New Zealand
Law Journal
Incorporating "Butterworth's Fortnightly Notes"
VOL. XXIX TUESDAY, APRIL 21, 1953 No. 7

POWERS OF ATTORNEY: EXECUTION OUTSIDE NEW ZEALAND.

THE law of England, in respect of powers of attorney, is generally applicable to New Zealand. The verification of the execution of a power of attorney executed out of New Zealand, for use in that Dominion must, however, comply with New Zealand law.

I.—General Powers.

The special provisions of New Zealand law in relation to powers of attorney, as contained in Part XII of the Property Law Act, 1952, are as follows :—

Section 134 of the Property Law Act, 1952, provides for the execution by the attorney in his own name. It is as follows :—

Section 134 (1). The donee of a power of attorney may execute or do any assurance, instrument, or thing in and with his own name and signature and his own seal (where sealing is required) by the authority of the donor of the power; and every assurance, instrument, and thing so executed and done shall be as effectual in law to all intents as if it had been executed or done by the donee of the power in the name and with the signature and seal of the donor thereof.

(2) This section applies to powers of attorney created by instruments executed either before or after the commencement of this Act.

Continuance of Power of Attorney.—Section 135 of the Property Law Act, 1952, provides that powers of attorney (whether executed in New Zealand or elsewhere) continue in force until notice of death or revocation. The section is as follows :—

135. (1). Subject to any stipulation to the contrary contained in the instrument creating a power of attorney, the power shall, so far as concerns any act or thing done or suffered thereunder in good faith, operate and continue in force until notice of the death of the donor of the power or until notice of other revocation thereof has been received by the donee of the power.

(2) Every act or thing within the scope of the power done or suffered in good faith by the donee of the power after such death or other revocation as aforesaid, and before notice thereof has been received by him, shall be as effectual in all respects as if that death or other revocation had not happened or been made.

(3) A statutory declaration by any such attorney to the effect that he has not received any notice or information of the revocation of the power of attorney by death or otherwise shall, if made immediately before or if made after any such act as aforesaid, be taken to be conclusive proof of the non-revocation at the time when the act was done or suffered in favour of all persons dealing with the donee of the power in good faith and for valuable consideration without notice of the said death or other revocation.

(4) Where the donee of the power is a corporation aggregate the statutory declaration shall be sufficient if made by any director, manager, or secretary of the corporation or by any officer thereof discharging the functions usually appertaining to any of those offices or by any officer of the corporation appointed for that purpose either generally or in the particular instance by the board of directors, council, or other governing body by resolution or otherwise, and if it is to the effect that to the best of the declarant's knowledge and belief neither the attorney nor any servant or agent of the attorney has received any such notice or information as is mentioned in subsection three of this section; and where the declaration contains a statement that the declarant is a director, manager, or secretary of the corporation or is an officer of the corporation discharging the functions usually appertaining to any of those offices or is an officer of the corporation appointed for the purpose of making the declaration, that statement shall be conclusive evidence in favour of the persons mentioned in that subsection.

(5) This section applies to powers of attorney executed in or out of New Zealand.

Irrevocable Power for Value.—Section 136, which deals with an irrevocable power of attorney for value, is as follows :—

136. (1). Where a power of attorney given for valuable consideration (whether executed in or out of New Zealand) is in the instrument creating the power expressed to be irrevocable, then, in favour of a purchaser :—

(a) The power shall not be revoked at any time, either by anything done by the donor of the power without the concurrence of the donee, or by the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor; and

(b) Any act done at any time by the donee of the power in pursuance of the power shall be as valid as if anything done by the donor without the concurrence of the donee, or the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor, had not been done or had not happened; and

(c) Neither the donee of the power nor the purchaser shall at any time be prejudicially affected by notice of anything done by the donor without the concurrence of the donee, or of the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor.

(2) This section applies only to power of attorney created by instruments executed on or after January 1, 1906.

Power of Attorney for Fixed Time.—Section 137, which treats of a power of attorney made irrevocable for a fixed time, is as follows :—

137. (1). Where a power of attorney (whether executed in or out of New Zealand, and whether given for valuable consideration or not) is in the instrument creating the power expressed to be irrevocable for a fixed time therein specified, not exceeding one year from the date of the instrument, then, in favour of a purchaser :—

(a) The power shall not be revoked for and during that fixed time, either by anything done by the donor of the power without the concurrence of the donee, or by the death, mental deficiency, or bankruptcy of the donor; and

(b) Any act done within that fixed time by the donee of the power in pursuance of the power shall be as valid

as if anything done by the donor without the concurrence of the donee, or the death, mental deficiency, or bankruptcy of the donor had not been done or had not happened; and

(c) Neither the donee of the power nor the purchaser shall at any time be prejudicially affected by notice, either during or after that fixed time, of anything done by the donor during that fixed time without the concurrence of the donee, or of the death, mental deficiency, or bankruptcy of the donor within that fixed time.

(2) This section applies only to powers of attorney created by instruments executed on or after the first day of January, nineteen hundred and six.

Companies and Other Corporations.—The above provisions apply, with the necessary modifications, to corporations, as if the corporation were a person and the dissolution of the corporation (however occurring) were the death of the individual. They apply alike to companies registered in New Zealand under the Companies Act, 1933, and to companies incorporated outside New Zealand.

Section 139 of the Property Law Act, 1952, provides as follows :—

(1). The provisions of this Part of this Act apply with the necessary modifications with respect to any power of attorney executed by any corporation to the same extent as if the corporation were a person and the dissolution of the corporation (however occurring) were the death of a person within the meaning of this Part of this Act.

(2) The provisions of subsection one of this section are in addition to and not in derogation of the provisions of sections forty-two and three hundred and thirty-three of the Companies Act, 1933.

(3) The provisions of subsection one of this section do not apply to a corporation which is dissolved before the commencement of this Act, but do apply to powers of attorney whether executed before or after its commencement.

Section 42 of the Companies Act, 1933—referred to in s. 139 (2) of the Property Law Act, 1952 (above)—is as follows :—

42. (1). A company may, by writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute instruments on its behalf in any place in or beyond New Zealand.

(2) An instrument executed by such an attorney on behalf of the company shall bind the company, and if executed as a deed shall have the same effect as if it were under the common seal of the company.

(3) The provisions of Part XI of the Property Law Act, 1908 [*now ss. 134–139 of the Property Law Act, 1952*], shall, with the necessary modifications, apply with respect to any power of attorney executed by a company to the same extent as if the company were a person and as if the commencement of the winding-up of the company were the death of a person within the meaning of the said Part XI.

Section 333 of the Companies Act, 1933, after declaring that a company incorporated outside New Zealand and after delivering certain documents to the Registrar, has the same power to hold lands as if it were a company incorporated in New Zealand, goes on to provide as follows :—

(2) The provisions of Part XI of the Property Law Act, 1908 [*now ss. 134–139 of the Property Law Act, 1952*], shall, with the necessary modifications, apply with respect to any power of attorney executed by a company to which this Part of this Act applies to the same extent as if the company were a person and as if the commencement of the winding-up of the company were the death of a person within the meaning of the said Part XI.

It is to be noted that s. 333 is contained within Part XII of the Companies Act, 1933, which applies to companies incorporated outside New Zealand carrying on business within New Zealand.

Executors and Administrators.—An executor or administrator of a will to be proved in New Zealand may appoint an attorney in New Zealand to whom letters of administration may be granted : Code of Civil Procedure R. 531E, which is as follows :—

531E. In the case of a person residing out of New Zealand administration or administration with the will annexed may be granted to his attorney acting under a power of attorney.

Maoris outside New Zealand.—A Maori, within the definition given in s. 2 of the Maori Land Act, 1931, who is outside New Zealand at the time of the execution of an instrument of alienation of land by Maoris, may execute such instrument by a European attorney in the ordinary manner, the power of attorney being executed and verified in the same manner as if it had been executed by a European : Maori Land Act, 1931, s. 269.

Married Women.—Section 13 of the Married Women's Property Act, 1952, provides as follows :—

13. A married woman, whether married before or after the commencement of the Married Women's Property Act, 1884, and whether a minor or not, may, as if she were unmarried and of full age, by deed appoint an attorney on her behalf for the purpose of executing any deed, or making any appointment otherwise than by will, or doing any other act she might herself execute or do.

Trustees.—As to the delegation of powers by trustees not resident in New Zealand, s. 103 of the Trustee Act, 1908, provides :—

103. Any trustee of real or personal property in New Zealand who for the time being is residing out of New Zealand, whether appointed by order of any Court, or by deed, will, letters of administration, or otherwise howsoever, and whether the order or instrument creating the trust or appointing the trustee is made or executed out of New Zealand or not, may, if not expressly prohibited by the instrument creating the trust, delegate by deed to any person residing in New Zealand all or any of the powers, authorities, and discretions vested in such trustee, so far as such powers, authorities and discretions affect or are capable of being exercised over the trust estate in New Zealand.

The validity of deeds and acts under powers delegated by trustees is assured by s. 105 of the same Act, which is as follows :—

Every deed, act, matter, or thing done or executed by any person under such delegated powers, authorities, and discretions shall be as valid and effectual as if the same had been done or executed by the person who executed the deed by which such powers, authorities, and discretions were delegated.

Public Trustee.—The Public Trustee may act as agent for the purpose of resealing in New Zealand any grant of probate or letters of administration granted outside New Zealand : Public Trust Office Amendment Act, 1921–22, s. 105.

The Public Trustee may also act as attorney for any person resident outside New Zealand desiring to appoint an agent in New Zealand : Public Trust Office Act, 1908, s. 12.

II.—Powers of Attorney to Deal with Land.

As, for all practical purposes, all the land in New Zealand is now under the Land Transfer Act, 1952, the provisions of that statute must be complied with where a power is given to deal with land, mortgages, leases, etc. Sealing is unnecessary (s. 153). Section 150 enacts as follows :—

150. The registered proprietor of land under this Act, or any person claiming any estate or interest under this Act, may by power of attorney in Form O in the Second Schedule to this Act or in any usual form, and either in general terms or specially, authorize and appoint any person on his behalf to execute transfers or other dealings therewith, or to make any application to the Registrar or to any Court or Judge in relation thereto.

Where a power of attorney gives powers of general

application, the usual form will suffice, as provision is made in s. 151 for such a power of attorney, or a copy verified to the Land Registrar's satisfaction, to be deposited in the Land Transfer Office, because registration of the power of attorney is not necessary. *This is the customary procedure.*

If, however, a special power of attorney is given to effect a particular dealing in land, Form O in the Second Schedule to the Land Transfer Act, 1952, *may* be used, *though its use in New Zealand is infrequent.* It is as follows :—

The provisions of the Land Transfer Act, 1952, relating to the revocation of a power of attorney are contained in s. 152 :—

> Section 152 (1). The grantor of any revocable power of attorney may, by notice to the Registrar in Form P in the Second Schedule to this Act, revoke the power of attorney either wholly or as to the land specified in the notice.
>
> (2) No power of attorney shall be deemed to have been revoked by reason only of a subsequent power of attorney being deposited without express notice as aforesaid, nor shall any such revocation take effect as to instruments executed prior to the reception of the notice by the Registrar.
>
> (3) No power of attorney shall be deemed to have been or to be revoked by the bankruptcy of the grantee or by the marriage of a female grantee.

