New Zealand
Law Journal

Incorporating "Butterworth's Fortnightly Notes."

VOL. XXVII. TUESDAY, AUGUST 21, 1951. No. 15.

THE OFFICE OF THE LORD CHANCELLOR.

THE coming to New Zealand early next month of the Lord High Chancellor, the Rt. Hon. Viscount Jowitt, is an event of outstanding interest to every lawyer in the Dominion. No other holder of his great office has previously visited this country. We shall all welcome him. The Sydney daily Press and our cable news have stressed the value of his robes, and the presence with him of his train-bearer: these things, no doubt, have an appeal to the lay mind, but lawyers welcome the Lord Chancellor for wholly different reasons. His office is at the centre of the constitution of Great Britain, and has been so for many centuries. He is the King's first subject, after the members of the Royal Family and the Archbishop of Canterbury. And the origin of his office is almost obscured in the mists of legend that surround the days of the almost fabulous King Arthur, who is said to have first appointed a chancellor.

The Antiquity of the Office.

The origin of the name "Chancellor" is disputed. Sir William Holdsworth disagrees with Lord Campbell, and, in his *History of English Law*, says that it is derived from the *cancelli*, or screen, behind which the secretarial work of the royal household was carried on. According to Selden, in his *Office of Chancellor*, Ethelbert, the first Christian King among the Saxons, had Augmendus for his Chancellor. So, from the time of the conversion of the Anglo-Saxons by St. Augustine, in 596, the King always had near him a priest, who was his personal chaplain and his confessor: hence the historic title of the Lord Chancellor, "the Keeper of the King's Conscience."

The person selected for the office was chosen from the most learned and most able of the clergy, and was better fitted for his duties than the unlettered laymen of the Court. In the ordinary course of events, he became in practice the private secretary of the king, and he was qualified by his knowledge of Civil and Canon Law to advise the Sovereign in the delicate legal issues which lay outside the purview of the Courts administering the Common Law of England. (The first layman to become Chancellor (in 1340) was Sir Robert Bourchier, a distinguished soldier; but many other clerics held the office in the centuries that followed.)

Edward the Confessor, the first King to have a seal, was also the first King to have a Chancellor to keep it.

The King has always been the fount of justice; but he was not learned in the law, and he could not himself decide all controversies. The Judges in his Courts were appointed to remedy all wrongs. Still, applications came to the King in person from people seeking redress in cases where the Courts could give no remedy. The King, therefore, needed assistance to deal with these petitions, someone to act in his name. This duty fell to the King's secretary, on whom, by degrees, the duty of remedying wrongs not cognizable by the Courts entirely devolved. And so the secretary came to be known as the King's Chancellor in a special sense, and the place where he could easily be approached—the Chancery—evolved into a form of Court.

The Chancellor's duties at first, as we have seen, were chiefly secretarial. He was "the secretary of state for all departments"; and, as part of this duty, he drew and sealed the Royal writs (*1 Stubbs' Constitutional History*, 398, 399). He became a prominent member of the Exchequer department of the Curia Regis; and he assisted in the judicial business both of the Exchequer and of the Curia Regis, and acted as itinerant Justice, when he accompanied the Sovereign on any royal progress

The Chancery.

The increase of the business of the Curia Regis increased the dignity of the Chancellor, and necessitated the employment of a staff of clerks. The Chancellor thus became the head of a department—the Chancery. In 1199, the departments of the Exchequer and the Chancery were separated, and a separate set of rolls—the Chancery Rolls—began. (As we have seen, it is probable that to this separation and the establishment of a new set of rolls, on the model of the rolls of the Exchequer and the Curia Regis, was due the development of the office of Master of the Rolls.) Then, as now, the Chancellor had miscellaneous functions; but for some time to come the Chancellor was not the head of a Court. Even when he attained that position, he did not cease to be an important member of the executive Government.

Naturally, the connection of the Chancellor and the Chancery with the Curia Regis—the governing body of the kingdom—was close. The Chancellor, as Professor Tout has said in his *Place of Edward II in English History*, was "the king's natural prime minister."

The result was that the Chancellor, though still a Court official following the King, had a staff of his own entirely separate from the chaplains and clerks of the Household. Professor Tout said, at pp. 59, 60:

> The clerks of the Chancery, living with their chief a self-contained and semi-independent collegiate life . . . soon developed a departmental tradition and *esprit de corps* that began to rival the strong corporate feeling of the Exchequer officials.

But the Chancellor was destined to become something very much more than a mere departmental chief. Though a " salaried officer of limited powers and tenure of office " had been substituted for " the old type of irresponsible magnate," yet this officer was bound to become an important official in the State, because he kept the Great Seal. It is, in fact—as Professor Holdsworth has reminded us—the Chancellor's position as Keeper of the Great Seal which puts him at the head of the English legal system and makes him the legal centre of the constitution.

As the Chancellor and the Chancery were, from the earliest times, in direct connection with all parts of the constitution, this accounts for the extraordinary range and variety of the Chancellor's duties. Of that range and variety Bentham's critical summary will give us the best idea. He is :

> (1) A single judge controlling in civil matters the several jurisdictions of the twelve great judges. (2) A necessary member of the Cabinet, the chief and most constant adviser of the king in all matters of law. (3) The perpetual president of the highest of the two houses of legislature. (4) The absolute proprietor of a prodigious mass of ecclesiastical patronage. (5) The competitor of the Minister for almost the whole patronage of the law. (6) The Keeper of the Great Seal; a transcendent, multifarious, and indefinable office. (7) The possessor of a multitude of heterogeneous scraps of power, too various to be enumerated [cited in *Parkes on the Chancery*, 437].

We have seen that the English legal system was a system of royal justice. This royal justice had to be called into action by original writs (as opposed to judicial writs), and these had to be sealed by the Chancellor. So, as Lambard, in his *Archeion*, says, the Chancery was " the forge or shop of all originalls." Thus, down to our own day, in conjunction with the common-law Judges, the Lord Chancellor is a guardian of personal liberty ; and anyone unlawfully imprisoned may apply to him for a writ of *habeas corpus*, either in term or in vacation. He may at any time issue a writ of prohibition to restrain inferior Courts from exceeding their jurisdiction, though he listens with reluctance to such motions, since they may be made to the King's Bench, whose habits are better adapted to the sort of business, as Lord Redesdale, L.C., said in *Montgomery* v. *Blair*, (1804) 2 Sch. & Lef. 136. Also, the Lord Chancellor has an exclusive authority to restrain a party from leaving the kingdom where it appears that he is withdrawing himself from the jurisdiction of the Courts. This is effected by the writ *ne exeat regno*, which is a high prerogative remedy issued under the Great Seal, but always (as Lord Campbell, L.C., reminded us) with great circumspection.

The Chancellor's Appointment.

It is now usual for the Sovereign to appoint, as Lord Chancellor, the person recommended for that office by the Prime Minister, whose choice must be made from the Judiciary or from those who have held the office of Solicitor-General or Attorney-General. On his appointment, the Great Seal of Great Britain is placed in his hands by the Sovereign himself, because, since 1707, the Lord Chancellor has been the Keeper of the Great Seal of Great Britain. He cannot leave the British Isles without the King's consent, and, while he is away, the Seal is held by Lords Commissioners. He returns the Seal to the King on retirement or resignation.

The Lord Chancellor receives a salary of £10,000 a year, and, on his retirement, a pension of £5,000. Unkind critics have bitterly attacked the latter payment ; but it must be borne in mind that most Lord Chancellors, health permitting, continue to sit on appeals to the House of Lords and to the Judicial Committee of the Privy Council, and that tradition forbids them to return to their practice at the Bar. On his retirement from the Woolsack, Lord Birkenhead was attacked in some quarters for taking the pension attached to the office of Lord Chancellor. To this he made reply that, when he accepted the office, he abandoned an income of £20,000 a year at a pre-war value. " Ask any of the leaders of the Bar," he said, " whether, if I returned to practice at the Bar, I could not now make £40,000 a year." While all ex-Lord Chancellors could not, perhaps, make £40,000 a year at the Bar, every one of them could earn in fees considerably more than £5,000, and this should effectually silence most of the critics.

Duties of the Office.

The Lord Chancellor has a great many duties, political, administrative, and judicial. He is a member of the Ministry and of Cabinet, and he accepts office or retires with the party to which he belongs. He is the Speaker of the House of Lords ; and he is, in general, the formal medium of communication between the King and Parliament.

The political nature of the office of the Lord High Chancellor has frequently been denounced as contrary to the best interests of justice, in that it is destructive of independence. But England has been fortunate in its Lord Chancellors, and their personal conduct of the office has gone far to meet the objection. It has been said in support of the existing system that, while the other Judges should be permanent, the highest legal functionary should stand or fall with the Ministry as the best means of securing his effective responsibility to Parliament for the proper exercise of his extensive powers.

The executive functions of the Lord Chancellor are not now so heavy as they have been in the past, and, while extensive duties still remain, their burden is now in practice considerably lightened by the efficient management of the Lord Chancellor's Department under his Secretary. Lord Thurlow was once asked how he got through his business as Lord Chancellor. " Oh," he replied, " just as a pickpocket gets through a horsepond—he must get through." But to many another Lord Chancellor the burden of the office has been heavy. To Lord Herschell, an exceptionally conscientious Chancellor, there were not, to use his own words, three days in the year in which he was not hard at work, and on many days he was working ten, eleven, twelve, and thirteen hours. And we know that Lord Langdale, offered the Great Seal in 1850, drew up a list of the pros and cons, the latter ultimately prevailing, on which side appeared the words :

> Persuasion that no one can perform all the duties that are annexed to the office of Chancellor. Certainly that I cannot. Unwilling to seem to undertake duties some of which must (as I think) be necessarily neglected.

Happily, the burdens of the office have since been lightened.

Speaker of the House of Lords.

Unlike the Speaker of the House of Commons, the Lord Chancellor takes part in debates; but, when he wishes to address the House, he must advance to his place as a Peer, for the Woolsack on which he sits is technically outside the precincts of the House. He votes, however, from the Woolsack, and does not go into the division lobby. Practically the only function which he discharges as Speaker is putting the question. If two members of their Lordships' House rise together, he has no power to call upon one, nor can he rule upon points of order. Not he, but the whole House, as "My Lords," is addressed by any member rising to speak.

It may perhaps be mentioned that there is no binding obligation on a Lord Chancellor to become a Peer. Though a commoner, he may still sit on the Woolsack and put the question and commit resolutions; but one thing he cannot do, and that is address their Lordships' House. There are advantages for a Lord Chancellor in remaining a commoner. For instance, if his party were ousted from power, he could return to the House of Commons and have within his reach both the office of Leader of the Opposition and the glittering prize of the Premiership should his party later be successful at the polls. But to accept a peerage is an irrevocable act, and there is many an ex-Lord Chancellor who, after his party's defeat, has sunk, so far as a public life is concerned, into comparative obscurity, spending the rest of his days in hearing and determining appeals to the House of Lords—valuable and essential work, but not a task that attracts the public eye. Exceptions, of course, are to be found, and amongst them stands conspicuous the case of Lord Birkenhead, who remained quite as well known under that title, and quite as important a personage, as he ever was as F. E. Smith—which is saying a great deal. Nevertheless, most Lord Chancellors continue, and probably always will continue, to take the irretrievable plunge into the peerage. Two of the most famous commoner Chancellors have been Sir Thomas More, whom historians have called "the greatest of Englishmen," and Sir Francis Bacon (though the latter elected to become Baron Verulam some six months after his appointment, and, a few years later, Viscount St. Albans).

Judicial Duties.

As the King's highest judicial officer, the Lord Chancellor is *ex officio* the President of His Majesty's High Court of Justice, and, in particular, the President of the Chancery Division thereof; and he is also the President of the Court of Appeal. When the Lords of Appeal in Ordinary sit as the final appellate Court for Great Britain and Northern Ireland and the Lord Chancellor is present as a member, he presides on the Woolsack, and he also declares the formal conclusion of the debate. He is also a member of the Judicial Committee of the Privy Council, as a Privy Councillor "holding high Judicial Office."

From a very early date the practice has prevailed of conferring upon the Chancellor special jurisdiction under special statutes. We find instances of this at all periods in the history of his office. In the Middle Ages he was given a special jurisdiction, *inter alia*, to punish the misdemeanours of sheriffs and other officers; to issue process for the arrest of felons who had fled into unknown places; to try cases of robbery committed by subjects upon alien friends, on the sea, or in any port within the realm. At a later period, various and heterogeneous powers still continued to be conferred upon him. We may take as instances an Act for settling tithes to be paid in the City of London after the Great Fire, the Habeas Corpus Amendment Act, and statutes dealing with arbitrations, Jews, friendly societies; and Canal, Navigation, Enclosure, and Tramway Acts often added further special powers.

