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THE CROWN PROCEEDINGS ACT, 1950.

WE now continue our consideration of the Crown Proceedings Act, 1950, and the changes it has made in procedure in civil proceedings in which the Crown is involved. In particular, we conclude a review of Part II of the statute, and cover Part III, leaving for a further, and final, article the new and detailed provisions relating to discovery, interrogatories, set-off, and the like in such proceedings.

IV.

Nature of Relief.

Under the previously existing law, s. 30 of the Crown Suits Act, 1908, the Court could give judgment on a petition of right such as it would give and pronounce in an action between subjects, with costs of suit following on either side as in ordinary cases between suitors. Every such judgment was declaratory in nature.

Section 17 of the Crown Proceedings Act, 1950, now gives the Court (as that term is defined in s. 2) in any civil proceedings under the Crown Proceedings Act, by or against the Crown or to which the Crown is a party or third party, power to make all such orders as it has power to make in proceedings between subjects, and otherwise to give such appropriate relief as the case may require. This power given to the Court is limited by the provisions of the Crown Proceedings Act, 1950, and any other Act, and is subject to the application of the procedural rules, &c., specified in s. 31.

The section, while enabling the Court to make all such orders as it has power to make in proceedings against subjects, such as to enter judgment in the normal way for a money sum and costs, contains some important exceptions now to be considered.

Section 17 (1) (*a*) contains an important provision to the effect that no injunction or order for specific performance can be obtained in any proceedings against the Crown ; but, in lieu of an injunction or order for specific performance, the Court may make an order declaratory of the rights of the parties. This preserves the dignity of the Crown, and has important practical effects, because, in times of national emergency, the Crown may have to take at short notice, with certainty that its operations will not be interrupted by the Courts, measures which may be thought to infringe the rights or alleged rights of the subject. If it were open to a subject at such a time to obtain an injunction restraining the Crown from doing what it thought necessary in the public interest, the freedom of the Executive would be fettered at a time when it should have a free hand to meet an emergency. A declaration of the subject's rights would fix the liability on the Crown without hampering its executive action. In such a case, by virtue of s. 17, the subject has a declaration of his rights, including, where appropriate, an assessment of the damages. The Crown can then either comply with the declaration or the Government of the day can ask Parliament to validate what it has done, or is doing, and to ratify it by subsequent legislation, which, in most cases, will provide for compensation to be paid to the aggrieved subject in terms of the Court's declaratory order.

Our s. 17 (1) (*a*) reproduces s. 23 (1) (*a*) of the corresponding United Kingdom statute. It was held by Romer, J., in *Underhill* v. *Ministry of Food*, [1950] 1 All E.R. 591, that the reference therein to " an order declaratory of the rights of the parties " (in lieu of an injunction) relates to a final declaration, and has no application where interlocutory relief is sought. Alternatively, the Supreme Court has jurisdiction to award damages in lieu of an injunction : *Ryder* v. *Hall*, (1905) 27 N.Z.L.R. 385, and *Ellis* v. *Rasmussen*, (1910) 30 N.Z.L.R. 316.

Though an injunction or interim injunction may not be made against the Crown by reason of s. 21 (1) (*a*), there is nothing in the Act to prevent the Crown from obtaining such orders against the subject in accordance with the relevant rules of Court : see s. 31. Where an interim injunction is sought by the Crown, no order for security will be made against it, and it is not required to give an undertaking as to damages : *Secretary of State for War* v. *Cope*, [1919] 2 Ch. 339, and *Attorney-General* v. *Albany Hotel Co.*, [1896] 2 Ch. 696.

The whole of the exception seems declaratory of the Crown's prerogative right to take any measures to repel an enemy in time of war, and to suppress rebellion and disorder.

There is a further exception in subs. 1 (*b*) of s. 17, which is to the effect that the Court in any civil proceedings may not grant any injunction or make any order against an officer of the Crown (as that term is defined in s. 2 (1)) if the effect of granting the injunction or making the order would be to give any relief against the Crown which could not have been obtained in proceedings directly against the Crown. The effect of this exception may be that in time of emergency it may be necessary for the Crown to authorize a subject to infringe the rights of a subject, and it would be contrary to the public interest if the Crown could be frustrated in its commands at such a time. But there does not appear to be anything in the proviso to modify the well-established rule by which the authority or command of

the Crown is not a defence to an action for tort. The granting of an injunction against an individual tortfeasor could hardly be considered as giving relief against the Crown.

EXCEPTIONS AND SAVINGS.

This is a convenient place in which to set out in detail s. 35, which saves certain rights of the Sovereign and of her Government in New Zealand, and preserves the position of certain statutory corporations sole to which reference has already been made in relation to s. 17.

Section 35 is in part as follows :

(1) Nothing in this Act shall apply to or authorize proceedings by or against His Majesty in his private capacity.

(2) Except as therein otherwise expressly provided, nothing in this Act shall—

(*a*) Affect the law relating to prize salvage, or apply to proceedings in causes or matters within the jurisdiction of the Supreme Court as a Prize Court, or to any criminal proceedings ; or

(*b*) Authorize proceedings to be taken against the Crown under or in accordance with this Act in respect of any alleged liability of the Crown arising otherwise than in respect of His Majesty's Government in New Zealand, or affect proceedings against the Crown in respect of any such alleged liability as aforesaid ; or

(*c*) Affect any proceedings by the Crown otherwise than in right of His Majesty's Government in New Zealand ; or

(*d*) Subject the Crown to any greater liabilities in respect of the acts or omissions of any independent contractor employed by the Crown than those to which the Crown would be subject in respect of the acts or omissions if the Crown were a private person ; or

(*e*) Subject the Crown to any liability in respect of the acts or omissions of any medical practitioner, pharmaceutical chemist, midwife, maternity nurse, dentist, or any other person while any such person is rendering any professional or other service or supplying any medicine, drug, appliance, or material in respect of any benefit provided in accordance with Part III of the Social Security Act, 1938, unless the medical practitioner, pharmaceutical chemist, midwife, maternity nurse, dentist, or other person is acting as a servant of the Crown at the time of the act or omission ; or

(*f*) Subject the Crown, in its capacity as a highway authority, to any greater liability than that to which a local authority is subject in that capacity ; or

(*g*) Interfere with or affect any Act that now is or hereafter may be in force whereby the Crown, or any of its officers and servants, is exempt from liability for anything done under the Act or affect any power, authority, or liability vested in or imposed upon the Crown or any of its officers or servants under any such Act ; or

(*h*) Affect any right of the Crown to control or otherwise intervene in proceedings affecting the Crown's rights, property, or profits ; or

(*i*) Affect any liability imposed on the Public Trustee or on the Consolidated Fund by the Public Trust Office Act, 1908 ; or

(*j*) Affect any liability imposed on the Maori Trustee or on the Consolidated Fund by the Maori Trustee Act, 1930 ; or

(*k*) Affect any liability imposed on the Government Insurance Commissioner, the Government Insurance Department, or on the Consolidated Fund by the Government Life Insurance Act, 1908 ; or

(*l*) Affect any liability imposed on the State Fire Insurance General Manager or the State Fire Insurance Department or on the public revenues of New Zealand by the State Fire Insurance Act, 1908, or by the Government Accident Insurance Act, 1908 ; or

(*m*) Affect any liability imposed on the State Advances Corporation or on the Consolidated Fund by the State Advances Corporation Act, 1934-35.

Subsection 2 (*a*) relates to the sum of money which the owner of a British ship which is captured by the enemy and is afterwards recaptured must pay to those who restore the ship to him : it is usually one-eighth of the value of the ship : see generally hereon *26 Halsbury's Laws of England*, 2nd Ed. 214, 234.

Subsection 2 (*b*) means that the Act in no way affects the liability of any other Dominion or Colonial Government which wishes to take proceedings in New Zealand. Those proceedings can be taken here in accordance with the general law and practice, but not under the Crown Proceedings Act, 1950. The general immunity given in s. 28 (1) excluding proceedings *in rem* against the Crown in its right everywhere, is not an exception to subs. 2 (*b*).

In addition to the provisions of subs. 2 (*c*), subs. 3 declares that a certificate by the Attorney-General to the effect that any alleged liability arises otherwise than in respect of the New Zealand Government is conclusive as to the matter certified.

The definition of " agent " in s. 2 (1) in relation to the Crown includes an independent contractor employed by the Crown. The provisions of subs. 2 (*d*) were included in s. 35 because that definition might have made the Crown liable for the acts or omissions of independent contractors as if they had been agents : see *146 House of Lords Official Reports*, 393.

It is worth noting in relation to the foregoing that, in its ultimate analysis, the liability of the Crown as an employer for the torts of an independent contractor is the same as that of a principal for the torts of his agent : it is liable for tortious acts the commission of which it has authorized, either expressly or by implication. An example of the application of this principle is found in *Black* v. *Christchurch Finance Co., Ltd.*, (1893) N.Z.P.C.C. 448.

A highway authority is liable only for misfeasance, and is under no liability for mere neglect to repair or nonfeasance. It is doubtful whether subs. 2 (*f*) was necessary, unless it was to make clear the position of the Crown as not being that of a private individual or corporation, but as having the same degree of immunity as a highway authority, such as is enjoyed by any local authority, for example a Municipal Corporation, a County, a Road Board, and the like.

Subsection 2 (*h*) covers the position where, the rights of the Crown being affected in any case, the Attorney-General should be made, or added as, a defendant. If he is not so made a party, he may intervene—*e.g.*, *Esquimalt and Nanaimo Railway Co.* v. *Wilson*, [1920] A.C. 358 ; and see *Nireaha Tamaki* v. *Baker*, (1894) 12 N.Z.L.R. 483, and *R.* v. *Airini Tonore*, (1902) 22 N.Z.L.R. 220.

The other paragraphs of subs. 2 are self-explanatory.

Subsection 4 is as follows :

> Where any property vests in the Crown by virtue of any rule of law which operates independently of the acts or the intentions of the Crown, the Crown shall not by virtue of this Act be subject to any liabilities in tort by reason only of the property being so vested ; but the provisions of this subsection shall be without prejudice to the liabilities of the Crown under this Act in respect of any period after the Crown or any person acting for the Crown has in fact taken possession or control of any such property, or entered into occupation thereof.

Section 6 (1) (*c*) provides that the Crown is liable in tort to the same extent as a private person of full age and capacity in respect of any breach of the duties

attaching at common law to the ownership, occupation, possession, or control of property. Liability of this kind may arise in many ways, of which liability to invitees or to licensees injured on dangerous premises, liability for nuisance, or liability for the escape of noxious things from property are examples. Section 35 (4) is a general qualification of the Crown's liability, made necessary by the fact that the Crown, independently of its own acts or intentions, may become the owner of property by operation of law, as, for instance, in the case of *bona vacantia*, on intestacy or otherwise, wrecks, and so on. It would not be just to subject the Crown to a liability in tort attaching automatically by reason of s. 6 (1) (*c*); consequently, s. 35 (4) provides that no liability is to attach to the Crown until the Crown, or some person acting on its behalf, has in fact taken possession or control of such property or entered into occupation of it.

Appeals, Stay of Execution, Costs.

Section 18 provides that, subject to the provisions of the Act, all enactments and rules of Court relating to appeals and stay of execution are to apply, with necessary modifications, to civil proceedings by or against the Crown under the Act as they apply to proceedings between subjects; and the costs of suit are to follow on either side as in ordinary cases between other suitors.

It is to be noted that the proviso to s. 24 (2) is to the effect that, if an order (whether for costs or otherwise) provides for the payment of money by the Crown, the Court of original or appellate jurisdiction may direct that, pending an appeal or otherwise, payment of the money or any part of it is to be suspended.

At common law, by application of the Crown's prerogative, costs were neither received nor paid by the Crown, but in equity the Crown sometimes received costs, though it never paid them: see *Attorney-General* v. *London Corporation*, (1850) 2 Mac. & G. 247; 42 E.R. 95. But, in New Zealand, since the enactment of s. 2 of the Crown Costs Act, 1858, the discretion as to the award of costs has been the same as in suits between subjects.

There is a proviso to s. 18 to the effect that the Crown is not to be required by any rule of Court or order to deposit or give security for the costs of any other party: this is declaratory of the effect of the judgment in *The King* v. *W. M. Bannatyne and Co.*, (1901) 20 N.Z.L.R. 232. Such a rule or order would be derogatory of the dignity of the Crown. In all other respects, the Crown and the subject are on the same footing as regards costs.

Payment of Interest on Judgments.