The form of revocation referred to in subs. (1) is as follows :—

Revocation of Power of Attorney

I, *A. B.*, of , being registered as the proprietor of an estate [*Here state the nature of the estate*] in all that piece of land [*Here describe land, referring to the existing grant, certificate, or other instrument of title*], hereby revoke the power of attorney given by me to *C. D.*, of [*Address and occupation*], dated the day of .

In witness whereof I have hereunto subscribed my name this day of , 19 .

A. B.

Signed by the above-named *A. B.* in the presence of

G. H.,

[*Occupation and address.*]

Subject to the foregoing provisions, the sections of the Property Law Act, 1952, as above set out, apply to powers of attorney for use under the Land Transfer Act, 1915.

III.—Execution of Powers of Attorney.

Sealing is not essential to the proper execution of a power of attorney for use in New Zealand, unless the donor is a corporation.

(*a*) *In General.*—The requirements of New Zealand law as to execution of documents generally (including powers of attorney) are set out in s. 4 of the Property Law Act, 1952, which is as follows :—

> (1). Every deed, whether or not affecting property, shall be signed by the party to be bound thereby, and shall also be attested by at least one witness, and, if the deed is executed in New Zealand, such witness shall add to his signature his place of abode and calling or description, but no particular form of words shall be requisite for the attestation.
>
> (2) Except where the party to be bound by a deed is a corporation, sealing is not necessary.
>
> (3) Formal delivery and indenting is not necessary in any case.
>
> (4) Every deed executed as required by this section shall be binding on the party purported to be bound thereby.
>
> (5) Every deed, including a deed of appointment, executed before the coming into operation of this Act, which is attested in the manner required or authorised by any enactment providing for the execution and attestation of deeds in force at the time of such execution, or at any time subsequent thereto, shall be deemed to be and to have been as valid and effectual as if it had been attested as required by this section.

(*b*) *Documents Affecting Land.*—The provisions of s. 4 of the Property Law Act, 1952 (as set out above) apply to documents affecting land that is not subject to the Land Transfer Act, 1952.

The requirements of New Zealand law for the due execution of an instrument affecting land that is subject to the Land Transfer Act, 1952 (*i.e.*, any printed or written document, map, or plan relating to the transfer of or other dealing with land, or evidencing title thereto) are contained in s. 157 of the Land Transfer Act, 1952, which is as follows :—

> 157. (1) Every instrument executed for the purpose of creating, transferring, or charging any estate or interest under this Act shall be signed by the registered proprietor and attested by at least one witness, and if the instrument is executed in New Zealand the witness shall add to his signature his place of abode and calling, office, or description, but no particular form of words shall be requisite for the attestation.
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> (2) Every instrument so executed shall, when registered, have the force and effect of a deed executed by the parties signing the same.
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> (3) This section shall be read subject to the provisions of section three of the Official Appointments and Documents Act, 1919.

The Offical Appointments and Documents Act, 1919 (N.Z.) (referred to in subs. (3)) has no effect in relation to documents executed out of New Zealand, as it is confined to the verification of documents executed by the Governor-General of New Zealand, or by a Minister of the Crown in New Zealand acting by direction of the Governor-General or of the Governor-General in Council.

Evidentiary : General.—If a power of attorney is executed out of New Zealand for use in New Zealand, the signature of the witness or witnesses must be verified in accordance with New Zealand law if it is to be admissible in evidence in a New Zealand Court, or if it is to be used for purposes of the registration of dealings in relation to land.

Section 6 of the Evidence Amendment Act, 1952, deals with the verification of documents generally, including powers of attorney. The section is as follows :—

> 6. (1) Every document of any kind duly executed out of New Zealand (whether before or after the commencement of this Act) shall, so far as regards the execution thereof, be admissible in evidence in any Court and before any person acting judicially if the execution is verified in any of the following ways, that is to say :—
>
> (a) Where the document is executed in any foreign country, then—
>
> (i) If it purports to be executed before a Commonwealth representative exercising his functions in that country and to be sealed with his seal of office (if any), or if there is endorsed thereon or annexed thereto, a declaration of the due execution thereof purporting to be made by an attesting witness thereto before any such Commonwealth representative as aforesaid, and to be sealed as aforesaid : or
>
> (ii) By or before a Notary Public exercising his office in that country ; or
>
> (iii) In any case where the provisions of section nine of the Evidence Amendment Act, 1945, apply, in the manner provided in that section :
>
> (*b*) Where the document is executed in any Commonwealth country, then—

(i) In a manner prescribed by para. (*a*) of this subsection for documents executed in a foreign country; or

(ii) In the manner (if any) prescribed by the law of that country for the verification of documents to be used abroad.

(2) It shall be presumed that any seal or signature impressed, affixed, appended, or subscribed on or to any document tendered in evidence under this section is genuine, and that the person appearing to have signed or attested any such document had in fact authority to sign or attest it, and that any such document was in fact made in accordance with the law under which it purports to have been made, unless the party objecting to the admission of the document proves the contrary.

(3) In this section—

"Commonwealth country" means a country that is a member of the British Commonwealth of Nations; and includes every territory for whose international relations the Government of that country is responsible; and also includes the Republic of Ireland as if that country were a member of the British Commonwealth of Nations:

"Commonwealth representative" means an Ambassador, High Commissioner, Minister, Chargé d'Affaires, Consular Officer, Trade Commissioner, or Tourist Commissioner of a Commonwealth country (including New Zealand); and includes any person lawfully acting for any such officer; and also includes any diplomatic secretary on the staff of any such Ambassador, High Commissioner, Minister, or Chargé d' Affaires.

Section 9 of the Evidence Amendment Act, 1945, referred to in s. 6 (1) (*a*) (iii), is as follows :—

9. (1) Every document of any kind duly executed outside New Zealand (whether before or after the commencement of this Act) by a member of any of His Majesty's Naval, Military, or Air Forces, whether raised in New Zealand or elsewhere, shall, so far as regards the execution thereof, be admissible in evidence in any Court in New Zealand, or before any person acting judicially—

(a) If it purports to have been executed outside New Zealand before an officer of any of the forces who holds a rank not below that of Lieutenant Commander, Major, or Squadron Leader, or an equivalent rank, or who holds an appointment as a Legal Staff Officer; or

(b) If there is endorsed thereon or annexed thereto a declaration of the due execution thereof outside New Zealand purporting to be made by an attesting witness before any such officer as aforesaid.

(2) It shall be presumed that any signature subscribed to any document tendered in evidence under this section is genuine, and that any person appearing to have attested the document had in fact authority to attest it, unless the party objecting to the admission of the document proves to the contrary.

(3) The provisions of this section shall be in addition to and not in derogation of the provisions of section one hundred and nineteen of the Property Law Act, 1908, or section one hundred and seventy six of the Land Transfer Act, 1915, or any other enactment [now, respectively, s. 6 of the Evidence Amendment Act, 1952, and s. 166 of the Land Transfer Act, 1952].

(*b*) *Powers of Attorney Affecting Land.*—Section 166 of the Land Transfer Act, 1952, deals with the verification of instruments generally which affect land. These include powers of attorney affecting dealings in land.

Subs. (1) is as follows :—

(1) Every instrument duly executed elsewhere than in New Zealand shall, as regards the execution thereof, be accepted for registration or deposit if the execution is verified in any of the following ways, that is to say :—

[Paras. (*a*) and (*b*), with the substitution of the word "instrument" for "document," are in the same terms as s. 6 (1) (*a*) and (*b*) of the Evidence Amendment Act, 1952, above.]

Subs. (2) is as follows :—

(2) In the absence of proof to the contrary, it shall be presumed that any seal or signature impressed, affixed, appended, or subscribed on or to any such instrument submitted for registration or deposit, or on or to any document verifying the execution of any such instrument, is genuine, and that the person appearing to have signed or attested any such instrument or document had in fact authority to sign or attest it, and that any such document was in fact made in accordance with the law under which it purports to have been made.

[Subs. (3) is in the same words as s. 6 (3) of the Evidence Amendment Act, 1952 (N.Z.).

IV.—Notarial Acts outside New Zealand.

Section 21 of the Statutes Amendment Act, 1939, provides as follows :—

(2) Every British representative exercising his functions in any place outside New Zealand may, in that place, administer any oath and take any affidavit, and also do any notarial act which any Notary Public can do within New Zealand; and every oath, affidavit, and notarial act administered, sworn, or done by or before any such representative shall be as effectual as if duly administered, sworn, or done by or before any lawful authority in New Zealand.

(3) Any document purporting to have affixed, impressed, or subscribed thereon or thereto the seal and signature of any person authorised by this section to administer an oath in testimony of any oath, affidavit, or act being administered, taken, or done by or before him shall be admitted in evidence without proof of the seal or signature being the seal or signature of that person, or of the official character of that person.

The terms used in the foregoing subsections are defined in subs. (1) of s. 21 as follows :—

(1) In this section, unless the context otherwise requires :—

"Affidavit" includes any affirmation, statutory or other declaration, acknowledgment, examination or attestation or protestation of honour;

"British representative" means an Ambassador, Envoy, Minister, Charge d'Affaires, Secretary of Embassy or Legation, Consul-General, Consul, Vice-Consul, Pro-Consul, Consular Agent, High Commissioner, Trade Commissioner, or Tourist Commissioner of a country within the British dominions (including New Zealand), and includes any person lawfully acting for any such officer;

"Oath" includes an affirmation and a declaration;

"Swear" includes affirm, declare, and protest.

SUMMARY OF RECENT LAW.

AGENCY.

Agent or Servant, *215 Law Times*, 96.

ANIMALS.

Damage by Animals, *215 Law Times*, 68.

COMPANY.

Winding-up—"Debt"—Dividend due to past member—Companies Act, 1948 (c. 38), s. 212 (1) (g). "Member" of a company in the Companies Act, 1948, s. 212 (1) (*g*), includes a past member, and so a sum due to a past member by way of dividends declared while he was a member is not to be treated as a debt of the company ranking for dividend in competition with the unsecured debts of the company due to ordinary creditors—*i.e.*, to persons otherwise than in their capacity as past or present members of the company. (Dicta of *Turner*, L.J., in *Re Anglesea Colliery Co.*, (1866) 1 Ch. App. 559, applied. *Re Aidall, Ltd.*, ([1933] Ch. 323, not applied.) *Re Consolidated Gold Fields of New Zealand, Ltd.*, [1953] 1 All E.R. 791 (Ch.D.)

CONTRACT.

Coronation Seat Cases, *215 Law Times*, 94.

