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THE AUSTRALIAN JUBILEE LEGAL CONVENTION.

IT will be remembered that the President of the New Zealand Law Society, Mr. W. H. Cunningham, in his closing address at the recent Dominion Legal Conference at Dunedin, referred to the Legal Convention to be held by the Law Council of Australia, as part of the Commonwealth Jubilee celebrations. It will be held in Sydney, beginning on August 8.

Mr. Cunningham said that any practitioner from New Zealand would be made a very welcome visitor at the Convention, and would be included in the general arrangements for the overseas guests.

Since the Conference, we have received a letter from the Secretary of the Law Council of Australia, in which he says:

> if any New Zealand practitioners and their wives attend the Convention, we can assure them of a very warm welcome and we hope that they will have an instructive and enjoyable holiday.

As we would all like to see New Zealand well represented at the Convention, we mention it now, as those wishing to attend should make early travel arrangements.

The First Australian Legal Convention was held in Melbourne at the end of October, 1935. In opening the First Legal Convention, the Chief Justice of Australia, Sir John Latham, said that, in holding the Convention, the object of the Australian Law Council, under the auspices of which that Convention had been held, was to advance the study of the law and to improve and develop the law, and it was also believed that such a Convention would help in producing a sense of unity in the profession, of which they might well have an increased measure, to the advantage alike of the profession and of the public.

The Second Convention was held in Adelaide in September, 1936. The Third Convention was held in Sydney in January, 1938, as part of the sesquicentennial celebrations in New South Wales, and the Fourth Convention was held at Brisbane in July, 1939.

As with the New Zealand Legal Conferences, there was a long interval before the next Convention, due to war conditions.

The Fifth Convention was held in Melbourne in March, 1948, and the Sixth took place in the same city in July, 1949.

Each of these Conventions was attended by members of the Federal and State Judiciaries and by the Attorney-Generals for the time being both of the State in which the Convention was held and of the Commonwealth, as well as by a number of distinguished members of the Bar from all parts of Australia. At each of these Conventions valuable papers were read on subjects of particular interest to the profession or of general interest to the public at large.

The Law Council of Australia, under the auspices of which the Conventions are held, comprises the following constituent bodies: the Bar Association of New South Wales, the Committee of Counsel, Victoria, the Bar Association of Queensland, the Law Institute of New South Wales, the Law Institute of Victoria, the Queensland Law Society, the Southern Law Society, Tasmania, the Northern Law Society, Tasmania, the Law Society of Western Australia, and the Law Society of South Australia. The Annual Convention, however, is not a mere conference of delegates from those bodies: it is open to all members of the profession practising in the Commonwealth. This year, an invitation has been given to all members of the profession, wherever they are practising.

The Seventh Legal Convention of the Law Council of Australia to be held in Sydney from August 8 to 17 is the seventh of its series. The combined generosity of the Australian Government, the Nuffield Foundation, and the Australian Jubilee Celebrations Committee has enabled the Law Council to invite overseas guests to attend the Convention, and the following have already accepted the invitation:

Great Britain:

The Rt. Hon. Viscount Jowitt, Lord High Chancellor of Great Britain, and Lady Jowitt.

The Rt. Hon. Sir Raymond Evershed, Master of the Rolls, and Lady Evershed.

The Rt. Hon. Sir Hartley Shawcross, K.C., President of the Board of Trade, and formerly Attorney-General for England, and Lady Shawcross.

Sir Leonard Holmes, President of the Law Society, England.

Canada:

The Rt. Hon. Thibaudeau Rinfret, Chief Justice of Canada, and Madame Rinfret.

Mr. E. G. Gowling, K.C., President of the Canadian Bar Association.

South Africa :

The Hon. A. van de S. Centlivres, Chief Justice of South Africa, and Mrs. Centlivres.

Mr. B. A. Ettlinger, K.C., Chairman of the General Bar Council of South Africa, and Mrs. Ettlinger.

India :

The Hon. Sir Harilal Kania, Chief Justice of India, and Lady Kania.

Mr. M. C. Setalvad, Attorney-General for India, and Mrs. Setalvad.

Pakistan :

Sir Abdur Rahman, senior puisne Judge of Pakistan, and Lady Rahman.

New Zealand :

The Hon. Mr. Justice Finlay, of the Supreme Court of New Zealand, and Mrs. Finlay.

Mr. W. H. Cunningham, President of the New Zealand Law Society, and Mrs. Cunningham.

United States :

Mr. Cody Fowler, President of the American Bar Association.

Professor Erwin Griswold, Dean of the Law School of Harvard University.

It is expected that Ceylon will also be represented, and that there will be other important visitors from overseas countries.

The Chief Justice of Australia, the Chief Justice of every State, the Chief Judge of every other Federal Court, and the Chief Judge of Papua-New Guinea have already stated that they will attend. A large proportion of the Judges of every Australian Court will also be present.

We are informed by the Secretary of the Law Council that every overseas guest and every Chief Justice and Judge of Australia have already promised to co-operate with the Law Council in ensuring that every junior and his wife shall have equal opportunities with seniors of meeting every overseas visitor and his wife personally.

Everyone who takes part in this Convention will be helping to make history in the annals of the law in Australia. He will also be participating in the most distinguished gathering of legal dignitaries ever assembled. His presence at the Convention will provide cherished memories for the rest of his life.

On each of five mornings of the ten Convention days, there will be a discussion on a paper which will have been printed and posted in advance to everyone who states that he will be present at the Convention. The opening session on the night of August 8 at the Sydney Town Hall will take the form of a public welcome to the overseas guests and visitors. All other functions will be of a social nature.

The papers will be :

(i) " Liability for Representations at Common Law" : His Honour Mr. Justice W. K. Fullagar.

(ii) " Fifty Years of a Federal Arbitration System" : Their Honours Mr. Justice E. A. Dunphy and Mr. Justice S. G. Wright.

(iii) " Fifty Years of the Australian Constitution " : Professor K. H. Bailey, Solicitor-General for Australia.

(iv) " Constitutional Recognition of the Divorce Decrees of the States " : Dean Erwin Griswold.

(v) " Fifty Years of Equity " : Mr. C. McLelland, K.C., of the Sydney Bar.

(vi) " The Division of the Legal Profession " : Mr. R. Z. de Ferranti, President of the Law Institute of New South Wales.

An interesting and varied programme is being arranged, which will provide for social enjoyment and for sightseeing. However, plenty of time will be allowed for relaxation and private social engagements. Attention is also being given to the provision of functions and entertainments which will appeal to the wives of visiting lawyers. As all the details have not yet been ar anged, it is not possible to publish a complete programme at the present time. This will be announced as soon as possible.

The Federal Commissioner of Taxation has ruled that members of the legal profession who are not on a salary, and who incur expenses in attending the Convention, will be entitled to a deduction in respect of the expenses incurred except to the extent that the expenses are outgoings of a capital, private, or domestic nature. The deductible expenses include the cost of travelling to the Convention and normal accommodation expenses for the taxpayer himself. It is, however, questionable whether the Commissioner of Taxes has power under the Land and Income Tax Act, 1923, to allow such deductions here.

The Committee of the Law Council of Australia, which is organizing the Convention, is assured that there will be a very large number of visitors from all the Australian States. It is therefore advisable that intending visitors from New Zealand should secure hotel accommodation as soon as possible. The Committee has booked accommodation, but, naturally, the number of rooms made available at each hotel is limited. The Committee cannot guarantee accommodation at any particular hotel. If, therefore, New Zealand practitioners can secure their own hotel accommodation, they would be well advised to do so. If they cannot do so, or if they prefer to book through the Committee, then it is essential that they should let the Committee know at once. Communications regarding accommodation should be sent to the Secretary, Sydney Committee of the Law Council of Australia, 149 Castlereagh Street, Sydney, N.S.W., stating if the writer is to be accompanied by his wife and the class of hotel accommodation desired.

Those responsible for the organization in Sydney must also know, as soon as possible, the name of each New Zealand practitioner who will be attending the Convention, so as to be able to form an early estimate of how many will attend the various social functions. Intimations to this effect should be sent to the above address.

We are pleased to be able to give the foregoing details concerning the forthcoming Australian Legal Convention. Sydney, from a New Zealander's viewpoint, is at its best in the early Spring days during which this exceptionally interesting gathering will take place. We trust that there will be a good response from Dominion practitioners to the cordial invitation extended to them by their Australian brethren.

SUMMARY OF RECENT LAW.

ACCORD AND SATISFACTION.

Work done on Contract—Amount less than Sum Payable sent by Cheque to Contractor—Special Endorsement "In full settlement" on Cheque—Contractor crossing out Endorsement and obtaining Amount of Cheque—Contractor not accepting Cheque in Full Settlement—No Accord and Satisfaction. The plaintiff claimed the balance owing to him by the defendant for plumbing work. He proved that the fair and reasonable charge for the work was £130 17s. 6d., and that he had received from the defendant £110 17s. 6d. in the following circumstances. On receiving an account for £130 17s. 6d., the managing director of the defendant company had asked the plaintiff to reduce the account by £20. He did not agree to this. The managing director then sent a cheque to the plaintiff for £110 17s. 6d. having endorsed on its back the following: "In full settlement a/c Picturedrome, Ltd., invoice September 17, 1950." The cheque was made payable to the plaintiff "or order," and was dated October 18, 1950. It was lodged by the plaintiff with his bank for collection on October 26, 1950, after he had struck out the endorsement and signed his name below. The cheque was duly paid. The defendant pleaded accord and satisfaction. *Held*, That, on the facts, the plaintiff had not accepted the £110 17s. 6d. in full settlement, and that, therefore, there had been no accord and satisfaction. *Semble*, The plaintiff had acted wrongly in striking out the endorsement and paying the cheque into his account at the bank, as it had been sent to him on the express condition that it was to be accepted in full settlement of the company's liabilities, and the defendant would have a good course of action to recover the proceeds of the cheque as moneys had and received by the plaintiff. *Quaere*, Whether the crossing out of the endorsement and the cashing of the cheque constituted theft of the proceeds of the cheque. *Vaughan* v. *Picturedrome, Ltd.* (Auckland. April 9, 1951. Luxford, S.M.)

ADMINISTRATIVE LAW.

A Common Lawyer looks at the *Droit Administratif*. (Bernard Schwartz.) *29 Canadian Bar Review*, 121.

AGRICULTURAL WORKERS.

Employment of Children under Fifteen Years of Age prohibited—Contract by Farmer with Child under That Age Voidable—Employer liable to pay for Such Child's Work—Agricultural Workers Act, 1936, s. 13—Agricultural Workers (Farms and Stations) Extension Order, 1949 (Serial No. 1949/134), Cl. 2. Section 13 of the Agricultural Workers Act, 1936, prohibits the employment of children under the age of fifteen years on dairy-farms. By cl. 2 of the Agricultural Workers (Farms and Stations) Extension Order, 1949, this prohibition was extended to other classes of farms. There is nothing in s. 13 of the Agricultural Workers Act, 1936, declaring a contract of employment entered into in breach of the section to be void; but the contract, though not void, is voidable. Where the employer has had the benefit of the child's work, it is right that he should pay for the work done. (*Gye* v. *Felton*, (1813) 4 Taunt. 876; 128 E.R. 577, followed.) (*Victor Battery Co., Ltd.* v. *Curry's, Ltd.*, [1946] 1 All E.R. 519, referred to.) *Semble*, While a person who employs a child in breach of s. 13 of the Agricultural Workers Act, 1936, would be liable, on conviction, to a fine, the child employee, for whose protection the section operates, would not be a party to the offence. (*Reg.* v. *Tyrrell*, [1894] 1 Q.B. 710, applied.) *Winter* v. *Burgess*. (Christchurch. March 21, 1951. Ferner, S.M.)

ANNUAL HOLIDAYS.