The remedies given against the Crown by the Crown Suits Act, 1908, gave no means for recovery of payment of interest on the amount of a judgment in favour of the suppliant. For a general explanation of the position, see *Broad* v. *The King*, [1916] N.Z.L.R. 609. Until the passing of the Crown Proceedings Act, 1950, the Code of Civil Procedure was not binding on the Crown, and, consequently, interest on the judgment or on costs awarded against the Crown was not recoverable.

Section 19 provides that any judgment due from or to the Crown is to carry interest if it would carry interest if due from or to a subject, and the rate of such interest is to be the same as would be payable if the judgment debt were due from or to a subject. The rate of interest payable on the judgment debt is prescribed by RR. 305 and 491 of the Code of Civil Procedure by which the Crown is now bound (as amended by Regs. 2 and 3 of the Supreme Court Amendment Rules (No. 3), 1951 (Serial No. 1951/261)).

Any costs awarded to or against the Crown, under s. 18, similarly carry interest as if awarded to or against a subject, and at the same rate. Interest on costs is ordinarily payable by virtue of the judgment in *Attorney-General* v. *Nethercote*, (1841) 11 Sim. 529; 59 E.R. 978, and such interest is payable from the date of judgment: *Landowners' West of England and South Wales Land Drainage and Inclosure Co.* v. *Ashford*, (1884) 33 W.R. 41.

The Court may award interest on debts or damages in any judgment in civil proceedings against the Crown to any person to whom interest could be awarded if the proceedings were between subjects, and at the prescribed rate.

Section 19 applies both to proceedings pending on January 1, 1952, and to proceedings instituted after that date—that is, before and since the statute came into effect.

Judgments for Fines and on Recognizances.

Section 20 of the Crown Proceedings Act, 1950, is merely a reproduction of s. 4 of the Crown Suits Act, 1908, providing the procedure to recover fines imposed upon any person other than by judgment or conviction.

Sections 21 and 23 replace ss. 5 and 7 of the Crown Suits Act, 1908, the latter without alteration and the former with the slight change in subs. 1 that the Justice may cause a recognizance to be estreated, in addition to estreat by a Judge or Magistrate.

Section 23 replaces, with slight amendment, s. 7 of the Crown Suits Act, 1908. The history of the section and its common-law background are set out in *In re Fox and Fox*, [1949] N.Z.L.R. 722. The new s. 23, like its predecessor, is intended to give to the Court the powers previously exercised by the Court of Exchequer, including the power to mitigate debts arising upon recognizances and to enter satisfaction of part of the judgment for the amount of recognizances.

In *In re King and Scott*, [1931] N.Z.L.R. 162, the Court of Appeal held that, in effect, ss. 5 and 7 of the Crown Suits Act, 1908, together formed a code dealing with the particular matter of debts arising upon recognizances and an entry of satisfaction of such debts by order of the Court.

In the same case, the Court of Appeal held that, under what is now s. 21 of the Crown Proceedings Act, 1950, a forfeiture arises immediately the principal party to the recognizance fails to appear in accordance therewith, and that, in such circumstances, the Court has no discretion, but must estreat the recognizance.

The Court of Appeal also held in that case that the person affected (now) by s. 23 of the Crown Proceedings Act, 1950, may, if he can, satisfy the Court by affidavit that, according to equity and good conscience and the real merits and justice of the case, he ought not to be required to satisfy the judgment that has been entered consequent upon the estreat.

In *In re Fox and Fox*, [1949] N.Z.L.R. 722, Gresson, J., applied the test which is applied by the Court in England in determining whether a recognizance should be estreated. That test is that the recognizance should

not be estreated if the Court is satisfied that the surety has taken all reasonable means to secure the attendance of the defendants : *R.* v. *Sangiovanni*, (1904) 68 J.P. 55. In *R.* v. *Michael*, [1949] N.Z.L.R. 1020, 1022, Smith, J., pointed out that in England the Court has a discretion as to whether it will estreat a recognizance, while in New Zealand the Court is obliged to estreat the recognizance. His Honour thought that the Court, in exercising its discretion under (now) s. 23, should have regard to that test, as Gresson, J., had done in *Fox's* case ; but, on the other hand, the practical test must be governed by the consideration set forth in s. 23—namely, whether, " according to equity and good conscience and the real merits and justice of the case " as between the defendant and the Crown, the defendant ought not to be required to satisfy the judgment.

Section 22 replaces without amendment the provisions of s. 6 of the Crown Suits Act, 1908, whereby the Governor-General may from time to time appoint a practitioner in each Judicial District to act in the name and on behalf of the Attorney-General in all such matters as by ss. 20 and 21 of the Crown Proceedings Act, 1950, are to be done by the Attorney-General.

Execution by the Crown.

Sums recovered by the Crown by any judgment could be levied and recovered under s. 20 of the Crown Suits Act, 1908, by a writ of *fieri capias*. That writ has been abolished by the Crown Proceedings Act, 1950, s. 12 and Second Schedule. Now, by virtue of s. 25 of the new statute, but subject to its provisions and the provisions of any other statute, any order made in favour of the Crown against any person in any civil proceedings may be enforced in the same manner as an order made between subjects is enforced, and not otherwise. This provision applies in relation to proceedings pending on January 1, 1952, and to all proceedings instituted since that date. But there is retained any procedure which was available before the date mentioned for enforcing an order made in favour of the Crown in proceedings brought by the Crown for the forfeiture or condemnation of any goods, or the forfeiture of any ship or share in a ship.

Section 20 thus abolishes the special powers formerly possessed by the Crown to enforce payment of debts by process against the person of the debtor, such as the writ of *fieri capias* and the writ of *capias ad respondendum* which directed the arrest of the defendant and his retention in custody until he had found satisfactory bail. The writ of *capias ad satisfaciendum* is preserved by the exception of proceedings expressly authorized by any Act—for example, the Customs Acts.

The Crown can now take advantage of the Imprisonment for Debt Limitation Act, 1908, by which it is bound : s. 5 (2) and First Schedule. It retains its priority in execution, as under the Bankruptcy Act, 1908, the Land and Income Tax Act, 1923, and the Social Security Act, 1938.

The section also preserves to the Crown its rights under the special provisions of revenue statutes as to special kinds of process, such as are contained in the Customs Act, 1913. The reference in subs. 2 of s. 25 to " proceedings brought by the Crown for forfeiture or condemnation of any goods, or the forfeiture of any ship or any share in a ship " relates to the proceedings available under the Customs Acts, and, in particular, to proceedings under Parts XVI and XVII of the Customs Act, 1913.

Execution in Relation to the Crown.

Section 24 amplifies the provisions of ss. 31 and 32 of the Crown Suits Act, 1908, and embodies with them some of the provisions of s. 25 of the corresponding statute of the United Kingdom. It applies to any execution or attachment, or any process of that nature, in any civil proceedings, issued out of any Court. It preserves the immunity of the Crown and its property from process, by providing that the Crown, the Attorney-General, or any Government Department or officer of the Crown cannot be made the subject of any such named process.

Section 24 is silent as to orders of the Court other than " execution or attachment or process in the nature thereof." It is to be presumed that the Crown, through its officers, will comply with such orders as a matter of course. For instance, nothing in the Act is to limit the discretion of the Court to grant relief by way of mandamus, notwithstanding that by reason of the provisions of the Act some other or further remedy is available : s. 35 (5).

Satisfaction can be obtained from the Crown in respect of any order for costs or otherwise against the Crown, the Attorney-General, any Government Department, or an officer of the Crown as such, by the person in whose favour the order is made by production of a certificate of judgment issued by the proper officer of the Court. If, however, the Court has directed the suspension of payment of the amount mentioned in the certificate, pending an appeal or otherwise, it may order that any such direction be inserted in the certificate if it has not already been issued.

The Governor-General, on receiving any such certificate, without further appropriation than s. 24, may cause to be paid to the person named in the certificate the amount payable by the Crown under the order, with any costs allowed and interest lawfully due thereon. As to interest lawfully due, see s. 19 of the Crown Proceedings Act, 1950, and the reference thereto : *Ante*, p. 83.

There is some new law made by s. 24 (3), which is as follows :

> On receipt of any such certificate the Governor-General, without further appropriation than this section, may cause to be paid to the person therein named the amount payable by the Crown under the order, together with any costs allowed him by the Court and the interest, if any, lawfully due thereon, and may also perform or give effect to the terms of the order so far as it is to be satisfied by the Crown.

An appropriation of public moneys to the satisfaction of a claim by a subject was held by the Court of Appeal not to be a condition precedent to the right of a subject to avail himself of the process provided in the procedural sections of the Crown Suits Act, 1908 : *Rayner* v. *The King*, [1930] N.Z.L.R. 441, 457. The Court, in the course of its judgment delivered by Adams, J., held that the finding of a Court in favour of a suppliant was declaratory only, and not coercive. Complete and absolute control of all public moneys rests in Parliament alone, and this control is secured by providing that no moneys can be paid away without a definite appropriation by the Legislature of a sum to the specific purpose for which it is to be applied.

In accord with that constitutional principle, Parliament can surrender its control of public moneys only by clear and express enactment. It has done so by enacting s. 24 (3), which reverses the position formerly

obtaining under s. 32 of the Crown Suits Act, 1908, which required a special appropriation by Parliament as a condition precedent to payment of a sum awarded to a subject by the Court in a proceeding against the Crown; and it rested entirely with Parliament to say whether or not a sum found by the Court to be payable by the Crown to a subject should be paid. The effective control of Parliament was so ensured, while the subject had access to the Court to establish his claim to a payment out of the public funds.

But now, in the clear terms of s. 24 (3), the Governor-General, without further appropriation than the section itself, may cause to be paid to the person named in a certificate given in terms of the section the amount, whether for costs or otherwise, set out in an order of the Court, payable by the Crown under the order, and the interest, if any, lawfully due thereon.

Attachment of Moneys Payable by The Crown.

Section 26 prevents moneys payable by the Crown to another person being attached except by the means set out in the section. In effect, a judgment creditor of a person who is a creditor of the Crown may obtain from the Court in proper cases an order which will restrain the creditor of the Crown from receiving the money and will direct payment of that money to the applicant, "in accordance with rules of Court." The section, however, denies this remedy in the case of wages or salary payable to officers of the Crown, and of moneys which by any statute cannot be assigned or charged or taken in execution.

With those qualifications, the section thus applies to moneys payable by the Crown, the ordinary provisions as to garnishee proceedings, such as are contained in rr. 264-278 of the Magistrates' Courts Rules, 1948, in relation to s. 96 of the Magistrates' Courts Act, 1947, and as to charging orders in Part IV of the Code of Civil Procedure. In any such proceedings, the Court may make an order in respect of the amount payable by or accruing due from the Crown which it would be entitled to make if the whole proceedings were between subjects; but, except as provided in any other statute, no such order may be made in respect of—

(*a*) Any wages, salary, honorarium, allowances, or expenses payable to any officer of the Crown as such:

(*b*) Any money which is subject to the provisions of any enactment prohibiting or restricting assignment or charging or taking in execution.

The term "any officer of the Crown as such" is the equivalent of any officer of the Crown in his person as a servant of the Crown, and has no relation to the expression used elsewhere in the statute, which relates to him in his representative capacity: *cf. Raleigh* v. *Goschen*, [1898] 1 Ch. 73, and *Mackenzie-Kennedy* v. *Air Council*, [1927] 2 K.B. 517.

The term "officer of the Crown," as used in para. (*a*), includes any servant of Her Majesty: see s. 2 (1). Yet, by R. 314 (*b*) of the Code of Civil Procedure, "moneys due or accruing due to such opposite party by the General Government" may be the subject of a charging order. In *Boylan* v. *Bloxsome*, (1892) 11 N.Z.L.R. 49, it was held that, under R. 314 (*b*), the salary of a Government servant is "accruing due" every day he is at work, and is liable for attachment. On the other hand, it has been held in Great Britain that a servant of the Crown holds his position at the pleasure of the Crown, and, accordingly, there is "no debt or sum of money due or accruing due" to him by the Crown in respect of salary or wages, and an attachment order will not be made in respect of his salary: *Lucas* v. *Lucas and High Commissioner for India*, [1943] 2 All E.R. 110. It may well be that para. (*a*) (which is taken directly from s. 27 (1) (*a*) of the Crown Proceedings Act, 1947 (U.K.)) was enacted in the latter statute owing to the doubt whether "any wages, salary, honorarium, allowances, or expenses" are "debts legally due and payable" to any servant of the Crown as such or are mere gratuitous payments, in view of the above-cited decision. An amendment of R. 314 (*b*) seems to call for immediate attention, in view of the apparent conflict between it and para. (*a*) of s. 26. (It may be added that the decision that moneys due by the Crown under a mail order contract were attachable under R. 314 (*b*) is still good law: see *Hodder and Tolley, Ltd.* v. *Cornes*, [1923] N.Z.L.R. 876.)