Formation — Uncertainty — Enforceable contract — Meaningless Clause—Rejection. By a letter dated August 10, 1951, the plaintiffs offered to buy from the defendant specified goods on certain terms and conditions set out in an enclosed order. On August 16, 1951, the defendant wrote a letter accepting the offer, the letter containing, *inter alia*, the following words: "I assume that we are in agreement that the usual conditions of acceptance apply". There were no "usual conditions" in operation between the parties. The defendant having failed to deliver the goods, in an action by the plaintiffs for breach of contract, *Held:* since there were no such "usual conditions" and hence nothing to which the clause could apply, it was meaningless, and, being clearly severable from the rest of the contract, and capable of being rejected without impairing the sense or reasonableness of the contract as a whole, it should be rejected; the defendant's letter of August 16, constituting an unqualified acceptance of the plaintiff's offer; and, therefore, there was a concluded agreement between the parties. Semble, *aliter* in the case of a clause the terms of which have yet to be agreed by the parties which may result in there being no concluded contract. *Nicolene, Ltd.* v. *Simmonds*, [1953] 1 All E.R. 822 (C.A.)

As to Uncertainty of Terms of Contract, see *7 Halsbury's Laws of England*, 2nd Ed., 330, para. 458.

Nonperformance due to Import Licence Control, *103 Law Journal*, 84.

CRIMINAL LAW.

Consent as a Defence, *103 Law Journal*, 116.

Evidence in Criminal Cases, *103 Law Journal*, 85.

DIVORCE AND MATRIMONIAL CAUSES.

Alimony and Charging Orders, *103 Law Journal*, 101.

Declarations as to Status, *103 Law Journal*, 131.

FOOD AND DRUGS.

Offences—Misleading Label—"Baked Beans in Tomato Sauce with Bacon" disclosed by Microscope—Proportion of Eight-onehundredths of Bacon to whole Product—Trace of Bacon Content not Perceptible to Eye or Discernible by Taste or Smell—Label Misleading—Food and Drugs Act, 1947, s. 6 (3). The defendant made up and sold an 11 oz. tin surrounded by a coloured label. The label had the word "Crest" in large print at the top, underneath was a picture of a dish of baked beans and at the foot were the words "Baked Beans in tomato sauce with bacon." The defendant was charged under s. 6 (3) of the Food and Drugs Act, 1947, with selling a food in a package—to wit, a tin of "Crest" baked beans in tomato sauce with bacon—which bore a misleading label purporting to indicate the composition of the article in the package. The precise allegation was that the words "with bacon" in the context of the words on the label on the package were misleading and constituted the offence. The evidence established that, in volume, there was a proportion of about eight-onehundredths of bacon to the whole (and this was before the bacon had been minced, boiled, and strained), and that in content of bacon fat there was an average of about twenty-eight one-hundredths; and further, that the bacon was not perceptible to the eye. *Held*, 1. That the test to be applied was: What does the ordinary man understand by the label and, in particular, by the words "with bacon". (*Concentrated Foods, Ltd.* v. *Champ*, [1944] 1 All E.R. 272, applied.) 2. That, on the evidence, the bacon was not discernible visually and to the ordinary person it was not discernible by taste or smell; and accordingly, the label was misleading in the use of the words "with bacon" to indicate the composition of the article. (*Evans* v. *British Doughnut Co., Ltd.*, [1944] 1 All E.R. 158, referred to.) 3. That the defendant company had acted wilfully and there was no evidence of any reasonable steps to ensure that the sale of the article would not constitute an offence, and, consequently the defence under s. 7 of the statute did not avail the defendant company. *Wark* (*Inspector of Health*) v. *New Zealand Products, Ltd.* (Auckland. January 16, 1953. Astley, S.M.)

GAMING.

Offences—Possession of Document designed to be used in Connection with Bookmaking—Doubles Chart—Mere Receipt not Constituting Offence—Offence Complete when Recipient having discovered Nature of Document, retains it in His Possession—Gaming Act, 1908, s. 63A—Gaming Amendment Act, 1949, s. 22. The mere fact of receiving a doubles chart does not in itself constitute the offence of a person's having in his possession a document designed to be used in bookmaking within the meaning of s. 63A of the Gaming Act, 1908, as inserted by s. 22 of the Gaming Amendment Act, 1949. If, however, a person after having received a doubles chart, and after having discovered what it is, elects to retain it in his possession, even if only for a short time (unless for a proved lawful purpose), then such person in fact commits the offence contemplated by s. 63A of the Gaming Act, 1908. (*R.* v. *Hudson*, [1943] 1 K.B. 458; [1943] 1 All E.R. 642, applied.) (*R.* v. *Tennet*, [1939] 1 All E.R. 86, referred to.) *Police* v. *McGregor and Another* (Otahuhu. December 15, 1952. Kealy, S.M.)

LAND AND INCOME TAX.

Income Tax—Compensation awarded for Land Taken—Award of Compensation including Payment to Claimant of "interest" on Net Sum of Compensation until Date of Payment thereof—Such Payment Taxable as "interest" or "income"—Land and Income Tax Act, 1923, s. 79 (1) (g) (h). The appellant was at all material times a farmer, and formerly carried on the business of farming at Titahi Bay near Wellington. By Proclamation dated March 15, 1947, and published in *1947 New Zealand Gazette* 326, certain pieces of land owned by the appellant, particulars of which are set out in the said Proclamation, and the total area of which was 451 ac. 1 ro. 21.59 p., were taken from the appellant by the Crown in pursuance of the Public Works Act, 1928, and s. 30 of the Finance Act (No. 2), 1945. The Proclamation was declared to take effect on March 24, 1947. Certain areas, totalling 9 ac. 0 ro. 15.43 p., were subsequently excluded from the operation of the Proclamation as being land no longer required by the Crown. The compensation payable for the net area of the land so taken was determined by a Compensation Court which by its judgment and award dated November 25, 1949, awarded as the proper amount to be paid to the appellant the sum of £47,000 together with interest thereon at the rate of four pounds (£4) per centum per annum calculated from April 1, 1947, until payment on the amount for the time being unpaid: (see *Marshall* v. *Minister of Works*, [1950] N.Z.L.R. 339; [1950] G.L.R. 20). The text of the award was as follows:—"1. That the amount of compensation to be paid by the respondent to the claimant in respect of the taking of the claimant's said lands be the sum of forty-seven thousand pounds (£47,000) against which shall be credited the sum of seventeen thousand four hundred and eighty-nine pounds (£17,489) being an amount paid on account on August 24, 1948, leaving the net sum of twenty-nine thousand five hundred and eleven pounds (£29,511) payable to the claimant. 2. That the respondent pay to the claimant interest on the whole of the said sum of £47,000 at the rate of £4 per centum per annum calculated from April 1, 1947, until August 24, 1948, and also interest on the said net sum of £29,511 at the rate of £4 per centum per annum from the said August 24, 1949 (*sic*) until the date of payment thereof." On August 24, 1948 the Crown paid to or on behalf of the appellant the sum of £17,489 on account of the compensation which would be payable for the land so taken. On December 23, 1949, the Crown paid to the appellant the balance of the sum of £47,000 referred to in the said award and interest at 4 per cent. as follows:—

On £47,000 from April 1, 1947 to August 23, 1948	£2,626 17s. 0d.
On the balance of £29,511 from August 24, 1948, to December 23, 1949	£1,574 19s. 10d.
Total interest paid	£4,201 16s. 10d.

On September 5, 1951, income-tax and social security charge assessments were made on the appellant in respect of income derived by him during the income year ended March 31, 1950, and the whole of the said interest amounting to £4,201 16s. 10d. was included in the assessments which increased the total amount of his assessable income. The income-tax payable under those assessments was £2,220 2s. 9d. and the social security charge payable thereunder was £362 13s. 4d. The appellant objected to the assessments upon the grounds that the amount awarded by the Compensation Court as interest formed part of the award; that the award was of a total sum and the division into principal and interest was for the purposes of computation only; and that interest was not legally due to the appellant, and could not have been recovered from the Crown. The objection was disallowed by the Commissioner of Taxes. The Commissioner of Taxes contended that the amount awarded by the Compensation Court as interest is income assessable under either para. (*g*) or para. (*h*) of subs. (1) of s. 79 of the Land and Income Tax Act, 1923. On case stated under s. 62 of the Land and Income Tax Act, 1923, the question for the determination of the Court was whether the

sum of £4,201 16s. 10d. awarded as interest and included in the assessment of the appellant's income was income of the appellant and was properly included in his assessable income for income-tax, and in his chargeable income for social security charge for the income year ended March 31, 1950. The learned Chief Justice held that all that can be awarded apart from costs under the Public Works Act, 1928, is compensation, but not interest; that the fact that the claimant was out of his land for a period was a head of compensation, but its assessment by way of computing interest did not make the payment interest: it was part of the realization of a capital asset, and it was, therefore, not taxable as "income" for the purposes of s. 79 (1) (*h*) of the Land and Income Act, 1923. From this determination, the Commissioner of Taxes appealed. *Held*, by the Court of Appeal, That the amount in question was either "interest" for the purposes of s. 79 (1) (*g*) of the Land and Income Tax Act, 1923, or "income" for the purposes of s. 79 (1) (*h*) of that statute, and so liable to assessment for income-tax. For the reasons, per *Northcroft*, J. That, inasmuch as loss of revenue is a class of damage suffered by an exercise of the powers given by the Public Works Act, 1928, it may be awarded to a claimant, and, in appropriate cases it would be reasonable to calculate it as interest; and it is open to the Compensation Court, if it decides to award interest at all, to award it *eo nomine*, as was done in this case; and that, here, interest was separately and expressly awarded as such; and, consequently, the amount of £4,201 16s. 10d. was taxable as "interest" under s. 79 (1) (*h*) of the Land and Income Tax Act, 1923. (*Walker* v. *Wellington and Manawatu Railway Co.*, (1887) N.Z.L.R. 5 S.C. 193; *Hallenstein* v. *Mayor, &c., of Wellington*, (1901) 21 N.Z.L.R. 64; 4 G.L.R. 165); *In re Johnsonville Town Board*, (1907) 27 N.Z.L.R. 36; 9 G.L.R. 636; and *O'Brien* v. *Chapman*, (1910) 29 N.Z.L.R. 1053, applied.) Per *Finlay* and *Cooke*, JJ. That, for income-tax purposes, it is necessary to ascertain whether the true character of the receipt is of an income or capital nature, and that the real question in every case is whether the sum is in reality interest as such, or is in substance a capital sum in arriving at which the element of interest has been introduced *in modum aestimationis*. (*Riches* v. *Westminster Bank, Ltd.*, [1947] A.C. 390; [1947] 1 All E.R. 469), followed.) Per *Finlay*, J. 1. That the Compensation Court which made the award in the respondent's favour had no power to award interest as such; and that the true character or quality of the sum of £4,201 16s. 10d. was a lump sum awarded by way of compensation for the item of loss suffered by a claimant in being dispossessed of his land and for some time being put out of possession of the money representing its value. (*Walker* v. *Wellington and Manawatu Railway Co.*, (1887) N.Z.L.R. 5 S.C. 193, and *In re Johnsonville Town Board* (1907) 27 N.Z.L.R. 36; 9 G.L.R. 636, followed.) 2. That the sum of £4,201 16s. 10d. was given in lieu of income, in that it was given to compensate the respondent for the loss of what he would have received by way of income, if he had been paid—as, ideally, he ought to have been paid, the value of his land at the moment it was taken out of his possession; in other words, the award of that sum was an award, not by way of accretion to capital, but as a sum representative of income and, as "income," it was subject to assessment for income-tax under s. 79 (1) (*h*) of the Land and Income Tax Act, 1923. *Riches* v. *Westminster Bank, Ltd.*, [1947] A.C. 390; [1947] 1 All E.R. 469, applied.) Per *Cooke*, J. 1. That it was plain from the language of para. 2 of the award that, if the Compensation Court had power to award interest as such, it effectively did so—*i.e.*, the payments directed to be made by that paragraph were to be payments of interest in the true sense. 2. That, assuming in the respondent's favour that the Compensation Court had no power to award interest as such and that the provisions of para. 2 of the award were beyond the jurisdiction of the Compensation Court, the form and contents of paras. 1 and 2 of the award were sufficient to show that, for the purposes of s. 79 (1) (*g*) of the Land and Income Tax Act, 1923, the payments directed by para. 2, when in fact subsequently made, were, in essence and in truth, payments of interest as such, and not payments on capital account estimated in terms of interest. (*Riches* v. *Westminster Bank, Ltd.*, [1947] A.C. 390; [1947] 1 All E.R. 469, applied.) 3. That any absence of power in the Compensation Court to award interest as such did not prevent the payments made under para. 2 of the award from being regarded as "interest" under s. 79 (1) (*g*) of the Land and Income Tax Act, 1923; and they fell within that paragraph and were liable to assessment for income-tax. (*Southport Corporation* v. *Lancashire County Council*, [1937] 2 K.B. 589; [1937] 2 All E.R. 626; and *Simpson* v. *Maurice's Executors*, (1929) 14 Tax Cas. 580, referred to.) *Marshall* v. *Commissioner of Taxes* (S.C. & C.A. Wellington. December 22, 1952. Northcroft, Finlay, Cooke, JJ.)

