, for loss of expectation of life, *for pain and suffering, and for loss of personal effects*, according to the circumstances of the case: *cf. Bishop's* case, [1950] 2 All E.R. 22, 26; and see Lord Atkin's speech in *Rose* v. *Ford*, [1937] 3 All E.R. 359, 363. In New Zealand, these sums constitute a "gain" to the estate of the deceased under s. 7 of the Law Reform Act, 1936, since that section is applicable to "any action" under the Deaths by Accidents Compensation Act, 1908; and, by virtue of it, no such "gain" may be taken into account in assessing damages in such an action: *Alley* v. *Alfred Buckland and Sons, Ltd.*, [1941] N.Z.L.R. 575.

In concluding his speech in *Rose* v. *Ford*, [1937] 3 All E.R. 359, Lord Roche said, at p. 381, that the proper place to deal with the deceased's future earning-power, cut off by death, is where the Court is dealing with the cause of action under (our) Deaths by Accidents Compensation Act, 1908, and that, accordingly, there is no clashing or overlapping between the two causes of action and the judgments thereunder.

Since, therefore, the action under s. 55 results in an increment to the estate of the deceased, founded on the cause of action vested in him before he died, and is available for the payment of debts and legacies, there is, in view of s. 7 of the Law Reform Act, 1936, no *duplication with the damages awarded the dependants* of the deceased, personally as such, in respect of the value of their dependency, calculated on loss of the deceased's earnings consequent on and after his death, in the action under the Deaths by Accidents Compensation Act, 1908.

It should be noticed that s. 3 (2) of the Law Reform Act, 1936, imposes limitations and confers benefits in respect of the award of damages, where a cause of action survives in pursuance of s. 3 (1) for the benefit of the estate of a deceased person—namely, the award of damages may not include any exemplary damages, and, where the death of the person has been caused by the act or omission which gives rise to the cause of action, the award of damages must be calculated without reference to any loss or gain to his estate consequent on his death, except that a sum in respect of funeral expenses may be included. These limitations and benefits are not applicable to an award of damages under s. 55.

It is true that s. 55 has made available and realizable for the benefit of a deceased worker's estate any cause of action which was vested in him when alive; but, in view of the decision of the Court of Appeal in *O'Meara* v. *Westfield Freezing Co., Ltd.*, [1947] N.Z.L.R. 253, in which *Forrest* v. *Kaitangata Coal Co., Ltd.*, [1939] N.Z.L.R. 910, was approved, that section is an independent enactment. An action brought under s. 55—to use the words in the judgment of Finlay, J., in *O'Meara's* case, at p. 278 (with which Kennedy and Callan, JJ., agreed)—"finds the survival of the right of action upon which it is founded not in s. 3, but in s. 55. In other words, the cause of action survives by virtue of s. 55 and not by virtue of s. 3." The judgment of the learned Chief Justice, at p. 269, is to the same effect. The limitations and benefits in respect of the award of damages in s. 3 (2) are limited to where "*a cause of action survives as aforesaid*"—*that is*, by virtue of s. 3 (1). Consequently, those limitations and benefits do not apply to an award of damages on the principle of *Rose* v. *Ford*, under s. 55.

Late Apportionment of Damages.

Earlier in this article, *Ante*, p. 241, we referred to the relevance of lapse of time since the death of the deceased when assessing damages under the Deaths by Accidents Compensation Act, 1908. After that appeared in print, Mr. Justice Northcroft, on September 11, delivered a judgment in *Reeve* v. *The King* (to be reported) in which he shows the method to be adopted in apportioning damages some time after the death of the bread-winner. The facts were that an order which was made in 1944 apportioning damages under s. 6 of the Deaths by Accidents Compensation Act, 1908, established, for the benefit of the wife and dependent sons of the deceased, a class fund of the kind declared by the Court of Appeal in *Public Trustee* v. *Heffron*, [1946] N.Z.L.R. 683, to be contrary to the provisions of that statute. In terms of the order, one-third of the moneys, after payment of funeral expenses and costs, was paid to the widow, and the remaining two-thirds of the residue and the income therefrom were held for the maintenance, education, advancement in life, or benefit of the widow and her two dependent sons until the younger should attain the age of eighteen years. Upon the younger's attaining that age, the Public Trustee was to apply to the Court to determine to or among which of the beneficiaries the balance of the moneys then remaining was to be paid or divided. The widow died in June, 1949, at which date the younger son had attained eighteen years of age.

This year, on a motion by the Public Trustee asking for directions, the learned Judge held that, in view of the decision in *Public Trustee* v. *Heffron* (*supra*), the Court was required to make a belated apportionment *nunc pro tunc*, and had to consider the circumstances of the widow and two dependent sons for whom the action was brought from the time they suffered injury by the loss of the deceased up to the present time.

As the learned Judge pointed out, the reasoning of the Lords Justices in *Phillips* v. *Kershaw, Lees and Co., Ltd.*, [1920] 3 K.B. 297; 13 B.W.C.C. 211, and that

of the Court of Appeal in *Williamson* v. *John I. Thornycroft and Co., Ltd.*, [1940] 4 All E.R. 61 (to which we have already referred), were entirely apposite to the case before him; and the apportionment, as in those cases, was to be made on the basis of the ascertained facts, and not on the basis of the probabilities existing at the date of the death of the deceased husband and father. The apportionment of the residue, therefore, was to be based upon the same considerations as would have applied had it been an apportionment of the original fund, taking into consideration the amounts that the dependants had received.

Consequently, as the widow's period of dependency was 2,160 days, and the respective periods of dependency of the sons were 1,263 and 1,992 days, and as the injury to the widow would be at a rate twice that suffered by each son, the original sum and interest, after deducting all costs and charges, was divided into 7,575 portions, of which the widow's estate was reallotted 4,320 and the sons 1,263 and 1,992 respectively, less the moneys already received by each of them.

SUMMARY OF RECENT LAW.

ACTS PASSED, 1950.

No. 1. Imprest Supply Act, 1950.
No. 2. Imprest Supply Act, 1950 (No. 2).
No. 3. Legislative Council Abolition Act, 1950.
No. 4. Potato Growing Industry Act, 1950.
No. 5. Reserve Bank of New Zealand Amendment Act, 1950.
No. 6. Emergency Forces Act, 1950.
No. 7. Co-operative Egg Marketing Companies Act, 1950.
No. 8. Stock Amendment Act, 1950.
No. 9. Wool Industry Amendment Act, 1950.
No. 10. Dairy Products Marketing Commission Amendment Act, 1950.
No. 11. Meat Export Control Amendment Act, 1950.
No. 12. Standards Amendment Act, 1950.
No. 13. Republic of Ireland Act, 1950.
No. 14. Republic of India Act, 1950.
No. 15. Plumbers Registration Amendment Act, 1950.
No. 16. Minimum Wage Amendment Act, 1950.
No. 17. Distress and Replevin Amendment Act, 1950.
No. 18. Infants Amendment Act, 1950.
No. 19. Tuberculosis Amendment Act, 1950.
No. 20. Medical Research Council Act, 1950.
No. 21. Imprest Supply Act, 1950 (No. 3).
No. 22. Land and Income Tax Amendment Act, 1950.
No. 23. Land and Income Tax (Annual) Act, 1950.

ADOPTION OF CHILDREN.

Intestate Estate of Adopted Child—Distribution—Adoption of Intestate in 1881—Intestate dying in 1942 predeceased by Adopting Parents, but survived by Natural Brothers and Sisters and by Nieces and Nephews of Adopting Parents—Natural Brothers and Sisters Sole Next-of-kin—Adoption of Children Act, 1881, ss. 5, 6—Infants Act, 1908, s. 21. Section 21 (2) of the Infants Act, 1908,* does not, either expressly or by inference, extinguish the rights of natural brothers and sisters as next-of-kin under the intestacy of a brother or sister who had been adopted (and who had died before January 1, 1950). (*In re Taylor, Public Trustee* v. *Lambert*, [1932] N.Z.L.R. 1077, *In re Carter, Carter* v. *Carter*, [1941] N.Z.L.R. 331, and *Trustees, Executors, and Agency Co. of New Zealand, Ltd.* v. *Rowley*, [1939] N.Z.L.R. 146, applied.) (*In re C.K.*, [1949] N.Z.L.R. 874, referred to.) The deceased, a spinster, died intestate on April 28, 1942. She had been adopted by her aunt and uncle on September 1, 1888, by an order of adoption under the Adoption of Children Act, 1881. The adopting parents, who predeceased her, died childless. The deceased was survived by her mother and three brothers and sisters. At the time of the intestate's death, there were fifteen nephews and nieces of the adopting father not related in blood to the intestate; and there were fourteen nephews and nieces of the adopting mother (who was the intestate's natural aunt), all but three of whom were the intestate's full cousins by blood, and the remainder were her natural brothers and sisters. On the question whether the effect of the order for adoption was to exclude the natural brothers and sisters of the intestate, by virtue of their natural relationship, from sharing in the distribution of the intestate's estate, *Held*, That the natural brothers and sisters of the intestate were the sole next-of-kin for the purpose of such distribution. *Semble*, If there had been no brothers and sisters of the intestate, the estate, which consisted wholly of personalty, would have been distributable amongst the next-of-kin in equal degree, without distinction between those on the paternal and maternal sides respectively. *In re Ballance (deceased), McKnight* v. *Anderson*. (S.C. Wanganui. August 18, 1950. Hay, J.)

* Infants Act, 1908, s. 21 (as if unamended since 1908).

BY-LAWS.

Standards Amendment Act, 1950, amends the Standards Act, 1941, so as to authorize local authorities to make by-laws by adopting standard codes of model by-laws, with power to a local authority to make by-laws by adopting standard specifications.

CHARITY.