Company—Receiver—Company's Employee retained by Receiver and Manager—Employment terminated and Normal Wages paid—Worker obtaining Judgment against Company for Recovery of Holiday Pay—Payment of Amount of Such Judgment entitled to Priority of Payment as against Debenture-holder—Companies Act, 1933, ss. 88, 258—Annual Holidays Act, 1944, ss. 3, 4, 6, 13. D. was employed from March 3, 1949, until November 24, 1949, by a company incorporated under the Companies Act, 1933. On November 10, H. was appointed by the State Advances Corporation to be receiver and manager of the company. On November 14, he gave D. a week's notice of determination of her employment; she received the whole of the normal wages to which she was entitled; but she was not paid any "holiday pay" which became due to her under the Annual Holidays Act, 1944, upon the termination of her employment. She brought an action against the company for recovery of such pay, and obtained judgment for it. The receiver did not refuse to pay the claim; he sought the directions of the Court. On the question whether D., in respect of such judgment, was entitled to priority of payment as against the debenture-holder, *Held*, 1. That, upon termination of her employment, D. was entitled, in addition to the normal wages, to holiday pay in terms of s. 4 of the Annual Holidays Act, 1944; and such holiday pay, for the purposes of ss. 88 and 258 of the Companies Act, 1933, was in the same position as that of ordinary salary or wages earned in respect of the period subsequent to the appointment of the receiver; and, as such, it was payable (if the receiver saw fit so to do) as an expense properly incurred in the carrying out of his duties as receiver and manager. 2. That it would not be proper for the receiver so to exercise the discretion vested in him as to render the company liable to proceedings under s. 13 of the Annual Holidays Act, 1944, for the recovery of a penalty for a statutory offence. (*In re Cider (N.Z.), Ltd. (in Liquidation), Official Assignee* v. *Grainger*, [1936] N.Z.L.R. 374, applied.) (*Wellington Woollen Manufacturing Co., Ltd.* v. *Patrick*, [1935] N.Z.L.R. 23, referred to.) The Court, therefore, directed that the receiver should pay D. the amount of her judgment and costs out of moneys in the hands of the receiver; and that any costs properly incurred by the receiver in the bringing of the present proceedings might be treated as expenses incurred by him in the course of his duties as receiver and manager. *Re Property Preservations, Ltd., Ex parte Harris*. (Auckland. April 10, 1951. Kealy, S.M.)

BENCH AND BAR.

Sir George Jessel, Master of the Rolls. (Roy St.G. Stubbs.) *29 Canadian Bar Review*, 147.

FACTORY.

"Place" used for Purpose other than Processes carried on in Factory—Use for Purpose other than Processes for and incidental to Main Purpose of Factory—Maintenance Shop "within curtilage forming factory"—Repair of Plant used in Factory—Factories Act, 1937 (c. 67), ss. 14 (1), 151 (6) (cf. Factories Act, 1946 (N.Z.), ss. 2, 41 (6))—Master and Servant—Liability of Master—Reasonable Foreseeability of Injury to Servant—Intervention of Act of Inadvertence by Employee. The plaintiff was employed as an electrician by the defendants, the occupiers of a factory which they used for the manufacture of margarine. Within the curtilage of the factory was a separate building, which was used for maintenance work in connection with the machinery and plant in the factory. While the plaintiff was testing in this maintenance shop an electric fan, which was used to extract steam in a ventilator in a room in the factory where one of the processes of the manufacture of margarine was carried on, and which had been removed to the maintenance shop for repair, his hand was caught in the rotating blades of the fan, and he was injured. The plaintiff could not remember how his hand was caught in the fan, and the Court took the view that it resulted from some inadvertent act on his part. He claimed damages from the defendants for the breach by them of their duty under the Factories Act, 1937, s. 14 (1), to fence securely dangerous machinery, or, alternatively, for negligence. *Held*, (i) That, assuming that the maintenance shop was a "place" within the curtilage of the factory within s. 151 (6) of the Act, such a place, to be deemed not to form part of the factory for the purposes of the Act, must be used for some purpose other than processes for and incidental to the main purpose of the factory; the testing of machinery used in the factory was a process for and incidental to the main purpose of the factory; and, therefore, the maintenance shop was to be deemed to be part of the factory, and the plaintiff was entitled to recover under s. 14 (1). (ii) That, although reasonable foreseeability of possible injury is the true criterion where negligence *vel non* is the issue, an employer who has created or permitted a dangerous condition to arise is reasonably expected to foresee and provide against the possibility of injury resulting therefrom, even though it so results through the intermediation of an act of inadvertence by an employee, and even though that act of inadvertence be of a character which cannot be precisely forecast and remains, in the event, unexplained; on the evidence, there was negligence on the part of the defendants, and the plaintiff's injury resulted therefrom; and, therefore, the plaintiff was entitled to recover on the ground of negligence also. (*Re Polemis and Furness, Withy, and Co., Ltd.*, [1921] 3 K.B. 560, stated not to have been overruled by any decision of the House of Lords.) *Thorogood* v. *Van den Berghs and Jurgens, Ltd.*, [1951] 1 All E.R. 682 (C.A.).

As to A Master's Duty at Common Law, see *22 Halsbury's Laws of England*, 2nd Ed. 187, paras. 313 and 314; and for Cases, see *34 E. and E. Digest*, 194-199, Nos. *1580-1626*, and Digest Supplement, and Second Digest Supplement.

FAMILY PROTECTION.

Social Security—Testator leaving Wife and Infant Child or Children—Family Benefit not taken into Account—Family Protection Act, 1908, s. 33—Social Security Act, 1938, s. 28—Social Security Amendment Act, 1950, s. 18 (3). In proceedings under the Family Protection Act, 1908, the Court, when considering the provision to be made for the testator's infant children, should take into account the family benefit under s. 28 of the Social Security Act, 1938, payable in their regard to testator's widow, as it is a payment made without a means test. (*In re Wood, Wood* v. *Leighton*, [1944] N.Z.L.R. 567, and *In re Calder, Calder* v. *Public Trustee*, [1950] G.L.R. 465, applied.) *Oakey* v. *Thompson*. (S.C. Wellington. April 30, 1951. Hutchison, J.)

HUSBAND AND WIFE.

Practice—Action by Husband against Wife for Possession of Chattels—Proceedings to be by Originating Application—Married Women's Property Act, 1908, ss. 17, 23. Where a husband claims from his wife certain chattels, or, in the alternative, recovery of their value, his action is necessarily founded on tort, and he must proceed under s. 23 of the Married Women's Property Act, 1908, by originating application under r. 75 of the Magistrates' Courts Rules, 1948. (*Hale* v. *Hale*, (1945) 4 M.C.D. 108, followed.) *Pearson* v. *Pearson*. (Palmerston North. April 3, 1951. Herd, S.M.)

JUDICIAL CHANGES.

The vacancy in the King's Bench Division created by the promotion of Mr. Justice Morris to be a Lord Justice of Appeal has been filled by the transfer to that Division of Mr. Justice Pilcher. His place in the Probate, Divorce, and Admiralty Division has been taken by Mr. Cecil Robert Havers, K.C., who was called to the Bar by the Inner Temple in 1920 and took silk in 1939. He was Recorder of Chichester. In 1946, he was elected a Master of the Bench of his Inn.

LAND AGENT.

Licence—Application for Renewal—Statutory Period for Renewal expired—Application to Renew filed during March keeping Old Licence in Force until Disposal of Application—Exercise of Magistrate's Discretion—Land Agents Act, 1921-22, s. 12. The provisions of s. 12 (6) of the Land Agents Act, 1921-22, must be read with s. 12 (7), with the result that subs. 6 does not give more than possibly one month's grace for renewal of a land agent's licence; because, once the licence has expired by effluxion of time, the power to renew is gone. If, however, an application to renew is filed between the last day of February and March 31, the old licence remains in force by virtue of subs. 7 until the application for renewal has been disposed of by a Magistrate. Two applicants for a land agent's licence had carried on business for some years and had been duly licensed to do so. They omitted in 1951 to apply for a renewal of their licence within the time specified in s. 12 (1) of the Land Agents Act, 1921-22. Their application for renewal was filed on April 2, 1951, which was the last day for filing it, as March 31, 1951, and the following day were Court holidays; and, consequently, the learned Magistrate had jurisdiction to hear and determine it. One of the applicants in an affidavit deposed that he had forwarded the application to his solicitors on or about March 12, 1951, with instructions for them to file it in the Court. The reasons given by him for the delay were that his state of health prevented him from attending to his business, that the land agency business had been left in the hands of the other applicant, his partner in the business, that he was still unfit for work, and that he had appointed a managing salesman to conduct the land-agency business. *Held*, That the circumstances outlined above would alone justify a Magistrate in exercising the discretion conferred on him by s. 12 (6) against such hearing and determination; and, as the Magistrate who granted the renewal of the previous application (which was filed after the last day of February, 1950) warned the applicants that they must in future comply strictly with the provisions of s. 12 (1), the hearing and the determination of the present application must be declined. *In re An Application by Johnson and Another*. (Auckland. April 9, 1951. Luxford, S.M.)

PROBATE AND ADMINISTRATION.

Probate—Testamentary Capacity—Delusion affecting Testator's Mind at Time of Execution of Will—Onus of Proof on Party propounding Will to establish affirmatively Execution by Testator free from Delusion of Such Character as to affect Disposition of His Property—Practice—Appeal to Court of Appeal—Review of Decision of Judge sitting without Jury to decide Question of Fact—Court of Appeal satisfied Such Judgment plainly Wrong in Law—Duty to reverse It. The issue of testamentary capacity is one of fact, to be examined in the light of the established legal principles; and the question for the Court where the presence of such capacity is attacked is whether the person making the will was of sound and disposing mind and understanding at the time when he made it. Unless the Court, on a review of the whole of the evidence, is able affirmatively to declare itself satisfied of the testator's competence when he executed the will, it must declare against its validity. (*Sutton* v. *Sadler*, (1857) 3 C.B. (N.S.) 87; 140 E.R. 671, *Symes* v. *Green*, (1859) 1 Sw. and Tr. 401; 164 E.R. 785, and *Smith* v. *Tebbitt*, (1876) L.R. 1 P. & D. 398, followed.) (*In the Will of Wilson*, (1897) 23 V.L.R. 197, approved in *Timbury* v. *Coffee*, (1941) 66 C.L.R. 277, 283), referred to.) The mere existence at the date of the will of a delusion or partial unsoundness of mind not affecting the general faculties, and not operating on the mind of the testator in regard to testamentary disposition, does not render him incapable of disposing of his property by will. Thus, if the particular delusion under which the testator labours could not reasonably be supposed to have affected his disposing power, its presence would not incapacitate him from making a valid will. (*Banks* v. *Goodfellow*, (1870) L.R. 5 Q.B. 549, *Boughton and Marston* v. *Knight*, (1873) L.R. 3 P. & D. 64, and *Smee* v. *Smee*, (1879) 5 P.D. 84, followed.) (*Sivewright* v. *Sivewright's Trustees*, [1920] S.C. (H.L.) 63, distinguished.) (*In the Estate of Bohrmann, Caesar and Watmough* v. *Bohrmann*, [1938] 1 All E.R. 271 referred to.) Where there is evidence of a delusion affecting the mind of the deceased at the time of his making his will, the onus is on the party propounding the will to show due execution by a testator possessing a sound and disposing mind, and thus to establish affirmatively that, at the time when he made the instrument so propounded, he was free from the delusion or its influence, or that it was of such a character that it could not reasonably be supposed to affect the disposition of his property. (*Waring* v. *Waring*, (1848) 6 Moo. P.C.C. 341; 13 E.R. 715, *Smee* v. *Smee* (1879) 5 P.D. 84), and *Tyrrell* v. *Painton*, [1894] P. 151, followed.) (*Marshall* v. *Public Trustee*, [1916] N.Z.L.R. 969, *Chatterton* v. *Howie*, [1926] N.Z.L.R. 595, and *Jones* v. *Jones*, [1930] G.L.R. 662, referred to.) Observations by *Finlay*, J., as to the conclusion to be drawn in respect of a period intervening between a state of delusion before the date of a will and a state of delusion after the will was made. In an action, the executors of the will of the testatrix, dated December 23, 1947, applied for probate. In his will, the testatrix, after providing her mother with the net income of her estate, and after directing her trustees after her mother's death fully to educate two infants, aged at the making of the will five years and fifteen years respectively, both being strangers in blood, directed them to apply the income of the trust estate in perpetuity in or towards the education of such persons as in the opinion of the trustees were of outstanding ability and character. That will revoked an earlier will, dated January 17, 1941, whereby the deceased made a devise of property to her mother, and gave her a life interest in the residue, directing her trustees upon her mother's death to pay one part of the residue to the testatrix's sister, who was to receive the income of the other part, and, upon the sister's death, to pay the capital of that part to the testatrix's brother. The testatrix's mother, sister, and brother opposed the application for a grant of probate of the will of December 23, 1947. They claimed that, at the time of the making of the will, she was not of sound mind, memory, and understanding, and that she did not know or approve of the contents thereof. Considerable evidence was heard by *Northcroft*, J., who held that the will of December 23, 1947, was valid, and granted probate accordingly. From the whole of that judgment, the defendants appealed. *Held*, by the Court of Appeal, 1. That, on the facts, and applying to them the above-stated principles, the respondent executors, both in the Court below and on the appeal, had not discharged the onus of establishing testamentary capacity on the part of the deceased; but, on the contrary, the proper inference to be drawn from the whole of the evidence was that, on the date of the execution of the instrument propounded, her mind was so perverted by mental disease that reason and judgment were absent, and there was present an insane delusion calculated to interfere with and distract the functions of her mind and to influence the dispositions of her property. 2. That, consequently, as the Court