LAND SETTLEMENT PROMOTION.

Application for Consent to Sale of Farm Land—Proposed Purchaser owning Adjoining Property—Principles to be applied—"Undue aggregation of farm land"—Land Settlement Promotion Act, 1952, ss. 29 (1) (a), 31 (1). The Land Settlement Promotion Act, 1952, is not *in pari materia* with the Servicemen's Settlement and Land Sales Act, 1943, to which it bears little relation. The term "undue aggregation" as used in s. 29 (1) (*a*) of the Land Settlement Promotion Act, 1952, is not precisely defined in that statute; but a Land Valuation Committee, in considering whether the acquisition of the land in question would cause "an undue aggregation of farm land," must have regard to the matters referred to in s. 31 (1). Under s. 31 (1) (*a*) reasonable regard must to some extent be had to the immediate future in relation to the support of the purchaser and his wife and such of his children as are dependent on him in a reasonable manner and in a reasonable standard of comfort. The "ordinary and reasonable standards" referred to in s. 31 (1) (*b*) are those obtaining in the district in which the land sought to be acquired is situated; and they are matters to be established by proper evidence. The words "public interest" as used in s. 31 (1) (*d*) are to be read in the light of the objects sought to be achieved by the statute; and in practice those words probably have somewhat limited application. Section 31 (1) (*e*) does not confer on a Land Valuation Committee a particularly wide discretion. *Quaere*, To what extent a Land Valuation Committee is empowered to consider the other so-called "relevant" matters referred to in s. 31 (1) (*e*), when, having regard to the matters mentioned in s. 31 (*a*) and (*b*), there would be "an undue aggregation of farm land." *In re A Proposed Sale, P. to S.* (Dunedin. April 14, 1953. Otago Land Valuation Committee. Willis, S.M., Chairman.)

LANDLORD AND TENANT.

Floods, *97 Solicitors' Journal*, 107.

Goodwill: Predecessor in Title, *97 Solicitors' Journal*, 143.

LAW PRACTITIONERS.

Barrister—Contempt of Court—Act of Discourtesy. A barrister practising in Nigeria, who was appearing in a divorce case, was absent from Court on the day on which judgment was to be given, permission to be absent, which had been previously granted by the Judge, having been withdrawn. He was summoned to attend the Supreme Court of Nigeria, which fined him £10 and ordered that, in default of payment, he be imprisoned for two months, for contempt of Court. He appealed to the West African Court of Appeal, which struck out the appeal on the ground of lack of jurisdiction. *Held*: while an act of discourtesy may amount to contempt of Court, yet summary punishment should be used sparingly; the appellant's conduct was clearly discourteous, and it may have been in dereliction of his duty to his client; but it did not amount to contempt of Court. *Izuora* v. *The Queen*, [1953] 1 All E.R. 827 (P.C.)

As to Acts Constituting Contempt of Court by a Barrister, see *2 Halsbury's Laws of England*, 2nd Ed., 510, para. 693.

MENTAL DEFECTIVES.

Committee—Petition by Person other than Public Trustee—Court justified in preferring Petitioner only if Sufficient Reason be shown—Mental Defectives Act, 1911, s. 115. Section 115 (1) of the Mental Defectives Act, 1911, contemplates, as the general thing, the appointment of the Public Trustee as the committee of the estate of a mentally defective person, and gives the Court the specific direction set out in that section. To justify the Court in appointing as the committee any person other than the Public Trustee, the circumstances must be such as to afford sufficient reason for preferring the petitioner to the Public Trustee. (*In re A. B.*, (1913) 32 N.Z.L.R. 781; 15 G.L.R. 457; *In re S.*, [1951] N.Z.L.R. 122; [1951] G.L.R. 109; and *In re E.*, [1952] N.Z.L.R. 826, distinguished.) (*In re K.*, [1948] N.Z.L.R. 800, and *In re C.*, [1951] N.Z.L.R. 578; [1951] G.L.R. 211, referred to.) Thus, where a solicitor (who was in every respect qualified to undertake the duty) petitioned to be appointed the committee of a mentally defective person, whose estate presented no difficulty of management, insufficient reasons for preferring the petitioner to the Public Trustee were the close relationship of the petitioner with the patient in friendship and business, his having been appointed executor of the patient's will, and the probability that, owing to the patient's age, it would not be long before the petitioner's duty as executor commenced. *In re Q.* (S.C. Wellington. March 24, 1953. Hutchison, J.)

PRACTICE.

Appeal to Court of Appeal—Application for Leave to Appeal—Principles applicable—Applicant alone interested in Subject-matter of Litigation—Decisive Principle of Law, as applied to Facts, already laid down by Court of Appeal—Leave refused—Judicature Act, 1908, s. 67. On an application for leave to appeal, under s. 67 of the Judicature Act, 1908, the applicant must show more than the existence of a substantial question of law or of fact which is capable of *bona fide* and serious argument. Further, he must show that there is involved in the case some interest, public or private of sufficient importance to outweigh the cost and delay that would result from further proceedings in the Court of Appeal. The interest which justifies the grant of leave is some interest, public or private, beyond the mere direct interest of the party seeking leave in the subject-matter of the litigation. (*Rutherford* v. *Waite*, [1923] G.L.R. 34, applied.) The respondent in the appeal reported, [1953] N.Z.L.R. 63, from the determination of the Magistrates' Court, sought leave to appeal in the Court of Appeal from the judgment of the Supreme Court. *Held*, refusing leave to appeal, That there was no interest, public or private, beyond the mere direct interest of the respondent in the subject-matter of the litigation; and that no substantial issue of law or fact was involved, as all that was done by the Supreme Court was to apply to the facts of this particular case an established principle of law laid down by the Court of Appeal. (*Rutherford* v. *Waite*, [1923] G.L.R. 34, applied.) (*Aurora Trading Co., Ltd.* v. *Nelson Freezing Co., Ltd.*, [1922] N.Z.L.R. 662; [1922] G.L.R. 241, referred to.) *Adams Bruce, Ltd.* v. *Frozen Products, Ltd.* (*No. 2*) (S.C. Wellington. December 15, 1952. Hay, J.)

SOLICITOR AND CLIENT.

Dealings between Solicitor and Client, *103 Law Journal*, 133.

TENANCY.