Cy-pres Doctrine — General Charitable Intention — Unconditional Gift for Particular Purpose—Purpose Impracticable. By his will, dated December 30, 1931, a testator who died on September 29, 1939, devised and bequeathed his residuary estate to his trustees on trust to sell the same and out of the remainder after payment of expenses debts and legacies (*inter alia*) to set apart £2,500 in authorized trust investments and pay the income to his daughter during her life. The testator then purported to dispose of the capital of the fund so set apart by directing that (i) his trustees should, with the sanction of the Court or a Judge or of the Charity Commissioners, apply "£2,300 out of my residuary estate in purchasing a piece of land preferably in . . . Kingston-upon-Hull . . . and erecting thereon six or more rest homes each home consisting of a living room, sleep apartment (*sic*) and usual outside domestic conveniences all to be on the ground floor and all on one level. (ii) My trustees shall set apart and invest in authorized trust investments the sum of £200 and apply the income arising therefrom or if necessary the capital of such sum for the upkeep of such homes including the proper costs charges and expenses of and incidental to the administration and management of the trust." On the death of the daughter, the fund being insufficient for the purpose specified, it was impracticable to give effect to the trusts, and the question arose whether the fund could be applied *cy-pres*. *Held*, That, although the gift was not dependent on the fulfilment of a condition, the language was so particular as to exclude the possibility of finding that a general charitable intention was expressed so as to permit the application of the *cy-pres* doctrine. (*Re Wilson*, [1913] 1 Ch. 314, and *Re Packe*, [1918] 1 Ch. 437, applied.) *Re Good's Will Trusts, Oliver and Another* v. *Batten and Others*, [1950] 2 All E.R. 653 (Ch.D.).

As to Application of Cy-pres Doctrine, see *4 Halsbury's Laws of England*, 2nd Ed. 221-230, paras. 325-339; and for Cases, see *8 E. and E. Digest*, 344-351, Nos. *1365-1460*.

CONSTITUTIONAL LAW.

Legislative Council Abolition Act, 1950, provides for the abolition of the Legislative Council as from January 1, 1951. The statute amends s. 32 of the New Zealand Constitution Act, 1852, to provide that the General Assembly will consist of the Governor-General and the House of Representatives, and it repeals all references in the statute relating to the Legislative Council.

Republic of Ireland Act, 1950, which is deemed to have come into force on April 18, 1949, declares that, notwithstanding that the Republic of Ireland is not part of His Majesty's dominions, it is not a foreign country for the purposes of any law *in force in, or in* any part of, New Zealand or in the Cook Islands, the Tokelau Islands, and Western Samoa, whether by virtue of a rule of law or of an Act of any Parliament passed or made before or after the passing of the new statute; and, further, that all existing law is to apply as if the Republic of Ireland were part of His Majesty's dominions.

Republic of India Act, 1950, which is deemed to have come into force on January 26, 1950, applies all existing law of, or of any part of, New Zealand or of the Cook Islands, the Tokelau

Islands, and Western Samoa, as if India had not become a republic.

The Statute of Westminster and the Constitution of Canada. (Hon. H. S. Nicholas.) *24 Australian Law Journal*, 147.

CONTRACT.

Contracts and Unforeseen Events. *210 Law Times*, 25.

Performance—Agreement to install Diesel Engine—Contract for Work done and Materials supplied—Covenants, Conditions, and Warranties implied therein—Faulty Installation—Total Failure of Consideration—Sale of Goods Act, 1908, s. 29. If a contract is a contract of sale, then the duties of the parties can be brought within the terms of s. 29 of the Sale of Goods Act, 1908. If the duty of the vendor is completed upon delivery, then it is a contract for the sale and delivery of goods. If that duty is not completed by delivery, but the supplier of the goods has to affix them to the land, or build or install them into a building or other installation, then the contract is not a contract for the sale of goods. (*Buxton* v. *Bedall*, (1803) 3 East 303; 102 E.R. 613, *Pinner* v. *Arnold*, (1835) 2 Cr. M. & R. 613; 150 E.R. 261, and *Clarke* v. *Bulmer*, (1843) 12 L.J. Ex. 463, applied.) The plaintiff company supplied a diesel engine and generator to the defendant for the lighting system in his hotel under a conditional-purchase agreement. After having inspected the existing plant, and as a result of discussion with the defendant, the company undertook to manufacture and install a power unit which would increase the power for defendant's lighting system and machinery. Under the heading "Description of Goods," there was written in the document signed by the defendant: "1-5/7 Cov. Victor Diesel built up in unit with J.K.V.A. Alternator radiator cooled and with special counter shaft also switchboard. Price installed." It was arranged that the company would instal the plant in time for the Christmas trade. It was common ground that the plant as installed by the plaintiff's employees was not satisfactory on account of excessive vibration, and that it was not possible to use it for the purpose for which it was required. The plaintiff admitted this, both in evidence and in correspondence. It attributed the excessive vibration to the nature of the country, however, and not to the negligence or inexperience of its employees. *Held*, 1. That the words "price installed," while inconsistent with the printed wording of the conditional-purchase agreement, imported that the price was not payable until the plant had been properly installed so that it operated efficiently for the purpose for which it was required. 2. That the term relating to installation for the Christmas trade was either a term or condition agreed upon which was part of the contract or intended as a warranty. 3. That the contract was not a contract for the sale of goods, but was a contract for work done and materials supplied. 4. That there was a total failure of consideration, as, on the evidence, the company failed to exercise reasonable care and skill in installing the plant; and the work was so negligently done as to be useless to the defendant. (*Appleby* v. *Myers*, (1867) L.R. 2 C.P. 651, and *The Moorcock*, (1889) 14 P.D. 64, applied.) (*British Dominions Films, Ltd.* v. *Dominion Picture-theatres Co., Ltd.*, [1935] N.Z.L.R. s. 50, referred to.) *A. M. Bisley and Co., Ltd.* v. *Hawtin*. (Hamilton. June 30, 1950. Paterson, S.M.)

Repudiation—Anticipatory Breach—Contract with Corporation for Removal of Refuse—Undertaking by Contractors to observe By-laws—Sealing of New By-laws—Substantial Additional Burden on Contractors. The City of London Corporation, as the sanitary authority, made a contract for the removal of refuse by the River Thames, under which the contractors undertook to use lighters and barges fitted with "temporary coamings and coverings to be secured to the permanent coamings." The contractors also undertook to comply with the by-laws of the Corporation as health authority for the Port of London. In April, 1948, when the contract still had a prospective life of some twenty years, the Corporation, as the Port health authority, sealed new by-laws, which were due to come into force in November, 1950. One of these by-laws required any vessel transporting refuse to be provided with "permanent coamings and close-fitting hatches to such coamings, capable of completely covering the refuse, and . . . water-proof sheeting for covering such hatches." It was not disputed that the additional burden thrown on the contractors by this by-law was such as would entitle them, when the by-law ultimately came into force, to treat the contract as having been frustrated. *Held*, That the repudiation of a contract must be a conscious act with reference to the contract which is said to be repudiated; in the present case, the Corporation legislated in discharge of their duty as Port health authority, without reference to the contract into which they had entered as sanitary authority; and, therefore, the sealing of the by-laws did not amount to a repudiation of the contract entitling the contractors to treat it as determined forthwith. *William Cory and Son, Ltd.* v. *City of London Corporation*, [1950] 2 All E.R. 584 (K.B.D.).

As to Repudiation of Contract, see *7 Halsbury's Laws of England*, 2nd Ed. 227-230, paras. 311-315; and for Cases, see *12 E. and E. Digest*, 338-345, Nos. *2830-2874*.

Two Aspects of Mistake. I. The Quality of a Mistake. *94 Solicitors Journal*, 465.

CONVEYANCING.

Restrictive Covenants affecting Leasehold Interests. *94 Solicitors Journal*, 472.

"The Prudent Man Rule" and Investment. *210 Law Times*, 23.

Will: Specific Bequests and Pecuniary Legacies Free of Duty. *24 Australian Law Journal*, 159.

CO-OPERATIVE COMPANIES.

Co-operative Egg Marketing Companies Act, 1950, applies to co-operative egg marketing companies the provisions of ss. 3–9 of the Co-operative Companies Act, 1933, and prohibits the use of the word "co-operative" in the name of a co-operative egg marketing company unless it is registered as such under the Companies Act, 1933.

COSTS.

Charging Orders. *94 Solicitors Journal*, 469.

Compensation Tribunals. *94 Solicitors Journal*, 446.

Fixed Costs. *94 Solicitors Journal*, 415.

The Crown and Public Authorities. *94 Solicitors Journal*, 430.

CRIMINAL LAW.

Trial—Plea of Not Guilty—Withdrawal—Admission of Guilt—Need to take Verdict of Jury. On arraignment, the appellant pleaded not guilty to charges of stealing and receiving. He was put in charge of the jury and the trial proceeded, but, during the opening of the case for the prosecution, his counsel said that he (the appellant) wished to change his plea to one of guilty of receiving, and asked that the jury should return a verdict accordingly, but the Recorder said that that was not necessary, and he passed sentence without a verdict's being returned. *Held*, (i) That the statement by his counsel that he wished to plead guilty was not sufficient, for a prisoner himself must plead. (ii) That, once a person had been put in charge of a jury, he could only be convicted or discharged by the verdict of the jury; this trial, therefore, was a nullity, and the Court could have ordered a retrial; but, in the circumstances, they would not take that step, but would quash the conviction. *The King* v. *Heyes*, [1950] 2 All E.R. 587 (C.C.A.).

As to Pleas on Arraignment, see *9 Halsbury's Laws of England*, 2nd Ed. 155, para. 213; and for Cases, see *14 E. and E. Digest*, 248, 249, Nos. *2414-2433*, and Digest Supp.

DISTILLATION.

Offences—Keeping Unlicensed Still—Power of Magistrate to impose Fine in Excess of £100—Distillation Act, 1908, s. 116—Customs Act, 1913, s. 314. A Magistrate may properly impose a fine in excess of £100 for any offence under s. 116 of the Distillation Act, 1908, as the power to impose fines under that section is not limited or restricted by s. 314 of the Customs Act, 1913. *Clark* v. *Enright*. (S.C. Invercargill. September 4, 1950. O'Leary, C.J.)

DISTRAINT.

Distress and Replevin Amendment Act, 1950, increases the exemption from distress for rent of clothing, furniture, and household effects, and tools or implements of trade from £50 to £100. This has already been done in the Bankruptcy Act, 1908, and in the case of executions under the Magistrates' Courts Act, 1947, and the Supreme Court Code. The new s. 5, substituted for s. 5 of the Distress and Replevin Act, 1908, makes the exemption provisions uniform with those of s. 85 (*a*) of the Magistrates' Courts Act, 1947.

DIVORCE AND MATRIMONIAL CAUSES.

Confessions of Adultery before Hearing. *210 Law Times*, 36.