Under para. (*b*), above, the specified moneys payable by the Crown retain the protection from attachment given by statutory provisions such as s. 60 of the Workers' Compensation Act, 1922, s. 118 (6) of the Social Security Act, 1938, s. 83 of the Superannuation Act, 1947, and s. 83 of the Shipping and Seamen Act, 1908; and see also the special provisions of s. 80 of the Bankruptcy Act, 1908, and s. 3 of the Wages Protection and Contractors' Liens Act, 1939.

In our next article, we shall consider the sections of the Crown Proceedings Act, 1950, which give the right to ask the Crown for discovery and to answer interrogatories, and also the subject of set-off in proceedings by or against the Crown.

SUMMARY OF RECENT LAW.

CONVEYANCING.

Covenants not to Assign. *96 Solicitors' Journal*, 54.

Voluntary Transfers of Property: The Essential Requirements. *96 Solicitors' Journal*, 66.

DAMAGES.

Special Damages—Bodily Injuries as Result of Negligence—Plaintiff asking for General Damages only—Special Damages to be claimed for Medical Fees—Reimbursement to Social Security Fund—Social Security Act, 1938, s. 81. Where a plaintiff has sustained bodily injuries which necessitated medical attention, and a claim for damages is made, the plaintiff should claim special damages for medical fees, notwithstanding that he has not been called upon to pay anything to his doctor, who would make a claim on the Social Security Fund. Any amount recovered for medical fees is subject, by virtue of s. 81 of the Social Security Act, 1938, to a charge in favour of the Social Security Fund, which should not be denied reimbursement by reason of an omission to claim in respect of medical expenses. *Ramlose* v. *Moult.* (S.C. Palmerston North. March 10, 1952. Gresson, J.)

DEATH DUTIES.

Death Duties (Estate Duty and Succession Duty)—Life Interest of Testator's Wife in Farm Lands with Remainder to Nephew—Residue of Estate to Wife—No Direction as to Payment of Death Duties—Incidence of Estate Duty and Succession Duty and Interest thereon between Such Beneficiaries inter se*—Charge in favour of Widow on Farm Lands to secure Payment of All Duties by Her—Death Duties Act, 1921, s. 31—Trusts and Trustees—Farm Property—Widow's Life Interest therein—Testamentary*

Trustees with Powers of Management—Probate Values of Stock adopted—Adjustment in respect of Ewes and Cows with Young at Foot at Testator's Death Increased Value of Lambs and Bullocks on Sale to go to Capital—Depreciation on Farm Plant and Machinery chargeable against Life Tenant—Rate of Depreciation at Trustees' Discretion. The deceased, by his will, after making some pecuniary bequests, devised and bequeathed unto his trustees his farm property and the stock and chattels thereon " Upon trust during the lifetime of my wife to carry on or permit my wife to carry on the farming business at present carried on by me and for that purpose to use the said farm lands stock and chattels and effects as aforesaid and to pay the whole of the net income arising therefrom to my wife for her life for her sole use and benefit absolutely." The testator gave the remainder in the farm lands and chattels on the death of his wife to his nephew absolutely. If his nephew predeceased the testator's wife, the remainder was to go to the nephew's children living when the testator's wife died in equal shares as tenant in common. The residue of the testator's estate was given to his wife, who survived him. There were no children of the marriage. There were no directions in the will as to the payment of death duties, but, for convenience of administration, the widow had paid all the death duties and the interest thereon. The value of the testator's estate was £43,829. The farm lands and chattels were of the value of over £17,000, in respect of which the estate duty was £4,939, and the widow's succession duty in respect of her interest therein was £1,080; and the succession duty on the interest of the remaindermen was £639. The total duty and interest on duties (£16,518) had, in the meantime, been paid out of the residue which had gone to the widow. On originating summons, the Court was asked to determine the proportions in which the widow and the residuary beneficiaries should bear between them the estate and succession duties paid in respect of the farm lands. *Held*, 1. That the liability for the estate duty (£4,939) in respect of the farm lands and chattels fell wholly upon the corpus taken by the remaindermen; but the interest on the estate duty was the obligation of the life tenant, the testator's widow. (*In re Holmes, Beetham* v. *Holmes*, (1912) 32 N.Z.L.R. 577, *Public Trustee* v. *Canterbury College Board of Governors*, [1924] N.Z.L.R. 942, and *Caldwell* v. *Fleming*, [1927] N.Z.L.R. 145, followed.) 2. That the responsibility for payment of the succession duty of the widow and of the remaindermen respectively in respect of the farm land and chattels rested on the widow and the remaindermen in the amounts as assessed. 3. That, by reason of s. 31 (5) of the Death Duties Act, 1921, the remaindermen, when their interest becomes an interest in possession on the widow's death, will be liable for interest on their share of the succession duty (£639) from the date of payment of the duty until they pay that sum. (*Caldwell* v. *Fleming*, [1927] N.Z.L.R. 145, followed.) 4. That the widow was entitled (in terms of s. 31 of the Death Duties Act, 1921, but subject to the proviso to s. 31 (5)) to a charge on the farm lands and chattels, to secure the estate duty (£4,939) and the remaindermen's succession duty (£639), with interest on the latter sum at the rate of £3 per cent. per annum, from the date of payment of it as succession duty until payment by the remaindermen. 5. That the probate values of the stock used in the farming operations should be adopted and maintained as the standard values, with an adjustment by separate values being placed on ewes with lambs at foot at the date of the testator's death, such valuation to have regard to the percentage of lambs; and the values so found were to be taken as the standard values; and similarly, *mutatis mutandis*, with cows valued with calves at foot. 6. That the lambs and bullocks on hand at the date of the testator's death were capital; and the increase in the value of such of them as were sold before the end of the accounting year went to capital. (*In re Angas*, [1906] S.A.L.R. 140, and *In re Bassett, Bassett* v. *Bassett*, [1934] N.Z.L.R. 690, applied.) 7. That provision should be made out of the income from farming operations during the widow's lifetime for the payment of depreciation in respect of the farming plant and machinery, including the tractor, since the widow carried on the farming operations only by permission of the trustees, who had the necessary powers of management, and the rate or rates of depreciation should be left to the discretion of the trustees. (*In re Leicester, Leicester* v. *Leicester*, [1947] N.Z.L.R. 420, applied.) *In re Brough (deceased), Couper and Others* v. *Brough and Others*. (S.C. Wanganui. February 5, 1952. Hutchison, J.)

DIVORCE AND MATRIMONIAL CAUSES.

Answer—Petition for Restitution of Conjugal Rights—Wife in Answer praying for Dissolution on Ground of Desertion—Decree for Dissolution on That Answer Permissible—Divorce and Matrimonial Causes Act, 1928, s. 20. It is permissible, by virtue of s. 20 of the Divorce and Matrimonial Causes Act, 1928, to allow a prayer for dissolution in an answer to a petition for restitution of conjugal rights. (*Best* v. *Best*, (1823) 1 Add. 411; 162 E.R. 145, and *Norton* v. *Norton*, [1945] P. 56; [1945] 2 All E.R. 122, referred to.) *Prangnell* v. *Prangnell*. (S.C. Christchurch. February 29, 1952. Northcroft, J.)

Condonation—Sexual Intercourse—No Intention by Petitioner to effect Reconciliation. In 1947, the wife deserted the husband, and thereafter, whenever he visited her, she received him with rudeness and abuse, and affirmed her refusal to return to him. On March 26, 1951, however, she invited him to visit her, and received him cordially. On this and subsequent occasions, she asked him to live with her again, but he replied that he needed time to think it over. On April 3, 1951, at the wife's invitation, the husband stayed the night with her and " reluctantly gave in " to her and had sexual intercourse. On the following day, he told her that he would not agree to live with her again. On the husband's petition for divorce on the ground of desertion, *Held*, That the fact that the husband had sexual intercourse with the wife with full knowledge of her offence of desertion constituted condonation of that offence, it being immaterial that the husband did not have the intercourse with the express object of effecting a reconciliation. *Maslin* v. *Maslin*, [1952] 1 All E.R. 477 (P.D. & A.).

As to Condonation, see *10 Halsbury's Laws of England*, 2nd Ed. 679-682, paras. 1004-1009; and for Cases, see *27 E. and E. Digest*, 339, 340, Nos. *3184-3203*, and Digest Supplement.

Desertion—Constructive Desertion—Conduct equivalent to Expulsion—Inference of Intention to end Consortium—*Presumption of Intention of Natural and Probable Consequences of Acts—Application of Presumption—" Wilful desertion "—Divorce and Matrimonial Causes Act, 1928, s. 10* (b)—*Divorce and Matrimonial Causes—Desertion—Separated Wife left habitually and without Just Cause without Reasonable Maintenance — " Without just cause "—Test of Reasonableness—Divorce and Matrimonial Causes Act, 1928, s. 13.* In order to establish constructive desertion, there must be proof of conduct equivalent to driving the other spouse away—*i.e.*, conduct equivalent to expulsion; and there must also be the intention of bringing the *consortium* to an end. Such intention may be inferred from the circumstances; but the acts relied upon as equivalent to expulsion must be of a serious and convincing nature. Otherwise, there is not only no expulsion in fact, but there is also no ground for inferring an intention to desert. (*Buchler* v. *Buchler*, [1947] P. 25; [1947] 1 All E.R. 319, followed.) (*Bain* v. *Bain*, [1923] V.L.R. 421; aff. on app., (1923) 33 C.L.R. 317, and *Franklin* v. *Franklin*, [1934] N.Z.L.R. 900, referred to.) Apart from the special provision in s. 13 of the Divorce and Matrimonial Causes Act, 1928, in every case of constructive desertion the ultimate finding of the Court must, in terms of s. 10 (*b*), be one of wilful desertion on the part of the offending spouse. Where conduct may fairly be described as equivalent to expulsion, then the necessary intention may be inferred, on the principle that a person is presumed to intend the natural and probable consequences of his acts; but that presumption is applicable to cases of constructive desertion only for the purposes of determining whether there has been wilful desertion. It must be applied with considerable caution; and it is rebuttable. (*Buchler* v. *Buchler*, [1947] P. 25; [1947] 1 All E.R. 319, followed.) (*Westall* v. *Westall*, (1949) 65 T.L.R. 337, *Kaslefsky* v. *Kaslefsky*, [1950] 2 All E.R. 398, and *Simpson* v. *Simpson*, [1951] P. 320; [1951] 1 All E.R. 955, referred to.) Conduct equivalent to expulsion is to be distinguished from blameworthy conduct such as a spouse may be under obligation to put up with throughout the married life in spite of great and continuing unhappiness; in such cases, there is no constructive desertion unless the conduct in question is equivalent to expulsion from the matrimonial home. If it is not, then threats to depart if the conduct is not changed will not give it that character; nor will statements by the offending spouse that the other may go if he or she does not like the conduct complained of. Under s. 13 of the Divorce and Matrimonial Causes Act, 1928, the words " without just cause " are to be construed in their ordinary meaning and not in any technical sense; but, as the gravamen of the matter is less than that in s. 10, there is not the same insistence on grave and weighty cause. Much less may excuse a failure to provide maintenance than is required to excuse desertion; and the simple test of reasonableness as between the spouses should suffice. (*Newell* v. *Newell*, (1909) 28 N.Z.L.R. 857, and *Gillard* v. *Gillard*, [1935] G.L.R. 203, applied.) The presumption that a person intends the natural and probable consequences of his acts, and its application in cases of constructive desertion and where cruelty is relied on

as a ground for divorce or for summary relief, discussed generally. (*Simpson* v. *Simpson*, [1951] P. 320; [1951] 2 All E.R. 955, *Hosegood* v. *Hosegood*, (1950) 66 T.L.R. 735, *Boyd* v. *Boyd*, [1938] 4 All E.R. 181, and *Edwards* v. *Edwards*, [1948] P. 268; [1948] 1 All E.R. 157, considered.) *Bolton* v. *Bolton*. (S.C. Auckland. January 31, 1952. F. B. Adams, J.)

Financial Rights of Wife. *212 Law Times*, 290.

Intent in Cruelty and Constructive Desertion. *96 Solicitors' Journal*, 52.

INCOME TAX.