Dwellinghouse—Creation of Tenancy by Implication—Agreement to let at Rent in Excess of Basic Rent subject to Rents Officer's Approval—Agreement to have No Force or Effect and not to create Tenancy until Such Approval obtained—Tenant let into Possession—No Approval of Rents Officer sought or obtained—Intention of Parties Test of Whether Tenancy or Licence for Exclusive Occupation—No Intention to create Licence shown—Inference of Intention to create Tenancy—Restrictions of Statute applicable thereto—Tenancy Act, 1948, ss. 22 (b), 47—Property Law Act, 1952, s. 105. Parties may now by contract, and in return for payments in the nature of rent, create rights of occupation which are both exclusive and capable of subsistence for any period, definite or indefinite, and the resulting legal relationship may not be that of landlord and tenant. In every case, the test is the intention of the parties; and the parties can, by clear expression of intention create a tenancy or create a licence for exclusive occupation possessing all the characteristics of tenancies except for the fact that it does not confer on the tenant an interest in the land. (*Errington* v. *Errington*, [1952] 1 All E.R. 149; *Cobb* v. *Lane*, [1952] 1 All E.R. 1199; *Marcroft Wagons, Ltd.* v. *Smith*, [1951] 2 All E.R. 271, and *Winter Garden Theatre* (*London*), *Ltd.* v. *Millennium Productions, Ltd.*, [1948] A.C. 173; [1947] 2 All E.R. 331, applied.) On April 13, 1951, the plaintiff (therein described as "the landlord") and the defendant (therein described as "the tenant") entered into an agreement whereby the landlord let and the tenant took certain residential premises at a rent in excess of the basic rent. The agreement contained the following clauses: "4. The provisions of Part III and of Sections 41, 42 and 43 of the Tenancy Act, 1948, save as expressly incorporated herein shall have no application to the premises the subject of this agreement or to any part thereof. 5. This agreement is subject to the approval of the Rents Officer and pending such approval shall have no force or effect nor shall any tenancy be deemed to have been created hereby or by any act of the parties in pursuance thereof unless such approval is forthcoming within weeks of the date hereof." No copy of the agreement was deposited with a Rents Officer, and it was not approved by a Rents Officer in terms of s. 48 (1) of the Tenancy Act, 1948 (as substituted by s. 2 (1) of the Tenancy Amendment Act, 1950). The defendant went into possession of the premises on the day after the execution of the agreement, and, later paid the rent for twenty-two weeks to the credit of the plaintiff's bank account. On September 10, 1951, the defendant claimed from the plaintiff a refund of £24 15s. as excess rent paid by her from April 14, 1951, to September 15, 1951. On September 26, the plaintiff's solicitors gave the defendant notice that as "the agreement is no longer effective, it would be necessary to revoke your licence to occupy the premises. Will you therefore kindly take notice that your licence to occupy the premises is revoked." In an action in the Magistrates' Court there was a claim for possession of the dwellinghouse, and for the sum of £90 for mesne profits at the rate of £3 per week up to November 10, 1951, less the sum of £66 refundable by the plaintiff to the defendant under the Frustrated Contracts Act, 1944. The resulting sum of £24 was also claimed, alternatively, for mesne profits from September 15 to November 10, and there was a further claim for mesne profits at £3 per week. The Magistrate held that there was no tenancy, the defendant having a licence to occupy only and being in the position of a mere licensee. He gave judgment for the plaintiff for the difference between payments made at the rate of £1 17s. 6d. per week (the basic rent) and the sum of £2 5s. which he had fixed as the proper allowance for "use and occupation," and he also gave judgment for possession. On appeal by the defendant from that judgment, *Held*, 1. That the Tenancy Act, 1948, does not invalidate an agreement *in toto* because it contains a clause, such as cl. 4 of the agreement (as above set out), which is rendered nugatory by s. 47 of the Tenancy Act, 1948; the statute does not invalidate the whole agreement because there is a conditional stipulation for an excessive rent in breach of s. 22 (*b*), and it did not amount to an offence against s. 22 (*b*) to stipulate, subject to a Rents Officer's approval, for a rental in excess of the basic rent. 2. That cl. 5 of the agreement was merely consensual and could be abrogated expressly or impliedly by consent; and it left the parties free to act, if they chose, in such a way that a tenancy might arise by implication. (*Mansion House Kawau, Ltd.* v. *Stapleton* [1948] N.Z.L.R. 1015; [1948] G.L.R. 454 and *Allan* v. *Reid*, [1951] N.Z.L.R. 328; [1951] G.L.R. 182, distinguished.) 3. That the proper inference from the facts was that there was a tenancy, because there were all the factors of exclusive possession and of payments in the nature of rent, which whether or not they raised a *prima facie* case of tenancy (as they did in the absence of explanatory circumstances) were matters of importance; and that there was an entire absence of any evidence that the parties expressly contemplated a licence, or contemplated that the relations between them should be governed by anything else but the agreement; and any suggestion of an express agreement for a licence had to be rejected as unproved. (*Errington* v. *Errington*, [1952] 1 All E.R. 149; *Cobb* v. *Lane*, [1952] 1 All E.R. 1199; *Marcroft Wagons, Ltd.* v. *Smith*, [1951] 2 All E.R. 271; and *Winter Garden Theatre* (*London*), *Ltd.* v. *Millennium Productions, Ltd.*, [1948] A.C. 173; [1947] 2 All E.R. 331, distinguished.) 4. That, applying the test of intention, the defendant was let into possession in pursuance of the agreement, and with the intention of bringing the agreement into operation subject to such modifications as might be necessary to secure the approval of the Rents Officer. 5. That, alternatively, the letting of the defendant into possession was not an act done in pursuance of the agreement, but, in the absence of explanatory evidence, was ground for inferring a new and distinct arrangement involving a tenancy at will or a tenancy to which s. 16 of the Property Law Act, 1908 (now s. 105 of the Property Law Act, 1952) would apply. (*Francis Jackson Developments, Ltd* v. *Stemp*, [1943] 2 All E.R. 601, applied; *Morris* v. *Baron and Co.*, [1918] A.C. 1, distinguished.) 6. That, on either view, the tenancy arose not by force of the agreement but by reason of the act done with the intention which the Court imputed to the plaintiff when he subsequently let the defendant into possession, which was consistent only with the view that the parties were in fact giving force and effect to the agreement. 7. That, accordingly, the agreement took effect subject to the provisions of the Tenancy Act, 1948, with regard to the rent, and, no approval of a Rents Officer having been obtained, subject also to Part III and to ss. 41, 42 and 43. The appeal was allowed, judgment to be entered for the defendant in the Magistrates' Court in respect of the claim for mesne profits as well as in respect of the claim for possession. *Donald* v. *Baldwyn* (S.C. Auckland. December 18, 1952. F. B. Adams, J.)

Urban Property—Possession—Applicant claiming to be Landlord for Period of Two Years preceding Service of Notice of Intention to Apply for Possession—Applicant Trustee of Property for Part of that Period and Beneficial Owner for Balance thereof—Landlord required to be Beneficial Owner for Whole Period—Tenancy Act, 1948, ss. 24 (1) (h), 25—Tenancy Amendment Act, 1950, s. 12. Section 24 (1) (*h*) of the Tenancy Act, 1948, confers a right dependant on the holding of a beneficial interest in the property; consequently, it does not confer a personal benefit on a trustee in consequence of a legal interest in the premises held by him only for the benefit of others. Therefore, a person cannot aggregate two periods of time in which he was "landlord" of an urban property in the different capacities of trustee and beneficial owner, in order to make up

the period of two years immediately preceding the notice to quit required by the second proviso to s. 25 of the Tenancy Act, 1948. (Judgment of *Morton*, L.J., in *Sharpe* v. *Nicholls*, [1945] 2 All E.R. 55, applied.) *Dudding* v. *Beale and Co., Ltd.* (S.C. Auckland. February 24, 1953. Fair, J.)

Urban Property—Possession—Landlord requiring Premises for Own Occupation, after Year's Notice given—Exercise of Court's Discretionary Power—Some Hardship on Landlord's Part to be Established before Power exercised—No Distinction between Hardship of Tenant and Hardship of "Any other person"—Tenancy Act, 1948, ss. 24 (1) (2), 25 (1)—Tenancy Amendment Act, 1950, s. 12. The effect of the additional proviso added to s. 25 (1) of the Tenancy Act, 1948, by s. 12 of the Tenancy Amendment Act, 1950, in relation to an application for possession based on the ground set out in s. 24 (1) (*h*) of the Tenancy Act, 1948, is that the provisions of s. 24 (2) are to be read as though s. 25 (1) had not been enacted. Section 24 (1) of the Tenancy Act, 1948, makes no distinction between the hardship of a tenant on the one hand and that of "any other person" on the other; and hardship in the case of the former is not to be given greater weight than in the case of the latter. Before the Court may exercise in favour of a landlord, the discretionary power conferred by s. 24 (2), some hardship on his side must be established. If there is none, it is the duty of the Court to exercise its discretion in favour of the tenant, assuming that hardship is shown on his side. *Humphrey's Furniture Warehouse, Ltd.* v. *Charlie Ming Yee* (S.C. Gisborne. February 26, 1953. Hay, J.)

TRANSPORT.

Exceeding the Speed Limit: A Note on *Blenkin* v. *Bell*, *103 Law Journal*, 53.

Offences—Carrying on Unlicensed Goods-service—Owner-drivers, Unincorporated, carrying on Taxi Service in Association with One Another—Such Unincorporated Body charged with Offence—Not a "person," and so not liable to Prosecution—Transport Act, 1949, s. 95—Acts Interpretation Act, 1924, s. 6 (1)—Justices of the Peace Act, 1927, s. 54. In view of the terms of s. 6 (1)—of the Acts Interpretation Act, 1920, the word "person" as used in penal enactments, does not include an unincorporated body of persons. Consequently, a body of persons or owner-drivers, associated and operating a taxi service and unincorporated, cannot be charged with an offence under s. 95 of the Transport Act, 1949. (*Davey* v. *Shawcroft*, [1948] 1 All E.R. 827, applied.) *Semble*, As members of an unincorporate body commit an offence, in order to bring them within s. 54 of the Justices of the Peace Act, 1927, they must be charged individually. *Police* v. *Kiwi Cabs* (Wanganui. March 24, 1953. Preston, S.M.)

Recovery by Local Authority of Extraordinary Expenses for Road Repair—Action to be commenced by Plaint and Summons in Ordinary Way—Magistrates' Courts Act, 1947, s. 30—Transport Act, 1949, s. 53 (1)—Justices of the Peace Act, 1927, s. 389. The provisions of s. 53 (1) of the Transport Act, 1949, are not penal: they are intended to apply not only to unlawful user amounting to a public nuisance, but also to user, which though not ordinary is legitimate and reasonable, the object being to ensure that a person using a highway for unusual purposes should pay for any damage caused thereby. Since the provisions of s. 53 are not penal, s. 389 of the Justices of the Peace Act, 1927, is not available as a method of enforcing liability for extraordinary expenses under that section. (*Watson* v. *Derry and Climo* ([1952] N.Z.L.R. 629; [1952] G.L.R. 447, followed.) The correct procedure is by action commenced by plaint and summons under the Magistrates' Courts Act, 1947, the appropriate jurisdiction being conferred by s. 30 of that statute. *Kiwitea County* v. *Dornbusch* (Taihape. March 3, 1953. Preston, S.M.)

Right-hand Rule—Right of Driver with Benefit of Rule to proceed—Extent of Right to rely on Compliance with Rule by Others—Consideration whether Driver should have seen Approach of Offending Driver—Conduct not subjected to Too-refined an Examination when Time to be measured in Fractions of Second—Traffic Regulations, 1936 (Serial No. 1936/86) Reg. 14 (6). A driver entitled to the benefit of the right-hand rule is entitled to exercise the right to proceed, which the rule confers upon him, until that point of time at which he sees or as a reasonably prudent driver he ought to see and appreciate, that if he continues to exercise the right and continues to proceed a collision will result. (*Buckley* v. *The King*, [1945] N.Z.L.R. 531; [1945] G.L.R. 209, followed.) If the driver of a motor-vehicle has deliberately disregarded the right-hand rule, he cannot be heard to say that another driver is negligent because, if he had in time observed such disregard of the rule, he could have stopped and allowed the improper manoeuvres to succeed. (*Joseph Eva, Ltd.* v. *Reeves*, [1938] 2 All E.R. 115, applied.) The conduct of the party who has the right to expect compliance with the regulations should not be subjected to too-refined an examination when, on a consideration of whether he should have seen the offending driver approaching time has to be measured in fractions of a second. (*Phillips* v. *Clark*, [1951] G.L.R. 148, and *Robertson* v. *Stapp*, [1951] G.L.R. 473, applied.) The appellant, S., was driving his motor-car along E. Street, and as he reached its intersection with F. Street, he looked to his left but saw nothing coming. He then proceeded to cross the intersection at a speed of from five to ten miles per hour. R. came along F. Street on S.'s left. He saw S. on the intersection, but thought he could pass ahead of him. S. did not see R. until he was so close that a collision was inevitable, and his car struck R.'s on the right-hand side. Both cars were damaged. Each party blamed the other and claimed to recover his loss from the other of them. In the Magistrates' Court, both parties were held to have been to blame for the collision: R. to the extent of 80 per cent. and S. to the extent of 20 per cent. On appeal by S. from that determination, *Held*, 1. That, on application of the above stated principles to the facts as found, no blame in relation to the accident was attributable to S. The appeal was accordingly allowed. *Sunde* v. *Rendell* (S.C. Auckland. December 8, 1952. Stanton, J.)

Warrant of Fitness—Tractor and Trailer used to take Milk to Dairy Factory and to carry Whey back to Farm—Such Vehicles not used for "farm operations," and so not within Exemption from carrying Warrant of Fitness—"Motor-vehicles"—Transport Act, 1949, s. 2—Traffic Regulations, 1936 (Serial No. 1936/86), Regs. 6 (1) (d), 11. The carriage of milk in a motor-vehicle from a farm to a dairy-factory and the carriage back to the farm of whey for the pigs are not "farm operations" within the meaning and intent of Reg. 6 (1) (*d*) of the Traffic Regulations, 1936; and the exemption therein from carrying a warrant of fitness does not apply in terms of Reg. 11 to motor-vehicles so employed. Although a vehicle (such as a trailer) may, by design and construction have been intended for agricultural purposes, the use which is made of it determines its exclusion from the definition of "motor-vehicle" contained in s. 2 of the Transport Act, 1949; and its habitual use to carry milk and whey on the road takes it out of the exception. (*Smyth* v. *Carlyle*, [1929] G.L.R. 6, applied.) *Police* v. *Moreland* (Hamilton. January 30, 1953. Paterson, S.M.)