Cruelty—Condonation—Revival of Cruelty—Inference that Conditional Forgiveness has become Absolute after Lapse of Time—Cruelty committed from 1930-38—Alleged Revival after 1945. The husband presented a petition for divorce on the ground of his wife's cruelty, and in her answer the wife asked for a

decree on the ground of the husband's cruelty. Each relied on incidents alleged to have taken place between 1930 and 1938 and after 1945. Between 1938 and 1945, it appeared, the parties lived a normal married life. It was contended by each party that, if the earlier acts of alleged cruelty had been condoned, they had been revived by the later incidents, which, it was alleged, amounted to matrimonial offences, even if they did not constitute cruelty in law. The learned Commissioner by whom the petition was heard was not satisfied that cruelty in law had been committed by either party in the period before 1938, and, in regard to the events after 1945, he found that the matters of complaint could not be treated as cruelty by one spouse to the other or as reviving previous cruelty, had there been any, and, accordingly, he dismissed the petition and rejected the prayer in answer. Both parties appealed. *Held* (per *Bucknill* and *Somervell*, L.JJ.), That, on the evidence, the learned Commissioner was justified in coming to the conclusion that no cruelty had been proved by either party in respect of either of the two periods. *Beale* v. *Beale*, [1950] 2 All E.R. 539 (C.A.).

EVIDENCE.

Taking Evidence out of the Jurisdiction. *210 Law Times*, 5.

FACTORY.

Building Operations—"Premises . . . temporarily used for . . . construction of a building"—Night-watchman injured during Week-end Stoppage of Work—Machinery not being used, but Available for Use—"Working-place"—Watchman's Tour of Inspection—"Efficiently lighted"—Watchman provided with Hurricane Lamp—Building Regulations, 1926 (S.R. & O., 1926, No. 738), Reg. 15. The Building Regulations, 1926, "apply to all premises on which machinery worked by steam, water or other mechanical power is temporarily used for the purpose of the construction of a building," and by Reg. 15: "Every working-place and approach thereto shall be efficiently lighted." A night-watchman employed by building contractors on a site on which they were constructing a block of flats was supplied only with a hurricane lamp to light his way. While on his round at 10.30 p.m. during a week-end when work had ceased until the following Monday, he tripped over a loose plank left in the roadway of the site and sustained injuries. On a claim by him against his employers for damages for breach of their duty under the Building Regulations, 1926, Reg. 15. *Held*, (i) That the Building Regulations, 1926, applied to the site at the time of the accident, since it was "temporarily used for the purpose of the construction of a building" so long as there was machinery on the site for the purpose of the construction of the building and available for use, although during the week-end it was not in active use. (*Barnett* v. *Caxton Floors, Ltd.*, *Butler* v. *Kleine Patent Fire Resisting Flooring Syndicate, Ltd.*, (1928) 140 L.T. 138, applied.) (ii) That the Regulations applied to the night-watchman as well as to building operatives, since it was the duty of an employer to observe such requirements in Part I of the Regulations "as affect any workman engaged by him." (iii) That a place on the night-watchman's ordinary tour of inspection was not a "working-place" within the meaning of Reg. 15. (iv) That, if Reg. 15 had applied to that place, it would have required that that "working-place" itself should be lit, and it would not be a compliance with it to provide the watchman with a lamp to take there. *Field* v. *Perrys (Ealing), Ltd.*, [1950] 2 All E.R. 521 (K.B.D.).

As to Safety of Employment, see *22 Halsbury's Laws of England*, 2nd Ed. 176-178, paras. 296-298; and for Cases, see *34 E. and E. Digest*, 194-203, Nos. *1581-1661*.

For the Application of the Factories Act, 1937, to premises used for building operations, see *14 Halsbury's Laws of England*, 2nd Ed. 621, 622, para. 1175.

Safe Means of Access to Place of Work—Maintenance of Floors and Passages—Passage leading to Canteen—Rainwater collected on Floor of Passage—Factories Act, 1937 (c. 67), *s. 25 (1), s. 26 (1)* (*Factories Act, 1946, ss. 47 (1), 48*)*—Master and Servant—Provision of Safe Place for Servant to Work—Rainwater on Floor of Passage leading to Canteen—Workman slipping and suffering Injury.* The plaintiff, who was employed by the defendants at their factory, was walking along a passage at the factory on his way to the canteen during a morning break, when, on turning a corner, he slipped on a patch of oil, or of water in which some mud or oil might have been present, and which had accumulated, possibly in a depression, on the concrete floor. He caught his foot between some machine tools standing nearby, and was injured. On a claim by him for damages for breach of the defendants' duties under the Factories Act, 1937, s. 25 (1) and s. 26 (1), and at common law, *Held*, (i) That s. 26 (1) [s. 47 (1) of the Factories Act, 1946] had no application to the facts, because, at the time of the accident, the plaintiff was using the passage as a means of access to the canteen, and not to go to any place at which any person had to work. (iii) That the existence of an unexplained patch of oil or of a patch of water on the passage did not amount to a failure properly to maintain the floor and the passage as required by s. 25 (1) [s. 48 (1) of the Factories Act, 1946]. (iii) That, in the circumstances, there was no failure by the defendants to take reasonable care to protect those employed from unnecessary risk. (Dictum of *Lord Herschell* in *Smith* v. *Baker and Sons*, [1891] A.C. 362, applied.) *Davies* v. *De Havilland Aircraft Co., Ltd.*, [1950] 2 All E.R. 582 (K.B.D.).

GOVERNMENT RAILWAYS.

Offences—Driving Vehicle across Level Crossing—Riding Bicycle—Bicycle a "vehicle"—Government Railways Act, 1949, s. 64. Riding a bicycle amounts to "driving any vehicle" across a level crossing within the meaning of those words in s. 64 of the Government Railways Act, 1949. (*Taylor* v. *Goodwin*, (1879) 4 Q.B.D. 228, applied.) *Police* v. *Mackie.* (Gore. August 8, 1950. Harlow, S.M.)

Offences—Mens rea—*Driving Vehicle across Level Crossing when Risk of Collision—Defence of Absence of* Mens rea—*Government Railways Act, 1949, s. 64 (1).* The offence created by s. 64 (1)—driving or attempting to drive any vehicle across a level crossing or elsewhere on a railway when there is any risk of the vehicle's being involved in a collision with any locomotive, rail-car, carriage, wagon, or other vehicle using the railway line—is not one of absolute liability, but comes within the third class of offence mentioned by *Williams*, J., in *R.* v. *Ewart*, (1905) 25 N.Z.L.R. 709, 725, 726; and it is open to the defendant to meet such a charge by establishing absence of *mens rea* on his part. (*C. L. Innes and Co., Ltd.* v. *Carroll*, [1943] N.Z.L.R. 80, followed.) (*Harding* v. *Price*, [1948] 1 All E.R. 283, applied.) (*Ashton* v. *Whittaker*, [1938] N.Z.L.R. 508, *Smith* v. *Buchanan*, [1939] N.Z.L.R. 1058, and *Broad* v. *The King*, (1914) 33 N.Z.L.R. 1275, referred to.) Whether there is a risk of collision or not is a question of opinion on the facts in each case; and, if such risk is not present, then no offence is committed. (*Guildhall (Owners)* v. *General Steam Navigation Co., Ltd., The Guildhall*, [1908] A.C. 159, followed.) *Frost* v. *Harper.* (Stratford. June 2, 1950. McCarthy, S.M.)

INFANTS AND CHILDREN.

Infants Amendment Act, 1950, sets out the legal status of an adopted child by substituting a new s. 21 in the Infants Act, 1908, after repealing s. 27 of the Statutes Amendment Act, 1949, which similarly substituted a new s. 21. The main change in the new section is that it is deemed to have come into force on January 1, 1950, and applies with respect to all orders of adoption, whether made before or after that date, provided that, for the purposes of any deed or instrument (other than a will) made before that date, or of the will or intestacy of any testator or intestate who died before that date, or of any vested or contingent right of the adopted child or any other person under any such deed, instrument, will, or intestacy, the section will not apply, and s. 27 of the Statutes Amendment Act, 1949, is deemed not to have been passed. Section 27 of the Statutes Amendment Act, 1949, is repealed as from the commencement thereof; and s. 20 of the Death Duties Act, 1921, and s. 21 (7) of the Finance Act, 1947, are repealed. Subsection 2 of s. 22 is amended by repealing that subsection and substituting two new subsections relating to the discharge of an adoption order.

LAND AND INCOME TAX.

Land and Income Tax Amendment Act, 1950. Land tax: Section 3 of the new statute increases the special exemption under s. 49 of the Land and Income Tax Act, 1923, by repealing s. 49 (1) (*a*) and s. 49 (1) (*b*) and substituting new paragraphs that provide (*a*) where the value does not exceed £1,500, a deduction of £1,000; and (*b*) where that value exceeds £1,500, a deduction of £1,000 diminished at the rate of £1 for every pound of that excess, so as to leave no deduction when that value amounts to or exceeds £2,500. Income tax: The additional tax on unearned income is abolished, and the basic rates are altered accordingly in terms of a new First Schedule to the Land and Income Tax Amendment Act, 1940.

Land and Income Tax (Annual) Act, 1950. The rates of land tax for the tax year ending March 31, 1950, are as enacted in the Amendment Act, 1950. Income tax for the tax year ending March 31, 1950, is the same as last year, with the exception that the additional tax on unearned income is abolished. The allowance from tax payable by each taxpayer of a rebate of the sum of £10 is retained.

LIBEL.

Damages—Special Damages—Loss of Employment following Publication of Libel—Determination of Service not in Breach of Contract — Libel — Privileged Occasion — Four Co-defendants—Malice found against One only—Effect on Privilege of Other Defendants. The four trustees of a friendly society, acting on behalf of the society, prepared a report on the activities of the society's general secretary, and caused it to be read by one of them at a meeting of the general committee of the society. The report was libellous, and after it had been read the meeting passed a resolution determining the secretary's appointment, in accordance with his contract of service, with a payment of three months' salary in lieu of notice. In an action for damages for libel brought by the secretary against the four trustees, the statement of claim, after reciting the facts, stated: "By reason of the premises the plaintiff has been brought into hatred ridicule and contempt and his said service agreement was terminated on November 6, 1947, and the plaintiff has suffered damage." The Judge ruled that the occasion of publication of the libel was one of qualified privilege. They jury found that one of the four trustees was actuated by malice, but that the other three were not, and they awarded general and special damages. *Held*, (i) That the trustees could not be sued for the libel in their capacity as trustees under s. 94 (1) of the Friendly Societies Act, 1896, because the proceedings were not "any action or other legal procedding . . . concerning any property, right or claim of the society" within the meaning of that subsection, but should be brought against the society in its registered name. (*Taff Vale Railway Co.* v. *Amalgamated Society of Railway Servants*, [1901] A.C. 426, applied.) (*Linaker* v. *Pilcher*, (1901) 84 L.T. 421, not followed.) (ii) That the protection afforded by the qualified privilege of the three trustees not actuated by malice was not destroyed by the malice of the fourth, because each acted under an independent duty to make the communication to the general committee of the society, and so had an independent privilege of his own, and not one derived from that of the fourth trustee. Moreover, a person who published a defamatory statement on an occasion which the law clothed with the protection of qualified privilege was not a tortfeasor, and could not, therefore, be a joint tortfeasor. (*Smith* v. *Streatfeild*, [1913] 3 K.B. 764, and *Thomas* v. *Bradbury, Agnew and Co., Ltd.*, [1906] 2 K.B. 627, explained and distinguished.) (iii) That the plaintiff was entitled to special damages for the loss of his employment, although the determination thereof was lawful and not in breach of contract. *Longdon-Griffiths* v. *Smith and Others*, [1950] 2 All E.R. 662 (K.B.D.).

