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RECENT LEGISLATION OF INTEREST TO PRACTITIONERS.

THE Parliamentary Session of 1952 was of particular interest to practitioners for the number and variety of the new statutes, many of them involving new law. In addition, there are some consolidating statutes of everyday use, such as the Administration Act, 1952, the Land Transfer Act, 1952, and the Property Law Act, 1952. The new Statute-book could properly be termed a "lawyers' law" lexicon.

CONSOLIDATED PROPERTY STATUTES.

When the Land Transfer Act, 1952, and the Property Law Act, 1952, were consolidated, the familiar statutes of 1915 and 1908, respectively, with their many amendments, underwent a rearrangement of subject-matter and now contain a number of amendments. In the coming year, the new statutes will be the subject of a series of articles by our learned contributor, Mr. E. C. Adams.

The Land Settlement Promotion Act, 1952, was the subject of an explanatory article on p. 329 of last year's volume of the JOURNAL.

New statutes which amend previous revenue provisions have been the subject of special articles: "Livestock Values and Taxation", (1952) 28 NEW ZEALAND LAW JOURNAL 346, and one on recent statutory amendments in Death and Gift Duty Law, on p. 10, *post*.

The Industrial and Provident Societies Amendment Act, 1952, with special reference to the compulsory registration of charges, was dealt with in the last volume of the JOURNAL, p. 344.

We shall, therefore, confine our attention here to new statutes outside the ambit of the law of property.

ADMINISTRATION.

The Administration Act, 1952, which came into force on January 1, 1953, is a consolidation of the Administration Act, 1908, and the amendments in force when the new Act began to operate. Besides changes in the formal phrasing, made to accord with current drafting practice, alterations to bring the Act into conformity with present-day conditions appear in ss. 5, 6, 13, 19, 21, 25, 40, 45 (2), 46, 47, 52, and 53. Details of these alterations are as follows:

Section 4 of the Administration Amendment Act, 1911, required that notice to the Public Trustee of the filing of applications for administration had to be sent by telegram. Section 5 (2) of the new statute places no restriction on the manner in which the notice may be given, but provides that any such notice will be sufficient if sent by telegram.

In s. 6 (1) of the new statute, dealing with administration bonds, the words "which bond shall be in such form as may be prescribed by rules" are used instead of the words in s. 21 of the Administration Act, 1908, "which bond shall be in such form as may be prescribed by rules, and in the meantime shall be in the form heretofore in use." Actually, a form was prescribed by the Code of Civil Procedure which formed a Schedule to the Supreme Court Act, 1882, and a form has ever since been in force. At the present time, it is Form No. 42 in the First Schedule to the Code of Civil Procedure.

Section 11 of the Administration Act, 1908 (as amended by s. 12 of the Administration Amendment Act, 1944), recapitulated in detail the devolution of real estate upon intestacy, according to whether the death occurred (*a*) after the coming into force of the Administration Amendment Act, 1944; (*b*) before the coming into force of the Administration Act, 1879, and after the coming into force of the Real Estate Descent Act, 1874 (the case of a male person leaving a wife or child or children or any lineal descendant and the case of any other person being dealt with in separate paragraphs); or (*c*) before the coming into force of the Real Estate Descent Act, 1874.

Section 13 (*c*) of the new statute substitutes for s. 11 (as amended) a reference in general terms to the law that would have applied if the Act had not been passed. It is as follows:

> The real estate of any person who has died before the commencement of this Act intestate as to that real estate—according to the provisions of the enactments and law which would have applied thereto if this Act had not been passed.

In s. 19 of the new statute, the words of s. 12 of the Administration Act, 1908, "such powers (similar to those of Commissioners in England acting under a decree in equity for partitions) as it thinks fit" are shortened to "such powers as it thinks fit." The employment of Commissioners in England appears to be obsolete, and the exact range of their powers nowadays is difficult to ascertain.

In s. 21 of the new statute, the words of s. 15 of the Administration Act, 1908, "every person dying on or after the 1st day of September, 1880," are changed to

" every person who has died, whether before or after the commencement of this Act " (namely, January 1, 1953). There is now no need to provide for the case of a person who died before September 1, 1880.

In s. 25 (3) of the new statute, the words " a notice calling upon him, within a period of three months from the date of service of the notice to take legal proceedings to enforce the claim ", represent the passage in s. 3 (1) of the Administration Amendment Act, 1911, which read : " a notice calling upon him to take legal proceedings within a period of three months to enforce the claim ". A notice following those words did not make clear to the person served the time from which the period of three months began to run.

Recent constitutional changes, and in particular the Republic of Ireland Act, 1950, necessitate a fresh form of words to replace the expressions " British subject " and " Her Majesty's dominions " in s. 31 of the Administration Act, 1908.

The new section is as follows :

40. (1) Every will and other testamentary instrument made out of New Zealand by a British subject or a citizen of the Republic of Ireland (whatever may be his domicile at the time of making the same or at the time of his death) shall, as regards personal estate, be held to be well executed for the purpose of being admitted in New Zealand to probate if made as required either by the law of the place where the same was made, or by the law of the place where the person was domiciled when the same was made, or by the law then in force in that part of the Commonwealth or of the Republic of Ireland where he had his domicile of origin.

(2) Every will and other testamentary instrument made within New Zealand by a British subject or a citizen of the Republic of Ireland (whatever may be his domicile at the time of making the same or at the time of his death) shall, as regards personal estate, be held to be well executed for the purpose of being admitted in New Zealand to probate if made as required by the law of New Zealand.

(3) No will or other testamentary instrument shall, so far as relates to personal estate in New Zealand, be held to be revoked or to have become invalid, nor shall the construction thereof be altered, by reason of any subsequent change of domicile of the person making the same.

The general rule of law is that a will disposing of moveable property depends for its validity on the law of the domicil. Section 40 (2) of the new statute provides that a will of personal property made by a British subject in New Zealand is valid if made in accordance with the law of New Zealand. It follows s. 2 of the Wills Act, 1861 (U.K.).

Section 45 (2) requires any regulations made under the Administration Act, 1952, to be laid before Parliament. The section is introduced to accord with current legislative practice.

Two new sections, ss. 46 and 47, transfer to the Administration Act, 1952, the provisions relating to administration suits formerly contained in ss. 89 and 96 of the Judicature Act, 1908, which are now repealed. The new sections are as follows :

46. In the administration by the Court of the assets of any deceased person (whether he has died before or after the commencement of this Act) if his estate proves to be insufficient for the payment in full of his debts and liabilities, the same rules shall prevail and be observed as to the rights of secured and unsecured creditors, and as to debts and liabilities provable, and as to the valuation of annuities and future and contingent liabilities, as may be in force for the time being under the law of bankruptcy with respect to the estates of persons adjudged bankrupt; and all persons who in any such case would be entitled to prove for and receive dividends out of the estate of the deceased person may come in under the decree or order for the administration of the estate and make such claims against it as they may respectively be entitled to by virtue of this Act.

47. In any action or other proceeding for the administration of the estate of any deceased person, no Court shall have jurisdiction to order or allow payment of costs out of the estate to the party responsible for the commencement or continuance of the action, unless the Court first certifies that there were reasonable grounds for the action being commenced or continued, and then only to the extent to which the continuance was necessary.

Adjustment is made on the lines of these sections in ss. 50 and 51, which relate to the resealing of probate or letters of administration granted by any competent Commonwealth Court or in the Republic of Ireland.

In s. 67 of the Administration Act, 1908, particular topics on which rules could be made came first, and the general clause at the end was controlled in its interpretation by what preceded it. In the new Act, in s. 78, the general power to make rules comes first, and its words are not so controlled by the list of particular topics that follows.

Sections 1 (2) (5) and 32 of the Administration Act, 1908, are dropped as spent. Section 74 of the Trustee Act, 1908, and s. 2 (1) of the Trustee Amendment Act, 1924, become s. 25 (1) (2) and s. 24, respectively; and s. 5 (2) of the Crown Proceedings Act, 1950, becomes s. 3 of the new statute. Consequently, those sections are repealed, as is so much of the First Schedule to the Crown Proceedings Act, 1950, as relates to the Administration Act, 1908.

Chattels Transfer.

Under s. 12 of the Chattels Transfer Act, 1924, where there are two or more Supreme Court offices in any district, a separate register, containing particulars of all instruments registered and entries made in that district, is to be kept by the Registrar in the " chief town." The chief town is named, in the section, for each district. Section 2 of the Chattels Transfer Amendment Act, 1952, adds to s. 12 of the principal Act a new subs. 3, which empowers the Governor-General, by Order in Council, to substitute the name of another town in the same district in any case where the Court office in a named town is abolished.

Compensation for Taking Land under the Public Works Act, 1928.

A new subs. 5 has been added to s. 22 of the Public Works Act, 1928, by s. 3 of the Public Works Amendment Act, 1952. The new subs. 5 provides that notices of intention to take land which are or have been given under the section are to lapse after a specified date unless they are followed by a notice of confirmation or by a Proclamation taking the land. Where any notice lapses, it may not thereafter be renewed for at least a year. In the case of any notice given after October 23, 1952 (the date of the coming into force of the new provision), the lapse is to occur after one year from the date of the first publication of the notice; and, in the case of any notice given before October 23, 1952, it is to occur after nine months from that date or after one year from the date of the first publication of the notice, whichever is later.

Section 7 of the Public Works Amendment Act, 1952, makes provision for accelerating the hearing of compensation claims by providing that claims for taking land may be heard before the issue of the Proclamation or Order in Council taking the land if—

(*a*) The Minister or the local authority has given notice confirming the intention of taking the land; or

(*b*) The execution has been completed of every portion of the work that will affect the amount of the land of the claimant which will have to be taken for the work or which will be injuriously affected or damaged thereby; or

(*c*) The Railways District Engineer or the District Commissioner of Works or the local authority has declined an application by the owner or occupier of the land for leave to do something which may prejudice the proposed work.

Where the owner or occupier of any land takes advantage of the procedure for accelerating payment of compensation, he is to be precluded from taking proceedings to prevent or delay the execution of the work or the taking of the land.

Section 23 of the Statutes Amendment Act, 1951, varied the principles for determining the date as at which compensation is to be assessed by adding a new subs. 3, and provided for the assessment to be made either at the date of entry for construction purposes or at the date at which the land was taken, whichever was the earlier. That subsection is now repealed. It is replaced by a new subs. 3, which defines the words "specified date" and amplifies the provision by applying the principles to the assessment of compensation paid under s. 7 of the Public Works Amendment Act, 1952, for land proposed to be taken. This particular amendment was made retrospective to February 23, 1950, in respect of land which was then "farm land" within the meaning of the Servicemen's Settlement and Land Sales Act, 1943; and, in respect of other land, the amendment is retrospective to November 1, 1950.

Section 81 of the Public Works Act, 1928, provides that, where the acts of a claimant for compensation who has notice of a proposed work render the execution of the work more costly, the additional cost is to be borne by the claimant and deducted from the compensation payable to him. New subsections (subss. 4-8) are now added to s. 81 to give a claimant relief from this provision where he has acted with the approval of a Railway District Engineer or a District Commissioner of Works or a local authority. By s. 7 (1) (*c*) of the Amendment Act, 1952, failure to grant approval to any such act is made a ground for accelerating the payment of compensation for the taking of the land.

Interest on Debts and Damages.

Section 3 of the Judicature Amendment Act, 1952, substitutes new provisions for ss. 28 and 29 of the Civil Procedure Act, 1833 (3 and 4 Will. 4, c. 42) (under which interest could be recovered on debts or damages in certain cases), and for s. 87 of the principal Act (under which interest recoverable on "a loan of money or on any other contract" was not to exceed 8 per cent. where the rate is not previously agreed upon).