TRUSTS AND TRUSTEES.

Modification of Trust: Court's Power to Sanction, *215 Law Times*, 57.

Trusts and Taxation, *103 Law Journal*, 99.

Trust Corporations: Power to Act as Bankers, *215 Law Times*, 45.

VALUATION OF LAND.

Resumption Valuation, *6 Australian Conveyancer and Solicitors' Journal*, 12.

WILL.

Condition—Certainty—Devise to person "who shall be a member of the Church of England and an adherent to the doctrine of that church". By his will, dated November 4, 1906, a testator, who died on November 25, 1908, devised real property to the eldest of the sons of F. "who shall be a member of the Church of England and an adherent to the doctrine of that church", and, in case there should be no son of the said F. "who shall be a member of the Church of England or an adherent to the doctrines of that church", then the testator devised the property to W. *Held:* the terms "member of the Church of England" and "adherent to the doctrine of that church" were incapable of exact definition, and, therefore, the condition was void for uncertainty. (*Re Tegg*, [1936] 2 All E.R. 878; *Re Lockie*, [1945] N.Z.L.R. 230, and *Re Biggs*, [1945] N.Z.L.R. 303, applied.) *Re Allen (deceased). Faith* v. *Allen and Others* [1953] 1 All E.R. 308 (Ch.D.)

As to Uncertainty in a Will, see *34 Halsbury's Laws of England*, 2nd Ed., pp. 109, 219-222, paras. 143, 274-277; and for Cases, see *44 E. and E. Digest*, pp. 440-444, 609-611, 612, 613, Nos. *2667-2687, 4366-4385, 4393-4400.*

Noncupative wills, *103 Law Journal*, 102.

Continued from cover i.

BERTRAM EGLEY, Solicitor, of Wellington, desires to announce that he has re-entered practice, and is carrying out Agency matters for the Legal Profession at the following addresses:
153 FEATHERSTON ST., P.O. Box 1988, WELLINGTON.
Office Telephone 41-999; (Residence) 53-611

BARRISTER AND SOLICITOR, 29, general experience, desires to acquire a partnership or position with immediate prospects in Auckland Provincial Country town. Reasonable capital available. Reply to—
" PRACTITIONER ",
C/o C.P.O. Box 472, WELLINGTON.

MESSRS. JOHN IRA FRASER and ALEXANDER HECTOR MACDONALD carrying on the practice of Barristers and Solicitors at Ranfurly, under the firm name of " Fraser & Macdonald " announce that they have admitted to partnership Alexander James Lloyd Martin, LL.M. The practice will be carried on under the firm name of " Fraser, Macdonald & Martin " at the same offices, Pery Street, Ranfurly.

J. I. FRASER.
A. H. MACDONALD.
A. J. LLOYD MARTIN.

MESSRS. M. R. GRIERSON, W. R. P. MOODY and R. K. JACKSON wish to announce that they have been joined in partnership by MR. D. S. BEATTIE, Barrister and Solicitor of Auckland. The partnership will practise under the name of GRIERSON, MOODY, JACKSON & BEATTIE, at Second Floor, Yorkshire House, AUCKLAND, and at King Street, PUKEKOHE.

M. R. GRIERSON.
W. R. P. MOODY.
R. K. JACKSON.
D. S. BEATTIE.

PARTNERSHIP.

MR. E. M. MACKERSEY has pleasure in announcing that he has admitted into partnership MR. GORDON KEITH ROSS, LL.B., Barrister and Solicitor. The practice of Barristers and Solicitors will be carried on as from the 1st of April, 1953, under the firm name of MACKERSEY & ROSS, at KING STREET, TE KUITI.

PARTNERSHIP NOTICE.

We wish to announce that we have admitted into partnership as from the 1st day of April, 1953, MR. GERARD PUTNAM MONAGHAN, LL.B., son of MR. CHARLES EDWARD MONAGHAN. The practice will continue to be carried on under the same firm name of " MONAGHAN & MIDDLETON."

MONAGHAN & MIDDLETON.
Egmont Street, New Plymouth.
1st April, 1953.

MR. L. N. JACKA and DR. R. G. MCELROY have pleasure in announcing that as from the 1st day of April, 1953, they have admitted into partnership with them MR. ROBERT HUGH DUNCAN for some time their managing clerk. The practice will continue to be carried on as heretofore at 2nd Floor, Yorkshire House, and the firm name will be JACKA, MCELROY & DUNCAN.

E. T. F. FIDLER, LL.B., Barrister and Solicitor, desires to announce that he has commenced practice at the following address :—
James Hotel Building, (First Floor), Cameron Street,
WHANGAREI. Telephone 4114.

MESSRS. HESKETH RICHMOND COCKER & CO. and R. H. MACKAY, Solicitors, Auckland, announce that they have amalgamated their practices and that the amalgamated practice will be carried on after 1st April, 1953 at Messrs. Hesketh Richmond Cocker & Co's. offices, No. 2 WYNDHAM STREET, AUCKLAND, under the name or style of HESKETH RICHMOND COCKER & CO. and R. H. MACKAY.

THE GAZETTE LAW REPORTS.

Fifty-five Years of Service.

With their second March part, the *Gazette Law Reports* have ceased publication as such, as the series has become incorporated in the *New Zealand Law Reports*, which are now in their seventieth year of publication.

During the practising years of the great majority of present-day New Zealand lawyers, the *Gazette Law Reports* have occupied a conspicuous place in the life of the law in this Dominion. The beginnings of those *Reports*, and their place in the legal literature of reporting, are due to the vision of one man, a prominent Christchurch practitioner.

In 1898, the late Mr. Thomas Gregory Russell established the *Gazette Law Reports*, and he continued as Managing Editor until his death on December 9, 1935.

Mr. Russell was born at Colchester, in Essex, England, and spent his early years in North Canterbury. Later, he studied for the legal profession, and qualified as a barrister and solicitor, being admitted in 1884. He was well-known in business circles throughout the Dominion, and occupied a prominent position in the legal profession. Until 1920, he carried on a successful legal practice, conducting many important civil and criminal cases. Besides his legal practice, the late Mr. Russell had extensive interests in commercial undertakings. He was the founder of New Zealand Automobiles, Ltd., a company which successfully marketed the "Buick" and "Nash" cars in New Zealand, and this company was one of the forerunners of the larger motor-importing firms now operating throughout the Dominion. Mr. Russell published the first issues of *Rules and Regulations under the New Zealand Statutes*, and his book, *Commercial Law in New Zealand*, was used for many years as a text-book in the New Zealand University Colleges, and was widely read by many business men.

The late Mr. Russell was a man of many unusual attainments, and he possessed outstanding business ability. An indefatigable worker who spared neither time not trouble to assist in the successful achievement of any venture upon which he was engaged, he was successful in everything which he undertook. Notwithstanding his own busy career, he was kindly at all times to those who were at the bottom of the ladder, and a word of encouragement and advice which gave confidence and courage when most needed, was often given. Mr. Russell did not take an active interest in public affairs, and his charitable dispositions, which were many, were made unostentatiously. He possessed very clear views on commercial and political affairs, as is well illustrated in the many articles which have appeared over a long period of years in *The Mercantile Gazette of New Zealand*; and his opinions were sought on important legal and commercial questions. The late Mr. Russell had the interest of New Zealand at heart, and it was his desire always to assist in maintaining the credit of the Dominion and that legislation should be promoted to make the country prosperous and its people happy.

The first number of the *Gazette Law Reports* was published on December 31, 1898; and thereafter it appeared quarterly until the following year when, from October onwards, fortnightly parts were issued.

The *Gazette Law Reports* have been well and favourably known to the legal profession of the last fifty-six years. They led the way in reporting cases under the Industrial, Conciliation, and Arbitration Acts and the Workers' Compensation Act. As was said by the late *Sir Michael Myers*, *Sir Archibald Blair* and *Sir Hubert Ostler*, the thirty-years' *Digest* of the Reports (1898-1928) remains a monument to Mr. T. G. Russell's services in connection with law-reporting in the Dominion.

In 1912, a company, the Gazette Law Reports, Ltd., was formed, with the late Mr. Russell as Managing Director, and Messrs. H. Walshaw and L. F. Blewett, who had been associated with the *Gazette Law Reports* for many years, as Directors.

Upon Mr. Russell's death in 1935, Mr. C. R. Russell, a son of the late Mr. Russell, was appointed Chairman of Directors, and, with Messrs H. Walshaw and L. F. Blewett, as Directors, the business of the Company was subsequently carried on under their management and control.

The decision of the Directors to effect a sale of the *Gazette Law Reports* to Messrs. Butterworth & Co. (Australia) Ltd., was prompted by the fact that the estate of the late Mr. Russell, the principal shareholder of the Company, will soon be entering upon the period of distribution. For the same reason, the trustees of the estate deemed it advisable to dispose of their interest in the *Magistrates' Court Reports*, which were founded by Mr. Russell in 1906.

The *Gazette Law Reports* claimed to have printed every judgment which has been given in New Zealand since 1898, except cases dealing with facts only or cases in which there was nothing which would be of any value to the profession. On the other hand, it has published, for the benefit of younger practitioners, judgments which were already amply covered by direct authority. During its fifty-five years of publication, no-one called the Editor's attention to any errors. The publication of all judgments absolutely followed copy. Judgments of particular value to the profession were published as soon after receipt as possible, and many cases which have not appeared in any other publications have been printed in the *Gazette Law Reports*.

Mr. T. G. Russell was Editor from 1898 until his death in 1935. Mr. T. A. Murphy, M.A., LL.B., was Assistant Editor from 1903 until his death in 1929. Mr. H. D. Muff, LL.B., was then appointed, and he continued as Assistant Editor until 1936, when he was appointed Editor with Mr. G. R. Butler as Assistant Editor. In 1941, Mr. Muff retired and he was succeeded by Mr. Butler. When Mr. Butler retired in 1949, Mr. H. W. Thompson was appointed to the position.

THE PROPERTY LAW ACT, 1952.

Further Amendments to the Law of Property explained.

By E. C. ADAMS, LL.M.

THE RULE AGAINST DOUBLE POSSIBILITIES.

In my last article I dealt with entailed estates and the rule in *Shelley's* case. Another rule, which has for generations plagued the life of the student of the New Zealand law of real property, is the rule against double possibilities. This too has received its quietus by the new property law legislation.