PRINCIPAL AND AGENT.

Commission—Instructions "to secure purchaser and accept offer to purchase"—Meaning—Offer to purchase obtained "subject to finance"—Finance not raised—Whether Commission payable. A business agent was instructed "to secure a purchaser for the above-mentioned business and to accept from such a purchaser an offer to purchase the business on the above or such other terms as are accepted by me." *Held*, (i) That, under the instructions, agent's commission was not payable on "finding a purchaser," which means that the person found must execute a binding contract with the vendor, but that the agent was entitled to commission if he secured an offer to purchase upon terms which the vendor approved, whether before or subsequent to the offer's being obtained from a person who was financially able to purchase.

(ii) That the agent, having obtained only an offer "subject to finance," and it not being possible to arrange finance, had not carried out his instructions, and was not entitled to commission. It is not a rule of law that an agent is entitled to recover commission whenever his principal enters into negotiations with the person introduced by the agent, although no sale results. *Gerlach* v. *Pearson*, [1950] V.L.R. 321.

Liability of Undisclosed Principal—Horse-float Owner asked by Trainer to render Accounts for Charges to Him—Payment by Horse-owners to Trainer, but Payment not made to Horse-float Owner—Action against Horse-owners for Unpaid Charges—Practice of Horse-owners to be responsible for Horses' Transport—Effect of Delay in rendering Accounts to Owners—Contractual Relationship through Trainer—Amounts recoverable from Owners. The appellants owned a number of race-horses, which were trained by E. The respondent was a float-owner who transported race-horses from the stables to race meetings. E. requested the respondent to send his account for float charges to him, and he (E.) would pay. The first monthly account was accordingly sent to E., and he paid it, after collecting the amount from the appellants. The next three accounts were collected by E. from the appellants, but he did not pay the respondent. The respondent sued the appellants for the float charges, and the learned Magistrate gave judgment in his favour. On appeal from that determination, *Held*, dismissing the appeal, 1. That there is a contractual relationship between a person in the position of the respondent carrying horses on his floats and the owner of the horses carried, through the trainer who orders the float, even though the float-owner does not know the name of the owner of the horses. 2. That, though the respondent gave credit to E., he did not agree to accept the sole responsibility of E. for the payment of his accounts, as the ordinary practice is that horse-owners accept responsibility for the transport of their horses, and he had looked to the appellants as the ultimate persons responsible to him. (*Irvine* v. *Watson and Sons*, (1879) 5 Q.B.D. 102, followed.) (*Davison* v. *Donaldson*, (1882) 9 Q.B.D. 623, applied.) (*Armstrong* v. *Stokes*, (1872) L.R. 7 Q.B. 598, and *Thomson* v. *Davenport*, (1829) 9 B. & C. 78; 109 E.R. 30, referred to.) 3. That mere delay by the respondent in seeking payment from the appellants was not, in itself, a sufficient reason for denying a remedy to the respondent, even though the appellants had paid his account to E. in the meantime; and the respondent was entitled to judgment for the amount due to him by the appellants. *Chamberlain and Sims* v. *Donovan*. (S.C. Wellington. August 21, 1950. Fair, J.)

SETTLEMENT.

Special Distributions on Settled Shares. *210 Law Times*, 21.

SHIPPING.

Bill of Lading—Inclusion of Term at variance with Contract between Parties—Admissibility of Evidence as to True Contract—Carriage by Sea—Breach of Contract—Measure of Damages—Shipper taking Delivery and paying Freight—Right to recover Increase in Import Duty and Loss of Profit. On November 22, 1947, in reliance on a promise made by the shipowner's agent that the ship would proceed direct to London, and, therefore, in the celief that she would arrive there by November 30, at the latest, a shipper in Cartagena, Spain, shipped 3,000 cases of mandarins which were intended for sale in the London market. The shipper was anxious that the goods should arrive in England by November 30, as the import duty on them would be considerably increased on December 1, and also because the sooner they arrived the better the prices they would fetch. These facts were known to all persons handling this class of merchandise, and, when making the contract, the shipper impressed on the shipowner's agent the importance of the ship arriving in London by November 30. The bill of lading contained a clause that the shipowner was to be at liberty to carry the goods to their port of destination "proceeding by any route, and whether directly or indirectly to such port, and in so doing to carry the goods beyond their port of destination." Instead of proceeding direct to London from Cartagena, the ship went first to Antwerp, where she arrived on November 30, and she did not arrive in London until December 4, with the result that the shipper had to pay the higher import duty, and obtained an appreciably lower price for the goods than the price which he would have realized if he had been able to sell them earlier. In an action by the shipper claiming damages against the shipowner for breach of contract, the shipowner relied, *inter alia*, on the clause in the bill of lading, and contended that evidence of any other contract or promise was inadmissible. *Held*, (i) That the bill of lading was not in itself the contract between the shipowner and the shipper, and, therefore, evidence was admissible of the contract which was made before the bill of lading was signed, and which contained a different term. (Dictum of *Lord Bramwell* in *Sewell* v. *Burdick*, (1884) 10 App. Cas. 105, applied.) (*Leduc* v. *Ward*, (1888) 20 Q.B.D. 475, distinguished.) (ii) That the shipper had not waived his claim for damages by taking delivery and paying freight. (iii) That, as the shipowner must have known that the earlier the goods arrived the better would be the price obtained for them, the shipper was entitled, not only to damages representing the increased import duty, but also to the additional sum which he would have realized if the ship had arrived in London on November 29, and the goods had been sold at Covent Garden on December 2. (*The Parana*, (1877) 2 P.D. 118, distinguished.) (*Dunn* v. *Bucknall Bros.*, *Dunn* v. *Donald Currie and Co.*, [1902] 2 K.B. 614, applied.) *The Ardennes (Owner of Cargo)* v. *The Ardennes (Owners)*, [1950] 2 All E.R. 517 (K.B.D.).

As to Effect of Bill of Lading on Contract of Affreightment, see *30 Halsbury's Laws of England*, 2nd Ed. 378, 379, para. 550; and for Cases, see *41 E. and E. Digest*, 371, 372, Nos. *2180-2188*.

TRUSTS AND TRUSTEES.

Reflections on *Cannon* v. *Hartley*. (Dr. J. G. Fleming.) *24 Australian Law Journal*, 149.

CONSTITUTIONAL LAW: SOME ASPECTS OF CHANGE.

By A. C. Brassington.

Admittedly Constitutional Law is vague in definition. We know in a general way that it deals with the structure of the chief organs of government, as regulated by laws and conventions, and with the relationship between these organs of government and the private citizen. We know that the subject carries us into the field of politics and that it covers such important problems as the liberty of the individual, his freedom of speech and assembly, and what are often called his fundamental rights. It concerns itself to-day with such current topics as the proposals in England relating to reform of the House of Lords; the proposed abolition in New Zealand of the Legislative Council; or the recent legislation regarding banking in the Commonwealth of Australia. In the field of British Commonwealth relations, it is concerned with the Statute of Westminster, the powers of a Dominion Legislature, or of a Governor-General. It reaches back to Magna Carta; it dealt yesterday with the abdication of a King, to-day it deals with the marriage of a Princess. The nature and exercise of the Royal Prerogative, and the privileges of Parliament, are within its ancient province, and its now extended boundary contains the vast and undeveloped territory of delegated legislation—that is, for example, legislation by Order-in-Council or by Departmental Regulation.[1]

Because the limits of the subject are but vaguely defined, it is necessary for the constitutional lawyer to be able to distinguish what is basic or fundamental from what is of secondary or merely temporary importance. In making this distinction, he is not helped, as are lawyers in the United States of America, by being able to turn to a written constitution. When we come to consider English Constitutional Law, we find that there is no constitutional code, no document in which the law of the constitution is formulated. It is true that part of this law is to be found in statutes, but these are legally in no way sacrosanct, because any statute, notwithstanding its public, historical, or other significance, may be repealed or amended by the ordinary process of legislation. Statutes of such importance as the Habeas Corpus Acts could be repealed by a clause in a mere "washing-up" Bill; by the same measure the electors could be disfranchised, or Parliament could prolong its own life indefinitely. As the law of the constitution is not to be found in a written code, its sources must be ascertained not only from numerous statutes but also from judicial decisions, and the opinions of writers of authority, and from conventional rules. These rules will usually be found to have as their sanction public opinion, which in a given case may or may not have some indirect backing from the law.