Income-tax—Objection to Default Assessment—Onus on Taxpayer to show by how much Assessment Wrong—Land and Income Tax Act, 1923, ss. 14, 25. Where the Commissioner of Taxes, not being satisfied with a taxpayer's return, makes an assessment of the amount on which, in his judgment, tax ought to be levied and of the amount of that tax, s. 14 of the Land and Income Tax Act, 1923, enacts that such person shall be liable to pay the tax so assessed, "save in so far as he establishes on objection that the assessment is excessive or that he is not chargeable with tax." In cases to which s. 14 applies, the provisions of s. 25 of the statute (which enacts that, on the hearing and determination of all objections to an assessment of tax, the burden of proof is on the objector) must be considered with those of s. 14; and the words "save in so far as he establishes" in s. 14 show that the onus is upon the taxpayer, not only to show that the Commissioner's assessment is wrong, but also to show by how much it is wrong. (*Aspro, Ltd.* v. *Commissioner of Taxes*, [1932] A.C. 683, referred to.) The judgment is reported on the above point only. *Commissioner of Taxes* v. *McCoard*. (S.C. New Plymouth. March 4, 1952. Cooke, J.)

Points in Practice. *192 Law Journal*, 131.

Residence—Dual Residence—Company—Residence in Countries where Sufficient Part of "superior and directing authority" is found. The three taxpayer companies were ordinarily resident both in the United Kingdom and outside it. On the question whether profits tax was to be ascertained as if no net relevant distributions to proprietors had been made—*i.e.*, whether non-distribution relief was to be given in respect of the whole of the profits and no distribution charges were to be made—*Held*, That s. 39 (1) of the Finance Act, 1947, which provides that persons "ordinarily resident outside the United Kingdom" shall be entitled to the relief stated, must be construed as referring only to persons who were not also ordinarily resident in the United Kingdom, and, therefore, the companies' claims to have profits tax ascertained as if no net relevant distributions to proprietors had been made failed. *Per curiam*, A finding that a company is a resident of more than one country ought not to be made unless the control of the general affairs of the company is not centred in one country but is divided or distributed among two or more countries. The matter must always be one of degree, and residence may be constituted by a combination of various factors, but one factor to be looked for is the existence in the place claimed as a place of residence of some part of the superior and directing authority by means of which the affairs of the company are controlled. (Observation of *Sir Owen Dixon*, J., in *Koitaki Para Rubber Estates, Ltd.* v. *Federal Commissioner of Taxation*, (1940) 64 C.L.R. 19, approved and adopted.) The question in any particular case whether or no the test is satisfied, whether such part of the "superior and directing authority" of a limited liability company is found in any country as will justify the conclusion that the company is really doing business there, and is, accordingly, there resident, is one of degree, and, therefore, one of fact, on which, if there be evidence to support it, the conclusion of the Special Commissioners will be final. Central management and control may be divided, and such division, being a matter of fact and degree in each case, is not denied by the circumstance that the supreme command, the power of final arbitrament, may be found to be, or to be predominantly, in one place. (Test laid down by *Lord Loreburn*, L.C., in *De Beers Consolidated Mines, Ltd.* v. *Howe*, [1906] A.C. 458, applied.) (*Swedish Central Railway Co., Ltd.* v. *Thompson*, [1925] A.C. 495, examined and explained.) *Union Corporation, Ltd.* v. *Inland Revenue Commissioners, Johannesburg Consolidated Investment Co., Ltd.* v. *Inland Revenue Commissioners, Trinidad Leaseholds, Ltd.* v. *Inland Revenue Commissioners*, [1952] 1 All E.R. 646 (C.A.).

For the Finance Act, 1947, s. 39 (1), see *12 Halsbury's Statutes of England*, 2nd Ed. 784.

INDECENT PUBLICATIONS.

Indecent Document—Magazine purporting to contain Humorous Stories—Sold to Public as Commercial Venture—No Literary or Artistic Merit—Publication having Immoral and Mischievous Tendency—Offence committed—"Indecent document"—Indecent Publications Act, 1910, s. 3 (b). The primary object of s. 3 of the Indecent Publications Act, 1910, is to punish persons preparing or distributing indecent writings or representations, but with the qualification that, if this is done in circumstances from which one ought to conclude that it could have no detrimental effect on anyone, no offence is committed. Thus, an offence under s. 3 (*c*) (printing or causing to be printed an indecent document) is committed by the publication and sale to the public as a commercial venture of a magazine purporting to be humorous if its content of humour is of no literary or artistic merit but is indecent and its publication to the world has both an immoral and a mischievous tendency. *Kerr-Hislop* v. *Walton*. (S.C. Auckland. February 7, 1952. Stanton, J.)

LAND SUBDIVISION IN COUNTIES.

Town-planning—Scheme Plan of Subdivision into Building Sections—Minister's Refusal to approve Such Plan on Ground of "public interest"—Such Refusal based on Proposed Town-planning Outline Development Plan—Such Plan only in Preliminary or Exploratory Stages, and not "an approved town-planning or extra-urban planning scheme"—Refusal invalid accordingly—Board of Appeal—Conflict of Jurisdiction with that of Town-planning Board raised by Evidence in Support of Minister's Refusal—Land Subdivision in Counties Act, 1946, ss. 3 (5) (a), 4, 7—Town-planning Act, 1926, ss. 16, 19, 29. The Minister of Lands refused his approval of a scheme plan of the subdivision of an area of 29 a., 2 r., 21 pp. in the Manukau County into ninety-five building sections. The Minister based his refusal on the ground of "public interest" under s. 3 (5) (*a*) of the Land Subdivision in Counties Act, 1946, on the basis of a proposed Outline Development Plan for the Auckland Metropolitan District and its environs, whereby a scheme of urban and extra-urban planning under the Town-planning Act, 1926, was in course of preparation by the responsible local authorities, including the Manukau County. To carry out that planning scheme, which was in its preliminary or exploratory stages, there was proposed a "green belt," in which area no subdivision of land into allotments of less than 5 acres would be permitted. (The land here under notice was in the proposed "green belt" of the Manukau County.) On appeal under s. 7 of the Land Subdivision in Counties Act, 1946, against the refusal of the Minister's approval, *Held*, 1. That "an approved town-planning or extra-urban planning scheme" within s. 4 of the Land Subdivision in Counties Act, 1946, means a scheme approved in accordance with the provisions of s. 21 of the Town-planning Act, 1926. 2. That the Outline Development Plan which formed the ground of the Minister's refusal comprised several urban and extra-urban planning schemes, none of which had reached the stage, under the Town-planning Act, 1926, of submission to the Town-planning Board: and they had not been even provisionally approved. 3. That, accordingly, the Outline Development Plan could not be raised by the Minister as a matter of "public interest" under s. 3 (5) (*a*) of the Land Subdivision in Counties Act, 1946, as a ground for refusal to consent to a subdivision. Evidence was called which showed that there was an unsatisfied demand for residential sections in and around Auckland, that the appellant's subdivision was situated about half a mile beyond an existing residential subdivision and about one mile from the township of Panmure, and that there was a substantial and continuing growth of industry around this township. The Minister's case did not raise factual objection to the subdivision of itself, but was devoted to evidence in support of the merits of the Outline Development Plan, which was substantially the same evidence as would be adduced upon the hearing under s. 19 of the Town-planning Act, 1926, by the Town-planning Board of objections to the provisional approval of a town-planning scheme. *Held also*, 1. That, although the Town-planning Board is partly judicial in character, and is required by s. 20 of the Town-planning Act, 1926, to make final decisions, the Board of Appeal under the Land Subdivision in Counties Act, 1946, was, on the facts, asked to determine a matter which was under the jurisdiction of the Town-planning Board, and that, of itself, would be an objection to the determination of the present appeal; and such a determination would be a denial to the subject of a consideration of the preliminaries prescribed by the Town-planning Act, 1926, which afford him an opportunity to study, and, if he wishes, to object to, a planning scheme, and the present appellant had had neither of those rights. 2. That a refusal to approve a subdivision under the Land Subdivision in

Counties Act, 1946, upon the grounds taken by the Minister might be a bar to, or at least might indefinitely postpone, the right of compensation for injurious affection created by s. 29 of the Town-planning Act, 1926. 3. That the foregoing findings, when considered in conjunction with s. 4 of the Land Subdivision in Counties Act, 1946, provided a good reason for the requirement in that section that the Minister could refuse to approve a subdivision only when the town-planning scheme had reached the stage of approval under the Town-planning Act, 1926. The appeal was accordingly allowed. *Patton and Another* v. *Minister of Lands.* (Land Subdivision in Counties Board of Appeal. Auckland. October 25, 1951. Astley, S.M., Chairman, and Messrs. Worley and Jackson, Members.)

TRANSPORT.

Accident—Duty to report—"Driver"—Vehicle Stationary at Time of Accident—Road Traffic Act, 1930 (c. 43), s. 22 (2). The appellant stopped his motor-vehicle on the near side of a public road, switched off the engine, and remained in his seat talking to his passenger for some ten minutes. He then opened the driver's door on the off side of the vehicle, and, in doing so, he struck a pedal cyclist who was passing. He failed to report the accident, and, on being charged under s. 22 (2) of the Road Traffic Act, 1930, with so failing, he contended that, as he had stopped the engine of the vehicle for a substantial time before the accident happened, he was not the "driver" within the meaning of the subsection at the time of the accident. *Held,* That, for the purpose of s. 22 (2), the "driver" of a vehicle was the person who took it out on the road, and he remained the driver until he finished his journey, and, therefore, the appellant was guilty of an offence under s. 22 (2). *Jones* v. *Prothero,* [1952] 1 All E.R. 434 (Q.B.D.).

Heavy Motor-vehicles—Classification of Roads—Road on Boundary of Two Counties classified as Class III—Each County a "Controlling Authority" only up to Midline of Road—Classification invalid—"Controlling Authority"—Public Works Act, 1928, ss. 113, 115, 116, 120—Heavy Motor-vehicle Regulations 1950 (Serial No. 1950/26), Regs. 1 (3), 4 (1), 11 (1). The defendant was charged with operating a heavy motor-vehicle, a fertilizer distributor, while it was carrying a load of greater weight than was indicated for the road on which it was travelling, contrary to the provisions of Reg. 4 (1) of the Heavy Motor-vehicle Regulations, 1950. The road in question was part of the common boundary between the Waikato County and the Franklin County, the boundary of the former being defined as extending to the middle of that road; thus, one-half of the road from the lateral midline to the edge lay in each County. All facts were admitted, apart from the proper classification by the Waikato County of the road as a Class III road. *Held,* 1. That, by virtue of ss. 113, 115, and 116 of the Public Works Act, 1928, the powers of control, &c., exercisable by a County Council are confined to county roads situate in the county; and, if such roads are not physically situate in the county, the County Council has no control over them. 2. That boundary roads come within the exception contemplated by s. 116, so that, in the absence of a direction by the Governor-General under s. 120, since only half of the road in question was "situate within the County," the Waikato County had control of such road to the lateral midline of the road under s. 116 of the Public Works Act, 1928, and was, at most, a "controlling authority," within the definition of that term in Reg. 1 (3) of the Heavy Motor-vehicle Regulations, 1950, to the midline of the road. 3. That, consequently, the purported classification of the road by the Waikato County Council was invalid; and the position was unaltered if the Franklin County Council had also classified the road as Class III, as, for the reasons given, it, too, was not a "controlling authority" in respect of it. *Quaere,* Whether a vehicle, which is exempt from payment of licence fees under the Motor-vehicles (Licensing Fees Exemption) Regulations, 1948, and from payment of heavy traffic fees under Reg. 11 (1) of the Heavy Motor-vehicle Regulations, 1950, is subject to Reg. 4 (1) of the latter Regulations. *Sanders* v. *Bulk Fertilizer Distributors, Ltd.* (Pukekohe. August 30, 1951. McCarthy, S.M.)

TORT.

Consent to Surgical Operation. *96 Solicitors' Journal,* 20.

VENDOR AND PURCHASER.

Options to purchase Land. *102 Law Journal,* 157.

WILL.