History and explanation of the Rule.—By s. 37 of the Conveyancing Ordinance of 1842, the Charter of our New Zealand law of property, it was provided that no estate should be void on account of its being made to depend on a possibility upon a possibility. The same provision appeared in s. 8 of the Property Law Act, 1908, which has now become s. 26 of the Property Law Act, 1952. As pointed out, however, in the Third Edition of *Garrow's Law of Real Property in New Zealand*, 362, in the light of recent research it is now generally agreed that there was never any such actual rule as the rule against double possibilities, but that, when the rule against double possibilities was spoken of, what was meant was that a remainder could not be given to the issue of an unborn person after an estate for life to such unborn person. This latter rule has been a rule of the English common law for a very long time and is now usually referred to as "the Rule in *Whitby* v. *Mitchell*," (1890) 44 Ch.D. 85, another case which the law student dare not forget at his peril. What therefore did s. 37 of the Conveyancing Ordinance, 1842, and s. 8 of the Property Law Act, 1908, really mean? *Garrow* expresses a very confident opinion:

> When the Conveyancing, Ordinance was passed, the only meaning that could be attached to the rule against double possibilities was that now embodied in the rule in *Whitby* v. *Mitchell*, and the only estates that could be made void at that time by the rule against double possibilities would be estates in remainder to the issue of an unborn person to whom there was a limitation for life. Consequently, if s. 37 of the Conveyancing Ordinance is to have any meaning, it must be taken to mean the abrogation of the rule now expressed in the rule in *Whitby* v. *Mitchell*. This would correspond with the general effect of the provisions of the Ordinance, which are all in the direction of doing away with such of the rules of English law as were considered unnecessary in the colony and which all tend towards the simplification of the law of property, as a careful study of the Ordinance of 1842 will show.

The Rule in Whitby v. *Mitchell retrospectively abrogated.*—Section 26 of the Property Law Act, 1952, which reads as follows, expresses *Garrow's* viewpoint, and moreover is of retrospective effect:—

> 26. (1) The rule of law prohibiting the limitation, after a life interest to an unborn person, of an interest in land to the unborn child or other issue of an unborn person is abolished, but without prejudice to any other rule relating to perpetuities.
>
> (2) Whereas section eight of the Property Law Act, 1908 made provision in the words following, namely, "No estate shall be void on account of its being made to depend on a possibility upon a possibility":
>
> Now, therefore, to prevent doubt being made as to the effect of the said section, it is hereby declared that the said section in its true meaning and effect extended at all times until the repeal thereof to establish the law as expressed in subsection one of this section and to abolish the rule thereby expressed to be abolished.

It may be pointed out that the corresponding provision in the United Kingdom legislation is not retrospective: see *Re Leigh's Marriage Settlement. Rollo* v. *Leigh*, [1952] 2 All E.R. 57.

Therefore, we can rejoice with the Hon. Mr. Mason that the rule against double possibilities and the rule in *Whitby* v. *Mitchell*, are "quite dead", and "the corpses are buried out of sight and may be forgotten."

"HEIRS" AND "NEXT-OF-KIN" INTERPRETED.

In a previous article, I referred to s. 38 of the Property Law Act, 1952, which interpreted certain expressions in written instruments, such as, "heirs of the body." A cognate section is s. 37, which reads as follows:—

> 37. (1) Where under the terms of any instrument coming into operation after the commencement of this Act any property vests in—
>
> (*a*) The heirs or heirs of any person; or
>
> (*b*) The next of kin of any person; or
>
> (*c*) The next of kin of any person to be determined in accordance with the Administration Act, 1952,—
>
> the property shall vest in the persons who on the death of the person intestate would be beneficially entitled to his real and personal estate under the said last-mentioned Act, and in the same shares.
>
> (2) This section applies only if and so far as a contrary or other intention is not expressed in the instrument, and shall have effect subject to the terms of the instrument and to the provisions therein contained.

As the Hon. Mr. Mason said in (1952) 28 NEW ZEALAND LAW JOURNAL, 25, legislation has so altered the operation of such expressions that it is hardly likely that a person, or at least an unlearned person, using them would have an intention in any way according with their present effect. It is well, therefore, to impose on them a presumptive meaning more in accord with the probable intention—as is here done.

This section is referred to by Mr. Justice *Fair*, in *In re Goldie, (deceased), Goldie* v. *Goldie*, [1952] N.Z.L.R. 928, 934. It appears from this case that this section alters the law somewhat, that is to say that it alters the primary meaning of the words "next-of-kin."

Apparently a gift to one's "relations" would be interpreted similarly; *In re Ganaloser's Will Trusts*, [1951] 2 T.L.R. 10, but the persons concerned would take as joint tenants and not as tenants in common.

Section 37 of the Property Law Act, 1952, is undoubtedly a good section, for it will render many an instrument certain, which but for the section would require to be interpreted by the Supreme Court. It will be observed, however, that the section is not retrospective, as it applies only to instruments coming into operation on or after the first day of January, 1953.

STATUTORY PROVISIONS RESTRICTING ACCUMULATION OF INCOME.

All the restrictions on the accumulation of income are now contained in ss. 41 and 42 of the Property Law Act, 1952. This ought to result in a great convenience to practitioners. In the past we have had to look up the Accumulations Act, 1800 (39 & 40 Geo. 3, c. 98), and s. 32 of our Property Law Act, 1908. The Accumu-

lations Act, 1800, was passed because of the extraordinary will of one Mr. Peter Thellusson. By his will, after numerous devises and bequests to his wife, his three sons, and his three daughters and other persons, he left the residue, worth over £600,000, to trustees upon trust for investment and *accumulation* during the lives of all his descendants *living at his death* (with the exception of his daughters and their issue) and the life of the survivor and then upon trust for division into three equal parts, for distribution among the surviving descendants of his three sons. The will was upheld under the then existing law.

Qualifications of restrictions on accumulation.—Section 42 appears to be new, and ought to prove very handy in practice: it reads as follows:—

> 42. Where accumulations of surplus income are made during a minority under any statutory power or under the general law, the period for which those accumulations are made is not (whether the trust was created or the accumulations were made before or after the commencement of this Act) to be taken into account in determining the periods for which accumulations are permitted to be made by the last preceding section, and accordingly an express trust for accumulation for any other permitted period shall not be deemed to have been invalidated or become invalid, by reason of accumulations also having been made as aforesaid during that minority.

Section 41 appears to be the same effect as the Accumulations Act, 1800, and s. 32 of the Property Law Act, 1908; and, therefore, it does not require any special comment.

Provisions as to intermediate income of contingent or executory gifts.—Another section, in which accumulations are also mentioned, is s. 35, which reads as follows:—

> 35. (1) A contingent or future specific or residuary devise or bequest of property, and a specific or residuary devise or bequest of property upon trust for a person whose interest is contingent or executory, shall, subject to the statutory provisions relating to accumulations, carry the intermediate income of that property from the death of the testator except so far as the income or any part thereof may be otherwise expressly disposed of.
>
> (2) Where under an instrument other than a will property stands limited to a person for a contingent or future interest, or stands limited to trustees upon trust for a person whose interest is contingent or executory, that interest shall, subject to the statutory provisions relating to accumulations, carry the intermediate income of that property from the time when the instrument comes into operation, except so far as the income or any part thereof may be otherwise expressly disposed of.
>
> (3) This section applies only to wills and instruments coming into operation after the commencement of this Act.

This section, too, ought to prove very useful in practice. In effect, it provides that a contingent or future gift of property carries the intermediate income unless otherwise disposed of. The corresponding United Kingdom form includes only the first subsection: the second subsection, affecting deeds *inter vivos*, appears to be copied from a New South Wales provision.

Non-application to pecuniary legacies.—Section 35 of the Property Law Act, 1952, was formerly s. 6 of the Property Law Amendment Act, 1951, which, of course, did not come into operation. Speaking of s. 6 of the Property Law Amendment Act, 1951, the Hon. Mr. Mason in (1952) 28 NEW ZEALAND LAW JOURNAL, 25, said:—

> It was held in *In re Raine, Tyerman* v. *Stansfield*, [1929] 1 Ch. 716, that the English section did not apply to a pecuniary legacy; and in our section the words "pecuniary or demonstrative legacy" are inserted, and differentiate it from both the English and the New South Wales prototypes.

Section 6 of the Property Law Amendment Act, 1951, began as follows:—

> A contingent or future pecuniary or demonstrative legacy, a contingent or future specific or residuary devise or bequest of property, and a specific or residuary devise or bequest of property, etc.

Thus s. 35 of the Property Law Act, 1952, contains no express reference to a pecuniary or demonstrative legacy. Therefore, it appears to me that *In re Raine, Tyerman* v. *Stansfield, (supra)* will apply to both subsections of s. 35 of the Property Law Act, 1952. In this respect the Hon. Mr. Mason's draft has been altered at the eleventh hour by the Legislature.

DISCHARGE OF MORTGAGES WHEN MORTGAGEE CANNOT BE FOUND.

In another important respect, the Property Law Act, 1952, does not follow the Property Law Amendment Act, 1951. I refer to the provisions relating to discharge of mortgages, where the mortgagees are dead and have no legal representatives, where they cannot be found or are otherwise unavailable. Section 87 of the Property Law Act, 1952, will be found to be more comprehensive than s. 26 (1) of the Property Law Amendment Act, 1951. Speaking of s. 26 (1) of the 1951 Amendment, the Hon. Mr. Mason said:—

> The legal profession has found the Public Trustee very diffident in undertaking the responsibility of acting on behalf of mortgagees who are dead, cannot be found, or are otherwise unavailable. In New South Wales, the Court undertakes this responsibility, and following a suggestion from the representatives of the New Zealand Law Society that arrangement is followed in the present Amendment Act.

Public Trustee still has power to discharge Mortgages.—In s. 87 of the Property Law Act, 1952, it will be found that the Public Trustee, as well as the Supreme Court, is given authority to release mortgages. The section is rather long to quote in a short article in this JOURNAL, but the practitioner will find the Public Trustee's powers set out in subss. 5 to 8.

It may reasonably be supposed that in practice a mortgagor will first make application to the Public Trustee, as an application to the Supreme Court would be more costly. If the Public Trustee proves "diffident", an application may then be made to the Court. There will doubtless be cases where the Public Trustee will think that owing to lack of clear evidence as to repayment of the mortgage or as to the amount of money remaining owing under a mortgage, the responsibility of granting a discharge should be placed on the Supreme Court.

Discharge of mortgages by recourse to Trustee Act unnecessary.—Hitherto these cases have been solved by the Supreme Court's making vesting orders under the authority of the Trustee Act, 1908. I refer to the previous practice in pp. 735-739 of the Second Edition of *Goodall's Conveyancing in New Zealand*. I should be pleased if readers of this JOURNAL who have a *Goodall* would make on their copy on above pages a reference to s. 87 of the Property Law Act, 1952, which now makes most of my comments on this topic in *Goodall* obsolete. If a discharge of mortgage has been duly executed, but has been lost or destroyed before it has been registered, then the correct procedure is as set out in ss. 56 and 57 of the Land Transfer Act, 1952. Under those sections, the Supreme Court alone has jurisdiction.—If but for s. 64 of the Land Transfer Act, 1952 (which provides that after land has become subject to that Act, no title thereto, or to any right,

privilege or easement in, upon, or over the same, shall be acquired by possession or user adversely to or in derogation of the title of the registered proprietor)—a Land Transfer mortgage would have become statute-barred, a mortgagor may apply under s. 112 of the Land Transfer Act, 1952 (formerly s. 43 of the Statutes Amendment Act, 1936) to the Supreme Court for an order expunging the mortgage from the Register Book. On the registration of such an order the mortgage is deemed to be discharged.