The fact that under the British Constitution there are no guaranteed or absolute rights is well illustrated in the important case of *Liversidge* v. *Anderson*[2] which came before the House of Lords in 1941. It may be remembered that the appellant in this case had been imprisoned in England under certain Defence Regulations which provided for the detention of persons of hostile associations. The Home Secretary had made an order for detention, stating therein that he did so because he had reasonable cause to believe the appellant was a person of hostile associations, and that, accordingly, it was necessary to exercise control over him. The appellant claimed a declaration that his detention was unlawful, and damages for false imprisonment. The argument before the House of Lords was in effect whether the Home Secretary, by virtue of the special provisions of the Regulations, had the right to detain persons at his own discretion, not subject to interference by the Courts. The crucial Regulation gave power to him to order the detention of any person whom he had "reasonable cause to believe" to be of hostile origin or associations. Did this mean that he was required to have such cause of belief as a Court of law would deem sufficient, or, on the other hand, did the quoted words merely require him to have such cause of belief as he himself considered reasonable? The former interpretation would give the Courts power to examine his reasons; the latter would mean that his action, taken in good faith, could not be examined in any Court. Of the nine Judges, eight took the latter view; the late Lord Atkin adopted the former in a dissenting judgment which aroused much controversy. One of the majority, Lord Wright, discussed in his judgment the topic of the liberty of the subject. He said (pp. 260, 261; 372):

> What is involved is the liberty of the subject. Your Lordships have had your attention called to the evils of the exercise of arbitrary powers of arrest by the Executive and the necessity of subjecting all such powers to judicial control. Your Lordships have been reminded of the great constitutional conflicts in the seventeenth century, which culminated in the famous constitutional charters, the Petition of Right, the Bill of Rights, and the Act of Settlement. These struggles did, indeed, involve the liberty of the subject and its vindication against arbitrary and unlawful power. They sprang (to state it very broadly) from the Stuart theory that the King was King by divine right and that his powers were above the law. Thus a warrant of arrest *per speciale mandatum Domini Regis* was claimed to be a sufficient justification for detention without trial. By the end of the seventeenth century the old common-law rule of the supremacy of law was restored and substituted for any theory of Royal supremacy. All the Courts to-day, and not least this House, are as jealous as they have ever been in upholding the liberty of the subject. But that liberty is a liberty confined and controlled by law, whether common law or statute. It is, in Burke's words, a regulated freedom. It is not an abstract or absolute freedom. Parliament is supreme. It can enact extraordinary powers of interfering with personal liberty. If an Act of Parliament, or a statutory Regulation . . . is alleged to limit or curtail the liberty of the subject or vest in the Executive extraordinary powers of detaining a subject, the only question is what is the precise extent of the powers given. The answer to that question is only to be found by

* By kind permission of Messrs. Whitcombe and Tombs, Ltd., the publishers of *Liberty and Learning*, for which this article was originally written.

[1] "The modern extent of sub-delegated legislation is almost boundless." Scott, L.J., in *Blackpool Corporation* v. *Locker*, [1948] 1 All E.R. 85, 92.

[2] [1942] A.C. 206; [1941] 3 All E.R. 338. The position in New Zealand is similar: see the judgment of Smith, J., in *Herbert* v. *Allsopp*, [1941] N.Z.L.R. 370, 374: "the Legislature can, and in an emergency does, modify and suspend what are sometimes called the fundamental rights of the individual."

> scrutinizing the language of the enactment in the light of the circumstances and the general policy and object of the measure. I have ventured on these elementary and obvious observations because it seems to have been suggested on behalf of the appellant that this House was being asked to countenance arbitrary, despotic, or tyrannous conduct. But in the constitution of this country there are no guaranteed or absolute rights. The safeguard of British liberty is in the good sense of the people and in the system of representative and responsible government which has been evolved.

Although at first it may be disturbing to find that under the law of England there are no guaranteed constitutional rights, further examination shows that individual freedom does exist, although without the guarantee of a written constitutional code. England *has no written code, yet there, if anywhere, is a free* people, and there the structure of liberty is supported, not by the bricks and mortar of unalterable law, but by the spirit of the people themselves, through their elected representatives in Parliament. But should this spirit fail, and the people of England lose their love of liberty, then a succession of Acts of Parliament *could soon reduce them to a form of servitude appro*priate to their decline. For example, let us assume that pursuant to the will of the people, their liberties and rights are embodied in some safeguarding statute, itself declared to be perpetual and not subject to repeal. If we were then to imagine that liberty had been secured in England for all time, we should delude ourselves, because no Parliament can legally bind its successor, and the safeguarding statute could itself be repealed by a subsequent Parliament. The Legislature has unfettered power to sweep away prior statutes, remove the safeguards of the independence of the judiciary, and destroy the ancient foundations of the common law.

Liberty is a word that escapes definition. Yet, since we understand, as our ancestors have understood, its significance in our lives, it denotes for us a recognizable general concept. Our understanding of its meaning does not come to us by logical deduction from first principles, but rather from our daily lives, and from the actions of individuals. It is from life and from action that we extract its principle, so that, when we speak of it, we think rather of some particular aspect which affects our own time and generation. As we are disinclined to the effort of formulating a comprehensive generalization, we prefer to apply our commonsense to some particular set of facts, some specific case, where we may recognize liberty in a plication, or detect the beginning or the possibility of oppression. When we think of liberty, we turn naturally to the law, because we regard the law as protecting the people and their ancient rights. The caprice of personal rule has no place in our legal system, under which we acknowledge only the rule of law and the equality of each of us before the law. But this statement does not end the matter; for, apart from the difficulty, present in every case, of applying the law to the particular facts, there is the added problem that the law itself is sometimes obscure or uncertain.

For example, the law cannot be regarded as sctlled in respect of some of the liberties of the subject. Let us consider the so-called "right of public meeting," which is popularly supposed to be protected by the common law. The generally-accepted view of the law regarding public meetings may be said to be that people may meet together in open meeting at any time or place, provided that they do not thereby commit a trespass or a nuisance or constitute an unlawful assembly. An unlawful assembly may be loosely defined as a gathering which intends to break the peace, or to commit a crime, or which by the manner of its assembly causes reasonable persons to fear a breach of the peace. The law as to public meetings cannot be fully stated in a short compass, because it must be approached from several angles, is not completely settled, and changes *along with the times. For example, the law is con*cerned at one time with the danger of riot and violence arising from the holding of a meeting, at another time with questions of obstructing a highway, or yet again with the prevention of rowdy and disorderly behaviour on the part of persons attempting to break up a meeting. One of the chief points to bear in mind is that the law does not recognize a right of public meeting in a public street, although such meetings are often held and are usually tolerated or permitted by local authorities and by the Police.[3] Members of the public have a legal right to pass along the highway but not to hold a meeting on it, for such a meeting is regarded in law as a trespass, being treated as an obstruction. Although the law permits members of the public to halt on the roadside for reasonable rest and recreation, they have no legal right to gather together on the highway to stand and listen to speeches. The dominant viewpoint of the law is that the highway must not be obstructed, because the highway is there primarily for the passage of the public along it. Ample powers are vested in the Police to deal with disorderly persons who attempt to break up a meeting, or to cause a breach of the peace. So far all seems fair and reasonable, and citizens may suppose themselves to enjoy a right of public meeting for a lawful purpose in a lawful manner. But a recent judicial decision in England has cast serious doubts upon the "right of public meeting"; and, as this decision has been followed and applied in New Zealand, both cases[4] require serious consideration.

In the English case, there was an attempt in 1934 by a Mrs. Duncan to hold a public meeting. Mrs. Duncan had mounted a box to start the meeting, but was arrested and later charged with obstructing a *Police officer in the execution of his duty. The place* chosen by Mrs. Duncan for the meeting was opposite a training centre for unemployed; and it was proved that over a year previously Mrs. Duncan had held a meeting at the same place, that a disturbance had then occurred in the training centre, and that the superintendent of the centre had attributed the disturbance to the meeting. There was no allegation that Mrs. Duncan had obstructed the highway, or that she had incited or provoked any person to commit a breach of the peace. The Court held that the Police officer, Jones, had reasonably apprehended that a breach of the peace would occur if the meeting were held, that it was his duty, therefore, to prevent the holding of the meeting, and that Mrs. Duncan, by attempting to hold the meeting, had obstructed Jones in the execution of his duty. Mrs. Duncan was accordingly convicted. It should be noted that the Police did not establish that the highway was obstructed, nor was trespass in issue in this case.

Before this decision, text-book writers on this topic *were accustomed to state the law as being that any*

[3] For a recent discussion in New Zealand by the Full Court of the powers of municipal corporations to regulate by by-law the holding of meetings in the streets and reserves of cities, see *Hazeldon* v. *McAra*, [1948] N.Z.L.R. 1087.

[4] *Duncan* v. *Jones*, [1936] 1 K.B. 218; *Burton* v. *Power*, [1940] N.Z.L.R. 305.

person can meet others, to an indefinite number, at an appointed place, so long as the law is not thereby broken. They would then usually refer to the decision in *Beatty* v. *Gillbanks*[5] as being authority for the statement that people who assemble for a lawful object without intending to break the peace do not constitute an unlawful assembly, even although they have reason to believe that a breach of the peace will occur in consequence of their meeting being opposed by others. Most lawyers will recollect that this case arose out of a public procession of the Salvation Army being riotously opposed by an opposition calling itself the "Skeleton Army." The Salvationists had assembled at Weston-super-Mare in the full knowledge that they would be opposed by the "Skeleton Army." The meeting had been forbidden by magisterial notice, and the assembled Salvationists were met by Police and ordered to obey the notice. Open disobedience of the Police order led to some of the Salvationists being prosecuted and convicted by the Magistrates. The Queen's Bench Division overruled the Magistrates, and held that there was no authority for a man being convicted for doing a lawful act, even if he knew that his doing it might cause another to do an unlawful act.

The text-books would then refer to the Public Meeting Act, 1908, which prohibited disorderly conduct at any lawful public meeting. The general effect of the statements in the text-books, was that the law protected the right of public meeting.

The effect of the decision in *Duncan* v. *Jones* upon the "right" of public meeting was recognized not only by constitutional lawyers,[6] but by many other authoritative commentators, and it became at once the subject of criticism in the English Press and in pamphlets and books. It must be remembered that the case was decided in 1936, at a time when Nazis, Fascists, and Communists were making propaganda in England; but the outbreak of war put an end, for a time, to further discussion. It may fairly be claimed that the decision went too far in developing preventive law, particularly as no trouble or disorder had actually begun amongst the assembled crowd, nor could any unlawful conduct be attributed to the speaker; that it could tend to encourage Police officers to over-zealous action in preventing the holding of meetings; and that it had the effect of placing in the hands of the Executive a very convenient weapon for the suppression of meetings in places where the public had rights of access.

The New Zealand case of *Burton* v. *Power*, [1940] N.Z.L.R. 305, was an appeal by a clergyman, the Rev. O. E. Burton, against his conviction by a Magistrate on an information for wilfully obstructing a Police Constable in the execution of his duty, contrary to the provisions of the Police Offences Act, 1927. The appeal was heard in April, 1940, by the then Chief Justice, Sir Michael Myers, who dismissed the appeal, the reasons for his judgment being given orally.

The facts, as reported, were that the appellant, who was a member of an organization called the "Pacifist Society," on March 29, 1939, held a meeting on a public reserve in the City of Wellington, and persisted in addressing the meeting after being forbidden to do so by the respondent, a Police Constable. He was convicted by a Magistrate and sentenced to three months' imprisonment.

The appellant, by leave of the Court, conducted his own legal argument, which is reported as follows:

> There must be something "illegal" before the Police can prevent a speaker from speaking. The meeting was not unlawful. No one was arrested for interfering with this or the other meetings: *Wise* v. *Dunning* ([1902] 1 K.B. 167). No breach of the peace resulted.