was satisfied that neither the Court below nor the Court of Appeal could, on a review of the whole of the evidence, affirmatively declare itself satisfied of the testatrix's competence at the time of the execution of the will, probate should have been refused. *Held*, further, 1. That, when an appellate tribunal is reviewing the decision of a Judge sitting without a jury to decide a question of fact, and it is satisfied that that judgment was unsound, in that it was plainly wrong, it should reverse it. (*Thomas* v. *Thomas*, [1947] A.C. 484; [1947] 1 All E.R. 582, followed.) 2. That, as, on the appeal, the appellants had established that the finding of testamentary capacity in the Court below was wrong in law, inasmuch as insufficient weight was given to a considerable body of evidence, lay and medical, negativing any such capacity, the appeal should be allowed. Appeal from the judgment of *Northcroft*, J., allowed. *In re White (deceased), Brown and Others* v. *Free and Others*. (C.A. Wellington. July 27, 1950. Sir Humphrey O'Leary, C.J., Finlay and Gresson, JJ.)

REHABILITATION.

Rehabilitation Act Extension Order, 1951 (Serial No. 1951/96), declares that persons who served as members of the Emergency Reserve Corps (which included all Emergency Precaution Services (E.P.S.), the Emergency Fire Service, the Emergency Traffic Police, and the Women's War Service Auxiliary, and also the Home Guard until it was constituted a part of the Army), are to be servicemen for the purposes of Part I of the Rehabilitation Act, 1941, so as to enable the Rehabilitation Board to grant assistance under that Act where the serviceman is totally incapacitated for work as a result of his service and is receiving a war pension, or where the serviceman or any of his children is receiving a war pension.

ROMAN LAW.

The Alleged Debt, Islamic to Roman Law. (Professor S. V. FitzGerald, K.C.) *67 Law Quarterly Review*, 81.

ROYAL COMMISSION.

Procedural Aspects of A Royal Commission. (Murray V. McInerney). *24 Australian Law Journal*, 386, 438.

RULES COMMITTEE.

Mr. Justice Finlay has been appointed a member of the Rules Committee to fill the vacancy caused by the death of Mr. Justice Callan; and Mr. D. R. Wood, of the Crown Law Office, has been appointed Secretary of the Committee.

SEA CARRIAGE OF GOODS.

Bill of Lading limiting Shipping Company's Responsibility for Damage to Goods before Discharge from Vessel's Tackle—Tractor unloaded from Ship into Railway Truck—Later, reloaded under Shipping Company's Foreman on Another Railway Truck which overturned and tipped Tractor into Harbour—Loss within Cesser of Liability Clause in Bill of Lading—Second Loading outside Same—Shipping Company liable as Bailee for Reward. Amberley Garage, Ltd. (to be referred to as "the company"), bought a new Fordson Major tractor from the Ford Motor Co. of New Zealand, Ltd., the price being £387. The plaintiff paid the Ford factory in full the sum of £387. The company and the plaintiff entered into a hire-purchase agreement, wherein it was expressed that the ownership of the tractor was with the plaintiff and that upon payment of the balance of the moneys stated therein within ninety days, the property would then pass to the company. The company paid to the plaintiff a deposit of £38 and the sum of £6 9s. 1d. for interest and charges. The tractor was shipped from Wellington for the parties by the New Zealand Railways Department on a "through rail shipment" to Amberley: the entire transportation was to be carried out by the Railways Department, which arranged for the defendant shipping company to undertake the sea-carriage from Wellington to Lyttelton, the Department attending to the rail transport at each end of the journey. The defendant's bill of lading contained the following special clause: "In consideration of reduced freight I hereby agree that the company's liability in respect of the within mentioned motor-car shall not in any event exceed £100." Clause 5 of the bill of lading was as follows: "The company does not guarantee the time of the vessel's arrival at or departure from any port, and will not hold itself responsible for the loss of or damage to any goods lying on any wharf awaiting shipment, or after discharge from vessel's tackle. Consignees or their assigns must be ready to take delivery of goods as soon as the vessel is ready to discharge. Then otherwise the company shall be at liberty to land and warehouse the goods or discharge them into a store, vessel or hulk or into lighters or on a wharf as customary at the shipper's risk and expense." The defendant received the tractor for shipment at Wellington on February 4, 1949, and its obligations for the sea-carriage were set out in a bill of lading of the same date issued in favour of the Railways Shipping Office, and an undertaking was given to forward the tractor to the Railways Shipping Office at Lyttelton, this Office being designated in the bill of lading as the consignee. The freight was payable at Wellington. The defendant company's vessel *Kopara* carried the tractor from Wellington to Lyttelton, arriving there on February 16, 1949, and on that date the tractor was unloaded from the vessel by means of a crane hired by the defendant from the Lyttelton Harbour Board and operated by the defendant's employees, the wages of the crane-driver being paid by the defendant. The tractor was unloaded from the ship and placed in a railway truck, which was shunted into its location by the Railways Department. Other tractors, apparently consigned to Christchurch, were also unloaded into this truck. The foreman stevedore, an employee of the defendant's, realized that this particular tractor should not have been placed in the truck with the Christchurch consignments, but should have been put into a truck to go direct to Amberley. The tractor was accordingly hoisted out of the first truck and deposited on the wharf, where it remained, possibly for upwards of two hours. The defendant caused the tractor to be hoisted from the wharf, and deposited it into another truck provided by the Department. The defendant's foreman stevedore controlled this operation, and, in the second truck, two Railways employees assisted in the work. The foreman stevedore gave instructions to the crane-driver that all was clear, and the gear, comprising slings, or wire strops, was accordingly hoisted up by the crane-driver out of the truck. Part of the gear fouled the Railways truck, tipped it off balance, and thereby rolled the tractor off the truck into the harbour. The tractor was salvaged, what could be sold was duly realized, and, after giving credit for the net proceeds of such realization, the company alleged its loss as £344 19s. 4d. The defendant admitted liability to the plaintiff in the sum of £100 only, and disputed liability for the balance of the claim, the sum of £244 19s. 4d. In an action claiming that amount from the defendant, *Held*, 1. That the tractor was properly delivered by the defendant, by placing it on the first truck or depositing it on the wharf, in terms of the bill of lading immediately it was freed from the ship's tackle on to the first Railways truck; and the defendant could properly claim in its favour the operation of cesser of liability in terms of cl. 5 of the bill of lading. (*Chartered Bank of India, Australia, and China* v. *British India Steam Navigation Co., Ltd.*, [1909] A.C. 369, applied.) (*Burgess, Fraser, and Co., Ltd.* v. *Roose Shipping Co., Ltd.*, [1931] N.Z.L.R. 962, referred to.) 2. That the operation of hoisting the tractor on to a second truck in the process of removing it from the wharf was an operation outside the bill of lading, as it was distinct from the operation of discharging the tractor from the vessel's tackle; but, as the defendant had admitted that the damage occurred through its negligence as a bailee for reward, the plaintiff was entitled to judgment for the amount claimed. *Semble*, As it was a term of the bill of lading that the consignee should not be entitled to recover damages for loss or damage to the goods unless such action were commenced within six months from the date when the goods were landed, and as the present action was not commenced within that period, the plaintiff could not have succeeded in an action founded on the bill of lading. *Alliance Finance Corporation (N.Z.), Ltd.* v. *Richardson and Co., Ltd.* (Christchurch. July 25, 1950. Grant, S.M.)

SHIPPING.

Salvage—Right to recover—Salving Vessels and Colliding Vessel under Control of Different Departments of Crown—Circuity of Action. In 1942, the Susan V. Luckenbach was in collision with the Nea Hellas, which was under bare boat charter to the Crown and was manned by British officers and crew appointed on behalf of the Crown by the Ministry of War Transport. Salvage services were rendered to the Susan V. Luckenbach by H.M.S. Arpha and the Confederate, the latter being a salvage steamer under the control of the Admiralty. The Susan V. Luckenbach claimed against the Nea Hellas in respect of the collision, and the Nea Hellas was found to be alone to blame for damage likely to amount to some £110,000. The statutory limit of the Nea Hellas's liability was £120,000. In a claim by the Admiralty for salvage, an award of £25,000 was made. *Held*, (i) That the fact that the colliding vessel and the salving vessels were in the same ownership—*viz.*, that of the Crown—was not a reason why the salved vessel should not pay salvage. (Dictum of *Lord Wright* in *The Kafiristan*, [1937] 3 All E.R. 753, applied.) (ii) That, since, in view of the limitation of the

liability of the Nea Hellas, the amount of damages recoverable against the Nea Hellas was not the same as the amount recoverable by the Admiralty in respect of salvage, and since the Admiralty was not a party to the collision action, there was no circuity of action, and the Admiralty was entitled to salvage. (Dictum of *Bucknill*, J., in *The Kafiristan*, [1936] 3 All E.R. 568, approved.) *The Susan V. Luckenbach*, [1951] 1 All E.R. 753 (C.A.).

As to Disqualification from Claiming Salvage, see *30 Halsbury's Laws of England*, 2nd Ed. 890, para. 1193; and for Cases, see *41 E. and E. Digest*, 843, 844, Nos. *7055-7068*.

SHIPPING AND SEAMEN.

Offences—Absence without Leave from Overseas Ship—New Zealand Citizen engaged in United Kingdom for Voyage to New Zealand and back—Conviction and Order for His Deportation from New Zealand—No Infringement of Rights given Him by Magna Carta—Shipping and Seamen Act, 1908, s. 132 (4) (5) (8)—Shipping and Seamen Amendment Act, 1950, s. 2. The rights given by Ch. 29 of Magna Carta—" No freeman shall be taken or imprisoned, or be disseized of his freehold, or liberties, or free customs, or be outlawed, or exiled, or any other wise destroyed; nor will we not pass upon him, nor condemn him but by lawful judgment of his peers, or by the law of the land. We will sell to no man, we will not deny or defer to any man either justice or right "—may be modified or cut down by an Act of the Legislature expressed in clear and unambiguous terms. Such an enactment is s. 2 of the Shipping and Seamen Amendment Act, 1950, which, having repealed (*inter alia*) subs. 4, substituted a new subs. 4 and added (*inter alia*) subss. 5 and 8 to s. 132 of the Shipping and Seamen Act, 1908. As those subsections apply to all seamen (excluding only those who have been engaged in New Zealand), they authorize the imprisonment, and placing on the first overseas ship to the United Kingdom, of a New Zealand citizen who has been engaged in the United Kingdom as a seaman and has been convicted in New Zealand of being absent from his ship, as such conviction and penalties were imposed on him " by the law of the land." *Murphy* v. *Gardiner*. (S.C. Wellington. April 23, 1951. Hutchison, J.)

TRANSPORT.