Construction—Gift of Income from Named Property in Equal Shares to Named Nephews during Their Respective Lives, and upon Their Death "the issue then living of such deceased nephews" to take during Their Respective Lives Equal Shares of Income to which Their Deceased Parents would have been entitled if Living—Gift of Income from Residue of Testator's Estate in Equal Shares to Testator's Only Surviving Brother, Four Named Nephews, and Four Named Nieces during Their Respective Lives—On Death of Any One of Them leaving "issue," "such issue" to take equally Share of Income to which Deceased Parent would have been entitled if Living—On Death of All Nephews, Named Property to be realized and Proceeds divided in Equal Shares among "the issue then living" of Such Three Nephews as They respectively attain Full Age, with Power of Advancement of All or Part of Minor's Presumptive Share in Capital or Income—On Death of Brother and All Named Nephews and Nieces, proceeds of Sale of Realty in Residue and Personalty to be divided equally between "issue then living" of Named Beneficiaries on Their attaining Full Age, with Same Power of Advancement—Word "issue" (wherever used in Will) meaning "children." The testator, who died on June 19, 1907, dealt in his will, which was dated April 22, 1907, with his property in two parts—namely, (i) as to realty situated in the City of Auckland and herein termed "the High Street property," and (ii) as to his remaining assets. The relevant clauses of the will were set out in the judgment. The brother of the testator named in the will had died without having married. The three named nephews had died. R. had not left any issue. D. left one child and two grandchildren. A. left four children and two grandchildren. All such children and grandchildren were living at the time of the realization of the High Street property, which took place after the death of the last surviving nephew. The question then arose whether the proceeds of that property went to the five children of the nephews D. and A. or to those five children and four grandchildren of D. and A.; in other words, whether distribution among the "issue" of the three nephews was to be *per stirpes* or *per capita.* On an originating summons for interpretation of the will, the following questions were asked in respect of each part of the testator's estate: "1. With regard to para. 2 of the said will: (*a*) Does the word 'issue' mean (i) children of the three nephews of the deceased named in the said paragraph? or (ii) descendants of all degrees of the said nephews? (*b*) Do the persons held entitled take equally *per capita* or equally *per stirpes* or in any other and if so what shares and proportions? 2. With regard to para. 5 of the said will: (*a*) Does the word 'issue' mean: (i) children of the several persons named in the said paragraph? or (ii) descendants of all degrees of the said named persons? (*b*) Do the persons held entitled, take equally *per capita* or equally *per stirpes* or in any other and if so, what shares and proportions?" The learned Judge answered those questions as follows: "1. (*a*) With regard to para. 2 of the will of the deceased the word 'issue' means descendants of all degrees of the nephews referred to. (*b*) The persons entitled in remainder take equally *per capita.* 2. (*a*) With regard to para. 5 of the said will the word 'issue' means descendants of all degrees of the several persons named in the said paragraph. (*b*) The persons entitled in remainder take equally *per capita.*" On appeal from so much of the judgment of the learned Judge as, in answer to Questions 1 (*a*) and 2 (*a*), determined the word "issue," where used in cls. 2 and 5 of the will, meant the descendants of all degrees of the persons referred to in those clauses, *Held,* by the Court of Appeal, 1. That the word "issue," where used in cls. 1 and 4 of the will, should be interpreted as meaning "children." (*Sibley* v. *Perry,* (1802) 7 Ves. 522; 32 E.R. 211, followed.) 2. That the word "issue," where used by the testator, in cls. 2 and 5 of the will, means "children"; and it is not permissible to depart from that meaning merely because the testator has failed to include a substitutionary gift in favour of the issue of children who may die. (*Martin* v. *Holgate,* (1866) L.R. 1 H.L. 175, and *Watson* v. *Haggitt,* (1927) N.Z.P.C.C. 474, applied.) (*Sibley* v. *Perry,* (1802) 7 Ves. 522; 32 E.R. 211, and *Edyvean* v. *Archer, In re Brooke* [1903] A.C. 379, considered.) (*In re Birks, Kenyon* v. *Birks,* [1900] 1 Ch. 417, *In re Timson, Smiles* v. *Timson,* [1916] 1 Ch. 293, *Re Noad, Noad* v. *Noad,* [1951] 1 All E.R. 467, and *Guardian, Trust, and Executors Co. of New Zealand, Ltd.* v. *Ramage,* [1927] N.Z.L.R. 288, referred to.) Appeal from part of the judgment of *Stanton,* J., allowed. *In re Campbell (deceased), Public Trustee* v. *Campbell and Others.* (S.C. Auckland. February 19, 1951. Stanton, J. C.A. Wellington. December 18, 1951. Gresson, J.; Hay, J.; F. B. Adams, J.)

Gifts to Non-existent Institutions: Claims by Several Institutions Similarly Named. *95 Solicitors' Journal,* 781.

CURIAL REVIEW OF THE DETERMINATIONS OF ADMINISTRATIVE TRIBUNALS.

By J. F. Northey, B.A., LL.M., Dr. Jur. (Toronto).

I. Administrative Law in New Zealand.

Although the study of Administrative Law figures prominently in law courses overseas and questions concerning it are regularly before the Courts of New Zealand,[1] it does not appear to have attracted the attention it merits. The explanation is not obvious. Certainly it is not because of any lack of scope for administrative lawyers, because a search of the statute books for the past decade proves the contrary. By way of illustration—and the list is by no means exhaustive—we can point to no fewer than twenty administrative tribunals that have been created or continued in being over the past ten years.[2] This impressive array of tribunals exercising administrative, quasi-judicial, or judicial functions should convince even the most sceptical of the part played by these bodies in our everyday life, and of the scope that exists for administrative lawyers.

In New Zealand, we have taken it for granted that administrative tribunals are necessary, though some would, perhaps, quarrel with the number of these tribunals that have been created. We no longer hear even the echoes of arguments based on Montesquieu's classic division of governmental activities into legislative, executive, and judicial. It is now appreciated that the manifold responsibilities of government have outrun Montesquieu's theory and that there is a place for specialized administrative agencies. We shall confine our attention in this article to a consideration of the respective ambits of the ordinary Courts and administrative tribunals.

[1] See, for example, *Boyes* v. *Carlyon*, [1939] N.Z.L.R. 504, *Hyland* v. *Phelan*, [1941] N.Z.L.R. 1096, *King* v. *Frazer*, [1945] N.Z.L.R. 175, *Fenton* v. *Auckland City Corporation*, [1945] N.Z.L.R. 768, *Campbell* v. *Holmes*, [1949] N.Z.L.R. 949, *F. E. Jackson and Co., Ltd.* v. *Price Tribunal (No. 2)*, [1950] N.Z.L.R. 433, *Buses, Ltd.* v. *Laurenson*, [1951] N.Z.L.R. 209, *Short* v. *Auckland Transport Board*, [1951] N.Z.L.R. 808, and *Masters* v. *Licensing Control Commission*, [1951] N.Z.L.R. 997.

[2] The Soil Conservation and Rivers Control Council (the Soil Conservation and Rivers Control Act, 1941), the Standards Council (the Standards Act, 1941), the Land Sales Committees and the Land Sales Court (the Servicemen's Settlement and Land Sales Act, 1943), the War Pensions Board and the War Pensions Appeal Board (the War Pensions Act, 1943), the Earthquake and War Damage Commission (the Earthquake and War Damage Act, 1944), the New Zealand Wool Board (the Wool Industry Act, 1944), the Local Government Commission (the Local Government Commission Act, 1946), the Fire Authorities and the Fires Appeal Tribunal (the Forest and Rural Fires Act, 1947), the Land Valuation Committees and the Land Valuation Court (the Land Valuation Court Act, 1948), the Government Service Tribunal (the Government Service Tribunal Act, 1948), the Government Railways Appeal Board and the Government Railways Industrial Tribunal (the Government Railways Act, 1949), the Military Service Postponement Committees and the Conscientious Objection Committee (the Military Training Act, 1949), the Licensing, Charges, and Appeal Authorities (the Transport Act, 1949), the Medical Council and the Disciplinary Committees (the Medical Practitioners Act, 1950), the Board of Trade (the Board of Trade Act, 1950), the Air Services Licensing Authority and the Air Services Licensing Appeal Authority (the Air Services Licensing Act, 1951), and the Review Authority (the Public Service Amendment Act, 1951).

II. Advantages of Administrative Tribunals.

Although the relative advantages and disadvantages of administrative tribunals and the ordinary Courts have been canvassed by many authors in the field of Administrative Law, the memorandum handed in by Dr. W. A. Robson[3] to the Committee on Ministers' Powers probably contains as excellent a summary of these considerations as can be found. Robson summarized the advantages and disadvantages under the following heads:

Advantages of Administrative Tribunals.
- Cheapness.
- Rapidity.
- Conducive to efficient administration.
- Introduction of special knowledge and experience.
- Accumulated Departmental information is made available for use.
- Flexibility.
- Ability to promote a policy of social improvement.
- Development of new standards.
- Infusion of new moral ideas.

Disadvantages of Administrative Tribunals.
- Secrecy or lack of publicity.
- Poor quality of investigation into questions of fact.
- Inability to compel production of documents and attendance of witnesses.
- Anonymity.
- Exclusion of lawyers.
- Failure to give reasons for decision.
- Refusal of oral hearing.
- Absence of report of cases.

Probably the most important consideration which led to the creation of administrative tribunals was the admitted incompetence of the ordinary Courts to cope with the new problems demanding solution.[4] During the debates on the Railway Act, 1854, Lord Campbell, speaking for the Bench, avowed their utter incompetency to decide questions of railway management. A similar view of the relative unsuitability of lawyers for certain administrative or quasi-judicial tasks was expressed by Lord Justice Scrutton in an address[5] delivered before the University Law Society on November 18, 1920, when he stated:

> I am not speaking of conscious impartiality; but the habits you are trained in, the people with whom you mix, lead to your having a certain class of ideas of such a nature that when you have to deal with other ideas, you do not give as sound and accurate judgments as you would wish. This is one of the great difficulties at present with Labour. Labour says: "Where are your impartial Judges? They all move in the same circle as the employers, and they are all educated and nursed in the same ideas as the employers. How can a Labour man or a trade unionist get impartial justice?" It is very difficult sometimes to be sure that you have put

[3] 2 *Minutes of Evidence taken before Committee on Ministers' Powers*, H.M.S.O., 1932, p. 55. See also W. A. Robson, *Justice and Administrative Law*, 3rd Ed. (1951) 557-581. In New Zealand, many of these disadvantages do not operate, because of the powers conferred on administrative bodies and the procedures defined for them by statute.

[4] Examples of these new problems are licensing (liquor and transport), land valuation, pensions, salary and wage determination, the fixing of prices of goods and services, workmen's compensation, and military service. See also the Report of the Committee on Ministers' Powers, Cmd. 4060 (1932), p. 96.

[5] "The Work of the Commercial Courts," (1921) *1 Cambridge Law Journal*, 6, 8.

yourself into a thorough impartial position between two disputants, one of your own class and one not of your class.

Lord Haldane also accorded recognition[6] to the growing tendency to prefer administrative tribunals to the Courts in matters where the Courts do not possess adequate specialized knowledge. He stated:

> In modern times it has become increasingly common for Parliament to give an appeal in matters which really pertain to administration, rather than to the exercise of the judicial functions of an ordinary Court, to authorities whose functions are administrative and not in the ordinary sense judicial.

III. The Place of the Courts in Relation to Administrative Tribunals.

We have, then, a conscious recognition, in the creation of the various administrative tribunals, of their superiority over the ordinary Courts, and an expression of the deliberate preference of the Legislature in favour of administrative tribunals rather than the Courts as the means by which the policies of Parliament are to be implemented. The question to be answered is: How far should the ordinary Courts review decisions reached by administrative tribunals? To what extent should the Courts be permitted to review, and thereby in some cases to nullify, the express wish of the Legislature that the administrative tribunals, selected for their special knowledge in the field, should make the decisions falling within their competence? In other words, our purpose is to examine the present state of the law as to curial review—*i.e.*, review by the Courts—and to ascertain, first, the means by which a person who feels that he has been injured by the decision of an administrative tribunal (including therein the procedure adopted in reaching the decision) can gain a hearing before the ordinary Courts, and, second, the extent to which the Courts are able to give redress. As both these questions involve, directly or indirectly, an appraisal of the proper function of the Courts in relation to the activities of the administrative tribunals, it should be possible in conclusion to offer suggestions as to the proper scope of curial review.

It seems to be generally agreed that the existing machinery for review of the decisions of administrative tribunals is unsatisfactory. The main criticism, apart from that directed at the confusion surrounding the prerogative writs, which will be separately dealt with, is levelled at the lack of uniformity, the absence of any system, in providing for review of the actions of administrative tribunals. In New Zealand, this lack of uniformity is most striking. We should expect to find that the powers to be conferred on, and the procedure to be followed by, each administrative tribunal are suited to its special needs, but an examination of the statutes listed above demonstrates that there has been little appreciation of this all-important fact. We should not expect to find, and it is doubtful whether we would in fact find, that a tribunal established to perform a relatively unimportant function, such as the collection of a levy to subsidize the extermination of rabbits, should have powers similar to, or a procedure modelled on, that of the ordinary Courts. What we do find, however, in comparing tribunals with similar functions, is a considerable divergence, without apparent explanation, in the manner of appointment of members, their tenure of office, the liability to review of their decisions by an administrative appeal authority and/or by the Courts, and the necessity for a hearing and for written decisions.[7]

Allen refers to the whole body of administrative law as a labyrinth, a statement which he thinks[8] is

> particularly true of the means which are afforded to the individual citizen to assert what he conceives to be his rights against a very powerful opponent—the State—in one branch or another of its executive action. Sometimes he may take his complaint to the Courts, or to a particular Court or succession of Courts, at one time by ordinary legal process, at another time by special procedure. Sometimes he may appeal to a Minister or a Board or a Committee, sometimes to a special tribunal operating either inside the Department or outside it, in which case he sometimes has further appeal and sometimes not. It may be, again, that he has to go to an independent quasi-judicial officer or a High Court Judge entrusted with a special jurisdiction. And sometimes he has not recourse at all, unless his common law right to petition Parliament, or his hope of inducing his Member to make a fuss, can be called an "appeal."