In his judgment, the learned Chief Justice said, at pp. 306, 307:

> This is not a charge against the appellant for being a pacifist or for holding opinions of any particular subject, nor does the case involve the law of unlawful assembly or any question of freedom of speech in any fair sense of the term. What is really involved was considered in the recent English case of *Duncan* v. *Jones* ([1936] 1 K.B. 218) . . .
>
> So, in this case, I find as a fact that the Police had a reasonable apprehension on the night of March 29 that breaches of the peace would occur. They had the whole history of the previous meetings of this society within their knowledge. In the previous fortnight, and again back in February, and back in September, the incidents that occurred at the meetings were such, in my opinion, as to give the Police reasonable cause to apprehend breaches of the peace on this occasion of March 29. The duties of the Police, onerous in normal times, become still more onerous and difficult in times when the susceptibilities and passions of the public are in a state of tension and liable to be more easily aroused.
>
> The Police are charged with the preservation of order and peace within the country, and it is their duty to carry out that charge with moderation, fairness, and discretion, and within the law. So long as they do that, they are entitled to and should receive the support of the Courts and of every good citizen. If they carry out their duties unfairly and immoderately, the Court would not hesitate to express its condemnation of their action and would see that no person suffered by reason thereof. But, on the other hand, it is the duty of every citizen, especially in times when susceptibilities and passions are likely to be aroused, with the likelihood of resultant breaches of the peace, to refrain from conduct calculated to produce that kind of disruption within the country.

Both cases rested upon the "reasonable apprehension" of a Police officer of a possible breach of the peace. In the New Zealand case, the learned Chief Justice followed the law as laid down in England. Had *Duncan* v. *Jones* been differently decided, presumably the law in New Zealand would to-day be different. It should be explained that much of the law of England still prevails in New Zealand, and that decisions of the superior Courts in England are usually followed by the Courts in New Zealand.[7]

It should also be explained to those who are unfamiliar with legal concepts that Judges both in England and in New Zealand are bound by precedent, and must interpret the law as it has been laid down. Writers on the common law of England tend to treat it in theory as having existed from earliest times in the minds of the Judges, and accordingly they assume that, even if a recent decision overrules an earlier one, the Judge himself does not make new law but merely declares what it always has been. In such a case, the earlier Judges are assumed to have been fallible and to have taken a mistaken view of the law, which itself

[5](1882) 9 Q.B.D. 308. Recently discussed in (1948) *64 Law Quarterly Review*, 451. In New Zealand, first commented on in 1891 by the Court of Appeal in *Goodall* v. *Te Kooti*, (1890) 9 N.Z.L.R. 26.

[6]*E.g.* A. L. Goodhart and E. C. S. Wade in (1937) *6 Cambridge Law Journal*, 161, 175, and the latter in (1938) *2 Modern Law Review*, 177.

[7]There is no space here to amplify this statement. But reference may be made to *Hight and Bamford's Constitutional History and Law of New Zealand*, Chap. XXV, and to the English Laws Act, 1858, which declared the laws of England as existing on January 14, 1840, to be in force in New Zealand, so far as applicable to the circumstances of the Colony, and to continue to be therein applied in the administration of justice accordingly. See also the English Laws Act, 1908. Much interesting material is to be found in the case of *In re Rayner, Daniell* v. *Rayner*, [1948] N.Z.L.R. 455.

is infallible. In accordance with this theory, when precedent is departed from, the Judge does not himself make new law, but merely reinterprets and clarifies the true doctrine. Lawyers usually treat this theory as a convenient "fiction"—laymen may find it on occasions absurd. The position was stated early in 1949 by the late Lord du Parcq in the House of Lords in these words:

> Let it be granted that the law is always certain. It must, nevertheless, be acknowledged that practitioners, and even Judges, sometimes have to find the best way they can through an obscure and difficult field of law, illuminated only by conflicting decisions. There may be a period, sometimes a long period, during which the truth, which is in its nature certain, has not been finally revealed to a perplexed world.[8]

This lengthy digression may explain why it is that the Courts in New Zealand are bound in general (and subject to certain important qualifications which need not here detain us) to follow the decisions of the superior Courts in England. It may explain how an English decision, such as that in *Duncan* v. *Jones*, by being applied in a similar case here, may radically affect the law of New Zealand. Now, if we suppose that *Duncan* v. *Jones* is at some future time overruled by the House of Lords, the law in New Zealand, which rests upon and flows from *Burton* v. *Power*, would probably some day need to be restated by our Court of Appeal. Put in another way, the House of Lords can, in effect, by its decisions alter the law of New Zealand in some of its branches, particularly the common law and the important liberties which rest upon it. The Judges in England are today tending to overrule those older decisions which now appear contrary to current ideas upon economic and social matters. They are in effect anticipating interference by the Legislature, by reforming that part of the law which is based upon past judicial decisions. This they have undoubted power to do, and thus they are in a sense legislating for New Zealand.

We must now revert to the decision in *Duncan* v. *Jones*, not only because it was a considered decision given in time of peace by a strong Bench of Judges, but because it exposes the frail foundation of the so-called "right of public meeting."

The learned editor of *Dicey's Law of the Constitution*, 9th Ed., has pointed out at pp. 559, 560:

> The common law of England, which rightly penalizes the speaker who persists in insulting language and behaviour, has ceased to protect the speaker who merely desires to give expression to his opinions without causing any obstruction or committing, inciting or provoking any breach of the peace. It is submitted that, not only is there no right to hold a public meeting as the law stands to-day, but every promoter of such meeting may have to face what is in effect a double trial: (1) By an administrative official—a Police officer, who can decide beforehand whether he is prepared to allow the meeting to be held . . . (2) By the Courts: possibly if the promoter fails to obtain previous Police approval, certainly if he declines to accept Police refusal to grant such approval . . . It is not for a lawyer as such, even a constitutional lawyer, to say whether the power of licensing public meetings ought to lie with the Police. But the result of the existing law is that it does. As citizens of a democratic State we may pause to inquire whether it would not be better to provide a reasonable measure of free facilities for public meetings, adjacent to the highway or (as at election time) in public buildings for those who wish to air their political views among their neighbours. If free discussion is accepted as an essential liberty, ought the law to permit the Police to hamper it as regards the place of its exercise merely on account of suspicions as to probable consequences?

The legal position in New Zealand may now be stated as follows. A person attempts to hold a public meeting after having been forbidden by a constable to address it. The constable has a reasonable belief that there will be a breach of the peace if the meeting is held, his belief being based upon his consideration of the circumstances existing at the time and at the place of the meeting. The attempt to hold the meeting contrary to the constable's prohibition is punishable by imprisonment, as being the crime of wilfully obstructing a constable in the execution of his duty. The prosecution need not prove that the accused or any of the persons present at the meeting committed a breach of the peace, or incited others to break the peace, for the Court need only satisfy itself that the constable had a reasonable apprehension that a breach of the peace would occur; that he ordered the accused not to continue with the meeting; and that the accused then attempted to address it.

Let us now consider a hypothetical case. Let us assume that the Executive Government of New Zealand has decided to prevent the discussion of some particular question at any public meeting and that it has instructed the Police accordingly. Let us also assume the existence of some political or other group in the country, working on an understanding with the Executive, which, for reasons of its own, does not wish to go so far as openly to prohibit the holding of meetings for public discussion of the question. A public meeting is held which is attended by a large and orderly crowd and is well policed, but a small group in the crowd begins to threaten the speaker and to make a demonstration. The Police make no attempt to deal with the small group, which for the purpose of this argument we shall assume could readily be silenced by Police action—action which we shall also assume would be readily supported by the crowd—but the Police order the speaker to stop speaking. The speaker must obey or face prosecution and the possibility of imprisonment. Although this is a hypothetical case, it is submitted that it is worthy of serious consideration; nor, indeed, need the matter be taken so far as in the foregoing example, because, even without connivance by the Executive, too much power is now placed in the hands of Police officers. Any small minority which can enlist the sympathy, conscious or unconscious, of a Police officer may cause him to order a public meeting to be stopped, thus placing upon the speaker an unfair onus to comply. Furthermore, any small but determined minority could cause a public meeting to be stopped merely by inducing in the mind of a constable a "reasonable apprehension" as to a possible breach of the peace. The decision in *Burton* v. *Power* is of particular importance because prosecutions for obstructing the Police are dealt with by Magistrates who are bound to apply the law as laid down in that case—a case which has given prosecuting officers a considerable advantage over any individual accused. It is submitted that the present state of our law as disclosed in this decision should be considered now and in tranquillity, rather than later, when perhaps the country may be disturbed. While we need pause here no longer to discuss these matters, we may agree that the best safeguard of liberty of assembly in New Zealand lies in enlightened public scrutiny of the use by the Police of their power to prevent the holding of public meetings.

From this example of an unsatisfactory state of one part of our constitutional law, one is led to reflect that in the past we have uncritically accepted too many generalizations concerning our public liberties.

(To be concluded).

[8] *Tyne Improvement Commission* v. *Armement Anversois Société Anonyme, The Brabo*, [1949] 1 All E.R. 294, 306, 307.

MIXED GIFTS FOR CHARITABLE AND OTHER PURPOSES.

A Consideration of In re Ashton.

By F. D. O'FLYNN, B.A., LL.M.

(*Concluded from p. 251.*)

There has, however, been one further case on the section which does not appear to have been cited to Smith, J., and which supports the view here expressed. In *Union Trustee Co. of Australia, Ltd.* v. *Church of England Property Trust, Diocese of Sydney*, (1946) 46 N.S.W. S.R. 298, certain lands were devised to the defendant Trust to use and apply the rents and profits or the proceeds of sale thereof:

> in such manner and for such purposes relating to the work of St. John the Baptist Church of England at Ashfield as the rector and churchwardens for the time being of the said church shall in their absolute discretion think fit.

Following the House of Lords decision in *Farley* v. *Westminster Bank*, [1939] A.C. 430; [1939] 3 All E.R. 491, that similar gifts "for parish work" were not valid charitable gifts, it was held that this gift must also fail, unless saved by the equivalent New South Wales legislation, s. 37D of the Conveyancing Act, 1919-1943. Nicholas, C.J. in Eq., had no difficulty in deciding that the section did so apply. At p. 304 that learned Judge takes the point made earlier that the language of both subsections compels the wider interpretation. He was, moreover, of the opinion (p. 302) that the dicta in *Lawlor's* case supported this view, and it will now be convenient to examine these.