Subsection 1 of the new s. 87 gives any Court a discretion to award interest, at a rate not exceeding 5 per cent., on any debt or damages. It does not authorize the giving of compound interest, or apply to a debt on which interest is payable as of right (for example, under an agreement, by statute, or by mercantile custom), or affect the special provisions of s. 57 of the Bills of Exchange Act, 1908, relating to the dishonour of a bill of exchange. This subsection is in the same terms as s. 3 of the Law Reform (Miscellaneous Provisions) Act, 1934 (U.K.), except that that section does not prescribe a maximum rate of interest. The maximum of 5 per cent. fixed by this Act is the highest rate usually allowed by the English Courts, and is the rate allowed by our Code of Civil Procedure for interest on judgment debts in Supreme Court actions.

Subsection 2 of the new s. 87 deals with cases where interest is payable as of right on debts, but where the rate of interest is not fixed or agreed upon. In those cases, the rate is to be fixed by the Court, with the same maximum—namely 5 per cent.

Evidence.

Competency of Witnesses.—Subsection 2 (1) of the Evidence Amendment Act, 1952, substitutes a new s. 5 for ss. 5 and 5A of the Evidence Act, 1908. The new section sets out in one comprehensive provision the whole of the general law relating to the right of an accused person and the wife or husband of an accused person to give evidence, or to refuse to give evidence, in criminal cases. The new section does not affect certain provisions making an accused person or the wife or husband of an accused person compellable to give evidence in special cases for which provision is made by statute, such as s. 274 of the Customs Act, 1913, and s. 69 of the Destitute Persons Act, 1910. It does, however, replace (in addition to certain rules of the common law) s. 228 (3) of the Crimes Act, 1908 (as to abduction); s. 19 of the Married Women's Property Act, 1908; the Evidence Amendment Act, 1926 (as to bigamy); and s. 237 of the Electoral Act, 1927; and those provisions are accordingly repealed. The new section contains seven subsections.

It will be convenient to comment on each subsection in order, bearing in mind that at common law a competent witness is also compellable: *R.* v. *Lapworth*, [1931] 1 K.B. 117; but see *R.* v. *Grbich*, (1910) 29 N.Z.L.R. 1045. A witness competent by statute is not compellable unless the statute says so: *Leach* v. *The King*, [1912] A.C. 305.

Subsection 1: The general common-law rule was that the wife or husband of a defendant could not give evidence for the prosecution or for the defence on the trial of the defendant except in certain cases which are now dealt with in subs. 3 (*a*). Subsection 1 repeats the general common-law rule, without its exceptions, so far as it relates to evidence for the prosecution.

Subsection 2: This subsection makes accused persons competent witnesses and their wives or husbands compellable witnesses *for the defence* upon the application of the accused, subject to the conditions as to cross-examination set out in paras. (*c*) to (*f*). This is a composite provision in the style of s. 1 of the Criminal Evidence Act, 1898 (U.K.), parts of which it includes, and it is based partly on subss. 3 and 5 of s. 5 of the Evidence Act, 1908. The restatement of the law, as it is contained in paras. (*a*) to (*f*) has been carefully revised and drafted, and may now be said to be a compilation of the best of both the present English and the previous New Zealand provisions. One advantage the new subsection will have over its English counterpart is that the regulation of the cross-examination with respect to the accused's previous convictions remains in the Court's discretion, as has hitherto been the case; in England, the only occasions where such cross-examination will be allowed are expressly enumerated in the relevant section.

Under both parallel sections as they were before the new Act, an accused person was permitted to give evidence on his own behalf, and his wife or her husband, as the case may be, was also a competent witness for the defence. "But", according to the Rt. Hon. Lord Porter, "this permission was hedged about by strict limitations for the protection of the prisoner. It was *his* choice whether he should give evidence or not and *his* or *her* choice whether his wife or her husband should be called": Lecture on English Procedure and Practice, more particularly in Criminal Matters, *Current Legal Problems*, 1949, 13, 19.

The new proposed section removes the husband's or the wife's choice, as it was the view of the Law Revision Committee, in consideration for the prisoner alone, that, if he wants his spouse called for the defence, she should not have the power she previously had to refuse.

Subsection 3: The purpose of this subsection is to prescribe exclusively, as exceptions to the general rule mentioned in relation to subs. 1, the occasions when the spouse may give evidence *for the prosecution* against the other party to the marriage. Before the enactment of this subsection, the wife or husband was:

(*a*) At common law, competent and compellable for the prosecution in respect of offences by the other party to the marriage against the person or liberty of such husband or wife.

(*b*) By statute, competent and admissible—that is, competent but not compellable (*Leach* v. *The King*, [1912] A.C. 305)—for the prosecution in relation to bigamy: Evidence Amendment Act, 1926, s. 3.

(*c*) By statute, competent and compellable in relation to offences under the Married Women's Property Act, 1908, in respect of the property of the wife or husband: s. 19 of that statute.

The new subsection transfers (*c*) to its proper setting, and is otherwise a codification, with amendments, effecting vital changes in the law set out above in (*a*) and (*b*).

By virtue of the new provision, the common-law exception to the general rule as it applies to the evidence of the wife or husband of the accused is replaced by a new statutory rule to make the wife or husband competent but not compellable where she or he has been hitherto compellable in relation to her or his spouse's offences against her or his person or liberty. It also extends the class of exceptional cases, so that all offences against the wife or husband, and not merely those relating to his or her person or liberty, will be covered. At the same time, the element of compulsion will be removed from the statutory rule (*c*). No change is made in respect of the rule at present applicable in the bigamy cases.

The law codified in subs. 3 and the type of provision re-enacted as subs. 4 have attracted the following recent criticism from a contributor, G. S. Wilkinson, in *14 Modern Law Review*, 437:

> Considering first the law as to the giving of evidence for the prosecution in criminal cases by spouses against one another, we see at once some anomalies. A wife may testify against her husband if he is charged with smacking some strange child aged sixteen years and eleven months, but not if he is accused of murdering their own son aged seventeen exactly (Children and Young Persons Act, 1933, s. 15). Again, she may give evidence against him if he has wilfully delayed a National Insurance Inspector inquiring into the payment of contributions or if he has failed to pay his contributions (National Insurance Act, 1946, s. 53), but she must not testify against him if he has half-killed a Police officer or swindled the Government or her own father of thousands of pounds. Even if her husband is jointly charged with others and her evidence relates only to one of the other defendants, she is still incompetent (*R.* v. *Mount and Metcalfe*, (1934) 24 Cr.App.R. 135) and (if called for the Crown) must stand mute—not of malice, not by visitation of God, but by virtue of the wisdom of our Legislature. It is submitted that spouses should be competent witnesses against one another either in all or in no criminal proceedings, so that order may be given to this branch of the law of evidence. (Of course, no change is suggested in the law as to their compellability in cases of violence to one another or larceny of each other's goods.)

As far as the common law is concerned, subs. 3 follows the New Zealand case, *R.* v. *Grbich*, (1910) 29 N.Z.L.R. 1045, rather than the English case, *R.* v. *Lapworth*, [1931] 1 K.B. 117. In the latter, it was held that a witness who is competent under the common law is also compellable, although a witness who is made competent by statute is not compellable unless expressly stated in the statute.

Subsection 4: This is a re-enactment, with a slight correction, of s. 5A of the principal Act, as inserted by s. 2 of the Evidence Amendment Act, 1950, a provision which received the approval of the Law Revision Committee following representations from the Society for the Protection of Women and Children.

Subsection 5: The occasions in England when a prisoner may give evidence for the Crown against a co-prisoner are regulated by four common-law rules, which are compendiously set out in *Archbold's Criminal Pleading, Evidence, and Practice*, 32nd Ed. 466. This subsection codifies these rules, but it makes an additional provision, consistent with the previous rules, to cover cases where the person jointly charged is the wife or husband of the accused. It provides, in accordance with the common law, that a person who is jointly charged with another person can be called as a witness for the prosecution or defence against or in favour of the other person where the proceedings have been stayed or he has been acquitted or has pleaded "guilty" or is being tried separately.

Subsection 6: This subsection makes it clear that, as in England, the evidence of an accused person, or of the wife or husband of an accused person, may be received as evidence for or against any person jointly charged with that accused person.

Under the common-law rule, if a defendant were indicted jointly with other persons, he could not give evidence on his trial against or for any of his co-defendants, if they were tried with him: *9 Halsbury's Laws of England*, 2nd Ed. 213. The effect of s. 1 of the Evidence Act, 1898 (U.K.), on this remnant of the common-law rule seems to be that, as each prisoner is entitled to be called for the defence, and not merely on his own behalf, he is free to give evidence which may exculpate or inculpate a co-prisoner: see *Archbold, op. cit.*, 467, 468, and the cases there collected. The New Zealand counterpart, s. 5 of the Evidence Act, 1908, has not had the same effect on the remnant of the common-law rule, with the result that, when two accused are jointly charged and one gives evidence on his own behalf, the jury, which has heard the evidence, must be told to disregard it when considering its verdict as respects the other prisoner: *R.* v. *Gibbons and Hamilton*, [1944] N.Z.L.R. 465. The purpose of this provision is to abrogate the remnant of the common-law rule which perpetuates this anomaly: see, hereon,

the remarks of the President of the New Zealand Law Society, Mr. W. H. Cunningham, at the Dunedin Legal Conference: (1951) 27 NEW ZEALAND LAW JOURNAL 116.

Subsection 7: This enacts that the new s. 5 is not to affect any other enactment (such as s. 6 of the principal Act, as to communications during marriage), but is to supersede the common law.

Section 6 is a re-enactment, to meet modern requirements and the altered nomenclature of overseas representatives, of s. 119 of the Property Law Act, 1908, and s. 176 of the Land Transfer Act, 1915. Those sections were in effect duplicate provisions related to the law of evidence, and are not limited in application, as are their parent statutes, to real property and instruments pertaining thereto. The amendment avoids the duplication, and provides more appropriate accommodation for the substituted section.

Photographic Copies.—Section 4 enables public records to be proved by prints taken from photographic copies, in the same way as they may now be proved by certified copies of the original records. This will facilitate the keeping of microfilm copies of public records, either to save storage space or to guard against the consequences of the destruction of the original records by earthquake, fire, or other disaster.

Section 5 is to enable the Government, banks, and trustee companies, and also any other bodies or persons authorized by Order in Council, to preserve photographic copies of documents that are subsequently destroyed, damaged, lost, or otherwise disposed of. The section provides that the copies may be proved either orally or by affidavit or statutory declaration, and that any such affidavit or declaration may be used after the death of the person making it.

Verification of Documents, &c.—Section 6 replaces s. 119 of the Property Law Act, 1908, which provides in similar terms for the verification of documents executed outside New Zealand.

Section 7 re-enacts s. 120 of the Property Law Act, 1908, as amended by s. 6 (2) of the Evidence Amendment Act, 1945. The section provides that, after an instrument has been registered under the Deeds Registration Act, 1908, for twenty years or more, its contents and execution may be proved by a certified copy.

Repeals.—Section 8 of the Act repeals s. 36 of the principal Act, which provides that documents admissible in any Court in the United Kingdom without proof of the seal or stamp or signature authenticating them are similarly admissible in New Zealand. Section 36 was open to objection on the grounds of vagueness and inconsistency with the present constitution of the Commonwealth, and is rendered unnecessary by s. 4 of the Evidence Amendment Act, 1950 (as to the proof of public registers, &c.), and by s. 37 of the principal Act (which is extended to acts of State, &c., of the United Kingdom by subss. 2 and 3 of s. 3).