Robson also draws attention to the "great lack of system in the organization of appeal tribunals," most of which "are *ad hoc* and specialized bodies."[9]

From these and other expressions of opinion there emerges a clear recognition of the need for greater uniformity of review procedure. There is also an appreciation of the fact that the procedure to be prescribed must be related to the function being performed by each administrative tribunal. Their diversity of function makes it imperative that a uniform procedure should not be imposed upon every tribunal "regardless of the special needs of its jurisdiction."[10] Let us first examine the ambit of review by the Courts.

IV. Recommendations of The Committee on Ministers' Powers.

In reference to review by the Courts, the Committee on Ministers' Powers observed[11] that:

> The scope of the High Court's supervision is well established by law. If a properly constituted inferior tribunal has exercised the jurisdiction entrusted to it in good faith, not influenced by extraneous or irrelevant considerations and not arbitrarily or illegally, the High Court cannot interfere. When exercising its supervisory powers, the High Court is not sitting as a Court of Appeal from the tribunal, but it has power to prevent the usurpation or mistaken assumption by the tribunal of a jurisdiction beyond that given to it by law, and to ensure that its decisions are judicial in character by compelling it to avoid extraneous considerations in arriving at its conclusion, and to confine itself to decision of the points which are in issue before it.

The Committee thus took the view that the High Court could not interfere with the determination of an administrative tribunal which had (*a*) exercised its jurisdiction (*b*) in good faith (*c*) uninfluenced by extraneous or irrelevant considerations (*d*) and not arbitrarily or illegally.

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[6] *Local Government Board* v. *Arlidge*, [1915] A.C. 120, 132. It is recognized that judicial and quasi-judicial tasks should in general be confided to the ordinary Courts, and departures from this practice should be both exceptional and proved to be necessary. See the Report of the Committee on Ministers' Powers, Cmd. 4060 (1932), pp. 84, 115, 116, and R. C. Fitzgerald, "Safeguards in the Exercise of Functions by Administrative Bodies," (1950) *28 Canadian Bar Review*, 538, 560.

[7] The fault may lie with the Departmental officers responsible for instructing the Law Draftsman as to the legislation required.

[8] C. K. Allen, *Law and Orders*, (1945), 163, 164.

[9] W. A. Robson, *Justice and Administrative Law*, 3rd Ed. (1951), 619. See also D. M. Gordon, "Administrative Tribunals and The Courts" (1933) *49 Law Quarterly Review*, 94, 419, and W. A. Gellhorn, *Administrative Law*, 2nd Ed. (1947), 807, 808.

[10] W. A. Robson, *Justice and Administrative Law*, 3rd Ed. (1951) 620.

[11] Report of the Committee on Ministers' Powers, Cmd. 4060 (1932), p. 98.

All of these matters seem to come within the Committee's later statement that the High Court has power to oblige administrative tribunals to keep within their powers and to " hear and determine according to law."[12] The third heading, (*c*), would presumably include bias and prejudgment, but, if the Courts examine the question whether the tribunal has exercised its discretion arbitrarily, there is a strong possibility that the Courts might thereby be reviewing the exercise of the tribunal's discretion.[13] This, of course, is what the plaintiff is seeking; he is not so much concerned that the Court should establish that the tribunal has acted without regard for " natural justice "[14] and that the determination should, therefore, be quashed.[15] It is clear law, however, that the Courts may not substitute their own discretion for that of the tribunal.[16]

The recommendations made by the Committee on Ministers' Powers relative to curial review should be examined closely.[17] It must be emphasized that the Committee were addressing themselves only to quasi-judicial and judicial functions exercisable by administrative tribunals. First, as to review on questions of jurisdiction, the Committee recommended the establishment of a simple procedure. The Committee apparently had in mind the substitution of a new procedure for the writs of certiorari and prohibition which are presently used to keep administrative tribunals within their respective jurisdictions, because the report of the Committee later states that " the existing procedure is in our opinion . . . too expensive, and in certain respects archaic, cumbrous, and too inelastic."[18] The adequacy of the prerogative writs will be examined later, but it should be observed that, if the Courts heeded the suggestion of Brett, L.J.,[19] that the writs should be used freely, the writs of certiorari and prohibition would seem to be reasonably adequate for the purposes which the Committee had in mind.[20]

The writs of certiorari and prohibition are, except where specifically excluded under statutory authority, available to persons who wish to question the jurisdiction of administrative tribunals.[21] On the ground of expense, however, it might be desirable to replace the writs by some procedure under which simple and cheap access to the Courts could be assured. The Committee outlined such a procedure at p. 117 of their Report.[22]

Secondly, the Committee recommended that administrative tribunals should vigilantly observe the following principles of natural justice:

(*a*) That no man should be a Judge in his own cause. Observance of this principle is enforced by the Courts and has been so enforced for many years.[23]

(*b*) That no person should be condemned unheard. Observance by administrative tribunals of this principle has also been enforced by the Courts.[24]

(*c*) That the parties should be advised of the reasons for the decision of administrative tribunals. Sir Maurice Gwyer stated in his written memorandum for the Committee[25]:

> I would encourage Departments to give reasoned decisions where possible and to make them available to the public, where they are such as to be of general interest, which is by no means invariably the case.

In reference to appeals on questions of law, the Committee stated[26]:

> In our opinion the maintenance of the rule of law demands that a party aggrieved by the judicial decision of a Minister or Ministerial tribunal should have a right of appeal from that decision to the High Court on any point of law . . . It is, in our opinion, of great practical importance that a uniform and simple procedure should be established for all such appeals. In general:
>
> (*a*) The time within which appeals may be brought should be strictly limited;
>
> (*b*) The appeals should be determined in a summary manner;
>
> (*c*) The appeal should be to a single Judge of the High Court and the question of appropriating particular Judges for such cases (on the lines of the Commercial Court and revenue cases) should be considered;
>
> (*d*) The decision of the High Court on an appeal should be final.
>
> But we recognize that there may occasionally be legal questions of unusual importance, and for these we would give the High Court and the Court of Appeal power to give leave to appeal further . . . we are satisfied that there should as a rule be no appeal to any Court of law on issues of fact.

[*To be continued.*]

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[12] *Ibid.*, p. 117; see also *Board of Education* v. *Rice*, [1911] A.C. 179, 182 (per Lord Loreburn, L.C.), and *Local Government Board* v. *Arlidge*, [1915] A.C. 120, 132 (per Lord Haldane, L.C.), 138 (per Lord Shaw of Dunfermline), 150, 151 (per Lord Moulton).

[13] D. M. Gordon, (1933) *49 Law Quarterly Review*, 94, 419, 423 *et seq.*, 441, and C. K. Allen, *Law and Orders*, (1945) 73.

[14] The meaning of this term is far from clear. See W. A. Robson, *Justice and Administrative Law*, 3rd Ed. (1951) 478, 479, 325-332, and H. W. R. Wade, "The Twilight of Natural Justice," (1951) *67 Law Quarterly Review*, 103.

[15] See, however, W. A. Robson, *Justice and Administrative Law*, 3rd Ed. (1951) 610, 611.

[16] See cases cited by D. M. Gordon, (1933) *49 Law Quarterly Review*, 419, 421, 422, notes 10-13.

[17] The recommendations appear on pp. 97 and 98 of the Committee's Report.

[18] *Ibid.*, 99.

[19] *The Queen* v. *Local Government Board*, (1882) 10 Q.B.D. 309, 321.

[20] Reference should be made to the opinion of Sir Maurice Gwyer, who in evidence before the Committee on Ministers' Powers submitted a written memorandum, an extract from which reads as follows:

" 12. I recognize, however, that justice must not only be done, but also seem to be done, if public confidence is to be retained, and I am convinced that all Departments would be ready to examine with an open mind any proposals for an improvement in the present system, provided such proposals are made with an understanding of the difficulties and a real knowledge both of what the system was designed to secure and of the reasons which have caused it to be established. *The Courts have already ample power by means of certiorari to restrain Departmental tribunals within the limits of their jurisdiction.*" (The italics are mine.) *2 Minutes of Evidence taken before the Committee on Ministers' Powers*, H.M.S.O. (1932), pp. 17, 18.

[21] Note, however, that the Courts react strongly against their exclusion by statute. Consider, for example, *New Zealand Waterside Workers' Federation Industrial Association of Workers* v. *Frazer*, [1924] N.Z.L.R. 689 698, 702, 703 (per Salmond, J.), *Goldsack* v. *Shore*, (1950) 66 T.L.R. 636, 638, and the *obiter dictum* in *Short* v. *Auckland Transport Board*, [1951] N.Z.L.R. 808, 813 (per F. B. Adams, J.). See also a note by B. Schwartz entitled " Administrative Finality: 'Conclusive Evidence' Clause: Inquiry into Vires of Administrative Action," (1950) *28 Canadian Bar Review*, 673-679.

[22] Cmd. 4060 (1932), p. 117, para. IX.

[23] See *The Queen* v. *Rand*, (1866), L.R. 1 Q.B. 230, *Cottle* v. *Cottle*, [1939] 2 All E.R. 535, *Leeson* v. *General Council of Medical Education and Registration*, (1889) 43 Ch.D. 366, and *The King* v. *Sunderland Justices*, [1901] 2 K.B. 357.

[24] See *Parsons* v. *Lakenheath School Board*, (1889) 58 L.J.Q.B. 371, *Board of Education* v. *Rice*, [1911] A.C. 179, and *Local Government Board* v. *Arlidge*, [1915] A.C. 120.

[25] *2 Minutes of Evidence taken before the Committee on Ministers' Powers*, H.M.S.O., p. 18. Consider s. 85 of the Transport Act, 1949, which requires an Authority to give reasons for its decisions. Such a provision appears to be exceptional, however. It would be desirable for the decisions of the important administrative tribunals to be made available to the public. Some of the decisions of the Land Valuation Court appear in the *New Zealand Law Reports*.

[26] Cmd. 4060 (1932), p. 108.

CONTRACTS BY INFANTS.

By E. C. ADAMS, LL.M.

Changes in the law, which are of more interest to the lawyer than to the general public, seem to come upon us, unheralded and unsung: yet these changes may vitally affect the lives of our people. An example of such a change will be found obscurely tucked away in a section in the latest Statutes Amendment Act, 1951. Here will be found the most material modification to the law as to contracts by infants ever enacted by the New Zealand Legislature. The learned Editor of this JOURNAL recently dealt with s. 10 of the Statutes Amendment Act, 1951 (*Ante*, p. 2). Perhaps an article, attempting to explain at more length the history of this branch of the law of contracts, and the effect of statutory modifications of the common law, will be of some slight interest to readers of this JOURNAL.

An examination of the common law will show that in this, as in most other, branches of the law the common law is based on sound common sense. Then, it may be asked, why alter the common law? The answer is that all legal systems must either adapt themselves to changing conditions of human life and behaviour or perish. Law exists for the benefit of man, not man for the benefit of law. Nowadays, many young people under the age of twenty-one years have far more money at their disposal than minors had in previous periods: work is plentiful and wages high to the willing, and often, also, to the rather unwilling. Naturally, the wiser of these young people with this superfluity of money desire to enter into contracts which they think will prove beneficial to them. In any case, it is far better for the young to enter into prudent contracts than to waste their earnings—hardly earned or easily earned—on the totalizator or the bookmaker, and these two avenues of gambling have always been open to them.

As to the history of the matter, let us start with Coke and Littleton.

> And it is to be understood, that when it is said, that males or females be of full age, this shall be intended of the age of 21 years; for if before such age any deed or feoffment, grant, release, confirmation, obligation, or other writing, be made by any of them, etc., or if any within such age be baylife or receiver to any man, etc., all serve for nothing, and may be avoided.