As has been mentioned, there was in that case, first, a gift of capital "as a nucleus, to establish a Catholic daily newspaper," followed by a direction that, until sufficient funds were in hand for this purpose, the income from that gift should be used "for Catholic education, or any good object the Hierarchy may decide." The Full Court in Victoria, in a judgment again delivered by Sir Frederick Mann, A.C.J., held that the capital gift for the newspaper was not a charitable gift. No argument was apparently addressed to them as to the possible application of the section to this gift, and the point is not touched upon in the judgment, nor is its effect on the gift for "any good object the Hierarchy may decide" in any way canvassed. After merely remarking that the section would undoubtedly have validated the gift of income for the first of the enumerated objects, the judgment seems clearly right in holding that it could not be invoked to divorce the gift of income from the capital gift on which it was dependent, and that the former must fail with the latter. In the High Court, Rich, Starke, and Dixon, JJ., reached the same conclusion, and each of them also held that the section could not be applied to the gift for the newspaper. The reasoning of Rich, J., on this point has already been cited. That learned Judge also expressed the view (at p. 23) that the section applies only where the purposes of the trust are severable. A different view is adumbrated by Starke and Dixon, JJ., in what are admittedly only dicta referring to the income gifts. Thus, at p. 26, the former says:

> The section might have protected the gift of the income from the two benefactions to be used for Catholic education, or any good object the Hierarchy might decide.

It is not clear whether the learned Judge thought the section might apply to the second alternative standing alone, but Dixon, J., expressed the hesitant opinion that it might. At pp. 37, 38, he says:

> "Any good object" goes beyond charitable purposes and, therefore, apart from s. 131, the whole trust of income would fail, but the section operates to exclude the non-charitable purposes and leave the income applicable to Catholic education, and, perhaps, also to other charitable purposes answering the description "good object," although this is doubtful.

Sir Frank Gavan Duffy, C.J., and Evatt and McTiernan, JJ., were of the opinion that the gift to the newspaper was good as a specific charitable gift, and, accordingly, did not consider the section in relation to it. In their joint judgment, the Chief Justice and Evatt, J., at p. 18, merely mention the question, without expressing any opinion even as to the income gift, which they are apparently content to assume is good. McTiernan, J., after referring to the section, said, at p. 55:

> There is therefore a valid charitable gift of the income of the benefaction, at least for Catholic education.

In short, it is not an unfair summing-up to say that, in five judgments by six Judges, only one of them expresses himself as unequivocally supporting the narrow construction, while two, or perhaps three, show themselves, albeit hesitantly, prepared to entertain the wider view.

In face of this conflict of judicial opinion, it seems justifiable to adopt the suggestion of Nicholas, C.J. in Eq., in the *Union Trustee* case, at p. 304, citing Lord Simon, L.C., in *Hickman* v. *Peacey*, [1945] A.C. 304, 315; [1945] 2 All E.R. 215, 218, and consider the mischief intended to be remedied by the section. In spite of the fact that its introduction in New Zealand followed *Smith's* case, and in Victoria it followed closely on *In the Will of Forrest, Forrest* v. *McWhae*, [1913] V.L.R. 425, in which case a similar alternatively worded bequest (likewise involving a large sum) failed, thus leaving room for the old argument *Post hoc ergo propter hoc*, it is confidently maintained that the wider evil must be taken to have been within the contemplation of the various Legislatures, and that the remedy provided was designed to meet it. This, at all events, was the view of Long Innes, C.J. in Eq., who called attention to the merits of the Victorian legislation in *Re Price, Price* v. *Church of England Property Trust Diocese of Goulburn*, (1935) 35 N.S.W. S.R. 444, 458, after having, with difficulty, upheld a gift to certain churches for "such purposes" as the respective trustees of each "should in their absolute discretion think fit." Again, in *Re Moroney*, (1939) 39 N.S.W. S.R. 249, where a gift "for such church purposes in the Casino parish as he [the parish priest] shall in his absolute unrestricted and unlimited discretion determine" was upheld by the same learned Judge, he remarked, at p. 250, that it was a matter for regret that the expense and the risk of disappointment involved in the litigation had been incurred because the Legislature had failed to give effect to the earlier unanimous recommendation of the Judges by passing the legislation until it was too late for it to govern the case before him.

In all the circumstances, those remarks are no doubt the merest *obiter dicta*. They have been cited because it is submitted that the view of the scope of the section there expressed can be shown to be entirely consistent

with the principle upon which was decided each one of the long line of well-known cases in which a host of general words other than "charitable" have been held ineffective to raise a valid charitable trust. The *fons et origo* of this line of authority is *Morice* v. *Bishop of Durham*, (1804) 9 Ves. 399; 32 E.R. 656, affirmed by Lord Eldon (1805) 10 Ves. 522; 32 E.R. 947. The bequest was "to such objects of benevolence and liberality as the Bishop of Durham in his own discretion shall most approve of," and the reasons of Sir William Grant, M.R., for rejecting this as a charitable trust are sufficiently instructive in the present connection to justify lengthy citation. He said (at pp. 405, 406; 658, 659):

> Do purposes of liberality and benevolence mean the same as objects of charity? That word in its widest sense denotes all the good affections, men ought to bear towards each other; in its most restricted and common sense, relief of the poor. In neither of these senses is it employed in this Court. Here its signification is derived chiefly from the Statute of Elizabeth (43 Eliz., c. 4). Those purposes are considered charitable, which that statute enumerates, or which by analogies are deemed within its spirit and intendment; and to some such purpose every bequest to charity generally shall be applied. But it is clear liberality and benevolence can find numberless objects, not included in that statute in the largest construction of it . . . could it be contended to be an abuse of the trust to employ this fund upon objects, which all mankind would allow to be objects of liberality and benevolence; though not to be said, in the language of this Court, to be objects also of charity? By what rule of construction could it be said, all objects of liberality and benevolence are excluded, which do not fall within the Statute of Elizabeth? The question is, not, whether he may not apply it upon purposes strictly charitable, but whether he is bound so to apply it?

It is unnecessary to traverse at length the cases which have followed this, which are conveniently collected in *Tudor on Charities*, 5th Ed. 65. A few more modern instances will be sufficient to show that the same reasoning has been adopted throughout—namely, that such general words, while no doubt including most objects of charity in the technical legal sense, include many other objects and purposes not within the protected ambit of the legal definition. Thus, in *Farley* v. *Westminster Bank*, [1939] A.C. 430; [1939] 3 All E.R. 491, two gifts "for parish work" were rejected by the House of Lords as charitable gifts, and the headnote, accurately reflecting the decision (see per Lord Romer, at p. 437; 494), states that:

> as the words "for parish work" would in their ordinary meaning include objects which were not charitable in the legal sense, those gifts were not charitable and consequently failed.

To add point to the contention now advanced, many of the cases dealing with such general terms were cases where they had in fact been linked to the term "charitable" by the use of "and" or "or." Such a case was *In re Macduff*, *Macduff* v. *Macduff*, [1896] 2 Ch. 451, wherein the word so considered was "philanthropic," and the concise but accurate headnote concludes:

> Such a bequest, however, is not a good charitable bequest, as there may be philanthropic purposes which are not charitable.

Another was *Attorney-General* v. *National Provincial and Union Bank of England*, [1924] A.C. 262, wherein the gift was "for such patriotic purposes" (*inter alia*) as trustees should select. This was rejected also, the headnote saying that "'patriotic purposes' were not necessarily charitable." The application of the reasoning of Sir William Grant, M.R., in the latter two cases and others like them, for instance *Houston* v. *Burns*, [1918] A.C. 337, shows, if demonstration of such a necessary logical deduction is required, that the rule in *Morice* v. *Bishop of Durham* is an essential element in the decision of cases where charitable purposes are linked with non-charitable purposes. It is merely necessary to read the bequest as disjunctively joining such purposes and the rule in *Morice* v. *Bishop of Durham* becomes applicable to the term including the non-charitable purposes and invalidates the gift. Indeed, such cases are merely special examples of the application of the rule, and hence it is submitted that the section, which admittedly alters the law as to such cases, must—since its language is not merely appropriate for, but positively indicates, such an intention—be construed as abrogating also the wider rule.

Finally, in *Chichester Diocesan Fund and Board of Finance* (*Inc.*) v. *Simpson*, [1944] A.C. 341; [1944] 2 All E.R. 60, a case identical with *Smith's* case (*supra*), and, therefore, easily disposed of by the House, Lord Simonds, after concurring in reading the words "charitable or benevolent" disjunctively, and applying the usual reasoning to the latter term, goes on to explore the effect of a contrary decision. Speaking of the Attorney-General's contention that to include benevolent objects which are not charitable with objects which are charitable does not make the whole gift fail, he says, at p. 370; 74:

> I do not see how, if his proposition is a sound one, it could be limited to the introduction of benevolent objects, philanthropic objects, liberal objects, perhaps patriotic or public objects, must come within the scope of this new doctrine. *Nor, if a gift for charitable or benevolent objects is valid, could it be any longer contended with any show of logic that a gift for benevolent objects alone is invalid.*

With all respect to Smith, J., the writer contends that this reasoning is correct, and is conclusive of the present question. It is admitted that our section renders a bequest for charitable or benevolent purposes valid, and, having regard to the clear principle of the cases on other general terms, it is clear that it must have the effect pointed to by Lord Simonds. In short, the construction of the section is governed by the maxim *Ubi eadem est ratio, eadem est lex.*

CORRESPONDENCE.

Attestation Clause in Will.

THE EDITOR,
NEW ZEALAND LAW JOURNAL.

Sir,

Re Selby-Bigge, [1950] 1 All E.R. 1009, is an interesting case on the adequacy of the attestation clause to a will.

The clause in question was: "Signed by the testatrix in our presence and attested by us in the presence of her and of each other."

You will notice that this clause contains only nineteen words compared with the total of over forty words in the attestation clause in general use. In his judgment, Hodson, J., says, at p. 1010, that "in order to save labour and for the sake of neatness, every skilful practitioner desires to reduce the number of words to the minimum."

I wonder if you would care to invite the JOURNAL's readers to a competition to devise the shortest and simplest attestation clause that will comply with s. 9 of the Wills Act and that will not require a confirmatory affidavit under R. 519. I suggest that you act as judge and publish the best five or ten entries.

My own entry would be: "Signed by testator and two witnesses, each in presence of the two others" (thirteen words).

I am, &c.,

HARRINGTON TAYLOR.

IN YOUR ARMCHAIR—AND MINE.

By Scriblex.