The Lord Chancellor possesses an extensive judicial patronage, but it is wrong to suppose that he is the only medium for recommending to the Sovereign preferment in the profession of the law. Justices of the High Court and the County Court Judges are selected by the Lord Chancellor, as are also Official Referees, Masters in Lunacy, and a certain proportion of the Masters and other high officials of the Supreme Court. But, technically at any rate, the Lord Chief Justice, the Master of the Rolls, and the Lords Justices are appointed on the recommendation of the Prime Minister. The Lord Chancellor also has the appointment of Justices of the Peace, but the number of these dignitaries renders it wellnigh impossible for any Chancellor to satisfy himself of the personal merits of each individual applicant or appointee. Lord Herschell, however, insisted on personally examining the case of each candidate to satisfy himself that he was a fit person to administer justice, saying that he would rather renounce his office than prostitute his power of appointment to political party purposes, and by this conscientiousness aroused, incidentally, considerable disfavour amongst his fellow-Liberals.

The Great Seal.

It is no wonder that lawyers and statesmen regard the Great Seal—the *clavis regni*—with an almost superstitious reverence. It is treason to counterfeit it; and they come to think that, if it is used—it may be contrary to the will, or during the madness, of the Sovereign—the act is as authentic as if the Sovereign had really sanctioned it.

All important Government acts—treaties with foreign States, the assembly of Parliament, Royal grants—must pass the Seal, and must, therefore, come under his review. The history of the office of Lord Chancellor is thus inseparable from every feature in the history and development of the constitution.

When the Lord Chancellor appears in his official capacity in the presence of the Sovereign, or receives the messages of the House of Commons at the bar of the House of Lords, he bears in his hand the purse that contains (or is supposed to contain) the Great Seal. On other occasions, it is carried before him by his purse-bearer.

The Great Seal is kept in its "white leather bag and silken purse" under the Chancellor's private seal. There is a rule that he may not take it out of the realm. The present Lord Chancellor has brought with him a purse of red velvet embroidered with the Royal Arms. He told people in Sydney last week that in the old days the Chancellor used to get a new purse every year, but now, when it is so expensive to produce, the purse is replaced only when it is worn out. Lord Jowitt had a "worn-out" one—which it was his perquisite to keep—carried before him in Sydney at the opening of the Legal Convention.

At the beginning of a new reign, or on a change in the royal arms or style, the Great Seal is "demasked," or struck with a hammer by the King at his first Council, in order slightly to deface it. The old Seal is then

presented to the Lord Chancellor as a perquisite. On the accession of William IV, there was a dispute between Lord Lyndhurst, who was Chancellor on the King's accession, and Lord Brougham, who succeeded him as Lord Chancellor before the new Seal was finished, as to the rightful possession of the old Seal, a question which the King himself decided by giving half of the Seal to each, and by arranging that the particular half that each of these great Chancellors should receive was to be determined by lot. His Majesty's judgment was greatly approved. Seals that have become worn out are also presented to the Lord Chancellor for the time being. The late Lord Halsbury is reputed to have acquired two such relics in this way. But the practice now is for a wafer Seal to be affixed to most documents of State, and the Great Seal itself, being used for only a few purposes, has thus a much longer period of efficiency than formerly.

CONCLUSION.

To conclude, we take the words of a writer well qualified to assess the interest and the importance of the Lord Chancellor's office. In his preface to the first edition of his great work, Lord Campbell says :

> There is no office in the history of any nation that has been filled with such a long succession of distinguished and interesting men as the office of Lord Chancellor or Lord Keeper of the Great Seal of England. It has existed from the foundation of the monarchy ; and although mediocrity has sometimes been the recommendation for it, generally speaking, the most eminent men of the age, if not the most virtuous, have been selected to adorn it. To an English statesman as well as an English lawyer the narrative ought to be particularly instructive, for the history of the holders of the Great Seal is the history of our constitution as well as of our jurisprudence.

For these reasons, and particularly for his own qualities and the friendliness of his personality, New Zealand lawyers will welcome to New Zealand the present distinguished holder of the Great Seal.

SUMMARY OF RECENT LAW.

ANIMALS.

Cruelty to Wild Animals. *101 Law Journal*, 425.

ANNUAL HOLIDAYS.

Award—Shift-worker—Award providing for Annual Holiday "on ordinary pay"—"Penalty payments" for Work performed on Saturdays and Sundays within Normal Forty-hour Week—Hypothetical Earnings in respect of "Penalty payments" not to be taken into Account as Part of "Ordinary pay"—Annual Holidays Act, 1944, s. 4 (1). Clause 6 (*a*) of the New Zealand Harbour Boards' Employees' Award, 1947 (*47 Book of Awards*, 1121), provides as follows : "Except where otherwise provided, workers shall, after the completion of each year of service, be entitled to two weeks' holiday on ordinary pay. In the case of shift-workers and workers who are required to work on Saturdays or Sundays at less than the penalty rates specified in cls. 4 (*l*) and 5 (*c*), three weeks' holiday on ordinary pay shall be allowed." Clause 16 (*a*) (*b*), dealing with shift-work, provides as follows: "(*a*) Where indicated in the appendix, shifts may be worked as required by the employer. Eight hours shall constitute a shift, and the ordinary hours of work shall be forty per week : Provided that shift-workers while employed on Saturday shall be paid at the rate of time and a half and while employed on Sunday shall be paid at the rate of double ordinary time. (*b*) A shift allowance of 2s. 6d. per shift shall be paid to all shift-workers (indicated as such in the appendix) while they are employed on afternoon or night shifts. Any shift starting or finishing outside the hours of 6 a.m. and 6 p.m. shall be deemed to be an afternoon or night shift." A worker subject to the Award, being a shift-worker, was entitled to an annual holiday of three weeks "on ordinary pay" under cl. 6 (*a*) of the Award. He worked up to January 11, 1948, enjoyed the next two days off under his roster, and commenced his annual holiday by arrangement on January 14, 1948. His qualifying year of service had commenced on September 10, 1946—*i.e.*, his annual holiday had fallen due on September 9, 1947. If he had worked to the normal roster over the period of his annual holiday, he would have earned £9 18s. more than he actually received as holiday pay. The question at issue was whether, for the purposes of assessing "ordinary pay" under cl. 6 (*a*) of the Award, shift allowance and "penalty payments" for work performed on Saturdays and Sundays within the normal forty-hour week should be taken into account. *Held*, That, on the assumption that the provisions of the Award were more favourable to the worker than were the provisions of the Annual Holidays Act, 1944, the worker was paid not less than the amount to which he was entitled under the Award in respect of his annual holiday, because the "ordinary pay for the different periods of annual holiday prescribed in cl. 6 (*a*) of the Award was intended to be computed on the basis of ordinary rates of pay, without taking into account the rate of double ordinary time mentioned in cl. 16 (*a*) or the shift allowances provided for in cl. 16 (*b*) of the Award. (*Moon* v. *Kent's Bakeries, Ltd.*, [1946] N.Z.L.R. 476, and *Leonard* v. *Auckland Electric-power Board*, [1950] N.Z.L.R. 534, referred to.) *Steptoe* v. *Wellington Harbour Board*. (Ct. Arb. Wellington. June 27, 1951. Tyndall, J.)

CONTRACT.

Construction—Purchase of Shares "at such price as may be found to be a proper price"—Meaning of "proper price"—Method of determining "proper price." In the course of a series of letters between the parties, intended to constitute a contract, the defendant's solicitor said he had been instructed by the defendant to say that he was "prepared to purchase such shares at such price as may be found to be a proper price after all necessary adjustments had been made." The defendant denied that the letters constituted a contract, as they neither fixed the price nor provided a certain means for the determination of the price. *Held*, 1. That the dominant provision in the contract was the promise to pay "the proper price," and that, in the context, "proper" was equivalent to "reasonable," and the promise was a promise to pay the reasonable price—*i.e.*, the price that is proper or appropriate in all the circumstances, or, more shortly, the "reasonable" price. (*Broome* v. *Speak*, [1903] 1 Ch. 586, and *Davies* v. *Davies*, (1887) 36 Ch.D. 359, applied.) (*Hillas and Co., Ltd.* v. *Arcos, Ltd.*, (1932) 147 L.T. 503, referred to.) (*May and Butcher, Ltd.* v. *The King*, [1934] 2 K.B. 17*n.*, and *Foley* v. *Classique Coaches, Ltd.*, [1934] 2 K.B. 1, distinguished.) 2. That the "proper price" fell to be determined, failing agreement, by arbitration if either party chose to insist on arbitration, and, failing arbitration, it was a question of fact for the Court. (*Milnes* v. *Gery*, (1807) 14 Ves. Jun. 400 ; 33 E.R. 574, followed.) 3. That, consequently, there was a binding contract between the parties. The judgment is reported on the above point only. *Peter Cameron* v. *Worboys* : *Dorothy Cameron* v. *Worboys*. (S.C. Wellington. June 15, 1951. F. B. Adams, J.)

Electricity Supply—Contract by Supply Authority providing for Minimum Annual Payment for Electrical Energy supplied—Rationing of Power imposed—Refusal by Consumer to pay Excess over Minimum Charge—Action by Crown for Payment thereof——No Proof of Consumer's requiring More Electrical Energy than Supplied to Him—Any Action by Consumer against Supply Authority barred—Electricity Act, 1945, ss. 22A (1)—Statutes Amendment Act, 1949, s. 12—Electricity Control Regulations, 1949 (Serial No. 1949/190), Regs. 3 (2) (b), 5 (1). The material parts of an agreement made on June 25, 1948, between the Minister of Tourist and Health Resorts (as the Supply Authority for the district) and the defendant were as follows : "2. The consumer agrees to pay a minimum charge of £40 per annum (due and payable monthly) for a period of five years. 3. The above quoted charge of £40 is a minimum

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The examinations of the Institute will be conducted in the last week in November in the subjects of the Institute syllabus. The closing date for receipt of entries is 1st October, (late-fee entries by 12th October).

Copies of the syllabus, together with entry forms for the professional examination in valuation, either rural or urban, are now available from the undersigned or from any branch of the Institute.

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charge only. If the charges for the apparatus installed either by meter or by assessment be greater than £40 such greater amount shall be paid. 4. The charge for energy supplied shall be computed in accordance with clause 35 of the Department By-laws . . ." The Minister made the necessary extensions, and the defendant on or about August 20, 1948, received a supply of electrical energy for domestic purposes and for working certain farming-plant. The power shortage in the North Island had already commenced. The minimum charge of £40 a year was, by agreement, reduced to £30 a year. On account of the shortage, the defendant was given a quota of 530 units a month for domestic purposes. For the period August 20, 1948, to October 28, 1950, he had paid £45 5s. 4d. He alleged that, in consequence of the imposition of the quota, he had been prevented from using sufficient power in a year to equal the amount to which a payment of £30 would entitle him. He refused to pay the difference between the minimum charge of £30 a year and the charges for electrical energy actually consumed. The plaintiff claimed that difference, amounting to £19 14s. 8d. *Held*, 1. That the agreement, standing alone, obliged the Supply Authority to supply the defendant with any amount of electrical energy which he might require; but, as the defendant had not proved that he required more electrical energy than had been supplied to him, he had shown no grounds upon which he could be excused from discharging his obligation to pay the annual minimum c a·ge. 2. That, when the Supply Authority became empowered, by virtue of the Electricity Control Regulations, 1949, to ration the use of electrical energy, any action against it by the defendant, whether by claim or by counterclaim, seeking relief on the ground put forward by him, was barred by s. 22A (1) of the Electricity Act, 1945. *The King* v. *Fleming*. (Rotorua. July 2, 1951. Luxford, S.M.)

CRIMINAL LAW.

Evidence—Previous Convictions—Report in Newspaper—Committal for Trial. On an application by the applicant to the Justices at the preliminary investigation of an indictable offence, evidence of the applicant's previous convictions was given, and was reported in certain local newspapers. Subsequently the applicant was convicted at Quarter Sessions. *Held*, That, although it was very undesirable that a newspaper should disclose such evidence, that by itself was not a ground for quashing the conviction. (*R.* v. *Dyson*, (1943) 169 L.T. 237, explained.) *The King* v. *Armstrong*, [1951] 2 All E.R. 219 (C.C.A.).

Practice—Autrefois acquit—*Charge of wilfully making False Income-tax Returns dismissed—Admission of Negligence—Amendment of Information not asked for—Subsequent Information for Negligently making False Returns—Neither Identical nor substantially Same as Former Charge—Defence of* Autrefois acquit *not Available—Two Conditions required—Conditions not Present—Crimes Act, 1908, s. 403 (1).* The defendant had been charged on informations with wilfully making false returns of income-tax for the years 1945 to 1948, and such informations were dismissed on the merits. At the time of such dismissal, the defendant admitted negligence, and counsel for the Commissioner of Taxes, when asked by the learned Magistrate, intimated that he did not ask that the charges of wilfully making false returns be amended to charges of negligently making false returns. The Commissioner of Taxes appealed against the dismissal, and the Supreme Court dismissed the appeal. Later, the defendant was charged with negligently making a false return in respect of each of the same years. He pleaded *autrefois acquit*. *Held*, 1. That the learned Magistrate's question to the prosecuting counsel at the earlier trial (whether an amendment was asked for after the defendant's admission of negligence) was as near as the defendant then got to having the charge of negligently making false returns brought against him, and as near as he ever got to being convicted of that offence without amendment, since no amendment was made and no decision was taken to proceed with any other charge; and, on dismissing the charge, the learned Magistrate was *functus officio* in its regard. (*Parr* v. *Surgenor*, [1923] N.Z.L.R. 1229, and *Duncan* v. *Graham*, [1941] N.Z.L.R. 535, referred to.) 2. That a plea of *autrefois acquit* cannot be sustained merely because of a possibility in the earlier case that the Magistrate could have amended the informations and substituted the charge of negligently making false returns. (*Smith* v. *Hickson*, [1930] N.Z.L.R. 43, and *Reg.* v. *Green*, (1856) 26 L.J.M.C. 17, referred to.) 3. That there is compliance with s. 403 of the Crimes Act, 1908, if (*a*) the offence charged in the second information is identical with that charged in the first (or if the charge is for an offence which is practically or substantially the same as that in the first information), *and* (*b*) upon the first prosecution, the defendant was in peril of being convicted of the offence charged in the second information. 4. That the offence of negligently making a false return is neither identical with, nor substantially the same as, wilfully doing it; it is not the same in whole or in part; and, although in one sense there was a chance (even a peril) of the defendant's being convicted if an amendment had been made completely changing the offence, such a radical amendment was not the type of amendment referred to in s. 403 (1) of the Crimes Act, 1908. (*Smith* v. *Hickson*, [1930] N.Z.L.R. 43, applied.) *Commissioner of Taxes* v. *Dale*. (Palmerston North. July 19, 1951. Herd, S.M.)