Subsection 4 repeals three United Kingdom Acts—the Evidence Act, 1851, the Documentary Evidence Act, 1868, and the Documentary Evidence Act, 1882—which have ceased to have any application to New Zealand.

SUPREME COURT OFFICES.

By s. 2 of the Judicature Amendment Act, 1952, a new section, s. 23A, is added to the Judicature Act, 1908. It authorizes the Governor-General to establish offices of the Supreme Court in Supreme Court districts, and to abolish any such office. At present the power to establish Court offices is implied in the provisions of the principal Act relating to the establishment of districts and the appointment of Registrars and other officers; but there is no express power to abolish an office and substitute one in another town.

SUMMARY OF RECENT LAW.

ADMINISTRATIVE LAW.

" Natural Justice " *214 Law Times*, 214.

AUCTIONEER.

Goods sold by Auctioneer for Disclosed Vendor—Advertisement of Sale of " Prefabricated cottage . . . suitable for a farmer or beach bach "—Auctioneer's Contract to deliver Goods of Type offered for Sale—Description intended as Statement of Fact to be acted upon by Intending Purchasers—Goods Unfit for Erection as Cottage—Breach of Condition entitling Buyer to rescind qua *Auctioneer and Vendor—Alternatively, Mutual Mistake as to Essential Nature of Goods intended to be sold and bought.* An auctioneer disclosing the name of the vendor and selling a specific article does not give a warranty of title; but, even if the auctioneer's contract is considered merely as a contract to deliver the goods, the contract is to deliver goods of the kind and type that he offers for sale. (*Benton* v. *Campbell, Parker and Co., Ltd.*, [1925] 2 K.B. 410, and *Wilson* v. *Pike*, [1948] 2 All E.R. 267, distinguished.) The respondent advertised in the *Manawatu Daily Times* an intended sale in the following terms: " Account Estate, I. B. Johnston, Wanganui Prefabricated cottage 24 x 12, Gardner Construction, 8 ft. stud, gable roof, flooring, 3 ft. door, packed in 4 lots of 6 ft. section. This cottage is most suitable for a farmer or beach bach and is in first-class order. To be offered at 2.30 p.m. sharp." On October 12, 1951, the respondent's auctioneer offered it at auction; the appellant was present and bid, and it was knocked down to him at £160. He had attended the sale as the result of the newspaper advertisement, as he wished to erect the cottage on a vacant section at Foxton Beach. Before the sale, he told the manager of the responding company at Feilding the purpose for which he wanted the cottage. He first saw the unassembled timbers and fittings, which were in three or four stacks on the respondent's property, on the day of the sale, and did not examine them closely, as he relied on the advertisement describing what was being sold as being " most suitable for a farmer or beach bach ". Three or four days after the sale, the appellant notified the respondent's manager that he would not take the cottage, as he was unable to get a permit to erect it as a cottage. It was proved in evidence that the studs provided for the cottage were only 2 in. x 2 in. in cross-section, and that the requirements of the local authority controlling Foxton Beach as regards studs were that they should be not less than 4 in. x 2 in. It was proved also that the building by-laws of all local bodies between Wellington and Wanganui (inclusive) prescribed a minimum of 4 in. x 2 in. for studs. For those reasons, the appellant refused to take delivery of the cottage or to pay for it, and it remained on the respondent's premises. In an action by the respondent company in its own name, by virtue of its lien on, or special property in, the goods sold, and not under the contract of sale between the purchaser and the auctioneering company's principal (the owner of the cottage), the respondent company claimed the amount of the unpaid sale price. The Magistrate gave judgment for the amount claimed ((1952) 7 M.C.D. 558). On appeal from that judgment, *Held*, 1. That the description of prefabricated material as a " cottage " implied that it could be erected and used as a residence; and that meaning was emphasized by the words " This cottage is . . . suitable for a farmer or beach bach " and by the details given as to the constituents of the material described. 2. That the description was intended as a statement of fact, and it was intended that it should be acted upon by in-

tending purchasers. 3. That it was a condition of the sale that the auctioneer undertook to deliver to the buyer goods fit for erection as a cottage, and the inability of the auctioneer to deliver a cottage was a breach of the condition entitling the buyer to rescind, and he did so *qua* both the auctioneer and the vendor. 4. That, alternatively, there was a mutual mistake as to the essential nature and kind of the article intended to be sold and bought, and the appellant was entitled to succeed also on that ground. (*Nicholson and Venn* v. *Smith Marriott*, (1947) 177 L.T. 189), and *Raffles* v. *Wichelhaus*, (1864) 2 H. & C. 906; 159 E.R. 375, followed.) *Fraser* v. *Dalgety and Co., Ltd.* (S.C. Wellington. September 23, 1952. Fair, J.)

BILLS OF EXCHANGE.

Banker's Liability in Respect of Payment of Forged Cheques (L. W. Gould). *5 Australian Conveyancer and Solicitors Journal*,108.

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CROWN PROCEEDINGS.

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DIVORCE AND MATRIMONIAL CAUSES.

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Delay in Presenting Petition. *214 Law Times*, 261.

Estoppel in Matrimonial Proceedings. *102 Law Journal*, 634.

Restitution of Conjugal Rights—Husband Petitioner formerly Escaped Inmate of Mental Hospital—Wife not raising Such Matter in Her Answer—Exercise of Discretion considered—Medical Evidence called by Direction of Court—Divorce and Matrimonial Causes Act, 1928, ss. 5, 6. The wife respondent, before the filing of a petition by her husband for restitution of conjugal rights, knew that at an earlier period in his life he had been an inmate of a mental hospital, from which he had escaped. The respondent did not raise that matter in her answer. The learned Judge asked that medical evidence be called, as he felt that, in all the circumstances of the case, he should be assured that there was no evidence of existing insanity on the petitioner's part. The medical evidence was to the effect that, whatever may have been the petitioner's earlier condition, he was, at the time of the hearing, sane, and not certifiable. *Held*, granting the decree, 1. That, as the respondent had expressly stated in cross-examination that the petitioner's earlier mental condition had no bearing on her attitude towards him, a decision was unnecessary as to whether discretion should be exercised in her favour, since she had not alleged that she was justified in declining to return to the respondent on the ground that he had failed to disclose to her his earlier history before the marriage. 2. That the medical evidence was called in order to assure the Court, in all the circumstances of the case, that there was no evidence of existing insanity on the petitioner's part. (*Hall* v. *Hall*, (1864) 3 Sw. & Tr. 347; 164 E.R. 1309, referred to.) *Semble*, That, if there had been such evidence, the Court would have felt obliged to consider whether the earlier English cases should now be followed. (*Hayward* v. *Hayward*, (1858) 1 Sw. & Tr. 81; 164 E.R. 638, mentioned.) *Gillen* v. *Gillen*. (S.C. Dunedin. December 4, 1952. North, J.)

FAMILY PROTECTION.

Evidence of Widowhood. *96 Solicitors' Journal*, 708.

Widower's Application—Nature of Exercise of Jurisdiction on Such Application—Separation after Five Years of Marriage—Unhusbandly Conduct previously thereto—Conduct not of Such Nature as to disentitle him from Order, but to be taken into Account in considering Quantum of Relief to be granted—Further Provision made—Nature of Order—Family Protection Act, 1908, s. 33(2). Owing to a disagreement, the testatrix and her husband lived apart after the first few years of their comparatively short married life, throughout which, speaking generally, the husband's conduct and attitude towards his wife were more or less unhusbandly. By her will, the testatrix gave him a small annuity. All the testatrix's children by a former marriage were married, and their circumstances were such that they had some moral claim upon her resources. On originating summons by the widower for further provision out of the estate of the testatrix, *Held*, 1. That, on the evidence, the husband's general conduct as a husband was not of such a nature as to disentitle him to the benefit of an order; and, consequently, the provisions of s. 33(2) of the Family Protection Act, 1908, did not apply; but the plaintiff's conduct as a husband in those respects in which it fell short had to be taken into account in considering the quantum of the relief to be granted. (*In re Green, Zukerman* v. *Public Trustee*, [1951] N.Z.L.R. 135, referred to.) 2. That, while the jurisdiction under the Family Protection Act, 1908, is exercised more sparingly in the case of an application by a widower than in the case of an application by a widow, the testatrix, in the circumstances, was under some moral duty to provide for her husband, and she had to some extent failed in that duty. (*In re Ruddell, Ruddell* v. *Blomfield*, [1944] G.L.R. 489, referred to.) An order was made for payment to the plaintiff out of the estate of an additional 10s. a week for his life, in addition to the provision made for him in the will, and such additional sum was charged upon the sum of £500 to be appropriated to answer that annuity, the remainder of the residue to be exonerated from the incidence of the order. On cessation of the annuity, so much as remains of the appropriated sum of £500 and any surplus income remaining is to revert to and form part of the residue of the estate. *In re Williams (deceased), Williams* v. *Cotton and Others*. (S.C. Wellington. November 26, 1952. Cooke, J.)

HUSBAND AND WIFE.

Division of Matrimonial Property. *102 Law Journal*, 619.

Intestacy: Rights over Matrimonial Home. *96 Solicitors' Journal*, 755.

Wife as Husband's Agent: Effect of her Means. *96 Solicitors' Journal*, 674.

IMPRISONMENT FOR DEBT.

Imprisonment for Debt Limitation (Magistrates' Courts) Rules, 1949, Amendment No. 1 (Serial No. 1952/243), which came into force on January 1, 1953, make miscellaneous amendments to the Imprisonment for Debt Limitation (Magistrates' Courts) Rules, 1949.

Hearing in Foreign Court. Rule 12 is amended to the effect that where a judgment summons is issued out of one Court for hearing at another, the application and supporting affidavit on which the judgment summons is founded will be sent to that other Court.

Rule 13 is amended by adding a new subcl. 4 providing that where fraud is alleged against a judgment debtor there must be served on him, with the judgment summons, a copy of the creditor's application and supporting affidavit.

Renewal of Judgment Summons. A new r. 13A enables a new judgment summons to be obtained, for hearing at another Court, where the original summons has not been served and the debtor has moved to another district. It also requires that the original judgment summons (or any such substituted summons) must be served within one year from the date of the issue of the original summons. If it cannot be so served, the Registrar may renew it from year to year (subject to the limitation of six years imposed by s. 80 of the Magistrates' Courts Act, 1947).

Rule 21 is amended to require notice of proceedings for the rehearing of a judgment summons in a foreign Court to be given to the Registrar of the home Court. It also provides for the return to the home Court (at the creditor's request) of an unserved judgment summons.

Rule 33 is revoked and a new r. 33 provides for new forms of affidavit and Registrar's certificate under s. 56 of the Bankruptcy Act, 1908 (under which an order of committal is not to be executed if the judgment debtor is adjudicated bankrupt and the debt is provable in the bankruptcy). It replaces the former r. 33, which was to the same effect as s. 56.

The Second Schedule is amended by revoking forms Nos. 2, 18, and 19, and substituting a new form of judgment summons book to be kept by the Registrar, and also the new forms referred to above.

An amendment of para. 9 of the Third Schedule prescribes a fee of 3s. for the renewal of a judgment summons (or the issue of a new summons instead of renewal by endorsement).

LAND TRANSFER.