2 Coke upon Littleton, 172a, has this commentary on the above words of Littleton "*Or other writing, be made by any of them, etc.*":

> Here by this etc. is implied some exceptions out of this generality, as an infant may bind himselfe to pay for his necessary meat, drinke, apparell, necessary physicke, and such other necessaries, and likewise for his good teaching or instruction, whereby he may profit himselfe afterwards: but if he bind himselfe in an obligation or other writing with a penalty for the payment of any of these, that obligation shall not bind him. Also other things of necessity shall bind [him] as a presentation to a benefice, for otherwise the laps shall incur against him. Also if an infant be an executor upon payment of any debt due to the testator, he may make an acquittance; but in that case a release without payment is voyd; and generally whatsoever an infant is bound to do by law, the same shall bind him, albeit he doth it without suit of law.

It has never been the law that infants can do no binding acts. As Lord Mansfield said in *Zouch d. Abbot and Hallet* v. *Parsons*, (1765) 3 Burr. 1794, 1801; 97 E.R. 1103, 1107:

> Great inconvenience must arise to others, if they were bound by no act. The law, therefore, at the same time that it protects their imbecility and indiscretion from injury through their own imprudence, enables them to do binding acts, for their own benefit; and, without prejudice to themselves, for the benefit of others.

Later on in the same judgment, Lord Mansfield points out, at p. 1802; 1107:

> that the acts of an infant, which do not touch his interest, but take effect from an authority which he is trusted to exercise, are binding: as, where an infant-patron presents; an infant-executor duly receives and acquits, pays and administers the assets; an infant-head of a corporation joins in corporate-acts; an infant officer does the duty of an office which he may hold.

Thus, an infant mortgagee under the Land Transfer Act, 1915, could not give a valid discharge if he held the mortgage in his own right. But he could give a valid discharge on repayment if he held it in another right, or in a representative capacity, and had no beneficial interest therein.

The privilege accorded to an infant in respect of contracts entered into by him is in the nature of a shield, and not a sword, so (at p. 1802; 1107) "that it never shall be turned into an offensive weapon of *fraud or injustice.*" Earlier, Lord Mansfield said, at p. 1801; 1107:

> If an infant does a right act which he ought to do, which he was compellable to do, it shall bind him: as if he makes equal partition; if he pays rent; if he admits a copyholder, upon a surrender.

Thus, although an infant is in general not liable for debts incurred in the course of his trading, if he obtains credit for it by a fraudulent misrepresentation as to his age, he may be compelled to make restitution: *1 Halsbury's Laws of England*, 2nd Ed. 618. Thus, also, when an infant has paid for something and has consumed or used it, it is contrary to natural justice that he should recover back the money which he has paid; but he will be relieved from future liabilities on such a contract: *Valentini* v. *Canali*, (1889) 24 Q.B.D. 166, 167.

The general rule as to contracts entered into by infants is thus stated in *17 Halsbury's Laws of England*, 2nd Ed. 604:

> At common law, an infant's contracts are, in general, voidable at the instance of the infant, though binding upon the other party. Exceptions to this rule are contracts for necessaries, and certain other contracts such as contracts of service and apprenticeship, if they are clearly for the infant's benefit; such contracts are good and binding upon an infant.

The onus of proof is on the plaintiff to establish that the contract is one for necessaries or one for the benefit of the infant.

According to *Anson's Law of Contract*, 18th Ed. 119, those contracts entered into by an infant which were voidable could at common law be divided into two classes:

(*a*) Contracts which were valid and binding on the infant *until he disaffirmed them*, either during infancy or within a reasonable time after majority.

(*b*) Contracts which were not binding on the infant *until he ratified them* within a reasonable time ater majority.

Anson, commenting on class (*a*), says, at p. 119 :

> (*a*) Where an infant acquired an interest in permanent property to which obligations attach, or entered into a contract involving continuous rights and duties, benefits and liabilities, and took some benefit under the contract, he would be bound, unless he expressly disclaimed the contract.

Thus, until he repudiates, an infant is liable for calls on shares and for rent which has accrued due under a lease : *17 Halsbury's Laws of England*, 2nd Ed. 607.

The effect of the disclaimer of such a contract either during minority or within a reasonable time after majority is to release the infant from his obligations under it. But it will not entitle him to recover anything that he may have already paid under the contract, unless there has been a total failure of the consideration for which the money has been paid : *Steinberg* v. *Scala (Leeds), Ltd.*, [1923] 2 Ch. 452.

Anson, in commenting on contracts of class (*b*)—*i.e.*, contracts which were not binding on the infant until he ratified them within a reasonable time after majority —says, at p. 122 :

> In the case of contracts that are not thus continuous in their operation, the infant was not bound unless he expressly ratified them upon coming of age. Thus a promise to perform an isolated act, such as to pay a reward for services rendered, or a contract wholly executory, and indeed all other contracts other than continuing contracts or contracts for necessaries, or for the infant's benefit, required an express ratification.

Anson was explaining the position at common law ; but the effect of s. 12 of the Infants Act, 1908 (hereinafter referred to), is that it is no longer possible for an infant to ratify after majority this second class of contract, and this is so whether or not there is a new consideration for the promise or ratification after majority.

Section 12 of the Infants Act, 1908, reads as follows :

> All contracts, whether by specialty or by simple contract, entered into by infants for the repayment of money lent or to be lent, or for goods supplied or to be supplied (other than contracts for necessaries), and all accounts stated with infants, shall be absolutely void :
>
> Provided that this enactment shall not invalidate any contract into which an infant may, by any existing or future statute, or by the rules of common law or equity, enter, except such as now by law are voidable.

(To be concluded.)

SIR THOMAS MORE, THE LAWYER.

By Richard O'Sullivan, Q.C.

I.—In The City.

In our day the fame of Sir Thomas More (who now appears in the Catalogue of the British Museum as Saint Thomas More) seems steadily to expand, and promises presently to encompass all the world.

During the last twenty years, apart from the classical *Life of Thomas More* by Professor R. W. Chambers, the memorable *Portrait* by Algernon Cecil, and the valuable study of *Sir Thomas More and His Friends* by Miss E. M. Routh, the Early English Text Society has published in turn three of the great Tudor lives of More, by William Roper, by Nicholas Harpsfield, and by the otherwise unidentified Ro. Ba. In 1928 the other great Tudor life (being Part III of the *Tres Thomae* of Thomas Stepleton) was translated for the first time into English and published here.

Outside England men have also hastened to pay their homage : Professor Donner of Stockholm with a learned *Introduction to Utopia* in 1945, and Professor de Wocht in Belgium with the important *Acta Thomae Mori* in 1947. In France a popular study of Thomas More under the title *Un Résistant Catholique* was published by Léon Lemonnier in 1948. In Switzerland, between the wars, Oskar Bauhofer wrote some penetrating articles on the politico-religious significance of Sir Thomas More. In the United States, within our period, at least two lives of More have been written, by Daniel Sargent and Theodore Maynard. In 1948, James Mason Cline of the University of California published an attractive essay on *Roper's More*.

As long ago as 1890 Karl Kautski, one of the early Communists, wrote a biography of More, the author of *Utopia*, " a man of genius who understood the problems of his age before the conditions existed for their solution " ; a man who " championed the oppressed classes even when he stood alone." " *Utopia* will soon be four hundred years old, but still his ideals are not defeated, still they lie before struggling mankind." In the Marx Engels Museum at Moscow, a special room is dedicated to the works of Thomas More and to translations of the *Utopia* in Russian and other foreign languages.[1]

There are books also which trace the influence of Thomas More on early Tudor drama, on the continuity of English prose, and on his place in English history and literature. Perhaps the most interesting development lies in the field of Shakespeare criticism where, in an Elizabethan manuscript in the British Museum of a play entitled *The Boke of Sir Thomas More*, three pages of 150 lines have been identified as the actual composition and handwriting of Shakespeare.

In all that has thus been written and published concerning Sir Thomas More there is little of his life and work as a lawyer and as a Judge. One might be led almost to think that his days had been devoted to letters and that he had had little to do with the law and little interest in it. Yet, as soon as he had decided, at Oxford or in London, that he lacked a vocation for the priesthood, the law became the profession of his choice, and was always his way of livelihood.

He was, one may say, of a legal family. His father John More (who died in 1530) was for many years one of the Judges of the King's Bench.[2] Elizabeth, daughter of Sir John More and sister of Sir Thomas

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[1] To this exhibition, towards the end of the late war, certain items were added through purchases made in London at the dispersal of the great John Burns Collection of the works of Thomas More.

[2] Before him, in Westminster Hall, Sir Thomas More as Lord Chancellor was wont to kneel and ask a blessing as he passed by the Court of King's Bench to his place in the Chancery.

More, married John Rastell, lawyer and printer and many other things beside. Their son William Rastell, nephew of Thomas More, was a lawyer and author of a famous *Book of Entries*, and in the reign of Mary was one of the Queen's Judges. It was he who edited in 1557 the magnificent volume of *The English Works of Sir Thomas More*. (He too wrote a great *Life of Sir Thomas More* of which only a small fragment survives.) William Roper also, who married Margaret, the favourite daughter of Sir Thomas More, was by profession a lawyer and a member of Lincoln's Inn, of which his father John Roper (son-in-law of Fineux, C.J.) was also an active member, and closely associated there with Sir John More and Sir Thomas More.

That young Thomas More was a brilliant student in the law we may infer from the fact that immediately after his call to the Bar he was appointed Reader in English Law to the students at Furnivall's Inn. As a young lawyer, too, he lectured in the Church of St. Laurence on the philosophical and historical aspects of the *De Civitate Dei* of St. Augustine, " before the chief and best learned men of the City of London."

Like many a young apprentice in the law, Thomas More (having now ceased to live at the Charterhouse and being newly married) sought and found a place in Parliament in the last years of Henry VII. The King having asked for a subsidy of three-fifteenths, young More opposed the grant and " with such reasons and arguments debated and enforced the matter that the rest of the Lower House condescended to his mind and the Bill was overthrown." A Privy Chamberlain reported to the king that " a beardless boy had disappointed and dashed all his purpose."[3]

In due course young More filled a series of offices in Lincoln's Inn. In 1507 he acted as Pensioner. In the autumn of that year he was elected Butler for Michaelmas Term. He lent money to the Inn for the New Building (it was duly repaid). In 1511, he was elected Autumn Reader, and in 1515 he was Lent Reader. To be a Double Reader at Lincoln's Inn in those days was, one imagines, a rare honour.

Over a period of eighteen years or so, young More was a leading practitioner at the Bar and, we are told, appeared on one side or another in all the great causes. " There was at that time in none of the Prince's Courts of the laws of this realm any matter of importance in controversy wherein he was not with the one part of counsel."[4] Already in 1509 he was given the freedom of the Mercers' Company " by the whole Company to have it frank and fre." The Hall of the Mercers' Company was the headquarters of the Merchant Adventurers who " haunted " the quarterly fairs in the Netherlands. Having a grievance against the city of Antwerp, the Venturers were at this time boycotting the Antwerp markets and demanding guarantees from the city of Antwerp. In the autumn of 1509 Antwerp sent its Pensionary Jacob de Wocht with full powers to negotiate a settlement, and the Mercers' Company entrusted young More with the organization and direction of a conference which he conducted in Latin and which, at the end of a week, he brought to a successful conclusion. A year later, in 1510, young More was appointed one of the Under-Sheriffs of the City of London in succession to Richard Brooke (of the *Abridgement*) who became Recorder. As Under-Sheriff he advised the City on points of law and exercised a certain limited jurisdiction.

The City Records show that during the period 1510-1518 he represented the Mayor and Aldermen on many occasions; and in other matters he represented and advised several of the City Companies and the City merchants. In March, 1512, we find him with Aldermen and Bakers, going to the King's Council " to know their pleasure for biscuit for the King." Again in 1512, he is doing business for the Fishmongers and acting in a dispute between the Mayor and the London Crafts in which finally all the Wardens (except the Wardens of the Tailors) consented to go to Parliament " by barge at their cost and appear before the Lords, and to have the Common Serjeant and young More to speak and make answer for them." Another time young More is appointed to a small committee which is " to speak with the Duke of Buckingham and the Bishop of Norwich for the Act concerning Corporations "; and again, when a committee is appointed to fix the price of victuals, " Mr. More the younger " is appointed assistant to them Anon he is named with the Recorder to arbitrate between the parishioners of St. Vedast and the Fellowship of Saddlers.

In the course of his practice during these years young More (as he continued to be called so long as his father lived) established a reputation for wisdom and knowledge and experience of affairs. In 1515, when the time came for a periodical renewal of the Intercursus with the Netherlands, the London merchants petitioned that Thomas More should accompany Tunstall and the other commissioners. It is this embassy that is described in the opening chapter of *Utopia*.