DAMAGES.

Measure of Damages—Forseeable Consequence of Breach of Contract—Series of Contracts—Plaintiffs compromising Claim by Ultimate Purchaser—Liability of Original Vendor to Plaintiffs. In February, 1945, the Royal Netherlands Government asked the plaintiffs to supply an adhesive for use with certain roofing felt. The plaintiffs passed the inquiry to the defendants, who ordered the material from the third parties. Deliveries of the material, which was called Permasec, began in April, 1945, and in the winter of 1945 substantial amounts were applied by contractors to whom it was supplied by the Dutch Government. In April, 1946, the Permasec which had been applied began to drip and run, or "creep," and claims were made on the Government. The Government asked the plaintiffs and the defendants to take back 1,400 tons of Permasec which had not been used, but they refused. Subsequently, the Government having withheld payment of £55,000 due to the plaintiffs, it was arranged to refer to arbitration the question of the plaintiffs' liability to the Government, but, on the first day of the hearing, the plaintiffs settled the dispute by accepting liability to the extent of £43,000 and costs. The plaintiffs claimed those amounts from the defendants, together with the plaintiffs' own costs of the arbitration, and the defendants made similar claims against the third parties. It having been held that the defendants were in breach of their contract with the plaintiffs and that the third parties were in breach of their contract with the defendants, on the question of the measure of the damages, *Held*, That, although the amount paid by the plaintiffs in settlement of the claim of the Dutch Government was not conclusive of the extent of the defendants' liability to the plaintiffs, and although it was the upper limit of that liability, if, having regard to the facts and on the evidence, the amount was reasonable, it should be taken as the measure of damages; on the facts and evidence, including the fact that the settlement had been made on legal advice, the settlement was reasonable; and, therefore, the defendants were liable to the plaintiffs in £43,000 and costs. (*Grébert-Borgnis* v. *Nugent*, (1885) 15 Q.B.D. 85, applied.) Decision of *Devlin*, J., [1950] 2 All E.R. 859, reversed on question of damages. *Biggin and Co., Ltd., and Another* v. *Permanite, Ltd.* (*Berry Wiggins and Co., Ltd., Third Parties*), [1951] 2 All E.R. 191 (C.A.).

As to Measure of Damages, see *10 Halsbury's Laws of England*, 2nd Ed. 126-129, paras. 160-164; and for Cases, see *E. and E. Digest*, Vol. 17, pp. 103-106, Nos. *173-194*, Vol. 39, p. 684, Nos. *2695-2702*.

Remoteness—Breach of Contract—Functions of Judge and Jury—Direction by Judge—Finding by Jury—Duty of Arbitrator—Devaluation of Pound Sterling—Delay in Payment of Freight—Loss on Conversion into Foreign Currency. By a charterparty, dated July 8, 1949, a shipowner, who carried on business in Turkey, chartered a vessel to carry a cargo of barley from Syria to the United Kingdom. The charterparty provided that the freight should be paid in advance to the shipowner's agents in London, who were instructed to remit it to the shipowner in Turkey. On September 6, 1949, freight became payable, but it was not received by the agents from the charterers until September 14. On September 18, the British Government devalued the pound sterling, and the rate of exchange of the Turkish pound to the pound sterling fell from 11.284 to 7.84. On October 5, the agents obtained permission from the exchange control authorities to remit the money to Turkey, but, owing to the late payment of the freight and the devaluation, the shipowner sustained a loss of £3,953. The shipowner having claimed this sum from the charterers on the ground that his loss arose through their failure to pay the freight in due time, the matter was referred to arbitration, and the arbitrator found that (i) the loss was not reasonably foreseeable by either party as liable to result from the freight not being paid on the due date; (ii) the charterers would not as reasonable persons have concluded that the loss was liable to result from the late payment, and (iii) the loss did not naturally and directly flow from the failure to pay on the due date, and, therefore, the charterers were not liable. *Held*, That, on a question of

remoteness of damage, it was the function of the Judge to direct the jury on the meaning of "natural and direct" or "reasonably foreseeable" consequences, on whether a particular head of damages was capable in law of falling within those phrases, and on whether there was evidence that a particular consequence was one to which those phrases applied; it was then for the jury to find as a fact whether certain damage was such a consequence, their conclusion, subject to there being evidence to support it, being final; in the present case, the arbitrator, being the tribunal of fact, had not misdirected himself on the law, and findings (i), (ii), and (iii) were findings of fact against which there was no appeal. *Mehmet Dogan Bey* v. *G. G. Abdeni and Co., Ltd.*, [1951] 2 All E.R. 162 (K.B.D.).

As to Remoteness of Damage, see *10 Halsbury's Laws of England*, 2nd Ed. 103-109, paras. 130-136; and for Cases, see *17 E. and E. Digest*, 117-120, Nos. *267-289*.

DEFAMATION.

Criminal Defamation—Application for Leave to lay Information—Special Circumstances to be shown before Leave granted—Allegation of Dereliction of Duty by Police Constable acting as One of Special Duty Force during Period of Unrest—Such Allegation affecting not only Particular Constable but Whole Police Force—Leave granted—Law of Libel Amendment Act, 1911, s. 11 (3). The principles upon which the Court should grant leave to lay an information for criminal libel on an application made under s. 11 (3) of the Law of Libel Amendment Act, 1911, are applicable to the granting of leave to lay an information for criminal defamation, and, in each case, special circumstances must be shown. (*Roe* v. *Carnachan*, (1936) 32 M.C.R. 31, referred to.) Where the applicant for leave is merely endeavouring to clear his character, even if he is a public officer, special circumstances do not exist. The defamatory statement must affect the public Department or organization to which the public officer belongs, before leave to lay an information should be granted. (*Ex parte Littleton, Middlesex (Postmistress)*, (1888) 52 J.P. 264) followed.) Any dereliction of duty by a constable affects the public interest, and any allegation of a dereliction of duty by a constable affects not only the particular constable but also the whole Force to which he belongs; and this is particularly so when the constable against whom the allegation is made is acting as one of a special duty force, charged with the duty of preserving peace and order during a period of unrest. These facts constitute special circumstances justifying the granting of leave to lay an information for criminal defamation. *Semble*, If the allegations are defamatory within the meaning of s. 236 of the Crimes Act, 1908, an appropriate remedy is by way of information. *Barnes* v. *Edwards*. (Auckland. July 14, 1951. Luxford, S.M.)

DIVORCE AND MATRIMONIAL CAUSES.

Points in Practice. *101 Law Journal*, 423.

Desertion—Termination—Offer by Deserting Spouse to resume Cohabitation—No Expression of Repentance—No Evidence of Violence by Deserting against Deserted Spouse. The parties were married in 1942. In 1949, after a long history of quarrels, the wife left the matrimonial home and filed a petition for divorce on the ground of the husband's cruelty. By his answer the husband denied the charges and cross-petitioned for divorce on the ground of the wife's cruelty. On May 18, 1950, both petitions were dismissed, the Commissioner finding that both parties were equally to blame for the various acts alleged as cruelty on either side. On June 7, 1950, the wife's solicitors wrote to the husband's solicitors stating that she felt that "good will and a *bona fide* desire by both parties to forget and forgive might save this marriage yet," and offered to return to the matrimonial home provided that both mothers-in-law stayed away from it. In reply, the husband's solicitors indicated that, as the offer did not contain any suggestion of repentance, it was not *bona fide* and must be refused. On an application for maintenance by the wife under s. 23 (1) of the Matrimonial Causes Act, 1950, *Held*, That the wife's offer was *bona fide* in the sense that she was willing to implement it; there was no obligation on her to express repentance for her desertion, since the need for such an expression was confined to cases where there had been violent conduct by the deserting spouse and the deserted spouse had reason to suppose that there was likely to be a repetition of it if the desertion was terminated without such an expression; and, therefore, the husband was not justified in refusing the wife's offer, and, as he refused to permit her to resume cohabitation, he must pay her maintenance. (*Thomas* v. *Thomas*, [1924] P. 194, and *Everitt* v. *Everitt*, [1949] 1 All E.R. 908, distinguished.) *Price* v. *Price*, [1951] 1 All E.R. 877 (P.D.A.).

As to Offer to Return, see *10 Halsbury's Laws of England*, 2nd Ed. 657, para. 967, and 1950 Supplement; and for Cases, see *27 E. and E. Digest*, 312-315, Nos. *2901-2929*.

EASEMENT.

Implied Reservation—Lease—Display of Advertisements on Outer Wall of Demised Premises—No Reservation of Advertising Rights over Outer Wall—Permissive User for more than Ten Years before Grant of Lease. The landlord was the head lessee of business premises of which he occupied the ground floor, where he carried on the business of a butcher and provision merchant. By a lease dated August 11, 1949, the tenant held the first and second floors of the premises for a term of twenty-one years for use exclusively as a hairdressing saloon. The tenancy covered the outer walls of the upper floors of the premises, so that they passed to the tenant for the term of the lease, but there was no covenant by either the landlord or the tenant to maintain the outer walls, nor was there any reservation in the landlord's favour of advertising or other rights as regards the use of the exterior surfaces of the walls. Between 1939 and 1949, the tenant had been in occupation of the two floors in question under tenancy agreements, and during that time the landlord had maintained two advertisements on the outside of the demised premises with the full knowledge of the tenant and without any complaint or claim on his part. *Held*, That *prima facie* the landlord could not assert against the tenant any right which was not expressly reserved to him in the lease; the maintenance of the advertisements during the term was not a necessary incident of his user of the ground floor for his business, nor was the bare circumstances that the advertisements were not only present at the date of the grant of the lease, but had been continuously present without objection by the tenant since the commencement of his original tenancy in 1939, sufficient to raise an inference that at the date of the lease it was the common intention of the parties to reserve to him the right to continue to display the advertisements; and, therefore, the landlord had failed to discharge the onus, which was on him, to show that a reservation of the right must be implied and the general rule did not apply. (*Suffield* v. *Brown*, (1864) 4 De G.J. & Sm. 185), *Wheeldon* v. *Burrows*, (1879) 12 Ch.D. 31, and *Crossley and Sons, Ltd.* v. *Lightowler*, (1867) 2 Ch.App. 478, applied.) (*Simpson* v. *Weber*, (1925) 133 L.T. 46, criticized and distinguished.) Per *Jenkins*, L.J., As to the law applicable to the case, it is not disputed that as a general rule a grantor, whether by way of conveyance or lease, or part of a hereditament in his ownership, cannot claim any easement over the part granted for the benefit of the part retained unless it is expressly reserved out of the grant: see, *e.g.*, *Suffield* v. *Brown*, *Crossley and Sons, Ltd.* v. *Lightowler*, and *Wheeldon* v. *Burrows*. There are, however, certain exceptions to the general rule. Two well-established exceptions relate to easements of necessity and mutual easements such as rights of support between adjacent buildings. It is, however, recognized in the authorities that these two specific exceptions do not exhaust the list, which is, indeed, incapable of exhaustive statement, as the circumstances of any particular case may be such as to raise a necessary inference that the common intention of the parties must have been to reserve some easement to the grantor, or such as to preclude the grantee from denying the right consistently with good faith, and there appears to be no doubt that, where circumstances such as these are clearly established, the Court will imply the appropriate reservation. Decision of *Danckwerts*, J., [1950] 2 All E.R. 828, reversed. *Re Webb*, *Sandom* v. *Webb*, [1951] 2 All E.R. 131 (C.A.).

ESTOPPEL.