Offences—Disqualification of Driver in charge of Motor-vehicle while in State of Intoxication—Cancellation of Driving-licence—Small Amount of Liquor consumed—Delayed Effects—Not " special reasons "—Transport Act, 1949, s. 41. The facts that a comparatively long time elapsed before the intoxicating effects of the liquor consumed by the driver of the motor-vehicle became apparent, and that the amount of liquor consumed by him was small, are not " special reasons " within the meaning of those words as used in s. 41 of the Transport Act, 1949, because any person who drives a car after consuming alcohol must know that there is a possibility that a state of intoxication will follow, and must be prepared to accept the consequences if that should happen. (*R.* v. *Crossan*, [1939] N.I. 106, and *Whittall* v. *Kirby*, [1946] 2 All E.R. 552, applied.) (*Duck* v. *Peacock*, [1949] 1 All E.R. 318, distinguished.) *Flannery* v. *Keenan*. (Pukekohe. April 18, 1951. Luxford, S.M.)

TRUSTS AND TRUSTEES.

Diplock—A Last Word. *95 Solicitors Journal*, 68.

VENDOR AND PURCHASER.

Time Not of The Essence. *24 Australian Law Journal*, 447.

WILL.

Mutual Wills—Identical Terms—Husband and Wife—Recital of Agreement to make Mutual Wills—Each given Absolute Interest—In case of Lapse, Residuary Estate divided into Moieties, One Moiety to be regarded as Testator's Personal Moiety and Other as Deceased Spouse's Moiety—Fresh Will by Husband after accepting Benefit under Wife's Will—Implied Trust in regard to Wife's Moiety of Husband's Residuary Estate—Whether Pecuniary Legatees entitled to take as Beneficiaries under Trusts of Wife's Moiety and as Legatees of Similar Legacies under Second Will. On August 31, 1940, the testator and his first wife executed wills in identical form, *mutatis mutandis*. Clause 3 of each will recited that it was agreed between the spouses that, if the survivor of them had the use of the other's property during his or her lifetime, he or she would provide in his or her will for carrying out the wishes expressed in the will of the other. By his will of August 31, 1940, the testator gave his residuary estate, including his half-share in their residence, to the first wife absolutely if she should survive him, but, if she should not survive him, he gave the house in its entirety to a certain hospital and directed that the remainder of his residuary estate should be divided into two equal shares, one moiety being considered as his own personal estate and the other moiety as the equivalent to any benefit which he had received from the first wife by reason of her predeceasing him. By cl. 6 (*b*) he disposed of the half-share which he regarded as his personal estate, and by cl. 6 (*c*) he disposed of the half-share which he regarded as the first wife's moiety. The first wife died on April 28, 1942, and, under the terms of her will, her residuary estate passed to the testator absolutely. On September 25, 1945, the testator remarried, and on December 19, 1946, he made a second will, whereby he gave certain pecuniary legacies, some of which were to beneficiaries to whom he had given pecuniary legacies (though not in every case of an identical amount) by cl. 6 (*c*) of the will of August 31, 1940. Subject to these and other legacies, he gave the whole of his residuary estate to his second wife. The testator died on December 27, 1946, and the will of December 19, 1946, was admitted to probate as his last will. *Held*, (i) That, as the testator's will of August 31, 1940, and his first wife's will of the same date each contained a recital of the arrangement between them to make mutual wills, and as the testator had approved the first wife's will by accepting her property thereunder, the provisions contained in his first will in regard to (*a*) the gift of the house to the hospital, and (*b*) the disposition of the first wife's notional half-share of the testator's residuary estate, took effect as a trust, and, therefore, the executors of the last will held his estate on trust, first to give effect to the gift of the house to the hospital and then to carry into effect the provisions of cl. 6 (*c*) of the first will out of one-half of the moiety of the residue, the other moiety passing under the provisions contained in the testator's last will. (*Dufour* v. *Pereira*, (1769) 1 Dick. 419, applied.) (*Re Oldham*, [1925] Ch. 75, distinguished.) (ii) That, as the pecuniary legacies given by the last will were not in every case identical with the pecuniary legacies given to the same legatees under cl. 6 (*c*) of the first will, the beneficiaries were entitled to take both a share in the trust fund under cl. 6 (*c*) and the legacies under the last will. *Re Green* (*deceased*), *Lindner* v. *Green and Others* [1950] 2 All E.R. 913 (Ch.D.).

As to Mutual Wills, see *34 Halsbury's Laws of England*, 2nd Ed. 18, 19, para. 13; and for Cases, see *44 E. and E. Digest*, 181, 182, Nos. *101-112*.

Purported Disclaimer by One Joint Tenant. *24 Australian Law Journal*, 449.

WORKERS' COMPENSATION.

Accident arising out of and in the course of Employment—Tuberculosis—Worker employed by Hospital Board—Presumption of having contracted Tuberculosis while so employed—Duties or Classes of Duties prescribed by Regulations declaratory of Class of Persons to whom Presumption applies—Worker entitled to Compensation—Date from which Presumption operates—Workers' Compensation Act, 1922, s. 10—Tuberculosis Act, 1948, s. 23 (2)—Tuberculosis Regulations, 1949 (Serial No. 1949/138), Reg. 19. F., who was then free of tuberculosis, commenced work with the defendant Board on October 9, 1946. He was continuously employed by it in the Cashmere Sanatorium until September 20, 1948, on which date he became totally incapacitated for work through having contracted the disease. Early in 1948, he began to associate with a female patient of the sanatorium, and became engaged to her in April of that year. He was infected with tuberculosis by the following June or July. By reason of the tuberculosis, he was totally incapacitated for work from September 20, 1948, to September 5, 1949. He was paid full wages to October 19, 1948, and he claimed compensation for the balance of the incapacity period. On September 5, 1949, he returned to his work with the Board, and he had not lost any wages since then. The disease had left him permanently unfit for heavy work and with an increased risk of infection; and he claimed compensation accordingly. He was not able to show by evidence that the tuberculosis which incapacitated him was due to the nature of his employment. On a case stated by the Judge of the Compensation Court for the opinion of the Court of Appeal on the question whether the presumption created by s. 23 (2) applied to the plaintiff's case, and, if so, from what date, *Held*, by the Court of Appeal, 1. That Reg. 19 of the Tuberculosis Regulations, 1949, is definitive or declaratory of a class of persons envisaged by s. 23 (1) of the Tuberculosis Act, 1948, and, accordingly, has the same effect as though its terms had been embodied in s. 23 itself. 2. That the presumption created by s. 23 (2) of the Tuberculosis Act, 1948, applied to the plaintiff's case as from April 1, 1949, the date on which the statute came into force. *Farrell* v. *North Canterbury Hospital Board*. (C.A. Wellington. April 30, 1951. Gresson, Stanton, and Hay, JJ.)

TORTS OF MARRIED PERSONS.

Third Parties' Right of Contribution.

By E. S. Bowie, LL.B., B.Com.

The Law Revision Committee has so amply justified itself that it seems almost impertinent to suggest that there is something which should be given urgent consideration. No doubt pressing problems have received the attention of the Committee, but it is nearly three years since the decision in *Curtis* v. *Wilcox*, [1948] 2 All E.R. 573, and so far the interesting problems which that case brings to mind have not, as far as I know, received attention.

Curtis v. *Wilcox* decided that a cause of action for personal injuries sustained by a woman before marriage was not destroyed by her marriage to the defendant. The decision overruled the judgment of McCardie, J., in *Gottliffe* v. *Edelston*, [1930] 2 K.B. 378, in which the facts, for the purposes of the principle, were identical.

In *Gottliffe's* case, the real defendant was the indemnifier of a young man in whose car the plaintiff was a passenger. The nominal defendant explained the accident by saying: "I was talking to the young lady, and, therefore, I did not notice the horse or cart." With characteristic felicity of phrase, McCardie, J., said that the plaintiff and defendant had "conceived a regard for each other." "They were," he said, at p. 380, "in the glamour of that period which precedes the romantic severity of a formal engagement." After the issue of the writ, but before hearing, they were married.

After a careful and detailed examination of the authorities, McCardie, J., had come to the conclusion that a right to sue for damages in tort was a chose in action. Section 12 of the Married Women's Property Act, 1882 (the English Act which corresponds with our Act of 1908), provides that every married woman:

> shall have in her own name against all persons whomsoever, including her husband, the same civil remedies . . . for the protection and security of her own [separate] property as if [such property belonged to her as] a feme sole, but, except as aforesaid, no husband or wife shall be entitled to sue the other for a tort.

I have put the word "separate" in brackets, as this word was deleted by the Law Reform Act, 1936. The other words in brackets have been replaced by the words "as if she were." The definition of "property" includes (as it does in s. 2 of our Act) a "thing in action" (s. 24), and the point in issue in *Gottliffe's* case was whether the plaintiff, by acquiring a cause of action to sue for personal injuries, had then acquired property which became her separate property upon her marriage, and in respect of which she could, therefore, maintain an action against her husband for its protection and security. McCardie, J., held that she had not, because the matter had to be considered in the light of the policy of the Act, which was to enlarge the common-law rights of married women to enable them to sue their husbands in tort, but only to protect their separate property, and that this right could not be extended to an action for personal injuries arising from negligence.

That married women could not sue their husbands for assault, libel, false imprisonment, malicious prosecution, or other personal injury had already been decided. It therefore seemed logical that Miss Gottliffe should not be allowed to pursue her action, which would not have been maintainable had she acquired the cause of action after marriage, and not before.

We next have to consider *Walsh* v. *Fairweather*, [1937] N.Z.L.R. 855, which involved the consideration of a wife's ability to sue for personal injuries in tort, and the impact of s. 17 (1) (c) of the Law Reform Act, 1936, on contribution between tortfeasors. In *Walsh's* case, a husband, while driving his motor-car, came into collision with a car driven by the defendant. The plaintiff, the wife of the first driver, was a passenger in his car. She sustained injuries and sued the defendant. He sought to issue a third-party notice, on the ground that the husband of the plaintiff had, by his negligence, contributed to the accident. Kennedy, J., refused the application, on the grounds that the wife could not sue her husband for the tort, and that the husband was not, therefore, a person who was (or would, if sued, have been) liable in respect of the same damage. In coming to this conclusion, the learned Judge followed the Scottish case of *Glasgow Corporation* v. *Cameron*, [1936] 2 All E.R. 173, which decided that a married woman could not sue her husband for personal injuries arising from his negligence; and he also adopted the reasoning of McCardie, J., in *Gottliffe's* case, [1930] 2 K.B. 378. It had been argued that the husband was a tortfeasor, liable in respect of the same damage to his wife, but Kennedy, J., rejected this, saying that the reservations in the Married Women's Property Act, 1908, and in the Law Reform Act, 1936, s. 16 (5) (as to the effect of judicial separation), are significant.

Then we have *Curtis* v. *Wilcox*, [1948] 2 All E.R. 573, where the Court of Appeal in England overruled *Gottliffe's* case, [1930] 2 K.B. 378, and held that the right to sue acquired before marriage did amount to "property" in respect of which the newly married plaintiff could maintain her action against her husband. The Court of Appeal followed McCardie, J.'s, analysis of the authorities on the point that a right to sue for damages in tort amounted to a chose in action, but did not agree that there was any limitation on the word "property" to exclude the right to sue upon such a chose in action which arose before the marriage.

Curtis's case, [1948] 2 All E.R. 573, at first sight leaves us in a difficulty: (i) Was the decision limited in its application to the right to sue upon a cause of action arising before marriage? or (ii) Does the judgment really mean that we must revise our views on a wife's inability to sue her husband for torts, whether they be connected with corporeal property or otherwise? So far as I can discover, there has been no decision on this question, probably because the difficulty is not substantial. The three cases mentioned were all discussed in an Editorial in (1948) 24 New Zealand Law Journal, 263, but the matter was not taken beyond the confines of the law arising from the facts in *Curtis's* case. In the note in (1948) *64 Law Quarterly Review*, 438, it seems presumed that the right to sue for an ante-nuptial tort of this kind will be preserved, but the right to sue for such a

tort arising while the marriage state is present (except where there is a judicial separation) is still not available.