In the introduction to *Utopia* there is a sketch of young More's daily life during these busy years:

> Whiles I doo dayelie bestow my time aboute lawe matters: some to pleade, some to heare, some as an arbitratoure, with myne awarde to determine, some as an umpier or a Judge, with my sentence finally to discusse; whiles I go one waye to see and visit my frende; another way about myne owne privat affaires; whiles I spend almost al the day abrode amonge others, and the residue at home among myne owne; I leave to myself, I meane to my booke no time. For when I am come home, I muste commen with my wife, chatte with my children, and talk wyth my servauntes. All the whiche thinges I reckon and accompte amonge businesses, forasmuche as they muste of necessitie be done; and done must they nedes be, onelesse a man wyll be straunger in his owne house. And in any wyse a man muste fashyon and order hys conditions, and so appoint and dispose him selfe, that he be merie, jocunde, and pleasaunt amonge them, whom eyther nature hathe provided, or chaunce hath made, or he hym selfe hath chosen to be the felowes, and companyons of hys life; so that with to muche gentle behavioure and familiaritie, he do not marre them, and by to muche sufferaunce of his servauntes make them his maysters. Amonge these thynges now rehearsed, stealeth awaye the daye, the moneth, the yeare. When do I write then? And all this while I have spoken no worde of slepe, neyther yet of meate, which emong a great number doth wast no lesse tyme than doeth slepe, wherein almoste halfe the life tyme of man crepeth awaye. I therefore do wynne and get onely that tyme which I steale from slepe and meate. Whiche tyme because it is very little, and yet somewhat it is, therefore have I at the laste finished *Utopia*, and have sent it to you frende Peter, to reade and peruse.

It is plain that the author of *Utopia* thought of himself as essentially a lawyer and as a man of letters only in his spare time.

[3] The King was deeply offended and devised a causeless quarrel with John More, the father, who was committed to the Tower. In order to recover his liberty he was obliged to pay a fine of £100 to the King. In 1508 young More, now " clogged with children," went abroad to visit the Universities of Paris and Louvain, being minded (as it seems) to emigrate with his family and to seek a livelihood abroad in literary studies.

[4] Out of his practice at the Bar and his office as Under-Sheriff he was said at one time to have " gayned without grief not so little as four hundred pounds by the year," which is the equivalent of some ten thousand pounds of our money before it began to lose its value and became in the language of our Parliamentarians " a meaningless symbol."

IN YOUR ARMCHAIR—AND MINE.

By Scriblex.

Pyrrhic Victory.—The working of the bureaucratic ideal is manifest in the case of the owner of a small hotel in Wellington who decided to expend £5,000 on the erection of a well-appointed small bar and off it, and a distance of some nine feet away, a tastefully-furnished lounge. Beer was not sold at this bar but only at the public bar where there was a plentiful supply of spirits at 10d. for the regulation measure. In the "lounge bar," as it was called, spirits cost 1s. On a charge that he had sold spirits in October at 1s. to a Price Tribunal official other than for "consumption in a lounge," the licensee was convicted by Mr. Hessell, S.M., the gravamen of the decision being that the intention of the licensee that spirits were to be consumed in the lounge and not at the bar was not made clear to the purchaser. Large notices were then displayed in the far area that all drinks sold there were to be consumed in the lounge. The licensee was again prosecuted by the Price Tribunal and convicted in February by Mr. Thompson, S.M., who held that the bar appointments and accessories—ledges for glasses, bar rail, and cigarette receptacles—constituted a tacit invitation to drink at the bar, and the notices did no more than seek to provide a defence to a prosecution. On appeal, Hay, J., quashed the conviction, holding that the inferences to be drawn from the tacit invitation should not prevail over the express direction unless the Court could find the direction deliberately misleading or untrue, and on the facts the matter was left in doubt. Three days after this decision a new Price Order was gazetted (No. 1366, March 27, 1952) substituting "served" for "for consumption in a lounge" and providing:

> For the purposes of the Order liquor shall be deemed to be served in a lounge or a dining-room only if it is served to the purchaser by the licensee or his servant in a lounge or dining-room and not directly to a purchaser over a counter.

It is doubtful whether in the three days' respite between Supreme Court decision and new Price Order the licensee collected enough twopences to pay for his amended notice citing, in large print, the approval of the Court to his charges. It is also doubtful whether Government Departments under delegated authority (the Order is that of the Price Tribunal acting with the authority of the Minister, not that of the Minister of Industries and Commerce himself) should have the power to negate Court decisions without adequate opportunity being afforded to interested parties to be heard.

The Weir Commission.—The *New Zealand Gazette* of March 27 appoints Mr. H. W. Bundle, S.M., of Nelson, now retired, to be a Commission to inquire into and report upon the manner in which Police officers handled the investigation of the facts before bringing a charge under s. 123 (1) of the Post and Telegraph Act, 1928, against Daniella Sylvia Joan Weir that she fraudulently stated that she had posted a postal packet containing the sum of £5 whereas in fact she did not post it. References to the circumstances in which it was alleged she was interrogated and made her statement have already been published in this Journal, as have denials by the Police Department and the Acting Minister of Justice. The Commissioner is a man of wide experience and is given ample scope in the order of reference to sift the whole matter.

Alcoholic Note.—Clifford Bax, in his third book of critical studies, *Some I Knew Well* (Phoenix House), speaks of once offering George ("AE.") Russell a drink when that famous Irish writer came to see him in London. AE. replied:

> No, my dear man, no, thank you, nothing, nothing. I have been drunken only once in my life and that was when I and a colleague had been bicycling or walking all day in the West of Ireland and we had eaten nothing. Towards evening we came to an inn, and I put two spoonsful of that horrible stuff—whisky—into my glass, and almost immediately heard my own voice rolling towards me from many miles away.

The extract is offered as an additional test in the ever-increasing "drunk-in-charge" cases. Indeed, the last one Scriblex has come across concerns a circus-hand who appeared before Mr. J. B. Sandbach at the South Western Police Court charged with being drunk in charge of a llama. It seems that the circus authorities, to save rail fare, decided to send the llama from one side of London to the other on foot. The circus-hand, as the day was hot, stopped at various pubs *en route*, and, after the fourth or fifth call, "realized his need for support, and placed his arm over the llama's neck, much as one uses a sling in a railway carriage, and, cheek by jowl with the llama, proceeded on his way." Unfortunately, the keeper's legs gave out altogether after a few more calls, and the sagacious beast stopped with the keeper's arms both entwined round his neck and his feet just touching the ground. No one suggested seven days' imprisonment; and a fine of half a crown was imposed.

The Tribunal's Face.—The headnote in *R.* v. *Northumberland Compensation Appeal Tribunal, Ex parte Shaw*, [1952] 1 All E.R. 122, reads (in part):

> On an application by the applicant for an order of certiorari to remove the order of the tribunal into the High Court to be quashed it was admitted that an error of law appeared on the face of the tribunal.

To wipe an error of law off the face of a tribunal is a task calling for the highest degree of tact: such a process of expungement should not be attempted by the young and inexperienced practitioner. Courts invariably resent interference with a mistake of law, which, once made, belongs to the fortunate possessor and will not be readily removed. On the other hand, an error of fact upon the tribunal's face can be detected by the exercise of reasonable skill. Juries that hasten back with a pleased expression into their box to deliver a verdict are almost invariably bound to be wrong or, at least, more wrong than usual. In the case of the Judge sitting alone, the furtive glance at the Press reporters' table and the reddening blush spread unevenly over the countenance are signs of a judgment later to be reversed upon appeal. Where, in Fluellen's well-known description of Bardolph's face, the tribunal's "is all bubukles and whelks and flames of fire," then to assume error of law may be a mistake of fact. It may, indeed, be no more than imminent somnolence consequent upon an ill-digested luncheon at the club.

PRACTICAL POINTS.

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1. Death Duty.—*Deceased's Widow entitled to Pension—Liability of Pension Moneys to Estate and Succession Duty—Death Duties Amendment Act, 1950, s. 3.*

QUESTION: I am administering the estate of a deceased clergyman, who died recently. He has left assets worth about £5,000, and his widow is his sole beneficiary. In addition, she has become entitled to a pension by reason of his death. I understand that, calculated actuarially, the present value of this pension amounts to about £800. Will the pension moneys be liable to estate duty and/or succession duty?

ANSWER: Section 3 of the Death Duties Amendment Act, 1950, provides that the value of any pension payable out of an *approved* superannuation fund to a widow is not deemed to form part of the husband's dutiable estate. The approving authority is the Commissioner of Stamps. He may or may not already have approved of the particular pension scheme concerned. If, therefore, he has not already dealt with this particular pension scheme, application should be made to him to approve of it. If duly approved, estate or succession duty will not be payable in respect of the pension moneys.

Attention, however, may be drawn to the fact that s. 3 of the Death Duties Amendment Act, 1950, does not apply to any *commuted* pension. If, therefore, the widow elects to have her pension wholly or partially commuted, the amount she receives by way of commutation will be liable to estate and succession duty.

X.2.

2. Sale and Purchase of Land.—*Covenant in Agreement by Purchaser not to build House of Less than Certain Value—Purchaser taking Land Transfer Title—Whether Covenant registrable under Land Transfer Act, 1915.*

QUESTION: My client owns two adjoining lots. He has agreed to sell Lot 1 to A. In the agreement, A covenanted not to build on Lot 1 any house of a value less than £4,000. A is now taking title under the Land Transfer Act, 1915. The vendor is retaining ownership of Lot 2, and desires to have the restrictive covenant noted against the titles to Lots 1 and 2. Is this permissible, if the covenant is included in the transfer?

ANSWER: In the present state of the law, this restrictive covenant cannot be registered, and cannot be noted on the Land Transfer Register Book: *Staples and Co., Ltd.* v. *Corby and District Land Registrar*, (1900) 19 N.Z.L.R. 517, 530, *Wellington and Manawatu Railway Co., Ltd.* v. *Registrar-General of Land*, (1899) 18 N.Z.L.R. 250, *Staples* v. *Mackay*, (1892) 11 N.Z.L.R. 258, 262, and *Gallagher* v. *Thomson and Allen* [1928] G.L.R. 373.

The restrictive covenant by A, however, could be registered and noted on the Register Book if the execution of the transfer could be delayed until January 1, 1953, provided that the benefit of the covenant was expressly annexed to Lot 2: Property Law Amendment Act, 1951, and *Ante*, p. 25.

X.2.

The Changing Commonwealth

"In the years since the close of the Second World War, the Commonwealth itself has undergone a profound change. Until the close of the War, the Commonwealth was composed of nations, apart from the United Kingdom, geographically outside Europe but predominantly European in their origins and in the basic character of their institutions. The inclusion within the Commonwealth circle, as absolutely equal partners, of three great Asian nations may well prove to be as important a landmark in the development of the Commonwealth as the recognition of complete self-government was in 1926. Although the Commonwealth grew out of a colonial Empire, this latest development is the complete reversal of colonialism. And it is a change which has not come too soon . . . The United Kingdom Minister for Commonwealth Relations, Mr. Patrick Gordon-Walker, has said that the Commonwealth contains within itself "the only real bridge between Asia and the West." As we look out on the world to-day, this statement is almost literally true. I believe it is of the utmost importance, not only for the Commonwealth but for the world, that this bridge should be preserved, and it seems to me that all of us in the Commonwealth, and particularly the Asian nations, can do much to remove dangerous misunderstandings in the East about the real purposes and policies of the Western nations."—From an address by the Rt. Hon. L. S. St. Laurent, Prime Minister of Canada, to the Canada Club in London on January 8, 1951.

Nameless Acts.

AT the beginning of these paragraphs to-day we have drawn attention to yet a third Order appointing days for the coming into force of sections of 11 and 12 Geo. 6, c. 58, popularly called the Criminal Justice Act, 1948. The lawyers' task at the present day is like that of the Light Brigade—theirs not to make reply, theirs not to reason why, theirs but to try to find out when each one of the multitude of new enactments that are to guide our footsteps in paths of peace actually is brought into force, and, of course, to understand and apply it when found to be in force. Recognizing that there must be good reasons, none the less cogent because they are at times hidden from us, why this particular type of journey through a maze of appointed days to the goal of being fully in force is really necessary for so many statutes, we may still be permitted the query—Has this particular Act, now partly in force, any effective name? We venture to draw the attention of the powers that be, whose child this Act is, to the fact that it seems yet to remain legally unchristened. "This Act," says s. 83 (1), "may be cited as the Criminal Justice Act, 1948"; but no day has yet been appointed for this subsection to take effect. About a nameless Act there is something sinister—the imagination conjures up such visions as those inspired by the witches' reply to the thunder of Macbeth's question, "How now, you secret, black and midnight hags! What is't you do?" All replied, "A deed without a name."—*Law Journal* (London).