Estoppel by Record—Judgment of Foreign Court—Separate Causes of Action against Different Defendants, but in respect of Same Damage—Action for Damages for Negligence—Plaintiff injured in Motor-car Collision in France—Claim brought against French Driver in Penal Proceedings in France—Damages recovered against French Driver, but Insufficient to compensate Plaintiff—Action in High Court against English Driver. While travelling in France in a motor-car driven by the defendant, the plaintiff was injured in a collision between the defendant's car and a motor-lorry driven by a Frenchman. In penal proceedings in France against the lorry-driver for involuntarily causing, by negligence, personal injuries to the plaintiff, the driver, was held two-thirds responsible for the accident and the defendant was held one-third liable, and the plaintiff was awarded £1,428 damages in respect of her injuries. That judgment was satisfied. While the French proceedings were pending, the plaintiff brought an action against the defendant (who resided in England) in the High Court, claiming damages for personal injuries and loss caused or contributed to by his negligence,

The defendant contended that she was not entitled to recover damages against him, as she had already obtained a satisfied judgment of a competent Court in respect of the damage suffered by her. The plaintiff contended that in the penal proceedings in France she had not been able to recover full compensation for the damage suffered by her, as (*a*) in those proceedings she was not able to claim for damage to, or loss of, goods, and (*b*) no damages were awarded in respect of any subsequent aggravation of her injuries. She undertook to give credit to the defendant for the damages awarded to her in the French proceedings. *Held*,, That the plaintiff was entitled to bring her claim against the lorry-driver in France and against the defendant in England, and the fact that she had obtained a satisfied judgment in France against the lorry-driver did not prevent her from obtaining damages against the defendant except to the extent that she had received compensation from the lorry-driver in respect of the same damage; as the principles on which damages were assessed were different in the French and the English Courts, and the award of the French Court was less than what an English Court would have regarded as full satisfaction of the plaintiff's claim for the injuries and loss suffered by her, the Court was not bound by the French Court's assessment of the damages; and, therefore, the plaintiff was entitled to recover from the defendant the balance in respect of the damage which she had suffered. *Kohnke* v. *Karger*, [1951] 2 All E.R. 179 (K.B.D.).

As to Defence of "Judgment Recovered," see *13 Halsbury's Laws of England*, 2nd Ed. 415-419, paras. 470-472; and for Cases, see *21 E. and E. Digest*, 225, 226, Nos. *586-593*.

EXECUTORS AND ADMINISTRATORS.

Renunciation of Probate—Release from Liability in respect of Estate. In an action in the Probate Division for the revocation of the grant of probate of a will, a compromise was reached whereby the defendants, the executors of the will, renounced probate and the plaintiffs, two of the residuary legatees, undertook to apply for letters of administration with the will annexed. In the present action, the plaintiffs sought an order for the delivery to them by the defendants of all documents relating to the estate in their possession, but the defendants claimed that they were first entitled to a formal release from all liability in respect of the estate. *Held*, That the defendants were not entitled to a release. *Tiger and Another* v. *Barclays Bank, Ltd.*, [1951] 2 All E.R. 262 (K.B.D.).

As to the Right of a Trustee to a Release, see *33 Halsbury's Laws of England*, 2nd Ed. 214, para. 397; and for Cases, see *43 E. and E. Digest*, 758, 759, Nos. *2016-2027*.

FOOD AND DRUGS.

Cream—Defendant Company selling Cream to Retail Vendor—Property in Cream passing from Defendant when Cream collected on Retailer's behalf—Sample taken by "officer" from Container in Retailer's Possession—Retailer "person selling"—Inspector, as Common Informer, proceeding against Defendant—Defendant convicted—Food and Drugs Act, 1947, ss. 2, 6 (2) (a), 12 (1), 15, 16. Cream sold by the defendant to one P. for resale to the public after it had been separated by the Government Treatment Station failed substantially to comply with the prescribed reductase test. It was fresh when the defendant uplifted it from the Treatment Station. P.'s container was in proper condition to receive his cream, and the sale to P. had been completed when an Inspector, who was an "officer" under the Food and Drugs Act, 1947, took the sample. The defendant was charged with selling to P. cream which did not comply with the standard prescribed therefor by Reg. 104 of the Food and Drug Regulations, 1946, in that it failed to comply with the prescribed reductase test. *Held*, 1. That, at the time when the sample was taken, P., and not the defendant, was "the person selling" within the meaning of s. 15 (1) of the statute. (*Cruickshank* v. *Hughey*, [1951] N.Z.L.R. 540, followed.) 2. That the "officer" (within the definition of that term in s. 2 of the statute) who took the sample of P.'s cream was under the duty of complying with ss. 15 and 16 in respect of P., and he performed that duty; and thereafter the same officer, finding that the defendant had offended against s. 6 (2) (*a*), was entitled to proceed against the defendant as a common informer who had discovered that a breach of the law had been committed. (*Middleton* v. *Incledon*, (1914) 34 N.Z.L.R. 182, referred to.) 3. That the property in the cream passed from the defendant to P. when it was collected on P.'s behalf at 2.30 a.m. on April 5, and not when the cream was put into P.'s container at about 9.30 a.m. on April 4. 4. That the defendant had not discharged the onus cast upon it by s. 7 of proving affirmatively that it had taken all reasonable steps to ascertain that the sale of the cream would not constitute an offence. (*Canterbury Central Co-operative Dairy Co., Ltd.* v. *McKenzie*, [1923] N.Z.L.R. 426, followed.) (*Wellington Fresh Food and Ice Co.* v. *Jones*, (1911) 31 N.Z.L.R. 192, referred to.) *Fischer* v. *Dairy Farmers Co-operative Milk Supply Co., Ltd.* (Dunedin. July 2, 1951. Willis, S.M.)

INDUSTRIAL CONCILIATION AND ARBITRATION.

Industrial Union—Union of Workers with "branch of not less than five members in each of at least four industrial districts"—Union Rule amended to give Power to discontinue Branch—Rule not ultra vires—Meaning of "branch"—Industrial Conciliation and Arbitration Amendment Act, 1936, s. 5 (1) (b)*—Industrial Conciliation and Arbitration Amendment Act (No. 2), 1937, s. 9 (1).* The defendant Union was created in March, 1937, pursuant to s. 5 (1) (*b*) of the Industrial Conciliation and Arbitration Amendment Act, 1936, as substituted by s. 9 (1) of the Industrial Conciliation and Arbitration Amendment Act (No. 2), 1937, as follows: "(*b*) Where application is made for the registration under this section of an industrial union of workers, that the applicant society has a branch of not less than five members in each of at least four industrial districts, and, in cases where the membership of any branch is less than fifteen, that the membership of that branch comprises not less than one-fourth of the total number of workers engaged in the industry or in the related industries, as the case may be, in the industrial district for which the branch is established." When a postal ballot was conducted in November, 1950, of the 357 votes cast, 75 per cent. supported a proposal of the Committee of Management to close the Auckland branch office of the Union. A special meeting was called for January 24, 1951, to amend the rules, to enable the closing of the Auckland office to be carried out. The new r. 41, which was registered on January 26, 1951, was as follows: "The Committee shall have power from time to time to establish (or discontinue) a branch of the Union at any port where, in the opinion of the Committee, there is a sufficient number of members to justify the establishment of a branch, to define the area within which such branch shall operate, the duties of such branch, and the method of government thereof; provided that no branch shall have power to enter into an industrial agreement or to refer a dispute to a Council or to a Court." In an action praying for (*a*) a declaration that the rescission of one of the rules of the defendant Union, and the substitution therefor of the above new rule, was *ultra vires*, (*b*) a declaration that the new rule, if valid, did not empower the closing of the Auckland branch of the Union, and (*c*) an injunction restraining the defendant Union from closing the Auckland branch of the defendant Union, it was contended that the closing of the Auckland branch would leave the Union with less than "a branch of not less than five members in each of at least four industrial districts." *Held*, 1. That the Legislature, while requiring that there be four branches, has required for a branch only a membership of not less than five members; and, inasmuch as there are at each of several ports members of the Union whose work centres on, or radiates from, that port, who, viewed as a group connected with the main body by certain ties and occasionally meeting as a body, may be regarded as something more than a mere group of persons following the same calling, the group as a whole may be regarded, for the purposes of s. 5 (1) (*b*) of the Industrial Conciliation and Arbitration Amendment Act, 1936, as a "branch"—a word which, in its widest meaning, means something connected with the main body to which it is attached. 2. That, as no contravention of s. 5 (1) (*b*) of the statute had been shown, since it had not been established that the closing of the Auckland branch would result in the Union's not having a branch of at least five members in each of at least four industrial districts, the right to an injunction had not been established. *Monaghan and Another* v. *New Zealand Merchant Service Guild Industrial Union of Workers*. (S.C. Wellington. July 24, 1951. Gresson, J.)

Jurisdiction—Award—Interpretation—Supreme Court asked to make Declaratory Order, in effect to interpret Award—Making of Such Order by Supreme Court Undesirable and Inexpedient—Originating Summons dismissed—Industrial Conciliation and Arbitration Act, 1925, s. 75—Industrial Conciliation and Arbitration Amendment Act, 1947, s. 9 (1)—Labour Disputes Investigation Act, 1913, ss. 3, 8—Declaratory Judgments Act, 1908, ss. 3, 10. An agreement, dated December 3, 1950, and made pursuant to s. 8 of the Labour Disputes Investigation Act, 1913, was made and approved by the Court of Arbitration for the purposes of the Economic Stabilization Regulations, 1942, and was filed with the Clerk of Awards on December 22, 1950. It was expressed to bind: "all members of the Association who are male officers in receipt of a salary exceeding £469

15s. 3d. per annum apart from overtime and also all members of the Association who are female officers in receipt of a salary exceeding £271 per annum apart from overtime; provided in all cases that these officers are not specifically bound by an industrial award or industrial agreement governing the class of work which they carry out for the Corporation." On October 30, 1950, the Court of Arbitration made an Award which, so far as the provisions relating to the rates of wages to be paid was concerned, was to be deemed to have come into force on April 1, 1950, and, so far as all other provisions of the Award were concerned, was to come into force on the day of its date. It was expressed to apply to officers of the Council (with certain exceptions not material to these proceedings), and it excepted as well "male officers in receipt of a salary of more than £650 per annum apart from overtime and female officers in receipt of a salary of more than £400 per annum apart from overtime." On originating summons under the Declaratory Judgments Act, 1908, the first question asked was "Does the agreement made on December 3, 1950, pursuant to the provisions of the Labour Disputes Investigation Act, 1913, govern the conditions of employment of the members of the plaintiff Association who were employed by the first defendant on that date?" or, in other words, whether those members of the Association who were members when the agreement of December 3, 1950, was entered into were bound as to conditions of employment by the terms of that agreement, or whether their conditions of employment were those prescribed by the Award. *Held*, That, as the Court of Arbitration is the proper tribunal for the interpretation of awards, the Supreme Court should not determine the questions submitted to it by the originating summons, since to do so would be an interpretation, in a somewhat oblique fashion, of an award made by the Court of Arbitration; and, therefore, it was undesirable and inexpedient for the Supreme Court to make such a declaratory order to determine, in effect, who were or who were not within the scope of an award made by the Court of Arbitration, a matter peculiarly within the scope of that Court. *Quaere*, Whether the plaintiff Association was a "person" entitled to bring an application under s. 3 of the Declaratory Judgments Act, 1908. (*New Zealand Educational Institute* v. *Wellington Education Board*, [1926] N.Z.L.R. 615, referred to.) *Wellington Municipal Officers' Association (Incorporated)* v. *Wellington City Corporation and Another*. (S.C. Wellington. June 18, 1951. Gresson, J.)

INFANTS AND CHILDREN.

Child Welfare—Children's Court—Jurisdiction—Child charged with Indictable Offence not triable summarily—Powers of Children's Court—Limitation on Jurisdiction—Child Welfare Act, 1925, ss. 31, 32—Child Welfare Amendment Act, 1927, s. 19 (2) (b). The Children's Court has no jurisdiction, where a child is charged with an indictable offence which cannot be tried summarily, to convict the child and release him on probation. It has jurisdiction, however, under s. 19 of the Child Welfare Amendment Act, 1929, by acting under the powers conferred on it by s. 31 of the Child Welfare Act, 1925 (as amended), after hearing the charge and finding it proved, to deal finally with the case by making an order committing the child to the care of the Superintendent of Child Welfare, or by placing the the child under the supervision of a Child Welfare Officer. The defendant, then aged seventeen years and five and a half months, appeared in the Children's Court, to which the case had been referred under s. 32 of the Child Welfare Act, 1925. She was charged with the theft of a diamond ring valued at £100. By that Court, she was convicted and released on probation. Later, she was charged under s. 13 of the Offenders Probation Act, 1920, with having committed a breach of her probation licence. *Held*, That the conviction and release on probation by the Children's Court had been made without jurisdiction, and the information must be dismissed. *Probation Officer* v. *Rawhiti*. (Rotorua. July 2, 1951. Luxford, S.M.)

MARKETING.

Apple and Pear Marketing—Regulations—Regulation compelling Carrier of Apples and Pears to carry and produce Waybills—Ultra vires—*Apple and Pear Marketing Act, 1948, s. 33—Apple and Pear Marketing Regulations, 1949 (Serial No. 1949/159), Reg. 16.* Regulation 16 of the Apple and Pear Marketing Regulations, 1949, which was purported to be made on the authority of s. 33 of the Apple and Pear Marketing Act, 1948, is not authorized by that statute, and is *ultra vires*, as neither the general words in s. 33 (1) nor the reference in s. 33 (2) (*b*) of the statute (giving power to regulate the distribution of apples and pears in New Zealand) includes the power to compel a carrier to carry and produce waybills for any apples and pears to which the Regulations apply and which are committed to his care. (*Commonwealth and Postmaster-General* v. *Progress Advertising and Press Agency Co. Pty., Ltd.*, (1910) 10 C.L.R. 457, and *Carroll* v. *Attorney-General for New Zealand*, [1933] N.Z.L.R. 1461, applied.) (*F. E. Jackson and Co., Ltd.* v. *Collector of Customs*, [1939] N.Z.L.R. 682, referred to.) (*O'Connor* v. *Kinniburgh*, [1940] N.Z.L.R. 296, distinguished.) *Headifen* v. *McNicol*. (Palmerston North. July 19, 1951. Herd, S.M.)