But, without an actual decision of the Court, can we be certain of this? The Court of Appeal decided that a right to sue in tort is a chose in action. "Property" in the Married Women's Property Act, 1882, s. 24, includes a "thing in action": s. 2 of the New Zealand statute. Can we not now read s. 17 of the Act as substituting the words "right to sue in tort for personal injuries" for the word "property"? If this is the decision in *Curtis's* case, [1948] 2 All E.R. 573, the section will read: "Every woman, whether married before or after this Act, shall have in her own name against all persons whomsoever, including her husband, the same civil remedies . . . for the protection and security of her own *right to sue for damages in tort for personal injuries* as if she were a *feme sole*." Of course, if this substitution were permissible, it would result in the excepting proviso's being surplusage.

In *Curtis's* case, [1948] 2 All E.R. 573, at the end of the judgment occurs the following paragraph, at p. 576:

> It was suggested in argument that the words in s. 12 "but, except as aforesaid, no husband or wife shall be entitled to sue the other in tort," were mere surplusage. In a sense this is true, but they serve to emphasize that the section constitutes an exception to the common-law rule, which otherwise still applies and would still prevent a married woman from pursuing a purely personal claim against her husband—*e.g.*, for damages for libel or slander or assault.

In such an event, do we have to revise radically our views as to the limits of the emancipation of women? If, on the other hand, *Tinkley* v. *Tinkley*, (1909) 25 T.L.R. 264, *Chant* v. *Read*, [1939] 2 K.B. 346; [1939] 2 All E.R. 286, and the Scottish case of *Glasgow Corporation* v. *Cameron*, [1936] 2 All E.R. 173 (referred to and followed by Kennedy, J., in *Walsh's* case, [1937] N.Z.L.R. 855) are still law and are unaffected by *Curtis* v. *Wilcox*, [1948] 2 All E.R. 573, the commonly accepted view that a wife cannot sue her husband in tort for personal injury arising from negligence (or, for that matter, for any other personal tort) still remains unassailed, the common-law inability of a husband to sue his wife in tort on any ground being unaffected in any event.

That such a construction is probably incorrect is shown by the case note on *Curtis's* case, [1948] 2 All E.R. 573 in (1949) *10 Cambridge Law Journal*, 271:

> An incautious reading of this case, particularly the reference to *Chant* v. *Read*, [1939] 2 K.B. 346; [1939] 2 All E.R. 286 (which concerned a post-nuptial tort), and the obscure last paragraph of the judgment, might suggest that a wife can now also sue her husband for a personal injury committed after marriage. It is submitted that such an interpretation of *Curtis* v. *Wilcox*, [1948] 2 All E.R. 573, would be mistaken. If the tort is ante-nuptial, a right of action has accrued to her as from the moment of the commission of the tort, as it would to any other *feme sole*. But when the personal tort is committed during marriage no right of action ever accrues. The argument that it has accrued is purely circular; the wife cannot have a right of action unless she has an existing property to protect, and she has in such instance no property unless she has an existing right of action.

Commenting on the last paragraph of the judgment in *Curtis's* case, [1948] 2 All E.R. 573, 576, the *Cambridge Law Journal* says:

> If the last paragraph of the judgment must be taken to mean either that bodily injury caused by negligence is not a purely personal tort or that a wife can sue her husband in tort for such injury when inflicted post-nuptially, then the last paragraph, it is respectfully submitted, is erroneous as well as *obiter*.

This view that *Curtis's* case, [1948] 2 All E.R. 573, does not affect post-nuptial torts seems entirely logical, but an extract from the judgment of Hallett, J., in *Chant* v. *Read*, [1939] 2 K.B. 346; [1939] 2 All E.R. 286, leads me to think that the question cannot be conclusively determined by means of a case note, however cogent. Hallett, J., said, at p. 357; 293, in reference to *Gottliffe* v. *Edelston*, [1930] 2 K.B. 378:

> Having read the case now with some care, and had the assistance of observations on it from both learned counsel, I think that if that case had been decided in favour of the plaintiff by the learned Judge, *McCardie*, J., there would still at any rate have been scope for argument that the decision did not apply in a case where the plaintiff had been married to the defendant throughout. Whether it would have applied, I express no opinion. I can at any rate see that there might have been considerable argument upon the subject.

There may therefore be a possibility of argument on this question, and it seems reasonable to suggest that it is important enough for the question to be covered by statute, and that we should not have to wait until some case is decided by the Court. To do so would necessarily involve possible hardship on an unsuccessful party. Moreover, until such decision is made, there appears to be some doubt at least about the matter, and, so long as any doubt remains, there is a possibility of confusion in the minds of practitioners who are advising on such questions.

Having, then, unsuccessfully tilted at windmills, I come to my main theme—namely, that there is a need to prevent the perpetuation of an injustice. We have here to consider, not only the question of contribution between tortfeasors liable in respect of the same damage, but also the part which the Contributory Negligence Act, 1947, takes in emphasizing the injustice.

If *Curtis* v. *Wilcox*, [1948] 2 All E.R. 573, has not affected the expansion of s. 17 of the Married Women's Property Act, 1908, to cover all rights of action in tort (and it is probable that it has not), then *Walsh* v. *Fairweather*, [1937] N.Z.L.R. 855, remains law. Suppose, then, that a wife is driving her husband's car, in which he is a passenger, but in circumstances which do not support agency or a gratuitous service. An accident occurs by collision with another car, the wife being 90 per cent. to blame and the third party 10 per cent. The husband is severely injured, and may well have an action for many thousands of pounds (a recent North Island case is an example of heavy damages); and, in addition, the car may be a total wreck—and modern American cars are not cheap. The wife sues for her damages. She may have been less severely injured than her husband, and her claim is for, say, £500. The defendant is entitled to claim reduction of her claim to £50. But the husband may claim, and be awarded, £10,000 against the third party, which his indemnifiers have to pay in full as to personal injury and he himself has to bear as to property damage if he is not insured against that liability, neither having the right to plead the contributory negligence of the wife (see *Mallett* v. *Dunn*, [1949] 2 K.B. 180; [1949] 1 All E.R. 173) or to claim contribution under the Contributory Negligence Act, 1947. It may well be that the wife has property against which a judgment can be enforced, or an income which will be sufficient to support a personal execution. It may be said that there is no real injustice, as the loss falls where it can best fall, for the third party has the benefit of the Motor-vehicles Insurance (Third-party

Risks) Act, 1928 ; but this is no answer, for two reasons. An insurance company has to pay its losses, and there is no reason why one company should have to pay losses which another indemnifier should meet. Secondly, the third party may not be comprehensively insured, and he is left to pay his own claim, less such contribution as he may claim from the wife on that claim, plus all the property damage of the husband. That claim may be large, as it may include damage to the car, medical expenses paid for the wife, and payment for extra help in the house—these last on the basis of *per quod consortium amisit*. The third party may have to pay hundreds, even thousands, of pounds to the husband, without contribution, even though the wife was 90 per cent. responsible.

The example given is the extreme case. It is much the same if the wife is the passenger and not the driver. There is no claim for contribution for the personal-injury claim of the wife, though presumably there will be for property damage, as the wife has, for such loss, a remedy "for the protection and security of her property."

To sum up : (i) *Curtis* v. *Wilcox*, [1948] 2 All E.R. 573, may have opened the door to the wife to sue her husband for all torts. If that is a possibility, the limitation should be restored in certain cases, but making it possible for a third party to be protected by contribution notwithstanding the non-liability of the husband to the wife. I do not say that the case has opened the door, but, as the door has not been firmly shut and locked, it is desirable that the key be turned.

(ii) If *Curtis* v. *Wilcox*, [1948] 2 All E.R. 573, has not changed the law, third parties should be enabled to claim contribution in the same way as if the driver and the passenger were not man and wife.

My plea is not that the right of a wife to sue her husband in tort should be enlarged, or that the husband should be allowed to sue his wife in tort, although there does seem some justification for asking, incidentally, that consideration can be given to allow a husband to sue his wife in tort for the protection and security of his property. What I do suggest is that, where the rights and liabilities of third parties are so materially affected, they should be placed in the same position as the position in which they would be had they not, by mischance, become involved in a collision with two persons who are married. Why should a third party have certain rights against a negligent driver whose passenger (unrelated to his or her driver) sues, and yet not have those rights when, by sheer chance, the passenger happens to be married to the driver of the car ?

Without being able to quote statistics, I think I am safe in saying that more women are driving cars to-day than in 1930 or in 1937, and that a much greater number of wives drive their own cars or their husbands' cars. This being so, the need for amending legislation is much greater now than it was when the Law Reform Act, 1936, was passed. As time goes on, it is probable that the need will become greater still. There is no need to approach the problem in the interesting but somewhat abstract way in which McCardie, J., did, by enlarging on the injustices and inequalities as between husband and wife ; but one can approach it in what I feel to be a practical way, from the viewpoint of third parties whose interests can be so materially affected.

THE SOVIET JUDICIARY.

Soviet Judges Admittedly only Party Instruments.

"*Judges are independent and subject only to the law.*"—Art. 112, Soviet Constitution.

The ability of Communists to twist words and concepts until they acquire a diametrically opposite meaning never fails them. The world has long known that Judges in the U.S.S.R. are anything but independent ; but it is refreshing to have the Soviets admit that Art. 112 of the Soviet Constitution is meaningless, and that their Judges are only instruments of the Party.

An article recently published in the *Moscow University Herald*, No. 11, states that :

> the meaning of the principle of independence of the judiciary in the countries where capitalism reigns supreme is entirely different than in the Land of the Soviets . . . the image of the Judge outside of politics belongs to bourgeois mythology just as the image of the Goddess of Justice herself belongs to ancient mythology.

Having thus disposed of the independence of the judiciary and relegated justice to the realm of "ancient mythology," the article continues :

> Since the Court is one of the organs through which the dominant class exercises its rule, it cannot be outside of politics ; what is more, the activities of the Courts are always political activities . . . In our Soviet State measures are taken to see to it that the Court is in reality a conductor of the policy of the Communist Party and the Soviet regime . . . The independence of the Judges referred to in Article 112 of the Stalin Constitution does not and cannot signify their independence of politics.

Communists, according to the article, see no contradiction in the guarantee of the Constitution that the Judge is "subject only to the law" and the demand that the Judge be subject to the policies of the Communist Party. They reconcile the contradiction by saying that the Party is the law ; therefore, if you are "subject only to the law," you are subject to the Party :

> The demand that the Judges be guided by the policy of the Communist Party is considerably wider than the demand for strict observance of the principles of legality, because the law itself gives grounds and leaves latitude for the application of the political criterion. The independence of the Judge and his subordination only to the law provided for by Art. 112 does not signify his independence of the political directives of the Party and the directing Soviet organs.

As for the degree of independence left to a Judge :

> In deciding the concrete case before him, the Judge is to be guided not only by his inner convictions in assessing the evidence, but in selecting the measure of punishment is obliged to follow the general instructions of the executive Soviet and Party organs.

To make certain that the Judges are kept in line, Soviet Courts of Review are not only expected to pay special attention to the legal aspects of the case under review, but are also to assess the political reliability of the Judges in the lower Court :

> If the Judges in the lower Court through carelessness or inadequate preparation for judicial work or through inadequate political awareness have handed down a decision which is wrong, the organs of Court administration have the right to criticize the action of the Court and of the Judges themselves.

If Soviet Judges wish to continue on the Bench, all they have to do is to keep abreast of the latest Party directives and forget about their law books.

SIR ALEXANDER JOHNSTONE, K.C.

Retirement from Office in Law Societies.

At its most largely attended annual meeting for many years, the Auckland District Law Society paid warm tribute on March 2 to Sir Alexander Johnstone, K.C., who retired from the Society's Council after more than thirty years' service. The large attendance at the meeting was in itself a striking reflection of the esteem in which Sir Alexander was held, and added emphasis to the spoken tributes.

The Taranaki District Law Society, of which Sir Alexander was a Council member before coming to Auckland, was represented by Mr. H. R. Billing, while letters were received from the District Law Societies of Canterbury, Gisborne, Hamilton, Marlborough, Otago, Southland, Wanganui, and Westland, and a telegram was received from Northland practitioners.

The Auckland Law Society's Tribute.