Lord Hailsham.—The death of Lord Hailsham last month (August 16, 1950) at the age of seventy-eight removes one of the great figures of the modern legal scene. Although he was not called to the Bar until he was thirty, he soon became a noted orator, and served six years as Attorney-General. Twice Lord Chancellor of Great Britain, he brought distinction to that office by the width of his knowledge and the clarity of his judgments. To the younger generation, he was perhaps best known as the Editor-in-Chief of the Hailsham edition of *Halsbury's Laws of England*—still the first and essential tool-of-trade in any lawyer's kitbag.

Wife's Maintenance.—The profession will welcome the dicta of Denning, L.J., in *Rose* v. *Rose*, [1950] 2 All E.R. 311, on the difficult question as to the extent to which a former husband is required to maintain his former wife who is capable of earning—and who, in many instances, earns—as much as he does :

> I agree that no general rule can be laid down on the matter, but this wife is certainly under no legal duty to go out to work in order to reduce the maintenance that her husband should pay. It would be quite unreasonable to expect her to do so when she has to look after a young child. If a wife does earn, then her earnings must be taken into account; or, if she is a young woman with no children, and obviously ought to go out to work in her own interest, but does not, then her potential earning-capacity ought to be taken into account; or if she has worked regularly during the married life and might be reasonably expected to work after the divorce, her potential earnings ought to be taken into account. Except in cases such as those, however, it does not as a rule lie in the mouth of a wrongdoing husband to say that the wife ought to go out to work simply in order to relieve him from paying maintenance.

In *Rose's* case, the husband had committed adultery with a Swiss student who came to help in the house, thereby breaking up twenty-one years of married life and leaving his wife with two children, one of whom was very young. The Court saw no reason to lessen his financial burdens by taking into account the potential earning-capacity of his wife.

Innocent Concealment.—Scriblex is indebted to the *Australian Conveyancer and Solicitors Journal* (July, 1950) for the story of an undefended divorce case. The atmosphere of the Court had been heavy, and nothing of interest had occurred until the petitioner stated that his wife had a wooden leg and that he was unaware of this until after the wedding. The Judge seemed somewhat startled. "Do you really mean to say that you married this woman and that you didn't know that she had a wooden leg ?"

"That is so," replied the petitioner.

"Well," said His Honour, "all I can say is that it must have been a pretty dull courtship."

An Avenue of Escape.—From the same source comes a reference to an eminent K.C., who was an acknowledged expert on the common law, but whose knowledge of equity jurisprudence was very small indeed. He was briefed to appear in a will case, and was soon in difficulties. The Judge was sympathetic and anxious to help. "I appreciate your point," said His Honour, "but don't you think that you're putting the cart before the horse ?"

"That is so," said the K.C., "but I am doing so advisedly. I may want to back out."

Patience and Discretion.—Recent references in the Press to unparliamentary language remind Scriblex of the famous encounter in the Court of Common Pleas in *Thurtell* v. *Beaumont*, in which Sergeant Taddy, for the defendant, had asked a question suggesting that the plaintiff had "disappeared" from a certain neighbourhood. Park, J., said that it was improper.

Taddy : That is an imputation to which I will not submit. I am incapable of putting an improper question to a witness.

Park, J. : What imputation, sir ? I desire that you will not charge me with casting imputations. I say that the question was not properly put, for the expression "disappear" means "to leave clandestinely."

Taddy : I say that it means no such thing.

Park, J. : I hope that I have some understanding left, and, as far as that goes, the word certainly bore that interpretation, and, therefore, was improper.

Taddy : I never will submit to a rebuke of this kind.

Park, J. : That is a very improper manner, sir, for counsel to address the Court in.

Taddy : And that is a very improper manner for a Judge to address a counsel in.

Park, J. (rising) : I protest, sir, you will compel me to do what is disagreeable to me.

Taddy : Do what you like, my Lord.

Park, J. (resuming his seat) : Well, I hope I shall manifest the indulgence of a Christian Judge.

Taddy : You may exercise your indulgence or your power in any way your Lordship's discretion may suggest.

No Case for Discretion.—A writer in the *Solicitors Journal* relates the story of a Chancery Judge that is going the rounds. It seems that he was called upon to sit in the Divorce jurisdiction and take some cases in the undefended list. One of these was an adultery suit, and the usual hotel bill was produced. He looked at it, took the objection that it was unstamped, and dismissed the petition. The report is not authenticated.

Rural Respectability.—In the first number of the new *British Journal of Sociology* is a survey endorsed by the Nuffield Trust entitled "Social Gradings of Occupations," and written by John Hall and D. C. Jones. The authors seek to classify occupations according to their rank in the social scale. In the first seven classes, country solicitors have been rated with medical officers, company directors, and chartered accountants. Town solicitors do not even run into a place—a distinction between town and country not to be found in any of the other listed occupations, nor elsewhere, unless there be included a somewhat similar one by the late Beatrix Potter, but in respect of mice, not men.

NEW ZEALAND LAW SOCIETY.

Meeting of Council.

(*Continued from p. 256*).

War Concessions.—The following letter was received from the University:

"The Council of Legal Education at its meeting on May 18 considered the representations of your Society regarding war concessions in the Professional Law courses. The Council decided to advise the War Concessions Committee of the Senate that Latin should not be a compulsory unit for ex-servicemen for the Professional Law examinations as distinct from the degree examinations. You will note that no reference has been made to a fixed term during which this concession is to operate.

"In regard to the matter of allowing single subject credits in the Professional Law course, the Council decided to advise the War Concessions Committee that in the case of an ex-serviceman who needs two subjects to complete his Professional examination (as distinct from the degree course), a pass in one subject shall count as a pass whether or not a candidate sits in one or both subjects. This resolution, as you will observe, is in terms of your Society's recommendation. The War Concessions Committee will consider these matters in due course."

A further letter from the University reading as follows was received:

"I have to advise that at its recent meeting, the full Executive of the Senate considered certain recommendations by the Council of Legal Education arising from your letter dated March 27. The Committee discussed at some length the courses of Law students who had benefited by war concessions and the manner in which those concessions had been applied to them. At the conclusion of the discussions the Committee resolved to advise the War Concessions Committee to continue with its existing policy in respect of Latin. Upon a separate motion the Committee also resolved to advise the War Concessions Committee against adopting a new policy of single credits in final or semi-final subjects for the Law Professional.

"Finally, the Committee, on the instruction of the Senate, gave consideration to the whole question of March examinations for ex-servicemen and considered the statistics, the results, and the reports of examiners for the March examinations of 1950. The Committee thereafter resolved to adhere to the decision of the Senate that the examinations of March, 1950, be the last special examinations conducted for ex-servicemen only."

Mr. Leicester stated that, on receiving this information, the Post War Aid Committee of the Society made representations to the Hon. the Minister of Education, who was fully in sympathy with the views expressed in the resolution and promised to look into the matter.

The Post War Aid Committee asked that an appeal be made to the full Senate, and Mr. Leicester suggested that in the circumstances no effort should be spared with a view to obtaining the concessions, which were a matter of grave importance to many of the servicemen in various parts of the country.

It was resolved that the Post War Aid Committee be instructed to make an appeal to the full Senate of the University against the decision of its executive committee.

Loss of Expectation of Life.—The following letter was received from Hamilton:

"I enclose the substance of a letter received from a firm of practitioners here and am instructed to say that my Council approves of the recommendation in the letter and suggests that it be referred to the Law Revision Committee."
Enclosure:

"I wish to bring to the notice of the Council the anomalous position which exists in regard to claims for loss of expectation of life.

"After the passing of the Law Reform Act, 1934, in England it was held in the leading case of *Rose* v. *Ford*, [1937] 3 All E.R. 359, that a claim for loss of expectation of life survived to the personal representative of the deceased, and this became also the position in New Zealand after the passing of s. 3 of our Law Reform Act, 1936. However, such claims have always been considered highly technical and theoretical and produced rather absurd results. The Deaths by Accidents Compensation Act, 1908, gives a right to relatives to obtain compensation for their actual or presumptive financial loss. The claim for loss of expectation of life, however, was a completely separate cause of action which gave a right not founded in any way on any financial loss of any dependants with the result that the damages recovered under this cause of action could go to complete strangers or remote next-of-kin and in some cases were in the nature of a pure windfall not founded in any way on any loss suffered by the recipient through the death of the deceased. Parliament obviously recognized the injustice of preserving such a right of action as it passed s. 17 of the Statutes Amendment Act, 1937. This section reads as follows: 'Where by virtue of Part I of the Law Reform Act, 1936, a cause of action survives for the benefit of the estate of a deceased person the damages recoverable for the benefit of the estate of that person shall not include any damages for his pain or suffering, or for any bodily or mental harm suffered by him, or for the curtailment of his expectation of life.'

"However, the Legislature obviously overlooked, when passing this section, the effects of s. 55 of the Workers' Compensation Act, 1922. This section says: 'The right to recover compensation under this Act or to recover damages independently of this Act in respect of an accident to a worker shall survive notwithstanding the death either of the employer or other person liable to pay the compensation or damages or of the worker, and all proceedings for the enforcement of such right may be begun or continued by or against the representative of the deceased person.'

"It has been held in the cases of *Forrest* v. *Kaitangata Coal Co., Ltd.*, [1939] N.Z.L.R. 910, and *O'Meara* v. *Westfield Freezing Co., Ltd.*, [1947] N.Z.L.R. 253, that an action for loss of expectation of life where a worker is killed in the course of his employment is available to his representative by virtue of s. 55 quoted above.

"The anomalous position therefore arises that, if a person is killed in a road accident or under any circumstances other than whilst employed, his representative cannot make a claim for loss of expectation of life, while if a person be killed during the course of his employment his representative can claim for loss of expectation of life.

"I understand that Mr. Justice O'Regan actually recommended that the abolition of claims for loss of expectation of life should be extended to employment cases as well as others.

"I suggest that the matter is worthy of attention by the Law Revision Committee."

The following letter was received from Auckland:

"I enclose a copy of a report adopted by my Council at its recent meeting."
Enclosure.

"*We are of opinion that there is no justification for any* distinction between cases where workers are killed in the course of their employment and cases where members of the public are killed outside the field of their employment. In each case the claim is founded on negligence. There is, we think, no doubt that when the provisions of the Law Reform Act were amended by the Statutes Amendment Act, 1937, the fact that the provisions of s. 55 of the Workers' Compensation Act gave rise to the same kind of claim was overlooked, and, therefore, unless the attitude of the Government has in the meantime changed, consistency requires that s. 55 of the Workers' Compensation Act should be repealed."

It was resolved that the Auckland report be adopted and that it be sent on to the Law Revision Committee.

(*To be concluded.*)