POLICE OFFENCES.

Wilful Obstruction—Physical Obstruction not Essential—Mere Non-disclosure of Name and Address not Wilful Obstruction—"Wilful obstruction"—Police Offences Act, 1927, s. 77—Police—False Imprisonment—Suspected Vagrant refusing to give Name and Address to Constable—Constable arresting Him on Charge of Obstruction—No Reasonable Grounds for Arrest on That Ground—Constable liable in Damages for False Imprisonment. It is a fundamental principle in English law that an accused person cannot be interrogated, or at least cannot be forced to answer questions, under a legal penalty if he refuses. That principle is absolute, and does not admit of an exception, even for a demand of name and address, unless a statute has expressly created an exception. At common law, if a policeman arrests without warrant on reasonable suspicion of crime of a sort that does not require a warrant, he must, in ordinary circumstances, inform the person arrested of the true ground of arrest—that is to say, a citizen is entitled to know on what charge, or on suspicion of what crime, he is seized. The rule applies with equal force where the power to arrest without warrant rests upon an express statutory provision. (*Christie* v. *Leachinsky*, [1947] 1 All E.R. 567, followed.) Mere non-disclosure by a person of his name and address to a constable who is making the inquiry does not amount to "wilful obstruction" within the meaning of that term as used in s. 77 of the Police Offences Act, 1927. (*Hatton* v. *Treeby*, [1897] 2 Q.B. 452, applied.) (*Betts* v. *Stevens*, [1910] 1 K.B. 1, and *Mathews* v. *Dwan*, [1949] N.Z.L.R. 1037, referred to.) Thus, where a person whom a constable suspected of being a vagrant refused to give his name and address, and the constable, acting honestly, arrested him on a charge of wilful obstruction under s. 77 of the Police Offences Act, 1927, there being a complete absence of reasonable grounds for arresting him on that charge, the constable was liable in damages to that person for false imprisonment. An appeal against the quantum of damages awarded by the learned Magistrate, who assessed such damages at £5, was dismissed, as, in the circumstances of the present case, the award was a proper one. *Elder* v. *Evans*. (S.C. Palmerston North. June 29, 1951. Hay, J.)

PUBLIC SERVICE.

Temporary Officers—Powers of Commission to appoint Temporary Officers for longer than Three Periods of Three Months each—Generality of Power—"Any person or class of person"—Public Service Act, 1912, s. 45 (5)—Statute—Interpretation—Section introduced by Words such as "Notwithstanding anything in this section"—Proper Interpretation thereof prevailing over Any Inconsistent Provisions. No restriction of any kind is placed by s. 45 (5) of the Public Service Act, 1912, upon who may be employed temporarily by the Public Service Commission for a longer period than is permitted by subss. 1-4 "in any case in which it considers that the public interest so requires," which is the sole condition imposed, as the use in subs. 5 of the words "any person or any class of persons" negatives a limitation to the persons comprehended in subs. 1, and there is no warrant for limiting the generality of such words. Moreover, subs. 5 is intended to amplify the provisions contained in subss. 1-4; and there is no indication in any subsequent legislation to indicate that the language of subs. 5 is to be construed as meaning less than it says. Where a section is introduced by such words as "notwithstanding anything in this section," it should first be construed disregarding them; and, then, whatever interpretation is proper must prevail over any inconsistent provisions in the section. (*Sir Thomas Cecil's Case*, (1597) 7 Co. Rep. 18b; 77 E.R. 440, *In re Bland Brothers and Inglewood Borough Council (No. 2)*, [1920] V.L.R. 522, and *Rix* v. *Controller and Auditor-General*, [1948] N.Z.L.R. 1021, followed.) *New Zealand Public Service Association* v. *Campbell*. (S.C. Wellington. August 3, 1951. Gresson, J.)

TENANCY.

Dwellinghouse—Breakfast Tray supplied to Tenants—All Other Meals provided by Tenants Themselves—Substantiality of Meals supplied—Value of Meals per Person per Week not Substantial Proportion of Whole Amount of Rent paid—Tenants

within Protection of Statute—Tenancy Act, 1948, ss. 2 (6), 47. If premises are originally let under s. 2 (4) of the Tenancy Act, 1948, as a separate tenancy to the tenant, and the meals provided were not substantial within the meaning of s. 2 (6), no subsequent act by the landlord increasing the value of those meals can defeat the tenancy first created, unless that tenancy is ended or wholly determined before any new arrangement is made. (*Artillery Mansions, Ltd.* v. *Macartney*, [1948] 2 All E.R. 875, applied.) The landlords, who had purchased a dwellinghouse in 1948, agreed to let three separate families portions of the house, partly furnished, for occupation, on a bed-and-breakfast basis temporarily. Each family occupied one room (with the exception of a family whose sons occupied a storeroom or shared a bedroom with a member of the family of another tenant). All tenants shared the amenities of the house. In addition, electric light was provided, but gas was supplied by a slot meter and paid for by the user. A blanket, sheets, and pillowslips were supplied by the landlords to each occupying family, and the laundering was done by the landlords each week. In addition, breakfast was provided by the landlords on a tray brought to the occupier's room. From April, 1951, until July 3, 1951, the breakfast for each person consisted of a cup of tea (poured out, but with a second cup available if asked for) with milk and sugar, two slices of buttered toast, and a dish of jam. After July 3, a small piece of steak, or two sausages, or an egg was added to the toast. All other meals were provided by the occupiers. The total return was £23 per week from the twelve residents. On an application to the Court to fix the fair rent of the house, the landlords contended that the premises were excluded from the operation of the Tenancy Act, 1948, by s. 2 (6) thereof, by reason of the fact that the value of the meals or food supplied to each occupant formed a substantial proportion of the total amount payable. *Held*, 1. That, if the cost of meals first provided by the landlord was not a substantial proportion of the amount payable sufficient to prevent the operation of the Tenancy Act, 1948, then, by virtue of s. 47 (which restricts contracting out of the benefits provided by the statute), the unilateral act of the landlord in increasing the value of the meals, even though those meals were accepted by the tenants, did not change the nature of the tenancy. 2. That, on the basis of the rent's being £2 per week per person, the value of each provided meal at 7s. 9d., or 19.4 per cent. of the total amount of £2, was not a substantial proportion of that total amount. 3. That, accordingly, each tenant was entitled to the protection of the provisions of the Tenancy Act, 1948. *Semble*, If the later type of meal were to be taken as the basis for consideration, it would give a cost per week per tenant of 11s. 3d., or 28.1 per cent. of the total amount payable by the tenant, which, owing to the special circumstances relating to the conduct of the premises, was not substantial. *Campbell and Others* v. *Fleming*. (Auckland. August 1, 1951. H. Jenner Wily, S.M.)

Dwellinghouse—Landlord's Mistaken Belief that She could not accept Rent for Part of Premises in view of Restrictive Provisions of Tenancy Act, 1948—Agreement to give Occupation in Return for Services by Tenants—Primary Purpose of Arrangement to give Landlord Return of Equivalent to Rent—Such Return "Money's worth"—Tenancy not Service Tenancy—Tenancy Act, 1948, s. 2 (1). Where the real reason for letting tenants into possession is not for services to be rendered, but for the return to the landlord of an equivalent to a rent, such return is "money's worth" within the meaning of that term as used in the definition of "rent" in s. 2 (1) of the Tenancy Act, 1948, and it completes the requisites of a valid tenancy. (*Snell* v. *Mitchell*, [1951] N.Z.L.R. 1, distinguished.) A landlord obtained an order for possession of premises for her own use and occupation, and, as a result of such order, she entered into occupation. Mrs. P., after a preliminary inquiry by her mother, approached the landlord with a request for a tenancy of part of the premises, and the landlord told her that she could not accept rent for the house for two years by reason of the Court's order in her favour. At a subsequent interview, the landlord refused to accept the rent offered, but offered to give Mrs. P. a home in part of the premises on condition that Mrs. P. provided the landlord with breakfast and dinner and kept the house tidy and in reasonable order, and that Mr. P. kept the hedges trimmed and the lawns in order. On this basis, they moved into the house on the day on which the landlord reentered into possession. In November, 1950, the landlord asked the P.'s to leave. The landlord ceased to live in the premises before Christmas, 1950, thus voluntarily withdrawing from the benefits she received from the P.'s; and on February 2, 1951, her solicitors gave the P.'s notice of termination of "the arrangements between you and her under which you are at present residing in her house." On a claim for possession by the landlord, on the ground that the right of the P.'s to occupy the dwellinghouse had ended with the termination of the P.'s employment, *Held*, on the evidence, 1. That the primary purpose of the first approach made to the landlord, which was not rejected except on the question of payment of rent, was to obtain a tenancy; and that, as a result of the second approach, the arrangement made between the parties was to give the P.'s a home in the dwellinghouse, but with such recompense as the landlord thought she was able to obtain. 2. That the employment of the P.'s to perform certain domestic duties was not the primary purpose of the arrangement, and such duties were not even ancillary to the primary purpose of the arrangement, but were an attempt by the landlord to avoid what she mistakenly thought was the prohibition in the Tenancy Act, 1950, against the reletting by her. 3. That, consequently, the real consideration for the landlord's letting the P.'s into occupation of part of the premises was, not the services to be rendered by them, but the return to her of an equivalent to a rent. (*Snell* v. *Mitchell*, [1951] N.Z.L.R. 1, distinguished.) 4. That, such return being "money's worth" within the meaning of that term as used in the definition of "rent" in s. 2 (1) of the Tenancy Act, 1948, a valid tenancy had been established. *Vallance* v. *Prince et Ux.* (Papakura. June 29, 1951. H. Jenner Wily, S.M.)

TRANSPORT.

Heavy Motor-vehicles—Tractor with Trailer designed to carry Excavator—Tractor licensed as Class K Vehicle—Trailer not licensed—Tractor with Single Trailer forming One Heavy Motor-vehicle if Trailer liable for Licence Fee—Trailer designed to carry Machinery exempted from Payment of Licence Fee—Exempted Vehicle's Identity not lost by Attachment to Heavy Motor-vehicle—Transport Act, 1949, s. 21 (1)—Motor-vehicles (Licensing Fees Exemption) Regulations, 1948 (Serial No. 1948/208), Reg. 6 (a) and First Schedule—Heavy Motor-vehicle Regulations, 1950 (Serial No. 1950/26), Reg. 1 (7) (a). The defendant owned and used a trailer approximately 25 ft. long overall, with a deck of 15 ft. by 18 ft. Its sole purpose was to carry an excavator. It was drawn by an unladen heavy motor-vehicle. It weighed a little over 3 tons empty, and had three axles, with eight wheels on the two back axles and four wheels on the front axle. With its load, it weighed 10 tons 17 cwt., the total weight of both vehicles being 14 tons 3 cwt. Heavy motor-vehicles licence fees, appropriate to Class K vehicles, had been paid in respect of the motor-vehicle, but none had been paid in respect of the trailer. On information charging the defendant with operating a heavy motor-vehicle carrying a greater load than it was licensed to carry, in that he had not paid the licensing fee for a Class Q vehicle, that being the appropriate class under Reg. 1 (7) of the Heavy Motor-vehicle Regulations, 1950, if the motor-vehicle and trailer had been treated as one vehicle, *Held*, 1. That Reg. 1 (7) (*b*) of the Heavy Motor-vehicle Regulations, 1950, means that a tractor with a single trailer attached to it is to be taken to form one heavy motor-vehicle, if such trailer be liable for an annual licence fee. 2. That the defendant's trailer, designed to carry an excavator from job to job, as a trailer is exempted from payment of the annual licence fee under Reg. 1 (7) by Reg. 6 (*a*) and the First Schedule of the Motor-vehicle (Licensing Fees Exemption) Regulations, 1948, in conjunction with s. 21 (1) of the Transport Act, 1949; and it does not lose its identity as soon as it becomes attached to a heavy motor-vehicle, and does not thereby lose the exemption. *Hazeldon* v. *Gigger*. (Wellington. June 15, 1951. Hessell, S.M.)