The newly elected President of the Auckland District Law Society, Mr. C. J. Garland, said it was customary to pay tribute at this meeting to members who were retiring from the Council. "Never before have we had to say farewell to one who has been for forty-four years a member of the Council of a District Law Society," said Mr. Garland. "From 1907 to 1919, Sir Alexander was a member of the Taranaki District Law Society, of which he was President in 1913, and from 1920 until to-day he has been a member of the Council of the Auckland District Law Society, and was President from 1924 to 1926.

"Sir Alexander Johnstone enjoys the distinction of being the only man in New Zealand who has been President of two District Law Societies. He was President of the Taranaki District Law Society in 1913, and President of the Auckland Law Society from 1924 to 1926. He enjoys another unique distinction—that of being the first man not resident in Wellington to hold the position of Vice-President of the New Zealand Law Society, an office he has held since 1933. He is a foundation member of the Solicitors' Fidelity Guarantee Fund, a foundation member of the Disciplinary Committee, a member of the Council of Law Reporting, and a member of the Council of Legal Education."

Sir Alexander had not confined his services exclusively to the law, said Mr. Garland. He served for a period on the New Plymouth Borough Council, and also on the New Plymouth High School Board of Governors, and had been for many years a member of the Auckland University College Council, the Senate of the University of New Zealand, and the Auckland Institute and War Memorial Museum Committee. One wondered how he ever found time for his practice.

"But to-day we want to dwell in particular on his services to the legal profession," said Mr. Garland. "No man has contributed more to raising the cultural standard of those entering the legal profession than has Sir Alexander. Some may think that the standard now set is too high but, if so, it is better to aim too high than too low.

"In recent years, Sir Alexander has been largely responsible for organizing lectures to law students on the ethics of the legal profession. He has not only organized these, but some he has himself delivered, while in other cases he has provided material for others to deliver. I am confident that these lectures will be of inestimable benefit to the young practitioner.

"But example is better than precept, and Sir Alexander has set us all an example that young and old alike can with advantage strive to emulate. He has devoted to his cases most diligent and painstaking preparation. He has presented his cases with a persuasiveness that is the result of years of practice, and he has exhibited throughout a manly courtesy towards the Bench, which, while honouring the recipient, reflects credit on the giver. With such an armoury, successes fell to him with an inevitability that occasioned no surprise.

"We of the legal profession render services in return for monetary reward. I think it was John Ruskin who said that the only service really worthy of the name was that which was given without any thought of reward. And in that sphere Sir Alexander stands in the legal profession in a class apart.

"The news of Sir Alexander's retirement spread rapidly throughout the country, and I have received letters from nine District Law Societies, from Northland to Southland. I propose to hand them to Sir Alexander. But I should like to select as typical that from the Law Society of the District of Otago. At their annual meeting, they carried the following resolution unanimously:

> That this representative gathering of members of the Otago District Law Society wishes to place on record its sincere appreciation of the outstanding service given to the legal profession of New Zealand by Sir Alexander Johnstone, K.C., of Auckland, over no less a period than forty-three years. Sir Alexander's remarkable record is well known to all practitioners throughout the length and breadth of the Dominion, and all Otago members of the legal profession extend to Sir Alexander their grateful thanks for his lengthy and invaluable service to the legal profession as a whole. We also take this opportunity of wishing Sir Alexander good health and much happiness during the years to come, for he richly deserves relief from the cares of office. We shall always remember and appreciate his long and distinguished service to our common interests.

"I would like also to read a letter from Mr. A. M. Goulding, S.M., as follows:

> My old friend—and on rare occasions my doughty and usually successful enemy—Sir Alexander Johnstone to-day brings to a close an association with District Law Societies and the New Zealand Law Society which is unique. I need not refer to the wonderful services he has during that time rendered to the legal profession. That his wisdom, kindliness, and perspicacity, in all the varied problems that crop up from time to time, will be greatly missed, everyone knows only too well. May I be permitted to join *in absentia* this afternoon in the tributes that will be paid to him, and in all good wishes for an honourable and lengthy retirement.

"When, a year ago, Sir Alexander was made a Knight Bachelor, it was an honour richly merited, and one which brought gratification to all members of the profession."

In recent years, said Mr. Garland, physical infirmity had afflicted him, making travel a real ordeal, but Sir Alexander had not let that deter him from attending meetings of the University Senate and the quarterly meetings of the New Zealand Law Society.

"One is tempted—and, indeed, constrained—at a time like this to ask what were the qualities which so admirably fitted him to give this record of enduring and illustrious service," continued Mr. Garland. "I would put first a strong, abiding, and dominating sense of duty. If it had not been for this sense of duty, Sir Alexander would not have offered himself for election. But, having been elected, what were those qualities which rendered him indispensable? I cannot improve on the language contained in a letter from the President of the Wanganui District Law Society:

> His profound knowledge of law, his wide experience of men and affairs, and his ability to get at the kernel of the subject under discussion all contributed to make his considered opinion carry great weight.

"He had, in the highest and best development, the genius of common sense," added Mr. Garland.

Wise decisions were reached by carefully weighing the radical arguments of the enthusiasm of youth against the Auckland District Law Society, but to-day I wish to conservatism of the experience of age, said Mr. Garland. Over a long period of forty-four years, Sir Alexander had contributed to both sets of arguments, and his contributions had always been worthy of the most serious consideration.

"Sir Alexander, we are going to miss you sadly in the Councils of the New Zealand Law Society and the Auckland District Law Society, but to-day I wish to sound, not a note of regret, but rather one of gratitude for a lifetime of valuable service. On behalf of practitioners here in Auckland, and, indeed, practitioners throughout the whole Dominion, I want to thank you cordially. The legal profession delights to do you honour," concluded Mr. Garland.

The Taranaki District Law Society.

Introducing the next speaker, Mr. Garland said that it was altogether appropriate that the Taranaki District Law Society should be represented at the gathering by a Taranaki practitioner, and it would be a source of personal pleasure to Sir Alexander that that practitioner was one of his old colleagues in Taranaki, Mr. H. R. Billing.

"I have come here under instructions from the Taranaki District Law Society and its members to express our regret that the time has now arrived when Sir Alexander Johnstone feels that he should no longer undertake the duties attached to the administrative offices he has held in the legal profession for so many years, and also to thank the members of the Auckland District Law Society for giving us this opportunity of joining with them in acknowledging our indebtedness and expressing our gratitude to Sir Alexander for his long and valuable service," said Mr. Billing.

"It is more than thirty years since he left New Plymouth, and in the meantime most of the Taranaki practitioners who were his contemporaries have, one by one, passed silently to rest. His name, however, is still quite familiar to all lawyers in our district, for the younger generation (including those who were law clerks in his time), as well as his old associates, fully appreciate the benefits they have received from the good work done by Sir Alexander locally as a member of our Council and generally as a member of the New Zealand Law Society.

"However, we cannot help claiming that some of Sir Alexander's good work and success has been due to his experience and practical training in Taranaki. He came to us more or less fresh from the University, and he came knowing all the answers but looking for the questions. We gave him every opportunity to find these and to gain the practical experience he sought, for he found himself in the midst of a body of practitioners who, though perhaps they did not hold top rank in all respects, were well qualified to render him such assistance or offer him such rivalry as the circumstances required.

"If on any occasion local talent was thought wanting, a call was made on Auckland or Wellington for help. At different times, Auckland sent us eminent counsel such as F. E. Baume, J. R. Reed, and Robert McVeagh; from Wellington came C. P. Skerrett, Michael Myers, Dr. John Findlay, C. B. Morison, and T. M. Wilford; and no doubt there were others. It was thus that A. H. Johnstone exercised his skill and gained practical experience. Moreover, he had the benefit of appearing before a Bench of eminent Judges who visited New Plymouth. At different times, we had the Chief Justice, Sir Robert Stout, Sir John Hosking, Sir Frederick Chapman, Sir John Salmond, and, last but not least, Sir Worley Bassett Edwards."

Mr. Billing said that, although there had been criticism of Sir Worley Bassett Edwards, he did not think that the Judge was as bad as he sounded, and no doubt Sir Alexander would acknowledge that he himself had benefited from appearing before him.

"Referring again to Sir Alexander's retirement, I think, Mr. President, that you have in very sincere and adequate terms expressed our affection for, and indebtedness to, him for what he has done for our profession, and I may perhaps conclude by saying I adopt and support everything you have said," continued Mr. Billing.

Addressing Sir Alexander directly, Mr. Billing said: "Taranaki appreciates all you did for us in New Plymouth and on the Council of the New Zealand Law Society. We wish you a full measure of leisure and a happy future."

Presentation of Gifts.

The third speaker was Mr. J. B. Johnston. Mr. Garland said that he supposed that in recent years Mr. Johnston had been Sir Alexander's closest colleague in Law Society matters, and that it was thought fitting that he should make the presentation.

"Although I have been so closely associated with Sir Alexander, I would like to say in advance that it has been as a humble junior," said Mr. Johnston. "I respectfully agree with everything that has been said about him by the previous speakers. I think his is one case where there could be no overstatement. We have been associated for a very long time in work both on the Council of this Society and on the parent body, and that is the reason I have been so honoured as to be asked to make this presentation.

"It was only a few months ago, on the occasion of our last trip together to Wellington, that Sir Alexander and I were trying to make a rough estimate of the number of times we had travelled down there together. We could not get nearer than dozens."

Their visits were so numerous that sometimes they gave rise to slight misunderstandings, said Mr. Johnston. He remembered one occasion when he arrived at the

station at the last minute and the attendant politely informed him that his " brother " was already in the cabin. Thus did one rise to fame.

" I look back on this association with great pleasure and with, I hope, pardonable pride," said Mr. Johnston. " We have had our problems, also our differences of opinion—not many, I am pleased to say—but not once has there been a single incident that has ruffled the surface of the happy relations that have always existed between us.

" To many of us, the meetings of the Councils will never be quite the same again. They certainly will not be to me. We will always feel that there is a vacant chair, that there is one missing who can ill be spared, one who has for so long contributed so much to the wisdom and achievements of these bodies.

" Sir Alexander, while we regret the occasion, and regret it very much indeed, I nevertheless feel it an honour to be the one to ask you to accept these gifts from your fellow-practitioners, not only, as you have just heard, from this District, but also from your old District of Taranaki and even further afield. We ask you to accept them as they are given—as tangible evidence of our respect and esteem, and as a recognition of the sterling example and invaluable services you have given to the profession which you have loved so much and which you have so richly adorned."

Mr. Johnston then presented Sir Alexander with an armchair, *Chambers's Encyclopaedia*, and a pipe.

Sir Alexander's Reply.

Although Mr. Garland ruled that he could reply from the comfort of the armchair, Sir Alexander chose to stand beside the gift.

He said that the very kind words which had fallen from the President and the other speakers made it almost impossible for him to reply adequately. His first and most urgent duty must be to offer his heartiest and most sincere thanks for the generous and noble gifts made to him upon his relinquishing his connection with the Law Society.

" So long as I live," Sir Alexander continued, " I shall value these gifts—value them because of the pleasure and comfort which I shall derive from the use of them, for I know of no more appropriate gifts which you can give an old man than a very comfortable armchair in which to sit and good books to read. But I value them far more for the expression of goodwill which accompanies them, and which, to me, makes them really priceless things. I thank you from the bottom of my heart."

His next duty, said Sir Alexander, was to thank the speakers for the very kind words in which they had expressed their views of his services, as they termed them, to the Law Societies, extending over many years.

" Mr. Billing has come all the way from Taranaki to bring greetings and good wishes from his Society. He remarked that the generation who lived in my time in New Plymouth had mostly passed away. A generation must have since grown up who knew not Joseph, so I regard it as an extremely high compliment that the Taranaki Council not only associate themselves with the kind words spoken, but have also sent my old friend Mr. Billing to represent them at this gathering.

" As to Mr. Johnston, he is, I think, an even older member of the Council of the Auckland District Law Society than I am, and his service to it has been much more distinguished. He has been a tower of strength over many years, and has helped the Council with his wisdom, advice, and sound judgment.

" Dr. Johnson once observed that in lapidary inscriptions a man is not on oath. To-day, none of those who spoke was on oath. They did not need to be, for the words which they spoke proceeded from the kindness of their hearts. What they said on your behalf moved me very deeply, and made me feel very humble indeed.