Mortgage—Limitation of Action—Sale by First Morgagee—Surplus Moneys in Hand after Satisfying Mortgage—Property abandoned and No Payment by Mortgagor under Second Mortgage for Eighteen Years—Claim by Mortgagor to Surplus Sale Moneys—Limitation Act, 1950, Subject to Provisions of Land Transfer Act, 1915—Moneys held on Statutory Trust for Second Mortgagee—Land Transfer Act, 1915, ss. 60, 108 (Land Transfer Act, 1952, ss. 64, 104)—Limitation Act, 1950, ss. 6(2), 16(2), 18, 20(4)—Land Transfer—Mortgage—Mortgagor's Application to Court for Order of Discharge—Court's Discretion not Exercisable unless Balance of Equity in Mortgagor's Favour—Statutes Amendment Act, 1936, s. 43 (Land Transfer Act, 1952, s. 112). M., in 1929, mortgaged to the State Advances Superintendent a residential property with a Land Transfer title. In 1930, M. gave a second mortgage of the property to D. M. made default in payment of interest under both mortgages, and in 1933 abandoned the property. She died in 1934. In 1933, the State Advances Corporation entered into possession as mortgagee, and remained in possession until 1951, when the Registrar of the Supreme Court, on the Corporation's application, sold the property for £1,900. After discharging all moneys owing in respect of the first mortgage, and the costs and expenses of the sale, the Corporation had in its possession the sum of £503 10s. 1d. This sum was claimed by the executrices of the will of M. No payment had been made by her or them under the second mortgage. The claim was based on the proviso to s. 18 of the Limitation Act, 1950, on the ground that, over twelve years having lapsed since any payment or acknowledgment of liability under the second mortgage, the rights of the second mortgagee were extinguished. *Held*, 1. That, by virtue of s. 6(2) and s. 16(2) of the Limitation Act, 1950, s. 60 of the Land Transfer Act, 1915, prevailed over the provisions of the first-named statute on which the deceased mortgagor's representatives relied. (*Campbell* v. *District Land Registrar, Auckland*, (1909) 28 N.Z.L.R. 816; rev. on app., (1910) 29 N.Z.L.R. 332, applied.) (*Young* v. *Clarey*, [1948] 1 All E.R. 197, and *In re Hazeldine's Trusts*, [1908] 1 Ch. 34, distinguished.) 2. That the second mortgagee was entitled to the surplus moneys in the hands of the first mortgagee by reason of the provisions of s. 108 of the Land Transfer Act, 1915, which enacted that the first mortgagee held the surplus moneys in trust for the second mortagee. 3. That s. 43 of the Statutes Amendment Act, 1936, did not apply, since, before the land was sold by the first mortgagee, no application had been made by the deceased mortgagor's representatives to discharge the second mortgage. *Semble*, 1. That, if the action were considered as a proceeding to recover the moneys due on the mortgage, the second mortgagee would be entitled to succeed also by reason of the proviso to s. 20(4)(*a*) of the Limitation Act, 1950, as the action was brought within the time prescribed by the section and the proceedings would fall completely within that proviso. 2. That the Court should not exercise the discretion given to it by s. 43 of the Statutes Amendment Act, 1936, to make an order directing the mortgage to be discharged unless there is a distinct balance of equity in favour of the mortgagor. (Dictum of *Callan*, J., in *In re a Mortgage, Pearce to Sansom*, [1951] N.Z.L.R. 331, 334, discussed.) *In re Dalton (deceased), State Advances Corporation of New Zealand* v. *Wolferstan and Others*. (S.C. Wellington. November 21, 1952. Fair, J.)

LANDLORD AND TENANT.

Abusive Protected Tenant. *96 Solicitors' Journal*, 691.

Lease—Army Houses for Accommodation of Personnel—Tenancy determinable if Premises "required for public purposes"—Premises required for Letting to Serving Members of Forces—"Public purposes". On appeal from the judgment reported [1952] N.Z.L.R. 596, where the facts sufficiently appear, *Held, per totam curiam*, That the appeal be dismissed. Judgment of *Cooke*, J. ([1952] N.Z.L.R. 596, affirmed). *King* v. *The Queen: James* v. *The Queen* (C.A. Wellington. September 18, 1952. Northcroft, J.; Finlay, J.; Hutchison, J.; North, J.)

Possession of Mortgaged Property. *102 Law Journal*, 592.

MAGISTRATES' COURT.

Magistrates' Courts Rules, 1948, Amendment No. 1 (Serial No. 1952/242), which came into force on January 1, 1953, provide as follows:

Part I—Crown Proceedings

This Part of these rules makes such modifications of the Magistrates' Courts Rules, 1948, as are necessary for the purposes of civil proceedings by or against the Crown under the Crown Proceedings Act, 1950.

Part II—Miscellaneous

Instituting of Forms: Rule 16: The effect of a new r. 9A is that, in headings to documents, names, addresses, and occupations of parties to proceedings need only be set out in full in plaint notes or other originating documents, statements of claim, summonses to defendants or sub-debtors, third party notices, judgments and orders. In headings in other documents in the proceedings, except where full descriptions are necessary to distinguish parties,—

(*a*) Initials may be used instead of Christian names:

(*b*) Addresses and descriptions may be omitted:

(*c*) Where more persons than one are joined in the same interest the words "and another" or "and others" may be used after the first name:

(*d*) The full name of a corporate body is a sufficient description, without reference to the fact or mode of its incorporation, its registered office, or other matters:

(*e*) The Act conferring jurisdiction need not be stated:

(*f*) Corresponding brevity may be used in references to estates, settlements, and other instruments.

Rule 18 is amended to make it unnecessary for Registrars to give separate numbers to entries in the minute book. Each minute is headed with the plaint number under r. 18(3) of the principal rules.

Rule 77 is amended to provide for a new form of statement of claim which will be sufficient where the claim is for goods supplied or services rendered and the plaintiff has previously given written particulars to the defendant. Before this amendment the form was available only in the case of claims for goods supplied.

A proviso is added to r. 108 to provide that a default summons may be served by leaving it for the defendant, at his or her place of abode, with the wife or husband of the defendant, or with certain other members of the defendant's family residing with him and appearing to be over the age of eighteen. The form of affidavit of service is consequentially amended.

Rule 215 is amended to make it clear that where a plaintiff claims the recovery of goods and money due under a hire-purchase agreement, and obtains an interim judgment for possession of the goods with leave to apply for further relief on the rest of his claim, the later application may be dealt with either by the Magistrate who gave the interim judgment or by any other Magistrate.

A new r. 223A prescribes the procedure to be followed by the Registrar in recording a judgment removed into his Court by certificate of judgment.

Under r. 245 of the principal rules an application for a distress warrant to enforce a judgment is not to be filed until the expiry of forty-eight hours after the judgment. Under the general provisions of r. 336(2), where forty-eight hours is required to elapse under any rule days on which the Court office is not open do not count in calculating the forty-eight hours. This amendment excludes the operation of the latter rule in the case of distress warrants.

Under the principal rules, where judgment is given for the recovery of specific chattels, the plaintiff may later apply to the Magistrate who gave the judgment to fix the value of the chattels for the purposes of levying execution. An amendment of r. 259(1) enables the application to be made to any Magistrate.

An amendment of r. 271 that no fee is payable on the filing by a sub-debtor of a notice disputing liability in garnishee proceedings.

Rule 313 is amended to provide for the payment of the usual Court fees on an application for directions as to service of notices under the Property Law Act, 1952.

The Third Schedule is amended to provide that no fees are payable on an application for an order for payment out of the Court office of money paid into Court, or on an agreement not to appeal.

The Fifth Schedule is amended by inserting in cls. 1, 2, and 9, after the words "statement of claim" in each case, the words "or counterclaim," to make it clear that solicitors' costs may be allowed for the preparation of a counterclaim as in the case of a statement of claim.

(*Continued on p. 14.*)

THE DEATH OF DR. H. F. von HAAST.

A Full and Varied Life.

The whole of the profession was sorry to learn of the death on January 4 of Dr. H. F. von Haast, at the age of eighty-eight years. He was one of the oldest practitioners in New Zealand, and had known and had been associated, at one time or another, with all the Chief Justices since the days of Sir James Prendergast and all the Judges over a period of sixty years. He was, in truth, in the poet's words, " that good grey head whom all men knew." With his passing goes one of the landmarks of his profession in his native land.

Heinrich Ferdinand von Haast was born at Christchurch on May 11, 1864. He was the son of Sir Julius von Haast and Mary, daughter of Edward Dobson, C.E., thus being descended on both sides from notable New Zealand pioneers. He was educated at Christ's College and Canterbury College. After winning a Junior and a Senior university scholarship, he graduated, first, M.A., and then LL.B. He was proud of being the real founder of the Canterbury College Football Club and of being its captain in the matches with Otago University played in 1886, 1887, and 1888. He also represented Canterbury in inter-provincial matches in the two latter years.

He gained his legal experience in the office of Messrs. Wilding and Lewis. Subsequently, he was Associate to Mr. Justice Ward, while he was a temporary Judge, and then for five years he was Associate to Mr. Justice Denniston, whom he left in 1891 for a visit to Europe. On his return, he practised in Christchurch, first alone and then in partnership with Mr. De Renzy Harman ; and, during that period, he was German Consul. With Mr. G. P. Williams, he founded the Christchurch Savage Club.

In 1925, Mr. von Haast left for Victoria. He resided in Melbourne for two years and was called to the Victorian Bar. Visiting England for the Golden Jubilee of Queen Victoria in 1897, he spent about six years there, working in the office of the representative of a syndicate of leading Australian and New Zealand papers, marrying, and being called to the Bar at Lincoln's Inn. He was present in Westminster Abbey at the Coronation of King Edward VII, on which he wrote a series of graphic and colourful articles for the New Zealand Press. Returning to New Zealand in 1903, he practised in Wellington in partnership with an old college friend, Mr. A. R. Meek, until 1926, when he continued in practice on his own account.

In 1915, Mr. von Haast was President of the Wellington District Law Society. For many years he was the Solicitor and Counsel for the New Zealand Law Society, becoming an authority on the disciplinary jurisdiction of the Supreme Court over the legal profession, on which he wrote a series of articles for the *New Zealand Law Journal*. To this periodical he contributed, for a number of years, a larger number of articles than any other member of the profession. They were distinguished by their variety, statement of principle, and practical utility. All that he wrote for the *Journal* appeared under his name.

The practice of Messrs. Meek and von Haast, mainly a conveyancing one, afforded little material from the contributions of its own clientele for the common-law partner. Although Mr. von Haast derived from it a considerable and successful Magistrates' Court practice, he had to depend mainly upon outside briefs for his work in the Supreme Court and the Court of Appeal, in the latter of which he appeared in and won several leading cases such as *Free Wheel Co., Ltd. and Others* v. *Inglis Bros.* ((1903) 23 N.Z.L.R. 309) (Patents), *In re Goldstone's Mortgage* ((1915) 35 N.Z.L.R. 19) (Land Transfer), *Orbell* v. *Mossman* ([1927] N.Z.L.R. 353) (New Trials), *Hooker* v. *New Zealand Law Society* ([1933] N.Z.L.R. 759) (Liability of Law Society under the Indemnity Fund).

Just before his departure for Europe in 1936 he appeared in *New Zealand Fisheries, Ltd.* v. *McCourtie* ([1936] N.Z.L.R. 277) (a By-law Case) for which he himself wrote the head-note in the *New Zealand Law Reports*. He was the Editor of those *Reports* from 1933 to the end of 1948, and, during those years, was assisted by the present Editor. Of all his achievements in his long life, Mr. von Haast was proudest of being Editor of his country's official Law Reports.