Right-hand Rule—Offences—Failure to give way at Intersection—Mens rea—Ingredient of Offence—Driver, exercising Care, Unaware of Defective Condition of Brakes—Collision due to Brakes not stopping Vehicle in Normal Distance—Traffic Regulations, 1936 (Serial Nos. 1936/86, 1943/199), Reg. 14 (6) (a). As *mens rea* is a constituent of the offence of failing to give way to a vehicle approaching on the right at an intersection, in breach of Reg. 14 (6) (*a*) of the Traffic Regulations, 1936, proof that such failure was not due to any lack of reasonable care on the part of the driver charged with that offence will absolve him from both criminal and civil liability. (*Algie* v. *D. H. Brown and Son, Ltd.*, [1932] N.Z.L.R. 779, *Cunningham* v. *Reilly*, (1947) 5 M.C.D. 141, and *Police* v. *Shannon*, (1950) 45 M.C.R. 137, applied.) The same principle applies if a driver of a motor-vehicle, notwithstanding the exercise of reasonable care, was unaware that his brakes would not stop his vehicle in the normal distance. In the present case, the defendant had issued to him shortly before an accident a warrant of fitness, on which it would be natural for him to rely

to some extent. With only the front brakes acting efficiently, he almost avoided a collision, and it seemed probable that his speed was not so great, or his application of his brakes so late, that he would have been unable to stop with some distance to spare if all four brakes had been efficient when he applied them heavily. *Held*, That, as it was doubtful whether, in the circumstances, there was any lack of reasonable care on the defendant's part, the charge against him of a breach of Reg. 14 (6) (*a*) of the Traffic Regulations, 1936, should be dismissed. *Police* v. *Goble*. (Stratford. May 24, 1951. Woodward, S.M.)

THE CHIEF JUSTICE ABROAD.

By APTERYX.

The profession in New Zealand will be delighted to learn of the warmth with which our Chief Justice has been welcomed in London, and to hear that both Sir Humphrey and Lady O'Leary are looking particularly well after a strenuous but stimulating month.

On his return, practitioners may look forward to hearing the Chief Justice himself speak of the official hospitality—some of it of an unorthodox sort—that has been extended to him, but a few of his more public engagements may be mentioned here.

Foremost amongst them was the occasion of his swearing in as a member of His Majesty's Privy Council on July 11. It will be recollected that the Chief Justice was appointed a Privy Councillor in 1948; but his taking the oath of office, with its obligation "to keep secret all matters committed and revealed unto you or that shall be treated of secretly in Council," makes him eligible to sit as a member of the Judicial Committee, and it is to be hoped that such an opportunity will occur while he is in England.

After Sir Humphrey had taken the oath and kissed hands, two other new Privy Councillors also did so. They were D. R. Grenfell, M.P., a former coal-miner and the present chairman of the Welsh Tourist Board, and the Hon. Kenneth Younger, Minister of State and second son of Viscount Younger of Leckie—a demonstration of the diverse sources from which the Labour Party in the United Kingdom derives its strength.

A formal Council was afterwards held, at which there were present Mr. Richard Stokes (Lord Privy Seal), Mr. Chuter Ede (Home Secretary, acting for the Lord President of the Council, Lord Addison, who has been indisposed), Mr. Philip Noel-Baker (Minister of Fuel and Power), and the Chief Justice of New Zealand.

On July 19, Sir Humphrey and Lady O'Leary were among the thousand guests at the second afternoon party of the Season in the garden of Buckingham Palace, and were presented to the Queen and to Princess Elizabeth. The other New Zealanders presented were Sir Bernard Dawson, the distinguished Dunedin gynaecologist, and Lady Dawson. It may perhaps be mentioned as an instance of the Queen's gracious ease of manner on such occasions that, when Lady O'Leary spoke of Sir Humphrey's swearing in, Her Majesty said that the King had indeed told her of it. There were also among the guests at the party Mr. A. K. North, K.C., and Mrs. North.

The Chief Justice and Lady O'Leary have lunched with the Lord Chancellor and Viscountess Jowitt at the House of Lords, and have dined with the Lord Chief Justice at his house in Chelsea Square. One of the most interesting—to a lawyer—of the larger functions they have attended was the annual Dinner to His Majesty's Judges given by the Lord Mayor at the Mansion House, his official residence. There were nearly four hundred guests, including many outstanding figures of Bench and Bar. Sir Humphrey sat on the left of Mr. Justice Hilbery and opposite to Sir Leonard Holmes, the President of the Law Society. Lord Goddard replied to the toast of "The Judges" (announcing, incidentally, that Mr. Justice Humphreys was, at the age of eighty-four, about to retire), and Lord Jowitt proposed the toast of "The Lord Mayor and Lady Mayoress."

Two nights later, Sir Humphrey attended the annual dinner of the Council of the Law Society, where he sat between Lord Goddard and Mr. F. A. Padmore, a member of the Council. Mr. F. M. Martin, of Wellington, was also, at the dinner. On this occasion, there were no speeches: for some years now the Law Society, in common with the Inns of Court, has elected not to incur whatever risks may be inherent in the contrary custom.

The pressure on Sir Humphrey's time since his arrival is indicated by the fact that as yet he has been able to visit the Courts themselves only twice. At the invitation of the Lord Chief Justice, he visited the Court of Criminal Appeal, and was provided with a seat near their Lordships. Here he heard Lord Goddard—in one of his firmer moods—and Hilbery and Ormerod, JJ., dismiss the the appeal in the notorious Messina case.

At the invitation of Colonel G. J. Cullum Welch Sheriff of the City of London, he also attended a murder trial at the Old Bailey, presided over by Hallett, J., who is celebrated as an acute, if not taciturn, Judge. The trial was unusual in that the prisoner attempted to plead guilty, but his counsel, Sir Charles Doughty, K.C. (a former Chairman of the Bar Council), in being asked by His Lordship whether the plea should be accepted, submitted that it should not, on the ground that his instructions showed—he had not himself interviewed the client, in accordance with the practice of a number of leaders of the Bar—that the accused's sanity was in doubt. Hallett, J., directed a plea of "not guilty" to be entered. The jury returned a verdict of guilty but insane. Like other visiting New Zealand lawyers, Sir Humphrey was interested by the practice of each juror's being required himself to read the juror's oath in full, instead of merely having to make an affirmative reply, as in New Zealand. The writer has been told, however, that even this precaution is not thought always to ensure conscientious verdicts in civil cases.

The Chief Justice and Lady O'Leary intend to leave London shortly, in order to motor up to Scotland. From there they propose to cross the Irish Sea, on the other side of which, one understands, Sir Humphrey fully expects the talk to be good. New Zealanders will wish them the happiest of well-deserved holidays.

Constitutional Law.

DECLARATIONS OF WAR AND PEACE.

By J. F. NORTHEY, B.A., LL.M. (N.Z.), Dr. Jur.
(Toronto).

The Proclamations issued pursuant to s. 41 of the Finance Act, 1950, terminating the state of war with Germany and Austria[1] have ended an unsatisfactory state of affairs brought about by the difficulty in securing agreement on the Peace Treaties. As was shown in *R.* v. *Bottrill, Ex parte Kuechenmeister*, [1947] K.B. 41 ; [1946] 2 All E.R. 434, despite the fact that Germany had surrendered unconditionally in June, 1945, the formal state of war between the United Kingdom and Germany continued, at least for the purposes of municipal law. In that case, Kuechenmeister sought by habeas corpus his release from detention as an enemy alien under Defence Regulations, on the ground that, as the state of war with Germany had ended in 1945, he could no longer be detained as an enemy alien. The Court, following earlier practice, sought the assistance of the Executive, and received a statement from the Foreign Office :

> (1) That under para. 5 of the Preamble to the Declaration, dated June 5, 1945, of the unconditional surrender of Germany, the Governments of the United Kingdom, the United States of America, the Union of Socialist Soviet Republics, and France assumed " supreme authority with respect to Germany, including all the powers possessed by the German Government, the High Command, and any State, municipal or local government or authority. The assumption, for the purposes stated above, of the said authority and powers does not effect the annexation of Germany."
>
> (2) That in consequence of this declaration, Germany still exists as a State and German nationality as a nationality, but the Allied Control Commission are the agency through which the government of Germany is carried on.
>
> (3) No treaty of peace or declaration by the Allied Powers having been made terminating the state of war with Germany, His Majesty is still in a state of war with Germany, although, as provided in the declaration of surrender, all active hostilities have ceased.

The application for a writ of habeas corpus was refused, the Court accepting as conclusive the Foreign Office certificate that the state of war with Germany continued. In his judgment, Scott, L.J., stated, at p. 50 ; 435, 436 :

> In the British constitution, which is binding on all British Courts, the King makes both war and peace, and none the less so, in the eyes of the law, that he does so as a constitutional monarch upon the advice of his democratic Cabinet. If the King says by an Act of State that the Commonwealth of countries over which he reigns is at war with a particular foreign State, it is at war with that State, and the certificate of the Secretary of State is conclusive ; and I do not deviate in order to consider the constitutional position of Eire, which I regard as anomalous. When the King makes peace with an enemy State, that war comes to an end, but it does not come to an end before that peace is made. Whether international law has a different rule is irrelevant ; for international law is only binding on our Courts in so far as it has been adopted and made part of our municipal law ; and the above propositions go, in my opinion, as far as our municipal law has gone.
>
> It follows, therefore, that the certificate of the Secretary of State for Foreign Affairs, which says in terms that we are still at war with Germany, is binding at least in our municipal law, and therefore on all the King's Courts.

Dr. Mann has pointed out[2] that, although the Foreign Office certificate as to the existence of a state of war *for the purposes of English law* must be accepted as conclusive, the state of war in the sense of international law probably terminated on June 5, 1945. Dr. Mann stated :

> In the case of Germany there is an outstanding fact which makes it difficult to think that the war is continuing. The Government of Germany is composed of the British, United States, Soviet, and French Commanders-in-Chief. Can the United Kingdom really be at war with a State whose Government includes Field Marshal Lord Montgomery and Sir Sholto Douglas, Marshal of the Royal Air Force, and supreme authority over whom has been assumed by this country jointly with its principal Allies ?[3]

The Proclamations of July 6, 1951, have ended this divergence of municipal from international law. The Proclamations themselves raise certain important questions, but a discussion of them will be deferred until the general question of the competence of the Dominions within the Commonwealth to make declarations of war and peace has been considered.

That part of the prerogative which relates to peace and war has not been delegated to the Governor-General of New Zealand.[4] During the period between the end of the 1914-18 war[5] and the 1939-45 war, some Dominion statesmen, and in particular those from the Union of South Africa and Eire, asserted that their countries would not be bound by a declaration of war that had not been approved by their own Parliaments.[6] This attitude seemed to overlook the difficulty inherent in such a view—namely, that the Crown, which was declared by the second Preamble to the Statute of Westminster to be " the symbol of free association of the members of the British Commonwealth of Nations," could scarcely be at peace in so far as some parts of the Commonwealth were concerned and at war in respect of other parts. It was implicit in any opinion that the Crown could not be both at war and at peace that the Crown was indivisible.[7] This theory of the indivisibility of the Crown was shaken by the rather divergent action taken by the United Kingdom and the Dominions towards the recognition of the Franco Government of Spain and the Italian conquest of Ethiopia, and in the implementation of His Majesty's Declaration of Abdication in 1936.[8] On the enactment of the Status of the Union Act, 1934, and the Royal Executive Functions and Seals Act, 1934, a prominent Canadian publicist observed :

> it is very hard in the light of all this legislation to maintain in future the indivisibility of the Crown.[9]

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[1] *1951 New Zealand Gazette*, 969, 970.

[2] F. A. Mann, (1947) *1 International Law Quarterly*, 335. See also K. V. Laun, *The Legal Status of Germany*, (1951) 45 A.J.I.L. 267.

[3] F. A. Mann, (1947) *1 International Law Quarterly*, 334.

[4] The Governor-General may exercise only so much of the prerogative power as has been conferred upon him : see the Letters Patent of May 11, 1917, and December 18, 1918 (*1919 New Zealand Gazette*, 1213, 1214), and the Royal Instructions of May 11, 1917 (*1919 New Zealand Gazette*, 1214, 1215).

[5] In 1914, the Dominions were automatically at war when His Majesty issued the Proclamation declaring that a state of war existed with Germany.

[6] *11 Halsbury's Laws of England*, 2nd Ed. 34, 35.

[7] A. B. Keith, *The Dominions as Sovereign States* (1938), 100, 111, and W. P. M. Kennedy, *The Constitution of Canada 1534-1937*, 2nd Ed. (1938), 379, 565, 566.

[8] See also *Sydney Municipal Council* v. *Commonwealth*, (1904) 1 C.L.R. 208, 231, *R.* v. *Sutton*, (1908) 5 C.L.R. 789, 797, 804, 817, and *Amalgamated Society of Engineers* v. *Adelaide Steamship Co., Ltd.*, (1920) 28 C.L.R. 129, 152.

[9] W. P. M. Kennedy, (1935) U.T.L.J. 149.

The course of events in the 1939-45 war rendered the theory of indivisibility untenable; not only did the Dominions enter the war at different dates, but Eire, whose membership in the British Commonwealth could not then be doubted,[10] remained neutral throughout, a position which Professor Keith refused to consider as a possibility consistent with continued membership in the British Commonwealth.[11] The fact of the matter is that Eire asserted her neutrality, a Minister of Eire remained in Berlin throughout the war, and her status was recognized by both belligerent groups. What would seem to be important is, not the abstract legal theory of Commonwealth relations, but the attitude of the belligerents, which was, without exception, one of respect for Eire's claims.