" I am sure that you will not misunderstand me or think that I am either ungracious or ungrateful if I say that it would have been in accordance with my wishes if no special notice had been taken of this occasion. I say that in all honesty, for the fact that I have been permitted to hold many offices in the Law Societies has been due to your having elected me to them. You could have paid me no higher compliment than to have elected me, year after year, to the membership of the Councils of the Law Societies. It is I who should be thanking you, therefore, for the confidence you have placed in me for over forty years, and not I who should be receiving thanks for any small services which I may have rendered to you. For this great privilege I thank you now out of a full heart.

" We belong to a great profession. I sometimes wonder whether members of it fully realize how great a profession it is. It is a learned profession, and a duty lies upon us to keep its standards high. I hope that, when ways are being considered of obtaining recruits for the profession, the lowering of the standards of legal education will not be one of them.

" We are a trusted people. We deal with the rights, liberties, and properties of our fellow-citizens as they journey through life, and afterwards. We make a not inconsiderable contribution to the administration of justice. We have great privileges, and carry high responsibilities.

" Lord Bacon in one of his essays says :

> I hold every man a debtor to his profession from the which as men of course do seek to receive countenance and profit so ought they of duty to endeavour themselves to be a help and ornament thereunto.

I am not so sure how a member of the legal profession is going to become an ornament to his profession, but one way in which he can serve it is by becoming a member of the Council of his Law Society.

" The legal profession cannot properly carry on without Law Societies. In their present form, District Law Societies date back to the year 1879 ; but Law Societies had sprung up in all centres of New Zealand many years before that. There is in the possession of the Secretary of the Auckland District Law Society a writing signed on March 25, 1842—109 years ago—by eight practitioners practising in Auckland. It is a resolution :

> That for the protection of the profession it is necessary that unqualified persons should be prevented from practising conveyancing and therefore that an action be forthwith commenced at the joint expense of the undersigned against any person who shall contravene the 54th section of the Ordinance passed during the last Session of the Legislature

entituled "An Ordinance to facilitate the transfer of real property and to simplify the law relating thereto."

At the same meeting, they drew up a scale of charges for conveyancing work. So, from the beginning, Law Societies have promoted and watched over the welfare of the profession. They have purged it of evil-doers; guarded its privileges; upheld its traditions; and done justice between practitioner and practitioner and between practitioners and their clients."

When he went to New Plymouth in 1906, he did so in fear and trembling, said Sir Alexander. It was said that newcomers were not welcome, and that it would be a form of madness to attempt to set up in practice there unless one's ancestors had lived there before the war.

"Much water had flowed under the bridges since then," continued Sir Alexander. "They were not referring to the Boer War but to the wars of 1862, when Taranaki volunteers went into action at Waireka and were the first volunteer company in the British Empire to do so.

"But all this talk of before the war was so much nonsense. I had not been there six months before I was elected to the Council of the Taranaki District Law Society, and I continued to be elected until 1919, when I left the district and came to Auckland.

"The Taranaki District Law Society was quite a live one, and maintained an excellent library. It encouraged social gatherings among its members, and discharged its duties competently. In 1913, I was elected President of the Society, and it became my pleasant duty to preside at a dinner tendered to the Hon. Mr. Herdman, Attorney-General in the Government of that time. In that year, Mr. Herdman had to deal with a situation not so very unlike that which confronts us to-day. He has retired now, and is a much revered man, and it is pleasant to recall that, by his courage and firmness on that occasion, he restored law and order to the community.

"Practice in New Plymouth was, in those days, extremely pleasant. We lived in pleasant surroundings. Mount Egmont was the background, and crystal streams which flowed to the sea were the delight of all fishermen. The members of the profession lived in amity. They were friendly and helpful to one another. There was never any wrath—well, hardly ever—and, if there was, the sun did not go down upon it. But every three months the peace and quietness and smooth running of professional life was disrupted by the arrival of the Circuit Judge. Most Circuit Judges succumbed sooner or later to the mood of the inhabitants, and peace and quiet reigned in the Court."

After recounting several anecdotes of professional life in New Plymouth, Sir Alexander went on: "I came to Auckland in 1919, and in February of the following year I became a member of the Council of the Auckland District Law Society. In that year, Mr. H. P. Richmond was elected President of the Society. He was a very energetic President, and soon cleared up arrears of work. New rules were made in his time, and new work was promptly dealt with. It happened that he was an old friend of mine, who, years before, had moved for my admission to the profession.

"I think the matter that gave us most concern in those far-off days was the Supreme Court Library, which was very inadequately housed. The agitation for proper accommodation continued for some years, but it was not until 1936, in Mr. Munro's presidency, that the present beautiful Library was opened. But, even when we got the Library, the Law Society had to find £2,000 for furnishing it.

"Mr. John Alexander followed Mr. Richmond, and I followed Mr. Alexander. I was elected President in 1924, with Mr. J. B. Johnston as Vice-President. In Mr. Alexander's time, the hours of work changed. We started at seven o'clock and went on until the work was finished, which was sometimes pretty late. This practice has continued, except that the Council now meets in its own comfortable room."

It would be otiose to describe to the Auckland District Law Society the work of its Council over the thirty years during which he had been a member, said Sir Alexander. The annual report for this year gave a fair idea of what had been carried out, and in previous years substantially the same work was done, but it had been gradually increasing, and those who undertook membership of the Council of the Auckland District Law Society in future would have to be prepared to give up even more time than had been the custom in the past.

"In earlier years, we never sent regular delegates to the Council of the New Zealand Law Society," continued Sir Alexander. "We appointed someone to go, but, if a local barrister was going to the Court of Appeal, it was usual to appoint him. But, after the reorganization of the New Zealand Law Society, the Auckland District Law Society was entitled to send four delegates. Mr. J. B. Johnston and I were two of these. Thus began one of the most pleasant associations in the history of the Society. This arrangement meant that we travelled to Wellington four times a year, but I cannot recall that we ever found the journeys irksome.

"In the war years, there were no sleeping-cars, and we slept as best we could, sitting up. When we reached Frankton, we would burst forth from the carriage, and, by using our elbows vigorously, push our way into a room marked 'Refreshments.' There we would try to attract the attention of a young woman behind the counter, and, if successful, would be handed an extraordinary example of ceramic art. It was a cup—yellow, chipped at the edges, and without a handle—filled with very hot tea. If you dropped it, you spilled the tea but did no harm to the cup. You could also buy a pie. The outer part seemed to be a mixture of flour and water, but the result was the same as if it had been manufactured from certified concrete. At any rate, it kept our digestive organs working all night.

"But I am here to thank you, and not to amuse you. To use the words of gentle Elia, I have come through to decrepitude and silver hairs, and I must make way for younger and more vigorous men. No one can view with regret an association that has lasted as long as my association with the Law Society. I retire with happy memories of my long association with the Council and with a heart filled with gratitude to you who have made that possible for me and have crowned all earlier kindnesses with the splendidly generous gift you have made me to-day."

LAND TRANSFER INSTRUMENTS.

Execution and Attestation.

All solicitors and law clerks know the requirements of the Land Transfer Department as to competency of a witness—for example, that the witness should be a solicitor, Justice of the Peace, clergyman, postmaster, or law clerk. (The last-named should always add the name of his employer.)

Another recent requirement of the Department, however, which is not so well known, is that a person, when executing or attesting a Land Transfer instrument, shall not use a ball-pointed pen. If a ball-pointed pen is used either for execution or for attestation, the instrument will be rejected at the Land Transfer counter.

The Secretary for Justice has asked Justices of the Peace, when witnessing Land Transfer instruments, to ensure that a ball-pointed pen is not used in their signing or attestation.

Attention is drawn to the Land Transfer Regulations, 1940, Amendment No. 2 (Serial No. 1951/112), which will come into force on July 1, 1951.

Powers of Attorney.

Under Reg. 35A of the principal Regulations (inserted by Reg. 3 of Amendment No. 2), the Registrar may decline to deposit any power of attorney, or a duplicate or attested copy thereof, unless the original has been duly signed (or, if executed by a Corporation, sealed), duly attested, and, if required by him, duly proved in accordance with ss. 169-171 of the Land Transfer Act, 1915, or duly verified in accordance with s. 176 of that statute, s. 21 of the Statutes Amendment Act, 1939, or s. 9 of the Evidence Amendment Act, 1945, as the case may be: see (1950) 26 New Zealand Law Journal, 353.

New Scale of Fees Payable to District Land Registrars.

A new scale of fees is prescribed by the amending Regulations, which revoke the Schedule in the principal Regulations and substitute a new Schedule, which increases the fees in most cases. A new feature is the introduction of registration fees on an *ad valorem* basis. Thus, where the monetary consideration or value of the estate or interest transferred does not exceed £100, the registration fee on a transfer is 10s.; where it does not exceed £1,000, £1 10s.; and on every other transfer, £2. Similarly with registration fees on mortgages. Where the principal sum secured or intended to be secured does not exceed £100, the registration fee on the mortgage is 10s.; where it does not exceed £1,000, £1 10s.; and on every other mortgage, £2.

The fee payable for a certificate of title on transfer for a monetary consideration or value not exceeding £100 has been increased to £1, and, for every other certificate of title, £2. Other fees are also increased.

CORRESPONDENCE.

Disclaimer by Official Assignee in Bankruptcy.

The Editor,
New Zealand Law Journal,
Wellington.

Dear Sir,

The article which appeared in the February issue of your Journal under the title "Disclaimer by the Official Assignee in Bankruptcy" by B. Sinclair-Lockhart (*Ante*, p. 45) aroused my interest as to the position in relation to land under the Torrens system in this State.

The question does not appear to have arisen, so far as I can ascertain, in this State or elsewhere in any of the Australian jurisdictions, though it may well have done so prior to August 1, 1928, when the (Commonwealth) Bankruptcy Act, 1924-1946, came into force.

Since that date, there are two provisions in that Act which render it less likely that questions of a similar nature may aeise:

(i) Section 98 (3) provides that, after the expiration of twenty years after the date of the sequestration of the estate of a bankrupt, no claim shall be made by the trustee of the estate to any estate or interest in any land which is part of the property of the bankrupt, and that estate or interest shall, subject to the rights (if any) of any person in possession of the land, be deemed to be vested in the bankrupt or any person claiming through or under him, as the case may be.

"Trustee" includes the Official Receiver, and, in consequence of this provision, after a period of twenty years from the date of sequestration, an application for transmission by the Official Receiver or Trustee of the estate of a bankrupt would not be in order, and should not be complied with by the Registrar-General.

(ii) Section 103 (4), which provides that, notwithstanding anything contained in the Act, where any Act or State Act requires the transmission of property to be registered and makes provision for the registration of the Official Receiver or Trustee as the owner of property vested in him under the Bankruptcy Act, the vesting of the property of the bankrupt in the Official Receiver or Trustee upon sequestration, or upon any composition, scheme of arrangement, or assignment under Part XI of the Bankruptcy Act, or under any deed of arrangement under Part XII of the Bankruptcy Act, shall be subject to compliance with the requirements of the Act or State Act.

If an unregistered purchaser from the bankrupt lodged a caveat, as a prudent person should, he would receive notice of the application for transmission, and should, I think, succeed in a contest between himself and the Official Receiver. The Act does not protect a person dealing with a registered proprietor unless and until his dealing is registered: *Templeton* v. *Leviathan Proprietary, Ltd.*, (1921) 30 C.L.R. 34, 69, 70; but, in the contest, the unregistered purchaser should, I think, succeed on the ground that his right arose prior in time to that of the Official Receiver, whose right would, it is submitted, by reason of s. 103 (4) above referred to, arise only on the registration of the title of the applicant for transmission.

If the unregistered purchaser omitted to enter a caveat, and the Official Receiver became registered, the position of the unregistered purchaser would be less secure, and, if the Official Receiver transferred the land to a purchaser for value, the position of the unregistered purchaser would be hopeless.

These random observations may be brought to the notice of the writer of the article in case he is unaware of the law in Australia, more particularly in relation to the last paragraph of his article, and, if thought of sufficient interest, may be brought to the notice of your readers.

Yours, &c.,
L. A. Harris,
Editor-in-Chief, *Australian Conveyancer and Solicitors Journal.*

Sydney,
March 22, 1951.