For a great number of years, Mr. von Haast was an Examiner in Law for the University. He had a longer term of service than any other examiner, first in Evidence and then in Contract. He was the first in New Zealand to introduce the problem question. In later years, he also examined in Commercial Law for the Diploma of Banking. The only complaint ever raised against his papers was that they were too long ; but they were marked by their balance, their fairness, their combination of test in matters of principle with the practical application of the principle.

Shortly after his return to New Zealand in 1903, Mr. von Haast took an active part in politics as a supporter of the Reform party. In 1915, he was president of the Reform organisation and presided over that year's Conference, making a stirring speech. The Rt. Hon. Mr. Massey had promised to put him forward as a Reform Candidate for the first vacant seat in Wellington. The appointment to the Supreme Court Bench of the Attorney-General, the Hon. A. L. Herdman (afterwards Sir Alexander Herdman), the chairman of whose Selection Committee Mr. von Haast had been for many years, furnished the opportunity. But the outbreak of the Great War, and the fact that Sir Julius von Haast, although one of New Zealand's pioneers and most distinguished scientists, had been a German, led the Government to nominate Sir (then Mr.) J. P. Luke. Instead of skulking like Achilles in his tent, sulky and disgruntled, Mr. von Haast supported Mr. Luke with energy and spirit. But he had done with politics. Thereafter, he concentrated his energies in public service on the work of the University of New Zealand, of which he was for many years the Honorary Treasurer and of which he was, in 1936, unanimously elected Pro-Chancellor. Before this, he had been on the Board of Governors of Canterbury College, of which he had been Chairman. Later, he was a member of the Victoria University College Council and its Chairman.

Upon the establishment of the New Zealand branch of the Institute of Pacific Relations, he became one its leading and most active members, visiting Shanghai in 1931 and Banff in 1933, as a New Zealand delegate to the biennial Conferences there. He was much in demand for articles and addresses upon Pacific Affairs.

After the Hawke's Bay Earthquake in 1931, Mr. von Haast was a member of the Hawke's Bay Adjustment Court, a body which performed much meritorious service.

In 1910 on the first visit of Mr. Lionel Curtis to New Zealand, Mr. von Haast became one of the foundation members of the first Round Table Group, and he was for several years its Secretary. He was a frequent contributor of the New Zealand article to the *Round Table Journal*, and he wrote and spoke frequently against the tendency to disintegrate the Empire, which culminated in the Statute of Westminster, and subsequently on the necessity of the Dominions, as independent Nations, recognizing their responsibility and co-operating according to their resources in the defence of the Empire. This was—and as events have proved rightly so—the burden of his speeches at the British Commonwealth Relations Conference at Toronto in 1933, at which he was one of New Zealand's delegates together with Messrs. Downie Stewart and Walter Nash, his frankness being one of the features of a heart-to-heart family talk. Subsequently, Mr. von Haast was the main mover in the formation of the New Zealand Institute of International Affairs and he became its vice-president. As the president, the Hon. W. Downie Stewart, was, for most of the year, absent from the capital city, Mr. von Haast was its inspiring spirit. Of late years, he was recognized as one of New Zealand's chief authorities on international questions. He visited Great Britain for the last time in 1936. He spent part of his visit at the home of Lord Rutherford of Nelson, with whom he had been closely associated in Canterbury College days.

S. P. Andrew, photo.

The late Dr. H. F. von Haast.

It was not only in serious and academic matters, legal, educational, and international, that Mr. von Haast showed his remarkable mental activity and versatility. Possessed of a keen sense of humour, a whimsical wit, and a power of speaking and writing lucid, rhythmical, and vigorous English, he made a considerable contribution to the gaiety of any society which looked to him—and not in vain—for a humorous speech, lecture, sketch, or set of verses. From his early days at Canterbury College, he wrote many light verses and songs, which he sang himself, mostly of a topical character. He was one of the founders of the Wellington Savage Club. Old members have not forgotten the occasion on which every stanza of his *King of the Fortunate Islands*, describing the career of Mr. R. J. Seddon in song and haka was interrupted by uproarious laughter. It made such a hit that it had to be repeated at a special evening for the Governor, Lord Plunket, at which " King Dick " himself was a guest. Other classics of his were the *Lawyer's Bride*, sung at a dinner given by the Wellington Bar in honour of the Rt. Hon. Sir Joshua Williams, with its characteristic fun :

Be tenant of my heart for life,
Oh maiden fair and chaste,
And let my arm encircle
Your voluntary waste.

This was subsequently published in the *Green Bag*. Lectures on law to the accountancy students and to members of the Bank Officers Guild were enlivened by quips that fixed the leading cases in the minds of his audience; and his humorous after-dinner speeches mostly made to those bodies, often coming on about 11 p.m. at the end of the evening, caused a hush in the uproarious atmosphere and then a continuous ripple of laughter. Perhaps his wittiest speech was his application of the allegory of the Rhine-Gold to the Banking situation in 1934, the light nonsense of which concealed a satirical criticism of credit and inflation fallacies and predicted the substitution of a Labour for a Coalition Government. Another song much appreciated for its clever and ingenious rhyming was *Registrar Joynt* which is enshrined in *The Old Clay Patch*.

In his Graduation Oration at the Graduation Ceremony of Otago University in 1935, perhaps he achieved his greatest oratorical success. At the age of 71, by a combination of humour, common sense, and eloquence, he captured at once and held the attention of an audience of some 2,000 persons in the large Dunedin Town Hall for 25 minutes, speaking without a note. He was equally successful with the boys and girls of the Feilding Agricultural High School in his Commemoration address upon his father, in which he mingled humour with thrilling narrative and concluded with an eloquent and inspiring peroration.

In November, 1948, the University of New Zealand conferred on Mr. von Haast the degree of Doctor of Literature. His thesis was a monumental work, the compilation of which had occupied him ten years, *The Life and Times of Sir Julius von Haast*. The book is a mine of historical and scientific knowledge relating to the early history and exploration of the South Island, as

well as to the geological surveys which led to the creation of much wealth in the Westland and Canterbury Provinces. It will become a " source book " on the topics with which it deals, as it is the result of painstaking and careful research allied to the wide learning which the author brought to his task of filial piety.

As a mountaineer, Dr. von Haast early made his mark, and he was a member of the Tararua Tramping Club from its inception. His endurance on walking tours until he was well into his eighties will long be remembered by his companions.

In the latter years of his life, Dr. von Haast's intense interest in cultural pursuits did not flag. He was for some time president and a very active serving member of the Wellington Shakespeare Society. Only a few months ago, at the age of eighty-eight years, he gave a series of learned, and at the same time most entertaining, lectures on subjects such as " The Music in Shakespeare". He was also an office-bearer in the New Zealand branch of P.E.N. He retained his interest in international affairs to the end, and was a vice-president actively engaged in the work of the British-American Co-operation Movement.

The place which Dr. von Haast occupied in the civic life of his city and country was shown by the large attendance at his funeral, though it took place in the legal vacation when so many of his friends and associates were away from home. Those present included the Hon. Mr. Justice Hay; the Attorney-General, Hon. T. C. Webb; the Solicitor-General, Mr. H. E. Evans, Q.C.; Mr. J. S. Hanna, S.M.; the president of the N.Z. Law Society, Mr. W. H. Cunningham; and Mr. R. L. A. Cresswell, representing the Wellington District Law Society. Representing the University were the Pro-Chancellor of the University of New Zealand (Mr. L. J. Wild), the Chairman of the Victoria College Council (Dr. T. D. M. Stout), and Sir Thomas Hunter.

Also present were the Leader of the Opposition, Rt. Hon. Walter Nash; the director of the Dominion Museum, Dr. R. A. Falla; the president of the New Zealand Federation of Labour, Mr. F. P. Walsh; Mr. J. M. A. Ilott, representing the " Round Table "; Mr. A. Leigh Hunt, of the British-American Co-operation Movement; and representatives of the Wellington Shakespeare Society, the P.E.N., and Tararua Tramping Club.

The pallbearers were Professor H. A. Murray, Messrs. C. E. H. Ball, G. J. Macdonald, H. Roth, T. P. Cleary, and R. L. A. Cresswell.

DEATH AND GIFT DUTY LAW.

Recent Statutory Amendments.

By E. C. Adams, LL.M.

In the recent Session, Parliament passed some important amendments to death and gift duty law in New Zealand. With one exception, these amendments will operate in favour of the taxpayer, and some will reduce hardship caused by the rather unsettled economic conditions which have existed since the outbreak of the Korean War. In one or two respects (again to reduce undue hardship), Parliament has entrenched on the fundamental principle of death-duty law that the assessment of death duty must be on the state of facts existing at the time of deceased's death, and not on the state of facts existing before or after death: *Trustees, Executors, and Agency Co., Ltd.* v. *Commissioner of Taxes (Victoria)*, (1941) 65 C.L.R. 33, and *Commissioner of Stamp Duties* v. *Shrimpton*, [1941] N.Z.L.R. 761.

Rebate on Death Duties.

The most welcome alleviation, and the one of universal application, is s. 2 of the Death Duties Amendment Act, 1952, which applies to the estates of all persons dying on or after August 8, 1952. This section enacts that there shall be allowed from the estate duty and succession duty calculated at the rates prescribed by Part IV of the Finance Act, 1940, a rebate of one-fifth thereof, and the balance only shall be payable, and ss. 32 and 60 and all the other provisions of the Act shall be construed accordingly. Subsection 2 repeals certain provisions of s. 27 of the Finance Act, 1940 (dealing with the limitation as to the maximum amount of succession duty), as the effect of the one-fifth rebate will be to prevent the maximum's being reached in any case.

Widow's Exemption Increased.

Section 3 of the Death Duties Amendment Act, 1952 (which also applies to the relevant estates of persons dying on or after August 8, 1952), increases the widow's exemption from estate duty. Widows are to receive complete exemption from estate duty in estates up to £6,000, instead of up to £5,000, as heretofore, and they are to receive *graduated* relief on an increased scale in estates up to £12,000 in value, instead of up to £10,000, as heretofore. The meaning of the word " graduated " as used in the immediately preceding sentence will be gleaned from an examination of s. 21 (3) of the Finance Act, 1947, which, as amended by s. 3 (2) (*d*) of the Death Duties Amendment Act, 1952, reads as follows:

> The aggregate of the amounts which may be deducted under the foregoing provisions of this section shall not in any case exceed the difference between the final balance of the estate and twelve thousand pounds, and in any case where apart from this subsection that aggregate would exceed that difference the said amounts shall be reduced proportionately so as to make the aggregate equal to the difference, and only the reduced amounts shall be deducted from the final balance of the estate.

Section 2 of the Death Duties Amendment Act, 1952, also increases correspondingly the existing exemption for infant children of the deceased from £10,000 to £12,000. Finally, s. 2 introduces a new scale of succession duty payable by widows, as follows:

SCALE OF RATES OF SUCCESSION DUTY FOR WIFE

Value of Succession.				Rate per Cent.
£		£		
Exceeding 6,000 but not	exceeding	12,000	..	2⅔ per cent. of the amount by which the value of the succession exceeds £6,000, plus an additional ⅓ per cent. of the same amount for every £1,000 or fraction thereof by which the value of the succession exceeds £7,000.
„ 12,000	„	21,000	..	4 per cent., plus an additional ⅓ per cent. for every £1,000 or fraction thereof by which the value of the succession exceeds £12,000.
„ 21,000	„	31,000	..	7 per cent., plus an additional 1/5 per cent. for every £1,000 or fraction thereof by which the value of the succession exceeds £21,000.
„ 31,000	„	70,000	..	9 per cent., plus an additional 1/10 per cent. for every £1,000 or fraction thereof by which the value of the succession exceeds £31,000.
„ 70,000	..	..	..	12 9/10 per cent.