The manner in which the various Dominions entered the 1939-45 war throws considerable light on the exercise of this part of the Royal Prerogative. In Canada, the bringing about of a state of war was considered to involve two distinct legal acts, which were embodied in separate instruments. The first was a submission to His Majesty, verbal in the first instance, but followed later by a submission in writing, from the Prime Minister, seeking His Majesty's approval of the declaration of war with Germany. The second was the issue of a Proclamation by the Governor-General, in the name of His Majesty, and bearing the counter-signature of the Prime Minister and the Great Seal of Canada, declaring that a state of war with the German Reich existed in Canada. The submission of advice to His Majesty seeking approval of the issue of a Proclamation did not take place until Parliament had assembled and resolved that Canada should enter the war. The Proclamation was issued on September 10, 1939. The Canadian Government demonstrated by the procedure it adopted that the declaration of war, being within that part of the Prerogative which had not been delegated to the Governor-General, could be issued only on the authority of His Majesty personally.[12]

In South Africa, the Government were able to take advantage of the powers contained in s. 6 of the Royal Executive Functions and Seals Act, 1934. This section provides that, where the King's signature cannot be obtained, or whenever the delay involved would either frustrate the object thereof or unduly retard the despatch of public business, the Governor-General shall, subject to any instructions by the King on the advice of his Ministers of State for the Union, sign on behalf of His Majesty the King any document, which shall have the same force and effect as if executed by the King himself. This statute enabled the Governor-General of South Africa to issue a Proclamation declaring the existence of a state of war without first consulting His Majesty. The writer has no information concerning the subsequent action of the Union Government, whether or not they approached His Majesty for approval, but such action would have been legally unnecessary, and the political background to the Royal Executive Functions and Seals Act, 1934, renders such an approach extremely unlikely. The South African Proclamation was issued on September 6, 1939; it was the first instance of the exercise by a Dominion of its right to make a separate declaration of war.[13]

The form of Proclamation issued by Australia when war was declared against Germany displayed some unusual features. The Prime Minister announced to the Australian people:

> it is my melancholy duty to announce officially that in consequence of Germany's persistence in her invasion of Poland, Britain has declared war and *as a result* Australia is at war also.[14]

The italics are mine.

It would seem that the Australian Government at that time considered that it was bound by the declaration issued in the United Kingdom, and that no separate Australian declaration was necessary. The announcement in the Australian *Gazette* was as follows:

> Canberra, Sunday, 3 September, 1939.
>
> Outbreak of War.
>
> It is hereby notified for general information that war has broken out between Great Britain and Germany.
>
> Dated this 3rd day of September, 1939.
>
> ROBERT G. MENZIES,
> *Prime Minister.*

Proclamation.

Commonwealth of Australia	By His Excellency the
to wit	Governor-General in and
GOWRIE	over the Commonwealth of
Governor-General	Australia.

Whereas by the Defence Act 1903-1939 it is amongst other things enacted that the expression "time of war" used in that Act means any time during which a state of war actually exists, and includes the time between the issue of a Proclamation of the existence of a state of war or of danger thereof and the issue of a Proclamation declaring that the war or danger thereof, declared in the prior Proclamation, no longer exists:

Now therefore I, Alexander Gore Arkwright, Baron Gowrie, the Governor-General aforesaid, acting with the advice of the Federal Executive Council, do hereby proclaim the existence of war.

Given under my Hand and the Seal of the Commonwealth this third day of September in the year of our Lord one thousand nine hundred and thirty-nine and the third year of His Majesty's reign.

By His Excellency's Command,
G. A. STREET,
Minister of State for Defence.

GOD SAVE THE KING.

Between the date of this Proclamation and the entry of Finland, Hungary, Roumania, and Japan into the war, the Australian Government seem to have reconsidered their position. Dr. Evatt, Australian Minister of External Affairs, stated that special care was taken by the Commonwealth to adopt a procedure, in relation to the declaration of war with these countries, which would correspond with the fact that the Commonwealth possessed:

> full status in every respect of its external relationships as well as in all its international affairs . . . [and that] in relation to Australia the vital decision as to peace or war with any country should be determined exclusively by Commonwealth Ministers.[15]

Dr. Evatt suggested that perhaps the approval of His Majesty to a Proclamation of war was unnecessary, adequate powers being vested in the Governor-General. Had His Majesty's approval not been secured, and had the power to declare war been held not to be vested in

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[10] *Murray* v. *Parkes*, [1942] 2 All E.R. 123. See also F. R. Scott, (1944) 38 A.J.I.L. 42.

[11] A. B. Keith, *The Dominions as Sovereign States* (1938), 48-57.

[12] The position is different now, as, by Clause II of the Letters Patent of September 8, 1947, constituting the office of Governor-General of Canada, the Governor-General is empowered "to exercise all powers and authorities lawfully belonging to Us in respect of Canada." The Governor-General could under this Clause approve the issue of a Proclamation of war.

[13] F. R. Scott, (1944) 38 A.J.I.L. 42. The New Zealand Proclamation, issued on September 3, 1939, displays certain unsatisfactory features which make it difficult to regard it as a separate declaration of war by New Zealand.

[14] (1939) *The Round Table*, 191.

[15] *11 Current Notes* (Department of External Affairs, Canberra), 268, 269.

the Governor-General, the principle stated in *Cameron* v. *Kyte*, (1835) 3 Knapp 332, 344 ; 12 E.R. 678, 683,[16] would have applied, and the Proclamation would have been without legal effect. Dr. Evatt stated :

> As to the procedure adopted, there are three comments which should be made. First, it was important to avoid any legal controversy as to the power of the Governor-General to declare a state of war without specific authorization by His Majesty. I express no opinion whether specific authorization was necessary as a matter of strict law. Certainly the Royal powers already exercisable under the Constitution by the Governor-General as the King's representative are extremely wide. However, the matter was too important and too urgent to invite any legal controversy. We therefore decided to make it abundantly clear that there was an unbroken chain of prerogative authority extending from the King himself to the Governor-General. For that purpose we prepared a special instrument, the terms of which were graciously accepted by His Majesty. Reference to the documents in the White Paper will show that His Majesty assigned to His Excellency the Governor-General the power of declaring a state of war, first with Finland, Roumania, and Hungary, and second, a state of war with Japan.
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> The second and more important matter involved no legal question but did involve the question of proper constitutional practice. The procedure adopted was in accordance with the practice that, in all matters affecting Australia, both the King and his representative will act exclusively upon the advice of the Prime Minister and Ministers responsible to this House. Accordingly, His Majesty was pleased to execute the instrument to which I have referred, upon the advice of the Commonwealth Executive Council. The instrument will, in due course, be countersigned by the Prime Minister of the Commonwealth. United Kingdom Ministers took no part in the arrangements which were made directly with the Palace authorities by our High Commissioner in London. Similarly, the actual Proclamations of a state of war were made by His Excellency the Governor-General on the advice of his Executive Council.
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> Thirdly the history of the transactions illustrates the fact that separate action by the King's Governments in the United Kingdom and the self-governing Dominions is perfectly consistent with close co-operation in all matters affecting their common interests. On the whole, what was done on these occasions was a complete answer to those who had maintained that separate action means the weakening of the tie of association between the British nations.[17]

The action taken by the Australian Government in securing an assignment to the Governor-General of the prerogative to declare war was an exceedingly novel procedure ; the Canadian Letters Patent of 1947, however, go much further, as they seem to involve the delegation of all His Majesty's prerogatives, including the power to make declarations of war.

In New Zealand, the declaration of war with Germany, which was issued by the Governor-General and countersigned by the Acting Prime Minister, took the following form :

> His Excellency the Governor-General has it in command from His Majesty the King to declare that a state of war exists between His Majesty and the Government of the German Reich, and that such a state of war has existed from 9.30 p.m. New Zealand standard time . . .
>
> W. NASH, Acting Prime Minister. GALWAY, Governor-General.[18]

New Zealand's entry into the war was notified to the German Government through the United Kingsom diplomatic representative in Berlin.[19] On the entry of Japan into the war, the Proclamation issued by the Governor-General took a slightly different form, a form which affords further evidence of the divisibility of the Crown :

> His Excellency the Governor-General has it in command from His Majesty the King to declare that a state of war exists between His Majesty the King and the Emperor of Japan, and that such a state of war has existed *in respect of New Zealand* from 11 a.m. . . .
>
> PETER FRASER, Prime Minister. C. NEWALL, Governor-General.[20]

The italics are mine.

The forms adopted for the declaration of war with Germany and Japan (and the other enemy States) appear to be defective, if not completely void in accordance with the principle stated in *Cameron* v. *Kyte*, (1835) 3 Knapp 332, 344 ; 12 E.R. 678, 683, for two reasons ; first, it is fairly clear that His Majesty did not in fact command the Governor-General to declare that a state of war existed with the countries named in the Proclamations. Even telegraphic communication would not have permitted approval to have been secured so promptly. This is not a serious objection from the strict legal point of view, however, as the legal presumption of regularity would prevent the declaration's being challenged, on that ground, in the Courts. The second objection is more important. As declarations of peace and war form part of the Royal Prerogative which has not been delegated to the Governor-General of New Zealand, the Proclamations should have been issued in the name of His Majesty after his approval had been secured. The declarations might well be of no effect, as having been issued without authority, and, therefore, within the principle laid down in *Cameron* v. *Kyte*, (1835) 3 Knapp 332 ; 12 E.R. 678.

The ratification of the Treaties of Peace with Italy and the satellite States made necessary a Proclamation terminating the state of war with these countries. The New Zealand Government exercised greater care in the constitutional procedure adopted to terminate the state of war than it evinced in commencing hostilities. No doubt an examination was made of the procedure followed by the other Dominions in declaring war, and it seems that the action taken by the Canadian Government in 1939 was found to be the most appropriate. A written submission, signed by the Prime Minister, was forwarded to His Majesty through the Governor-General seeking Royal approval of the issue of a Proclamation terminating the state of war. The approval of the Executive Council to the submission of advice to His Majesty was secured before the advice was tendered to His Majesty. On the signification of His Majesty's pleasure, despatched through the Governor-General, and the deposit of the instruments of ratification, a Royal Proclamation declared that the state of war which had existed with Italy was terminated on December 24, 1947, and with Roumania, Bulgaria, Hungary, and Finland on December 31, 1947.[21] This Proclamation was signed by the Governor-General and countersigned by the Prime Minister.

It is now necessary to consider the Proclamations of July 6, 1951, which terminated the state of war with Germany and Austria. These Proclamations would seem to have been issued under statutory, and not

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[16] " But if the Governor be an officer, merely with a limited authority from the Crown, his assumption of an act of sovereign power, out of the limits of the authority so given to him, would be purely void, and the Courts of the Colony over which he presided could not give it any legal effect."

[17] *11 Current Notes* (Department of External Affairs, Canberra), 269.

[18] *1939 New Zealand Gazette*, 2321 ; (1939) 1 App. H.R. A.-1A.

[19] F. R. Scott, (1944) 38 A.J.I.L. 42.

[20] *1941 New Zealand Gazette*, 3877.

[21] *1948 New Zealand Gazette*, 1.

prerogative, powers.[22] The Proclamations read "I, Lieutenant-General Sir Bernard Cyril Freyberg . . . pursuant to section 41 of the Finance Act, 1950 . . ."; so that the source of authority would appear to be that section, and not the prerogative power of the Crown, only part of which has been delegated to the Governor-General by the Letters Patent and other Royal instruments relating to the office of Governor-General of New Zealand. Section 41 (1) provides as follows:

> The state of war between New Zealand and any of those States shall be deemed to be existent until a date to be specified as the date of the termination of the state of war with that State in a Proclamation by the Governor-General published in the *Gazette*.

The Proclamations recently issued appear to be effective to terminate the state of war for all purposes. The reservations made in the statement communicated to the Austrian Minister in London and the representative there of the Government of the Federal Republic of Germany[23] in no way effect the Proclamation of the termination of war, as these statements do not form part of the Proclamations.

The Treaties of Peace (Italy, Roumania, Bulgaria, Hungary, and Finland) Act, 1947, authorized the Governor-General to issue Regulations to give effect to the Treaties of Peace with those countries, and under these powers the Treaties of Peace Regulations, 1948 (Serial No. 1948/162), were issued. Regulation 15 provided for the transfer by the Public Trustee, as Custodian of Enemy Property, of all moneys and property held by him as Custodian under the Enemy Property Emergency Regulations, 1939, to an account established under Reg. 14. This fund is available in proper cases to meet the claims of New Zealand nationals against enemy States and their nationals. The Treaties of Peace Regulations, 1948, are the authority for the disposal of enemy property formerly held by the Custodian. It is rather difficult to ascertain precisely the authority of the Custodian to retain enemy property belonging to Austria and Germany and their nationals now that the state of war has been terminated. It would appear that, on the issue of these Proclamations, Austrian and German nationals ceased to be alien enemies and their property to be enemy property within the meaning of these terms in the Enemy Property Emergency Regulations, 1939 (Serial No. 1939/153).

By Reg. 4 of the Enemy Property Emergency Regulations, 1939, the Attorney-General is authorized to order the vesting in the Custodian of Enemy Property of enemy property or any interest or estate in enemy property. "Enemy property" is defined in Reg. 1 of the above Regulations as "all property, real or personal, which belongs to an enemy or alien enemy or in which an enemy or alien enemy has any interest . . ." This Regulation defines "alien enemy" as:

> every person wherever resident who is, or who has at any time been, a subject of any State with which His Majesty is for the time being at war . . .