The Editor,
New Zealand Law Journal,
Wellington.

Dear Sir,

I am indebted to you for letting me see a copy of the letter dated March 22 at Sydney of Mr. L. A. Harris, the Editor-in-Chief of the *Australian Conveyancer and Solicitors Journal.*

The case of *In re Palmateer*, (1890) 16 V.L.R. 793, illustrates the kind of protection to which it seems the public are entitled—*viz.*, where the assignee of the bankrupt took proper steps to

(*Concluded on p. 164.*)

IN YOUR ARMCHAIR—AND MINE.

By Scriblex.

Judge Ongley.—Having attained the age of seventy-two, Judge Frederick Ongley has handed to the Minister his resignation from the office of Judge of the Court of Compensation, but has been requested to continue for another three months, to enable the Government to appoint a successor. His going will be a real loss to the profession, which has now become accustomed to his genial and helpful approach to the varying problems of a difficult field of law. Those who appointed him gave scant consideration to such problems. He followed the late P. J. O'Regan, who was an acknowledged expert in workers' compensation litigation, and who, during his term, demonstrated a firm belief in the necessity of expanding the territory of workers' claims. It is clear from some of Ongley, J.'s, decisions that he considered his predecessor had gone too far in this respect. But that was not his main worry. The Government of the day superimposed upon his duties in the Compensation Court, first, those wholly unrelated ones of the Land Sales Court, and, later, those of that unhappy organization, the Waterfront Control Commission. In each one of these positions he has shown judicial courage and the ability that marked his work as Crown Solicitor at Timaru in earlier days. One matter for which the profession may have reason to be grateful has been the willingness with which he has, when confronted with difficult and important questions of law or practice, stated a case for the Court of Appeal. This is a tendency that should be strongly approved where puzzled or disappointed litigants have, as in England, no statutory right of appeal.

The McSherry Case.—The average person will understand and sympathize with the public outburst of the father of the murdered man in the case of Gordon McSherry that it is a fiasco that a person should be brought to trial on a murder charge, found guilty without recommendation to mercy, and then have the sentence inflicted upon him upset by Cabinet. "What is the use," he says "of having a fiercely debated political wrangle over capital punishment when the party favouring the change to capital punishment nullifies it on the first death sentence?" In a statement to the Press, the Minister of Education (Mr. Algie) tells how "Mr. Holland reminded us all [*i.e.*, the members of the Cabinet] of the procedure, and impressed on all the solemnity of the occasion. Then each one gave his opinion of the case." It seems that the Judge did not recommend mercy, but, from the reports submitted: "There was something in the present make-up of the murderer which should weigh against the carrying out of the death sentence." This position is not altogether satisfactory. If statements of this kind are to become the rule, they will come more appropriately from the Minister of Justice, in whose preserve the matter lies.

Lawyers' Incomes.—In one of a series of articles prepared for a "Survey of the Legal Profession of Canada," John P. Nelligan, of Toronto, has some interesting things about the golden period of lawyers' earnings and its Indian summer. It seems that the typical career of one practising on his own account or in partnership with others begins with a very low income, which increases in a slowly rising curve until it reaches its peak after about thirty years in practice. "A slow decline then sets in, and income decreases slightly as the years go by. Even after forty years in practice, however, the average income is considerably higher than at any time during the first fifteen years. (Amongst American lawyers the same general pattern is disclosed.) In the medical profession, the doctor sees his income increase much more rapidly, and reaches within a few hundred dollars of his maximum earning-power within the first ten years of practice. His income continues to rise very slowly from the tenth to the twentieth year, and then begins to decline, slowly at first, then increasing rapidly as the years go on. After forty years in his profession, the average doctor is earning about the same income as he did during his first five years." Following on a release of income-tax figures by the Canadian Department of National Revenue, one of the daily newspapers headlined its commentary with: "Girls, Get Yourself a Lawyer—Their Income is the Highest in the Land." According to the Survey, they should have been further advised to concentrate on lawyers over fifty years of age, since it is this group who receive the highest incomes in the legal profession. But the average lawyer over fifty is a pretty dull dog, his halo, romantically speaking, a trifle tarnished. At least, that is what his wife will tell you.

Striking Note.—In April last, seven dockers were charged in London with conspiring together to contravene certain Regulations which prohibit strikes in connection with trade disputes, and, upon a second count, with conspiring to induce dock-workers to commit a breach of contract. The jury failed to agree upon the first charge, but found the accused guilty upon the second. On the day following the verdict, the Attorney-General entered a *nolle prosequi*, and, amidst the plaudits of an army of their supporters, the dockers were discharged. In the course of pointed comment upon the trial, it is said in (1951) *100 Law Journal*, 226:

> It seems to us that on behalf of the citizens of this country the result of these proceedings can only be described as lamentable: there is neither acquittal nor conviction, nor any prospect of ending the "unofficial" strikes which bode ill for the community. During the trial, the dockers claimed that they were a life-line of the nation—a grandiloquent description perhaps, but one which contains much truth, as we are an island people. All the more, therefore, do they owe a duty to their fellow-citizens to see the life-line is kept working. If groups of workers will not have regard to the public interest, but subject the public to inconvenience and distress in order to gain their own ends, it is time that some effective remedy should be devised for the protection of the rest of the community.

These are timely words, with a peculiar significance in regard to some of the troubles that confront our own country. Lawyers may challenge, constitutionally, some of the means taken to combat them, but is the most effective of all—deregistration of unions—really open to challenge? Should any organization that is given both protection and remedy under the law be heard to complain that, if it declines to recognize and act in accordance with the law, it suffers the penalty of legal forfeiture as a consequence of its transgressions?

DISCLAIMER BY OFFICIAL ASSIGNEE.

((*Concluded from p. 162.*)

caveat the title to the land.

The essential apparent defect in our Land Transfer system apropos of bankruptcy is that nothing necessarily is recorded on the register-book to indicate in any way that the registered proprietor has gone bankrupt, and, by statute, whether the Official Assignee exercises his claim or not, a right to become the registered proprietor has been conferred upon a party who is alien to the title—namely, the Official Assignee.

A limitation of time, such as is indicated in s. 98 (3) of the (Commonwealth) Bankruptcy Act, 1924-1946, and usefully cited by Mr. Harris, would be of material help, but in my opinion the Official Assignee should be forced to act more quickly, even if he does nothing other than immediately caveat the certificate of title.

It is not really the unregistered purchaser (referred to by Mr. Harris) who needs to caveat the title, in my contemplation, because I was concerned more with the case where immediate registration was practicable, which, of course, is the simplest possible instance of the problem under review, but still is permeated by the vice I have endeavoured to highlight. Theoretically, with our Land Transfer Act, I am inclined to think there is the definite pitfall rather inadequately described in my article, which you were kind enough to publish. I have since been encouraged by the comment of another District Land Registrar that there is something worthwhile in my contention. Possibly the Registrar-General may consider the point, and I think also Mr. F. C. Spratt's opinion would be very valuable.

Yours, &c.,

B. SINCLAIR-LOCKHART.

OBITUARY.

Mr. J. F. Strang (Hamilton).

The death occurred in Hamilton on May 12 of Mr. John Ferguson Strang, Crown Solicitor at Hamilton. He was aged sixty-seven.

Born at Lamington, Scotland, Mr. Strang came to New Zealand when he was four years old. He was educated at the Otago Boys' High School, the Waitaki High School, and Victoria University College. He served for some years in the Public Service before he was admitted as a barrister and solicitor in 1907. He first practised at New Plymouth, and then went to Taumarunui. He began to practise at Hamilton in 1920, and was appointed Crown Solicitor in June, 1946, on the retirement of the late Mr. H. T. Gillies.

The late Mr. Strang was a former President of the Hamilton District Law Society, and for a number of years he was a member of the Society's Council. During the Second World War, though not a young man, Mr. Strang served with the National Military Reserve on the Great Barrier Island. He was a past President of the Hamilton Golf Club, and was always a keen player. Cricket was one of his greatest interests, and for some years he acted as an umpire, and he was President of the Waikato Umpires Association. He was also an authority on the history and customs of Tibet, and gave a number of lectures on the subject. He was also a keen chess player.

Mr. Strang is survived by his widow and two daughters, Mrs. N. S. MacDiarmid, formerly of Hamilton and now of Taranaki, and Miss Sydney Strang, who is in England.

THE HAMILTON BAR'S TRIBUTE.

On May 15, the members of the Hamilton District Law Society assembled in the Supreme Court, Hamilton, before Mr. Justice Adams to pay a tribute to the late Mr. J. F. Strang.

The President, Mr. G. G. Briggs, said that Mr. Strang, in the course of a long period of practice, had kept bright and untarnished the ideals and traditions of the legal profession. It was fitting that a tribute to his memory should be paid in the Supreme Court in Hamilton, where so much of his professional life had been spent.

Mr. Briggs said that for thirty-one years Mr. Strang had taken an outstanding part in the administration of justice in the Hamilton district and in the affairs of the Hamilton District Law Society. He had been the acknowledged leader of the Hamilton Bar.

Referring to Mr. Strang's career, Mr. Briggs said that he had loved his profession and had lived for it. He had been diligent in the interests of those for whom he had acted.

Mr. Briggs referred to Mr. Strang's part in organizing and administering various sports. He concluded by expressing to Mrs. Strang and her daughters the profound sympathy of the profession.

MR. JUSTICE ADAMS.

"It is indeed fitting that such a tribute should be paid to Mr. Strang in this Court, where his voice has so often been heard," said Mr. Justice Adams, who added that he had received a letter from Mr. Justice Finlay expressing his desire to be associated with any tribute. "Our profession is an exacting one," His Honour continued. "It calls for excellence in all the qualities which go to make a man. I believe Mr. Strang possessed those qualities in high degree. The profession of the law has the effect of revealing a person's virtues and laying bare his weaknesses. To pass through a long and arduous period of practice, and at the end of it to command the regard of fellow-practitioners, as Mr. Strang has done, is a worthy and notable achievement."

LEGAL LITERATURE.

New Zealand Probate Practice.

Probate and Administration Practice in New Zealand, by A. E. Dobbie, S.M. Pp. 374 + xxiv. Wellington. Butterworth and Co. (Aus.), Ltd. Price 65s.

This work is the fruit of the author's long experience and close association with probate and administration practice. He was Deputy Registrar at Wellington from 1923 to 1926. During the twelve years which followed, he was Deputy Registrar at Auckland, and had charge of all probate and administration applications and matters in that extensive Registry. He took advantage of his opportunities to take notes of all practice matters which came under his notice. Later, he was Registrar at Wanganui, at Dunedin, and at Invercargill before his appointment as a Magistrate in 1944.

Even practitioners who deal with a number of probate matters find difficulty in readily ascertaining the correct practice in the many and varied aspects of this branch of their work. The author's logical arrangement of his subject, fortified by numerous references and points of practice, should prove of great value and should save much time.

A useful feature of the work is the inclusion of forms, with copious notes. The drafting of forms and the obtaining of approval of them before any attempt is made to present the forms for filing often occupy a practitioner's valuable time that could be more profitably spent on other work. The author has wisely included the relevant forms in the Code of Civil Procedure, with notes, as well as those other kinds of forms for which there are so often no easily-available precedents. Other forms, though of less frequent use, are there to be found when wanted; they are well worthy of being placed on record.

The fact that the statutes and Rules that affect probate and administration practice are included separately causes them to be readily accessible without the need for recourse to further search or inquiry.

A special feature is the cross-reference of the practice points to the relative substantive law as found in *Garrow's Wills and Administration in New Zealand.* In this way, the two works are so correlated as to form one authoritative text-book for New Zealand on this subject.

Mr. Dobbie's industry is also shown by his reinforcement of his text with the citation of nearly 1,900 authorities, and by his comprehensive index.

The work is up to date, and includes the clarification of a doubtful point of practice appearing in *In re Young,* [1951] N.Z.L.R. 70.

Altogether, Mr. Dobbie is to be congratulated on his matter and his arrangement; and, as soon as the quality of his excellent practice work is known by practitioners, it will become indispensable in their offices.

P. B. E.