SPECIAL EXEMPTIONS ON SOLDIER'S ESTATE.

Section 84 of the Death Duties Act, 1921, conferred exemptions from death duty on the estates of members of His Majesty's Military or Naval Forces who died whilst on active service out of New Zealand or of wounds, accident, or disease suffered or contracted while on such service out of New Zealand, or who died of wounds, accident, or disease whilst a member of any Expeditionary Force raised in New Zealand for service in the 1914-1918 war. The shares of a serviceman's wife and ancestors and descendants were exempted up to £5,000.

On the outbreak of the 1939-1945 war, these exemptions were extended by s. 10 of the Finance Act (No. 2), 1939, to the estate of any person :

(*a*) Who dies or has since the third day of September, nineteen thirty-nine, died while on active service with any of His Majesty's Naval, Military, or Air Forces, whether within New Zealand or elsewhere ; or

(*b*) Who dies or has since the day aforesaid died of wounds, accident, or disease suffered or contracted while serving with any of His Majesty's Naval, Military, or Air Forces, whether within New Zealand or elsewhere.

Section 4 (1) of the Death Duties Amendment Act, 1952, extends these provisions to the estate of any person :

(*a*) Who dies or has since August 23, 1950, died while on active service with an *emergency* force, whether within New Zealand or elsewhere ; or

(*b*) Who dies or has since the day aforesaid died of wounds, accident, or disease suffered or contracted while serving with an *emergency* force, whether within New Zealand or elsewhere.

" Emergency force " is defined in s. 4(4) as follows :

For the purposes of this section the expression " emergency force " means any naval, military, or air force raised in New Zealand or any other part of the Commonwealth for fulfilling obligations undertaken in the Charter of the United Nations, and includes any other part of the naval, military, or air forces of New Zealand or any other part of the Commonwealth that may for the time being be declared by the Minister of Defence by notice in the *Gazette* to be an emergency force for the purposes of this section.

There are also applied to the estates of these members of *emergency* forces the provisions of ss. 19 and 20 of the Finance Act (No. 3), 1944, which provide for relief from death duties where the serviceman is a successor of another serviceman who died within the preceding three years, and for the exemption of pay accruing after the death of the serviceman.

These special exemptions, therefore, will apply to the estates of members of emergency forces raised for United Nations emergencies—such as of those New Zealanders now serving in the Korean War—and also of any other New Zealand or Commonwealth force declared by the Minister of Defence to be an emergency force.

DECEASED JOINT TENANT.

The next section in the Death Duties Amendment Act, 1952, appears to be the only provision in the recent legislation not in favour of the taxpayer. It looks very simple on paper, but in reality it will close up a serious leakage in death-duty revenue. Section 5(1)(*e*) of the Death Duties Act, 1921, deals with property held on beneficial joint tenancy (whether realty or personalty), and renders liable to death duty :

Any property which the deceased has at any time, whether before or after the commencement of this Act, caused to be transferred to or vested in himself and any other person jointly, so that the beneficial interest therein passes or accrues by survivorship to any person on the death of the deceased, if the property was situated in New Zealand at the time of such transfer or vesting as aforesaid.

Obviously that provision applies only to joint tenancies to which the deceased himself has contributed. But, in the United Kingdom, non-contributing beneficial joint tenancies are also liable to death duty, because there it is held that a non-contributing joint tenant has a *general* power of appointment as defined in the United Kingdom statute. But the New Zealand Courts have held that the definition of " general power of appointment " in s. 2 of the Death Duties Act, 1921, does not catch non-contributing joint tenants, the reasoning of the New Zealand Court of Appeal being that para. (*h*) of s. 5(1) of the Death Duties Act, 1921, applies only to property belonging to some person *other than the deceased*, over which the deceased had at his death a general power of appointment within the meaning given to those words by the definition : *In re Todd, In re Going, Public Trustee* v. *Commissioner of Stamp Duties*, [1951] N.Z.L.R. 144.

In *Going's* case, the husband and wife were joint owners of the matrimonial home, which had been solely purchased and paid for with the husband's money. The wife died first, and the Court held that the one-half share of the wife in the home was not liable to death duty in her estate.

In *Todd's* case, two brothers and a sister were, by *inheritance* from their mother, joint owners of land and chattels. One brother died first before the joint tenancy had been determined, and again it was held that his beneficial one-third share was not liable to death duty in his estate.

An amendment of s. 5 of the Death Duties Act, 1921, alters the law as laid down in those cases. Section 5(1) of the Death Duties Amendment Act, 1952, reads as follows :

Section five of the principal Act is hereby amended by inserting in subsection one, after paragraph (*e*), the following paragraph :

" (*ee*) Any property vested in the deceased and any other person jointly and situated in New Zealand at the death of the deceased, to the extent to which he had power up to the time of his death to dispose of his beneficial interest therein, if that interest passes or accrues by survivorship to any person on the death of the deceased : ".

In future, whether or not the deceased contributed to the joint tenancy, property held under a beneficial joint tenancy will be liable to death duty on the death of a joint tenant to the extent stated, except to a maximum limit of £2,000, if the property is settled under the Joint Family Homes Act, 1950.

Duty Exemption in Respect of Joint Family Home.

Section 4 of the Joint Family Homes Amendment Act, 1952, which, be it noted, is *retrospective* to the coming into operation of the Joint Family Homes Act, 1950, reads as follows :

The principal Act is hereby amended, as from the commencement thereof, by repealing section sixteen and substituting the following section :

" 16. Where any joint tenant of any joint family home dies during the lifetime of the other joint tenant and, except for this section, the value of the joint family home or of any interest therein would form part of the dutiable estate of the deceased joint tenant for the purposes of the Death Duties Act, 1921, that value shall be deemed not to form part of that dutiable estate unless it exceeds two thousand pounds in which case it shall be deemed not to form part of that dutiable estate to the extent of two thousand pounds."

This means, not only that there is exemption up to a maximum value of £2,000, but also that, in ascertaining the rate of estate and succession duty on the rest of the estate, the sum to which it is entitled to exemption under the Joint Family Homes Act, 1950, will not be taken into consideration. Before the Joint Family Homes Act, 1950, was amended by the Joint Family Homes Amendment Act, 1952, such sum was taken into consideration in ascertaining the rate of estate duty payable on the rest of the estate, but not in ascertaining the rate of succession duty payable thereon.

Income-tax treated as Debt of Deceased.

Section 6 of the Death Duties Amendment Act, 1952, provides that all income-tax and social security charge in respect of the income of a deceased person *up to the date of his death* is to be treated as a debt of the deceased in all cases, even when it is assessed to the executor or administrator. This provision appears to codify existing law and practice : *Conway* v. *Commissioner of Stamp Duties*, [1932] N.Z.L.R. 1232.

Gift Duty limited to Inadequacy of Consideration.

No section in the Death Duties Act, 1921, has caused more trouble to solicitors and their clients than s. 49. Where a transaction is constructively made a gift by the statute, because the consideration therefor is inadequate, if any part of the consideration is to be paid or performed in *the future*, such part of the consideration is to be ignored in assessing the value of the gift. I have yet to meet the taxpayer who believes in the justice of this provision and in this method of assessing the value of gifts. Thus, if A transfers or agrees to transfer to B land worth £5,731 in consideration of B's paying to A, some time in the future, the sum of £4,660, gift duty, until the coming into operation of s. 7 of the Death Duties Amendment Act, 1952, was payable on the full sum of £5,731 : *Taylor* v. *Commissioner of Stamp Duties*, [1924] N.Z.L.R. 499.

In such a case as *Taylor's*, gift duty in future will be payable only in respect of the inadequacy of consideration, for s. 7 of the Death Duties Amendment Act, 1952, reads as follows :

(1) The provisions of section forty-nine of the principal Act shall not apply to a gift made after the passing of this Act in consideration of any benefit or advantage to or in favour of a donor by way of any annuity or other payment, whether periodical or not, if and so far as the annuity or payment—

(*a*) Is of a fixed or ascertainable amount in money payable over a fixed or ascertainable period or at a fixed or ascertainable date or dates or on demand ; and

(*b*) Is secured to the donor under an instrument executed by the beneficiary either creating a mortgage or charge over the property comprised in the gift or being an agreement for the sale and purchase of land comprised in the gift, or is secured to the donor under a deed executed by the beneficiary.

(2) For the purposes of this section the expression " ascertainable " means ascertainable as at the date of the gift to the satisfaction of the Commissioner.

The requisites of this section are that the amount payable in the *future* must be ascertainable at the date of the gift to the satisfaction of the Commissioner, and that sum must be in an agreement for sale and purchase of *land*, or must be secured by a mortgage or charge over the property or by a *deed* ; in every case, the instrument must be executed by the beneficiary. As regards the necessity for a deed, it is just as well to take the advice of the late Mr. T. F. Martin and call the instrument a deed : *Martin's Conveyancing in New Zealand*, 37. And of course the family solicitor should see to it that the instrument is attested with the requisites of a deed as set out in the Property Law Act, 1952. A future sum secured by a promissory note will still be caught by s. 49, provided, of course, that initially there is the element of inadequacy of consideration. Originally, the transaction in *In re Potter, Commissioner of Stamp Duties* v. *Wallace*, [1942] N.Z.L.R. 241, was not liable to gift duty (although secured by promissory note merely), because the promissory note was for the *full* amount advanced by the husband for the purchase of investments in the name of the wife. Eventually, gift duty was payable in that case on the amount of the promissory note, for the husband allowed the amount payable thereunder to become statute-barred. Before relieving a taxpayer from the effect of s. 49, the Legislature requires something more substantial than a mere promise to pay by the constructive donee.

Value of Sheep of Deceased.

The provisions granting relief to the estates of sheep-farmers who died during the year ending August 31, 1951 (which, it will be recollected, was the period during which wool prices rose to very high levels), are contained in s. 3 of the Finance Act (No. 2), 1952. This enables relief to be granted, not only from death duty, but also from income-tax and social security charge. The executor or administrator of the estate of any person who died during the aforesaid period may apply in writing to the Commissioner within six months after the passing of the Act, or within such extended time (not exceeding a further twelve months) as the Commissioner may in any case allow, *to have the value of the sheep owned by the deceased person at the date of his death reduced to*

the basic value. The basic value is really the mean value one year before and one year after the date of deceased's death. Only an approved valuer can be employed to ascertain the *basic* value, and an approved valuer is a person employed as a valuer by any member of a constituent association of the New Zealand Stock and Station Agents' Association. The approved valuer must put his mind to this question: What would have been the value of sheep (which is defined as including a lamb), of the same number, quality, sex, age, and condition, one year before and one year after the date of deceased's death? And the approved valuer must certify that the valuation has been made by him on those dates on the basis that the climatic and all other local conditions at those dates were the same as those prevailing at the date of death. Thus, if drought conditions prevailed at date of death, then the approved valuer must ascertain the mean or basic value on the hypothesis that drought conditions also prevailed one year before and one year after death. If, on the other hand, the climatic and other local conditions were most favourable to sheep at date of deceased's death, then the approved valuer must assume that the same favourable conditions existed one year before and one year after such date.

As Ostler, J., pointed out in *Commissioner of Stamp Duties* v. *Shrimpton*, [1941] N.Z.L.R. 761, the assets of a deceased person must be valued for death-duty purposes at the date of his death. He said, at p. 767:

> It has always been understood that the value of a deceased's assets for death-duty purposes is their value at the date of his death unaffected by any subsequent event or consideration which would either increase or decrease that value.