If the authority of the Custodian to hold property belonging to Austrian and German nationals has been terminated by the Proclamations ending the state of war, legislative authority similar to the Treaties of Peace Regulations, 1948, will be necessary to enable the Public Trustee to retain the property and to apply it in satisfaction of the claims of New Zealand nationals arising out of the state of war.[24] That it is contemplated that such property should be retained and that New Zealand nationals should secure satisfaction of their claims against the former enemy States and their nationals is apparent from the communications of July 6, 1951, to the representatives of the States concerned.[25]

If I might in conclusion revert to the general question of the powers of the Governor-General, it is clear that many important prerogative powers cannot be exercised by the Governor-General because they have not been conferred upon him by Letters Patent or other Royal instruments. That this is a most unsatisfactory state of affairs is apparent from the action of the Canadian Government when they secured in 1947 a revision of the Letters Patent and Royal Instructions.[26] The Government might well be embarrassed by the fact that certain prerogative powers cannot be exercised by the Governor-General, and by the need to secure His Majesty's personal approval of the action contemplated. It would be highly desirable for the Governments to make an early and careful examination of the existing Royal instruments, which were last issued in 1917. The status of New Zealand and the King's representative here has altered considerably in the intervening years, and a revision of the Letters Patent on terms similar to the Canadian Letters Patent of 1947 is long overdue. A clause similar to Clause II of the Letters Patent of September 8, 1947, constituting the office of Governor-General of Canada, would, it is suggested, confer on the Governor-General the plenitude of powers which should be available to the officer representing His Majesty in New Zealand.

[22] For the importance of the distinction between statutory and prerogative powers, and the abrogation of the latter by statute, see *Attorney-General* v. *De Keyser's Royal Hotel, Ltd.*, [1920] A.C. 508. The powers exercisable by the Governor-General of South Africa under s. 6 of the Royal Executive Functions and Seals Act, 1934, are statutory, and not prerogative, powers.

[23] The communication to the Austrian Minister in London states *inter alia*: "The New Zealand Government reserve the right to retain any money or property subject to control by virtue of the Enemy Property Emergency Regulations, 1939, and to obtain satisfaction of their claims and the claims of New Zealand nationals arising out of the state of war." A similar communication was addressed to the representative of the Government of the Federal Republic of Germany. See *1951 New Zealand Gazette*, 969, 970.

[24] The authority for the retention by the Public Trustee of "enemy property" seems to turn on the construction of Reg. 4 of the Enemy Property Emergency Regulations, 1939. Under this Regulation, enemy property becomes vested in the Custodian under orders signed by the Attorney-General, and on the making of an order the Custodian becomes "entitled to the possession, occupation, and enjoyment of the property." Regulation 12 gives the Custodian wide powers of management of enemy property. The effect of the Regulations may be either to vest the property in the Custodian until it is divested by legislation or to vest it in him while the enemy character of the property continues. In the latter event, the Custodian will require legislative authority for the retention and disposition of the property.

[25] *1951 New Zealand Gazette*, 969, 970.

[26] The Canadian Government incorporated in one document the Letters Patent and Royal Instructions, and excluded from the revised Letters Patent the many archaic provisions which appear in the New Zealand instruments.

Just and Equal Laws

Kernochan looked at the twelve men in the jury-box. There, in the railed enclosure, stood civilization. Science, the arts, the great achievements of commerce—all these meant nothing if the law failed. Of what avail were researches into the unknown, the mastery of disease, the progress of economics, if justice broke down? Other civilizations had failed because, in the rush for material gain, the world forgot the law. Why couldn't this one fail? (Arthur Somers Roche, *The Case Against Mrs. Ames.*)

IN YOUR ARMCHAIR—AND MINE.

By Scriblex.

Canadian Appeals.—According to Mr. J. L. Farris, K.C., of the Canadian Bar, the action of the Canadian Parliament in passing the statute abolishing appeals from Canada to the Privy Council was not the result of dissatisfaction or lack of appreciation of the great services rendered and the immeasurable benefits received. On the occasion of his last appearance before the Judicial Committee in May, he gave expression to his "personal feelings of deepest regret" at the severance of a most intimate tie between the lawyers of Canada and the Committee. The Canadian nation, he said, was young and vigorous, and was experiencing a remarkable growth in development. With that expansion had come a correspondingly new national spirit and national self-consciousness, and it was inevitable that there should come the feeling that they should do things for themselves; and part of that feeling was that Canada was now big enough to have her own final Court of Appeal. In expressing the gratitude and appreciation of the Board, Lord Simon said that its members should consider whether it was not possible for the Judicial Committee to go on circuit throughout the Commonwealth and sit in Ottawa and other capitals just as much as it sat in London. If such ideas prevailed, a new kind of Supreme Commonwealth Tribunal would have been created, and there would not have been the feeling that, by coming to London, Canada in some way was travelling outside its natural judicial orbit.

Moonshine.—*Time* provides a useful variant to the well-known defence to the charge of receiving stolen goods, that they were bought "from a man I didn't know." It seems that in Pittsburgh the Police recently raided the home of Mrs. Letha Jackson and found two 10-gallon stills, 40 gallons of mash, 250 lb. of sugar, and 2½ gallons of moonshine whisky. The explanation was simple, if unconvincing: "Somebody," she explained to the Judge, "must have left all that there."

Aiding the Plaintiff.—In *Joyce* v. *Boots Cash Chemists (Southern), Ltd.*, [1950] 2 All E.R. 719, the plaintiff, who was a porter, tripped over a piece of linoleum when carrying medicine bottles from the storeroom. He contended that the premises were a factory within the meaning of the Factories Act, 1937, and that the defendants had failed in their duty to provide floors of safe and sound construction and to maintain them properly. Slade, J., held that the plaintiff failed to establish either statutory negligence or negligence at common law. On his appeal ([1951] 1 All E.R. 682), Lord Goddard, L.C.J., pointed out that the plaintiff had done what hundreds of others had done before, he had tripped; but, because such an accident might happen at a certain place, it did not follow that the state of affairs there existing was a danger. Actually, there had been no prior accident during the five and a half years the linoleum had been tacked down on the top of the stairs. Singleton, L.J., observed that, since the plaintiff was an assisted person under the Legal Aid Act, against whom no contribution towards costs had been ordered, the result was that the State paid his costs and the successful defendants could not recover theirs from anyone. Lord Goddard added: "The defendants have had the privilege of paying for the transcript of a shorthand note at a cost of over £100. I do not know what the result of this is going to be." He went on to suggest that, before an assisted person can appeal, leave should be obtained from the trial Judge or the Court of Appeal, so that the Court may be satisfied that there is an appealable point.

Over or Under.—The question put by V. R. Meredith to a witness in *R.* v. *Horry* ("You had a birthday in 1943?"), and the reply of counsel (A. K. Turner) that we all did, reminds Scriblex that, in common with most people sensitive about the relentless tooth of time, he is older than he says he is. In *Lloyds Bank, Ltd.* v. *Eagle Star Insurance Co., Ltd.*, [1951] 1 All E.R. 914, an accident policy provided that the company should not be liable in respect of personal injuries "sustained by, or happening to, the insurer if . . . over the age of sixty-five years." The accident with which the litigation was concerned occurred on December 22, 1949, after the assured had attained the sixty-fifth, but before he had attained the sixty-sixth anniversary of the date of his birth. He claimed, understandably enough, that he was still sixty-five, and so remained until he was sixty-six. The inevitability of mathematics and the judgment of Jones, J., killed the contention. He was held to be "over the age of sixty-five" and not covered.

The Judges and the Judged.—A young practitioner, his tongue doubtless in his cheek, and mindful of the manner in which our Judges set up the judgments of each other, recently asked Scriblex what qualities the Court of Appeal expected to find in their brethren of the Court below. This query recalls some observations made upon "Some Aspects of the Work of the Court of Appeal" by Asquith, L.J., when speaking last year at the annual meeting of the Society of Public Teachers of Law:

> The late Mr. Theobald Mathew—*clarum et venerabile nomen*—with his inimitable gift for condensation, has summarized once and for all the functions of a Judge of first instance. He should be "quick, courteous, and wrong." "*Wrong*" because otherwise there would be nothing left for the Court of Appeal to do. I wish Mr. Mathew could have found time to embalm the functions of a Judge of the Court of Appeal in some equally compact formula. Do not let us, however, jump to the conclusion that a Lord Justice should be "quick, courteous, and right!" That would run counter to Mr. Mathew's own principle, since no work would then be left for the House of Lords. The Lords of Appeal in Ordinary must not be lightly defrauded of their statutory prey

Sufficient Reason.—That a witness can be verbally as impressive as his opposing counsel is borne out by an inquiry held some time ago into the reasons why one Casey Stengel, a well-known baseball player, had disappointed the supporters of his League by not sliding into home plate on a close play during his appearance with the Pittsburgh team. "On what they're paying me here," he replied to the question, "I'm so hollow that I'm liable to explode like a light bulb if I hit the ground too hard."

OUR DISTINGUISHED VISITORS.

Summarized Itineraries.

The following itineraries of the Lord Chancellor, Lord Jowitt, and Lady Jowitt, of the Master of the Rolls, Sir Raymond Evershed, and Lady Evershed, of the Chief Justice of Canada, Rt. Hon. Thibaudeau Linfret, and of Sir Leonard Holmes, President of the Law Society (England) have now been provisionally settled, and are set out for the general information of practitioners.

The Lord Chancellor and Lady Jowitt will arrive in Wellington on September 3 and leave for Christchurch on the afternoon of the next day. They will be in Christchurch on September 5, and will leave for Dunedin on the following morning, spending the day there. Next day, they return to Wellington, where they will stay until September 9, when they leave for Napier, where they will spend the following day. They will then visit Wairakei, Rotorua, and Waitomo, and arrive in Auckland on September 13, where they will stay two days.

The Master of the Rolls and Lady Evershed will arrive in Auckland on August 31. They will then visit Rotorua and Waitomo Caves, and return to Auckland on September 3. They will leave there on their return journey on the following morning.

The Chief Justice of Canada will arrive in Wellington on September 3, and will be there for two days. He will then visit New Plymouth, and will be there from the evening of September 5 until September 7. He will be in Auckland on September 10 and 11, and he will then leave for home.

Sir Leonard Holmes will arrive in Auckland on August 31 and spend the two following days there. On September 3, he will leave by plane for Dunedin, where he will spend the following day. He will arrive in Christchurch on the afternoon of September 5, and leave for Wellington on the following evening. He will be in Wellington on September 7 and 8, and, after a visit to Rotorua, he will arrive in Auckland on the afternoon of September 10, and will leave New Zealand the following afternoon.

Receptions by the Judiciary and by the New Zealand and District Law Societies, at which practitioners will have the opportunity of seeing and hearing our distinguished guests, have been arranged in the centres which they will be visiting. As this issue of the JOURNAL goes to press, the times and places of these various functions have not been so finally settled as to enable a complete list of them to be given here with detailed accuracy. Practitioners should, therefore, verify their local occasions with the Secretary of their particular Law Society.

RETURN TO THE STOCKS.

By ADVOCATUS RURALIS.

The conversation had got round to "drunk in charge." The not-so-junior members, thinking of their children, were all in favour of gaol for a first offence, but Advocatus expressed the opinion that the discretion should remain with the Magistrate.

Advocatus remembered a case of an ex-regular Army noncom. who was, after some years, well and truly caught drunk in charge. He insisted on a second medical examination, and, by the time the doctor arrived, the ex N.C.O. could have drilled a battalion with the Colonel looking on; and the Police were powerless.

Any regular Army N.C.O. of Kipling's school remembers that a bastinado stronly applied to the soles of hobnailed boots has a wonderfully sobering effect when it is necessary to pass the guard. Advocatus even remembered an occasion when the bastinado had been effective in the New Zealand Army.

A non-drinker, on the other hand, can have two or three drinks at a wedding and later start an argument with a traffic cop which in due course may land him in gaol.

The Oldest Member expressed the opinion that the idea behind the stocks was the best method of dealing with dangerous driving. When asked to explain, he said that the matter frequently went back to lack of parental control. John Willie borrows the family car, and, in an endeavour to make an impression on his passenger, he drives dangerously. If the Magistrate had power to take away the registration plates for a period and replace them with, say, a skull and crossbones with number for dangerous driving, and a coffin with number for drunk in charge, the standard of driving would improve overnight. The car could not be sold except with the distinguishing plates. John Willie would have a very painful three months if Father, Mother, and Sister could use the car only at night or else run the gauntlet of criticism during the day-time.

"You gentlemen, react against the idea because it may be your car; but, if it's your car, it may be your fault. On the other hand, it may be your daughter who is the victim of the motor-driver."

The meeting dispersed—thoughtfully.

Here and There.—*The Times* (May 2, 1951) refers to an unsuccessful appeal before the Divisional Court (Lord Goddard, L.C.J., and Oliver and Sellars, JJ.) by a solicitor against a fine of £100 imposed upon him by the Disciplinary Committee for a breach of r. 1 of the Solicitors' Practice Rules, 1936, whereby he is not to permit in the carrying on of his practice any act "which can reasonably be regarded as calculated to attract business unfairly." He was commended, however, for his candour, since the proceedings against him were based upon his own reply to the complaint, and he expressed no desire for the anonymity to which, as an appellant, he was entitled. His name was Evill.—SCRIBLEX.