It will readily be seen that s. 3 of the Finance Act (No. 2), 1952, is but a partial modification of that principle of death-duty law, to meet an extraordinary state of facts. The principle has not been completely jettisoned, even with respect to the estates of sheepfarmers who were unlucky enough to die whilst wool prices were soaring.

Special Valuation.

The effect of a special valuation made in accordance with this subsection is set out in subss. 4 and 5, which read as follows:

> (4) Where application is duly made in accordance with this section—
>
> (*a*) The basic value of the sheep shall be taken into account for the purpose of assessing the income tax and social security charge on income derived during the period ending with the date of death and the period immediately following the date of death:
>
> Provided that this paragraph shall not apply in any case where a standard value which is lower than the basic value is required to be taken into account for that purpose by section sixteen of the Land and Income Tax Amendment Act 1939 as from time to time amended:
>
> (*b*) The basic value of the sheep shall be deemed to be the value thereof for the purpose of assessing death duty in the estate of the deceased person:
>
> (*c*) In any case where paragraph (*a*) of this subsection applies the amount of income tax and social security charge (if any) required to be allowed as a debt under section nine of the Death Duties Act 1921 in respect of the income of the deceased person for the period ending with the date of his death shall be the amount of the tax or charge as assessed in accordance with that paragraph,—
>
> and all assessments of any such income tax, social security charge, or death duty shall be made accordingly or if already made shall be amended accordingly.
>
> (5) All income tax, social security charge, and death duty paid in excess of the amount payable under an assessment made or amended in accordance with this section shall be refunded without further authority than this section.

Gifts to Charities operating Overseas.

Section 5 of the same Act exempts from gift and death duty a gift of any property made in response to the appeal made by the United Nations in the year 1952 to a fund established and to be used to provide food for the relief of distressed children in overseas countries. A similar exemption is now becoming an annual Legislative event. Special legislation is necessary to exempt these gifts to people of overseas countries, for it is a general principle of our death and gift duty law that it is only charitable gifts exclusively for the benefit of the people of New Zealand which are exempt: *Weston and Guardian Trust, and Executors Co. of New Zealand, Ltd.* v. *Commissioner of Stamp Duties*, [1945] N.Z.L.R. 316. If a gift (although charitable) *may* be used to benefit persons or objects outside New Zealand, it is not exempt from death or gift duty by the Death Duties Act, 1921: *In re McClelland, Hewitt* v. *Commissioner of Stamp Duties*, [1952] N.Z.L.R. 726 (a bequest to the New Zealand Red Cross Society Incorporated, "for the general purposes of the Wellington Centre of such Society"). It was held that, although the bequest was charitable, it was not entitled to exemption from succession duty in New Zealand, because, although the Wellington Centre may apply its funds for local purposes within New Zealand, it may also apply them for utilization outside New Zealand in the promotion of the objects of the Society.

Farmers' Estates: Postponement or Reduction of Death Duty.

Further relief from death duty is granted by s. 4 of the Finance Act (No. 2), 1952, which, however, is not restricted, as is the preceding section, to the value of sheep owned by a deceased person, but applies to the estates of farmers who died between September 1, 1950, and August 7, 1952, leaving to their families farm land or farm stock which would have to be sold to pay the death duty if relief were not granted. On the recommendation of a special commission which has been appointed under the Commissions of Inquiry Act, 1908, the Commissioner of Stamp Duties, with the approval of the Minister of Finance, may do one or more of the following things:

> (*a*) Postpone payment of the death duty or any part of it without penalty for any period up to five years from the date of death:
>
> (*b*) Reduce or remit the interest payable on the postponed duty:
>
> (*c*) Reduce the death duty by an amount not exceeding one-fifth, on condition that the farm land is not sold for a period of five years from the date of death and that the farm stock is maintained in numbers and quality for that period.

Before making any such recommendation, the Commission must be satisfied that a sale of the farm land or farm stock, or a substantial part thereof, would be contrary to the general economic interests of New Zealand, in that it would result, or would be likely to result, in reduced primary production. *

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* An announcement by the Associate Minister of Finance regarding the manner in which applications for relief may be made to the Commission appears on p. 16, *post*.

SUMMARY OF RECENT LAW.

(*Concluded from p. 7.*)

MAORI LAND.

Lease—Right of Renewal—Rent in Arrears during Term of Lease—Amount thereof reduced by Court of Review—Notice of Desire to renew Lease given to Lessor—New Lease executed but Confirmation refused—Lessee's Payments in Terms of Court of Review's Order not in Breach of Lease—Previous Default in Payment of Rent operating to defeat Right of Renewal notwithstanding Subsequent Writing-off of Part by Court of Review—Lessee, in Possession of Land, paying Current Rent and Rates when due—Lessee not Tenant as Tenancy not confirmed—Lessee not in Position to give Notice of Renewal—Lessor not Compellable to execute Renewal of Lease unless Lessee granted Relief from Forfeiture. In 1923, the plaintiff granted to the defendant a lease of certain land at Raukokore, the terms of which, as confirmed by the Waiariki District Maori Land Board, were, so far as relevant, as follows: " Term twenty-one years from the 1st September, 1923. Annual rent £115 12s. for the first ten years and £130 for the remaining eleven years. Right of renewal for a further term of twenty-one years as a rental of 5 per cent. on the owner's interest in the land as at the 1st September, 1944, but not less than £130 per annum for the first ten years, and 5 per cent. on the owner's interest in the land as at the 1st September, 1954, but not less than the then existing rental for the remaining eleven years." In August, 1938, following an application for relief by the defendant, a voluntary adjustment between the parties under the Mortgagors and Lessees Rehabilitation Act, 1936, was approved by the Court of Review in the following terms: "(*a*) Arrears of rent up to the 1st day of March 1938 shall be reduced to £32 which shall be paid by two equal half-yearly instalments of £16 each and the first of such payments to become due and to be made on the 2nd day of December, 1938, and the second on the 2nd day of June, 1939. (*b*) The rent payable for the remainder of the 1st term of 21 years shall be reduced to £104 per annum. (*c*) The annual rent payable for the whole of the second or renewed term of 21 years shall be 5 per cent. of the unimproved value of the land comprised in the said lease according to a special Government valuation to be made as at the 1st day of September 1944 plus 5 per cent. on £380 (being the value of the owner's improvements as at the 1st day of September 1923) but such annual rent shall not be less than £115 10s." On August 8, 1944, formal notice was given to the plaintiff of the defendant's desire to renew the lease, in terms of the lease and of the Court of Review's order. A new lease was prepared in those terms, and was executed by the parties; but the Maori Land Court refused confirmation, on the ground that the new lease did not comply with the provisions of the original lease relating to the right of renewal. On January 17, 1951, the plaintiff executed a new lease of the property to the defendant for twenty-one years from September 1, 1944, at a rental of £130 per annum, being a rent in excess of 5 per cent. on the owner's interest in the land. This lease was submitted to the Maori Land Court for confirmation, but decision thereon was deferred pending the stating of the present Case. The defendant had remained in possession of the property and had paid rent at the rate of £130 per annum, and had paid the rates from time to time as they became due. On a Case Stated by the Maori Land Court, with the sanction of the Chief Judge, under s. 71 of the Maori Land Act, 1931, for the opinion of the Supreme Court, asking, as a matter of law, whether the plaintiff could have been compelled by legal process to sign a renewal of the lease to the defendant. *Held*, 1. That the order of the Court of Review was effective in relation to the existing lease, as the Court had power to make orders under s. 79 of the Mortgagors and Lessees Rehabilitation Act, 1936, in respect of leases of Maori land, and, accordingly, the arrears of rent written off and the reduction of rent effected by that order were validly and legally dealt with; and that the lessee, in failing to pay those arrears and in paying rent at the reduced rate, was not committing breaches of the terms of his lease. (*In re A Lease, Wests, Ltd., to De Luxe Theatre Co., Ltd.*, [1935] N.Z.L.R. s. 102, *In re A Lease, East Coast Commissioner to C. Estate Partnership*, [1932] N.Z.L.R. 1390, and *Treadwell* v. *Holmes*, [1933] N.Z.L.R. 244, applied.) 2. That the failure of the lessee, before the making of the order by the Court of Review, to pay the rent as and when it became due was a default which operated to defeat his right of renewal, notwithstanding the fact that the arrears of the rent were subsequently written off in part by the Court of Review; but, under s. 6 of the Property Law Amendment Act, 1928, the Supreme Court could give him relief against such a default so as to prevent the forfeiture of the right of renewal. (*Bartlett* v. *Bain*, [1922] N.Z.L.R. 790, followed.) (*In re A Lease, Kennedy to Kennedy*, [1935] N.Z.L.R. 564, referred to.) 3. That the lessee was not in a position to give notice of his intention to require a renewed lease when he tendered to the lessor the new lease in question, because the lessee had not remained in possession of the property as a tenant, since a tenancy of Maori land cannot be created without confirmation by a Maori Land Court. (*McGregor* v. *Hartwell*, (1912) 32 N.Z.L.R. 184, referred to.) *Semble*, That, as there would have been no failure on the lessee's part in giving notice of renewal but for his contractual incapacity if the Supreme Court should relieve the lessee against the forfeiture of his right of renewal, then, by virtue of s. 2(5) of the Property Law Amendment Act, 1928, he would be entitled to obtain confirmation of the renewed lease as of right. 4. That the tendering by the lessee of the new lease was ineffective for the further reason that it did not provide for the appropriate rent for the last eleven years of its term; and the lessor, being a Maori, could not, even if willing, forgo the possible benefit of adhering to her contract as confirmed by the Maori Land Court; but the Supreme Court had jurisdiction to relieve the lessee in this respect also. 5. That, consequently, the lessor could not have been compelled by action at the suit of the lessee to sign a renewal of the lease unless in any such action, or in other proceedings, the lessee had also applied to the Supreme Court for relief from forfeiture and such relief had been granted. *Semble*, That, on the granting of such relief, the lessor would be compelled to sign a renewal-lease in terms identical with those of the lease signed by her except that the annual rent for the last eleven years would be either £130 or 5 per cent. on the lessor's interest in the land, whichever was the greater. *In re a Lease, Mihi Terena to Swinton.* (S.C. Auckland. October 31, 1952. Stanton, J.)

MUNICIPAL CORPORATION.

By-law—Abattoir—By-law providing for Destruction of Animals brought to Abattoir and found on Inspection to be suffering from Disease and Unfit for Food—By-law ultra vires *and Unreasonable—Meat Act, 1939, s. 22—Meat Regulations, 1940 (Serial No. 1940/90), Reg. 8.* Section 22 of the Meat Act, 1939, authorizes the making of by-laws " regulating the working and management of abattoirs ". Regulation 8 of the Meat Regulations, 1940, provides for the ante-mortem inspection of stock. Clause 26 of By-law No. 5 of the Levin Borough By-laws provided as follows: "(1) Any animal brought to the abattoir which upon inspection shall be found to be suffering from disease so as in the opinion of the Inspector to be unfit for human food, or to be from any other cause unfit for human food, shall be slaughtered apart from all other cattle at such time and shall be destroyed or disposed of as directed by the Inspector. (2) The carcass of any animal which has been slaughtered and which from the like cause or causes is in the opinion of the Inspector unfit for human food shall be similarly destroyed or disposed of." *Held*, That the by-law was invalid, as it went far beyond anything enacted by the Meat Act, 1939, or prescribed by the Meat Regulations, 1940, and was void for unreasonableness. *Everton* v. *Levin Borough.* (S.C. Wellington. November 26, 1952. Gresson, J.)

NEW YEAR HONOURS.

Mr. J. H. Luxford, formerly Stipendiary Magistrate at Auckland, received the honour of Companion of the Most Distinguished Order of Saint Michael and Saint George (C.M.G.).

TENANCY.

Dwellinghouse—Possession—Premises reasonably required for Occupation by Employee of Landlord—Need of both Landlord and Employee to be considered—Employee already housed adequately—Landlord's Need insufficient to warrant Making of Order for Possession—Tenancy Act, 1948, s. 24(1)(i). Section 24(1)(*i*) of the Tenancy Act, 1948, authorizes the making of an order for possession where premises " are reasonably required for occupation as a dwellinghouse by any person in the regular employment of the landlord ". On an application for an order for possession based on that ground, it is a major consideration whether the premises are reasonably required for the employee as living quarters for himself, even though the occupation of the premises by the employee is something which would so greatly advance the interests of the landlord that it could be said that the landlord reasonably required possession. It is a question of fact whether the premises are reasonably required by the employee for his own occupation; and, where it is proved that the employee is already adequately housed, the landlord's need alone is insufficient to warrant the making of an order. *Manawatu Joinery Co., Ltd.* v. *Sellers.* (S.C. Wellington. November 28, 1952. Gresson, J.)

IN YOUR ARMCHAIR—AND MINE.

By Scriblex.

Talking Shop.—There is a story concerning three French executioners who met and began to discuss their work. After listening for some time to the other two seeking to outvie each other in prowess on the scaffold, the third said: "For heaven's sake, you fellows, lay off and don't talk chop!" Scriblex is reminded of it by a reference of Frank Swinnerton in one of his "Letters to Gog and Magog" in *John O'London's Weekly*, when he declares that of all "shops" the kind he likes best is that of barristers. When they are together, he says, lawyers are rich in talk about the idiosyncrasies of Judges, the way in which particular effects have been obtained in Court, the replies of stubborn witnesses, and a thousand details of human nature as it is seen during litigation. He continues:

> Such men have to be quick-witted, and those I have known have all rejoiced in fun. They tell and comment with tremendous skill and relish. They have seen the world of humans, great and small. And they are entirely objective. This, in what may be called 'group talk' is an important factor. No argument begins; the common aim is the pooling of knowledge for the amusement of all.

Those of us who really enjoy professional life can testify to the acuteness of Swinnerton's observations; but is not the best legal raconteur the one who is prepared now and again to tell a good story against himself? Confine yourself to your triumphs, and you finish up a complete bore.

Between Soup and Savoury.—No future "waiters' charter" or precedent for any principle that waitresses are entitled to decant soup over the suits of invited guests, resulted from *Foster* v. *Bush House, Ltd.* (*The Times*, October 22). The facts nevertheless presented the Court of Appeal (Evershed, M.R., Romer, L.J., and Harman, J.) with something of a problem, especially as each of its members maintained that individually he would have come to a different conclusion. The plaintiff (who has our sympathy) was plump, and, in consequence, her chair protruded further from the dining table than that of her neighbours in the restaurant. The waitress, in passing, caught her toe against the protuberant backside of the chair whereupon the soup she was carrying sharply altered its course and deposited itself on the plaintiff's clothes. In the County Court, the Judge considered that such measures as might have been taken to prevent such a protrusion (*i.e.*, of the chair) or to ensure that the waitress concerned was aware of it seemed to him either impracticable, or counsels of perfection rather than prudence, or both. He regarded the accident (for which damages were claimed) as simply a piece of bad luck. The Court of Appeal, although it dismissed the Appeal, would not subscribe to any such doctrine. If the Judge's conclusion were based on the view that the duty of care placed on a waitress did not extend to looking out for the possibility of chairs being slightly out of line, as distinct from an obstruction such as a stick or umbrella placed on the floor by a diner, and that an accident due to failure to notice such a circumstance could not be negligence, the Master of the Rolls thought that the Judge would materially have misdirected himself. However, the Judge on a consideration of the facts had come to the conclusion that the accident arose from an act of inadvertence falling short of a breach of duty, and the Court would not disturb the verdict for defendants. We recall a somewhat similar accident in the tearooms of a racing club some years ago where the unfortunate plaintiff, clad in a light-grey suit, had the contents of a scalding pot of tea deposited in his lap. He was distressed, as Damon Runyon would put it, more than somewhat. The club, as part of the *res gestae*, sought to introduce an observation of the waitress: "There is nothing deliberate about this, sir, it is all accidental." And for the benefit of the newer generation, let it be said that "*res gestae*" was not on the menu that day.

Judicial Notice.—Scriblex has recently devoted a little space in this column to meat, and on this occasion refers to an unsavoury aspect of it. In *Cronau* v. *Cahill*, [1952] Q.St.R. 183, the defendant, who was the owner of a utility-truck and was employed at the Alligator Creek meatworks, was charged with having in his possession meat suspected of being stolen. When accosted by a Police officer and shown a bag and a suitcase on his truck, both containing meat, he denied stealing the meat, and contended that he did not know to whom the bag and the suitcase belonged or who had placed them on the vehicle. He pointed to his own suitcase, which was also on the truck and was empty. Two other employees, riding as passengers, professed an equal ignorance of this mystifying state of affairs. The Magistrate, however, took a more mundane view. In convicting the defendant, he said that it was absurd for him not to take notice of the fact that meat had been continually taken from the meatworks over the last three years while he had presided in the Court, and that, in these circumstances, any man leaving the meatworks and wanting to protect himself would be particular about the articles he carried. On appeal to the Full Court, it was held that the conviction should be set aside, since the matters of which the Magistrate purported to take judicial notice were not such as a Court might, for the purpose of determining guilt or innocence, judicially notice without proof in the ordinary way. The majority (Mansfield, S.P.J., and Townley, J.) further considered that, as the evidence was equally consistent with guilt or innocence, the prosecution had failed to discharge the onus of proof, and that the conviction should be quashed.

From My Notebook.

"Lawyers as a profession certainly have their contribution to make in reconciling order with liberty, and in marrying the instinct of individualism, with its desire to compete, and the social instinct, with its desire to co-operate."—Sir Hartley Shawcross at the Conference of the Law Society at Eastbourne.

"As a profession we have ever been conscious of our vulnerability . . . and, consequently, step by step over the years, we have sought to tighten up our professional rules and our regulations as to etiquette until, today, we have probably the strictest disciplinary standards of any professional organisation in the world"—The President of the Society (*ibid.*).

"His entrance into a room seemed to change the whole complexion of the company and I often fancied that he could dispel a London fog by his presence."—Lord Rosebery of Sir Frank Lockwood, Q.C., one-time Solicitor-General.

FARMERS' DEATH DUTY.

Commission of Inquiry.

The Associate Minister of Finance, the Hon. C. M. Bowden, has stated that the Commission of Inquiry consisting of Mr. R. H. White and Mr. N. B. Fippard, has held its first meeting.

As Mr. Bowden announced recently, the Commission was set up to inquire into and report upon cases where it is claimed that the payment in full of death duty in the estates of certain deceased farmers would result in forced sales of the farm land or farm stock.

Claims are to be addressed to the Secretary, Farmers' Death Duty Investigation Commission, P.O. Box 2198, Wellington.

Information as to the form and substance of claims for relief may be obtained on application to any District office of the Duties Division, Inland Revenue Department.

In order that administrators of farming estates may take advantage of the Government's other measures for taxation relief before lodging their claim under this legislation, the Commission has decided to receive applications up to April 30, 1953, and, in special circumstances, may receive applications after that date.

Mr. Bowden referred to s. 4 of the Finance Act (No. 2), 1952, under which the Commission of Inquiry is constituted. This section provides that relief may be granted in the estates of certain deceased farmers who died during the period from September 1, 1950, to August 7, 1952.

Where the only or principal asset is farm land and stock and the beneficiaries are the wife or husband, children, or grandchildren of the deceased farmer, the Commission, if it is satisfied that the payment of death duties in full would result in the sale of the whole or part of the land and stock and that such sale is contrary to general economic interests, in that it would reduce primary production, may recommend to the Government that relief should be given in any particular case.

The relief recommended may consist of the remission of penalties, the reduction or remission of interest, and the reduction in the duty payable by not more than 20 per cent.

The Commission hopes to begin its sittings as soon as sufficient applications are received to enable it to arrange suitable appointments for the hearing of claims. Applicants will receive due notice of such arrangements, and are urged to lodge their claims as soon as possible.

Convention and Citation

"There are peculiar conventions in pronouncing the names of cases. (1) A criminal case, such as *R.* v. *Sikes*, can be referred to informally as '*R.* v. *Sikes*' (pronounced as written), or '*Rex*' (or '*Regina*') 'v. *Sikes*' (again pronounced as written). In Court, however, the proper method is to call it '*The King*' (or '*The Queen*') 'against *Sikes*.' (2) In civil cases the 'v.' coupling the names of the parties is pronounced 'and,' both in Court and out of it. Thus, *Smith* v. *Hughes* is always pronounced (but never written) '*Smith* and *Hughes*,' and similarly *British Coal Corporation* v. *The King* (which was a civil proceedings against the Crown) is pronounced with an 'and.' Lawyers thus write one thing and say another": Glanville Williams, *Learning the Law*.

The Position of a Judge

In this country the conduct of proceedings in Court is the very antithesis of the inquisitorial system by which the Judge takes the leading role in the examination of witnesses. Here the Judge—perhaps symbolically—sits, as it were, raised on a higher plane, and the party strife is waged before and beneath him. That does not mean, of course, that the Judge has not full control over the course of the proceedings, and, although he is undoubtedly entitled to ask questions, and, in some circumstances, to call witnesses, the calm and dispassionate observation of the demeanour of witnesses under examination by counsel is, as Lord Greene, M.R., once said, a necessary advantage for the Judge. Thus, a line is drawn—ill-defined though it may be—beyond which a Judge should not go, for, to quote Lord Greene, M.R., again in *Yuill* v. *Yuill*, [1945] 1 All E.R. 183, 189, a Judge who "descends into the arena . . . is liable to have his vision clouded by the dust of the conflict." In that case, it was said that the trial Judge had asked the witnesses many more questions than all the counsel in the case put together, and had, in effect, taken the conduct of the case out of counsel's hands. The Court of Appeal refused to order a new trial, but allowed the appeal. In *Heayns* v. *Heayns* (*The Times*, March 12), complaint was again made of the conduct of the trial by the same Judge by reason of his interrupting, early on and without adequate reason, the examination of witnesses by counsel, but there, while fully approving the remarks of Lord Greene, M.R., in *Yuill* v. *Yuill*, the Court of Appeal felt they should not disturb the findings of the Judge. In *Harris* v. *Harris* (*The Times*, April 9), the Court of Appeal felt it necessary to order a new trial after the same Judge had refused a wife petitioner a decree on the ground of cruelty. Lord Justice Birkett and Lord Justice Singleton both regarded the trial as unsatisfactory by reason of undue interference with counsel, which resulted, as in *Yuill* v. *Yuill*, in the conduct of the case being virtually taken out of the hands of counsel altogether. Lord Justice Birkett referred particularly to the fact that in the present case the parties had received legal aid, and, being unaccustomed to procedure in the Courts, were likely to be overawed or confused or to become distressed under prolonged questioning by the Judge. It may be that this is yet another instance of where justice not only must be done but also must be seen to be done, but at least as good a reason for the minimum of interference from the Bench with witnesses consonant with a proper control of every trial is that the Judge does not know what is in counsel's brief, and there is a very real danger that a party may not have his case presented in its most advantageous light. This, after all, is the right of every litigant, and, strictly speaking, the very *raison d'être* of counsel.—*Law Journal*, London.