THE LEGAL MUSEUM.

A Lawyer's Fancy.*

I had often promised myself a visit to Lord Bandon-Gown's Collection in Bedford Square, but somehow I had never got there. But when one day I happened to be in the Stationery Office, and saw their illustrated catalogue of the exhibits my old interest was revived. Would it not be a good idea (I thought) to take Veronica there next Saturday? My stock was a little low with her after that fiasco at Brighton, and that fool Sir New Clear-Fishon was gaining ground. That the majesty of the law would impress her I was certain.

The first gallery containing the smaller items looked promising. In the centre as the item of greatest interest there is the original smoke ball under a glass cloche affair with a cutting from the *Pall Mall Gazette* of November 13, 1891, containing the advertisement which attracted Mrs. Carlill. The keeper told me an amusing story of an old lady who tried to remove the ball after reading the advertisement, illustrating the potency of the advertisement which satisfied the doctrine of consideration so long ago. Also, prominently displayed, was the original ginger beer bottle in *Donoghue* v. *Stevenson* very cleverly lit so that you see down the neck to a representation of a snail. Feeling fairly confident on this case, I explained it fully to my charming guest. Her quick brain seized on my explanation of the duty of the reasonable man, and for a moment she nonplussed me when she asked: "Does the law recognize the reasonable woman?"

"But, my dear Nicky, there isn't such a . . .". I stopped myself in time and changed it to ". . . a distinction. I mean between the sexes on this. Anyway the plaintiff was a woman".

"What an extraordinary case!" she commented. "The House of Lords goes to all that trouble over a hypothetical snail and proceeds to describe the reasonable man when it is really talking about a woman, who did not even buy the stuff herself". It was clear that Nicky had misunderstood what I had said about there being a snail: that it did not matter whether the noxious thing could have been proved not to be a snail but something else. This was very disappointing, and I could see that I was lacking in that foresight of consequences which a reasonable man ought to have. For a moment I began to think that this expedition was a mistake after all.

I hastily drew her attention to one of the original bills of exchange in *Vagliano's* case; the squib in *Shepherd's* case; the bar of chocolate in *Tolley* v. *Fry*; the ticket in *Parker* v. *S.E. Rly.*, and the promissory note in *Eastwood* v. *Kenyon*.†

She did not take much notice until we came to the next group consisting of a number of items acquired by the National Trust including the supposedly Carolingian tablecloths of *Nicolson and Venn* v. *Smith-Marriott* and the goldmounting and some of the stones in *Armory* v. *Delamirie*. Things were looking up now that I had found something to catch a lady's interest, and they continued on the same level as we examined the bottle of milk in *Frost* v. *Aylesbury Dairies*, and the broken deck-chair in *Chapelton* v. *Barry U.D.C.* She actually laughed over the story of the latter, though I am sure she is no sadist. Even the tyre of *Dunlop* v. *Selfridge* evoked a smile and so did the lamp of *Terry* v. *Ashton* fame, and the original will of *Cheese* v. *Lovejoy* in its original drawer (where it had lain for thirty years).

We had now had enough of this, and though I caught a glance of another display case with some *Cundy* v. *Lindsay* handkerchiefs we passed on to the Great Hall where the "big stuff" is.

The first thing that catches the eye is the grey mare in *Burnard* v. *Haggis*. The taxidermist has made a good job of her, but I must say she is a broken down old hack, and one can well imagine her jibbing at a mere two-foot hedge. I thought the tramcar in *Bourhill* v. *Young* occupied more space than was justified, but could well imagine that even a Glasgow fish-wife would have been concealed by it. The model furnace showing the fusing of equity and law was great fun; the lighting system indicating law in blue on one side and equity in cream on the other was very cleverly arranged.

The demonstration of *res ipsa loquitur* is a triumph for the boffins. I discovered how it works. When you press the button to release the barrel out of the alcove (some 15 feet up and made to represent an old-fashioned upper storey warehouse) this switches on a photo-electric cell device, so that when you endeavour to run to the other side without being hit by the falling barrel, the device releases two arms with the net between them if you are still in the line of drop, and this catches the barrel.

I was fascinated by the row of ex-Chancellors' boots illustrating just how much the length of a Chancellor's foot *does* vary. The Rule fixed in the wall just above this display can be used to measure them. By the way, did you know that this is the Rule which caused so much bother in *Shelley's* case?

I missed the miniature brougham of *Pearce* v. *Brooks* which, in spite of my curiosity, in the circumstances saved me much embarrassment.

We then took the lift upstairs to the wax-works of personalities. I must here criticize the portrayal of the reasonable man at home. It is practically a copy of No. 221B Baker Street, even to the Sherlock Holmes pipe; and why should it be supposed that every reasonable man has gone to the expense of buying or acquiring the *Encyclopaedia Anglorum* with its forty odd volumes? On the other hand I don't think he should

* By courtesy of the *Law Journal* (London).

† No doubt the doctor's underpants in *Grant* v. *Australian Knitting Mills, Ltd.*, are in the National Collection at Canberra. Probably the hyposulphite which was not removed in their manufacture is also preserved there.—ED.

be shown wearing glasses, in case it is suggested that he may be myopic. Perhaps the labels were misplaced and this was meant as the prudent trustee, but then I saw no sign of the Stock Exchange lists. Also the portrayal of the Bona Fide Purchaser for Value Without Notice, as a man with a cheque book and dark glasses is simply banal. Something better than this will have to be devised.

Of course, there was John Doe and Richard Roe, but which is which? The labelling in this room needs attention. Veronica was triumphant when she saw that the bare trustee was of her own sex. It is quite a good carving—Byzantine in style, I should think, influenced by Mestrovic, yet with some of the repose to be found in a Maillol—and well lighted.

Just then I saw the hole in the floor illustrating *Indermaur* v. *Dames*, and I was just in time to save Nicky from falling through. I could not tell whether it is the original hole, or one specially devised. True, there is a net below and a rope ladder to climb back, and Veronica is a sailing type used to climbing up the shrouds, but it might have upset her just as things were going nicely. You get a good view of this from the Great Hall which is below this floor, I discovered afterwards.

Then we came to the model room. The bankruptcy models of "keeping house", and reputed ownership are rather specialized, and hardly for the layman. The model railway showing *Loach's* case with the original brake that did not work, and, preserved in alcohol, the last opportunity that one might have had, excited no interest in my now rather weary companion. I had saved this room till last as something unique, but perhaps it was the wrong policy. The model of the *Strathcona* only produced scorn from one addicted to sail, and the model of the levying of a fine (before 1833) and of a feoffment by livery of seisin, so puzzled her that I felt she doubted my sanity. With a heavy heart we approached the drilling scene in *Bradford* v. *Pickles*, but when she grasped how the law allowed a man to hold the community to ransom, she was boiling, and she is no red, I assure you. I could not tackle the *Rylands* v. *Fletcher*, or the *Read* v. *Lyons* models.

As we took the lift down, I was busily thinking what I could do to repair the loss of esteem. I will take her to the zoo and exhibit my fondness for animals. Women like that.

L. W. M.

WELCOME TO NEWLY-ADMITTED PRACTITIONERS.

And Congratulations to a Jubilarian.

On February 26, 1953, the Council of the Wellington District Law Society held a small function to welcome those who had just been admitted as barristers or solicitors and, at the same time, to congratulate Mr. C. G. White on celebrating that day the fiftieth anniversary of his admission.

In welcoming the guests, the President, Mr. E. D. Blundell, said that the gathering was largely due to the Secretary, Mrs. Gledhill, who was always particularly interested in the younger practitioners and ready to help them where possible. The Council had adopted her suggestion enthusiastically and hoped that this function would become an annual event.

Mr. Blundell congratulated Mr. White on celebrating fifty years of continual practice, and on managing to look so well at the end of that time. He hoped many years of practice and association with his friends in the Profession still lay ahead of him.

On the Threshold of The Law.

In speaking to those who had just been admitted, the President disclaimed his right or ability to offer helpful advice from any background of lengthy experience; but he felt there were a few matters which he should mention. They had recently joined a profession steeped in a tradition of honourable conduct. At any time any one of them might have to face circumstances where the temptation of immediate material gain or of an apparent success might involve a departure from that high standard of conduct which the Profession so rightly demanded. They should resist any such temptation firmly. No transient gain was worth the loss of self-respect and the confidence and esteem of their fellow-practitioners.

They would find that the law was a hard task-mistress who gave success only as a reward for hard and conscientious work. The more successful they became, the more demands would there be on their time; for, unlike men of the commercial world, the professional man had definite limitations on the amount of work he could pass to others. While, therefore, they must be prepared to work hard, they should be on their guard against allowing work to become their hobby. There was no need to emphasize the effect this could have upon one's health or the time available to enjoy happiness at home. The comment was made because this approach to the profession could also affect efficiency.

As they grew older they would find time and again that they were faced with problems, the answer to which might need considerable research in the law. If a certain decision seemed by all proper standards of conduct and morality to be right, then they could be reasonably sure that they would find the law directed the same result. That postulated the ability to be able to form a sound judgment on what was right and wrong; and a person who cut himself off to a great extent from the companionship of others in different walks of life was also cutting himself off from that background of experience so essential to form sound judgments. They should remember the law was not some hidden mystery for Judges and lawyers, but was the standard of conduct which society had set for its own welfare and behaviour.

They would face many ups and downs in the course of their careers. They should avoid being over-jubilant in success or despondent in failure. In the very nature of things, neither they nor their clients could always be right. They should learn to be humble when they succeeded, and cheerful when on the losing side. It was always a comforting thought to remember how many times the Supreme Court had been reversed on an appeal, and the Court of

Appeal, in England and here, similarly reversed on an appeal to the House of Lords or to the Privy Council.

Mr. Blundell urged them to join in the social activities of the Profession. It was indeed a great brotherhood, and one had only to travel round the country to learn what this meant in practice. It was not, however, only a matter of making friends with men of standing and ability, but, in the ordinary routine of work, it was so much more helpful to know the man on the other side as "Tom" or "Dick" and not as Mr. So-and-so.

After Fifty Years of Practice.

Mr. C. G. White, in reply, thanked the President and the members of the Council for inviting him to be present, for a twofold purpose: to be their guest on the day which was the fiftieth anniversary of his admission to the Bar, and also to be associated with them in extending congratulations to the young men who had in the last few days been admitted to an honourable Profession. He continued: "It is a very great privilege to be here with you on this very happy and unique occasion, and I would like to congratulate you and your Council on this new departure, which will, I am sure, be approved by all the members of the Profession, and will be remembered with appreciation by these young men who have lately joined our ranks. I do thank you for your kindly remarks about myself. As you say, fifty years is a long period of time for active participation in the practice of the law; and I look back over the years with feelings of profound satisfaction that I have earned the respect and goodwill of my colleagues at the Bar.

"When we look at these young men for whom the golden gates of opportunity are opening, we must surely from the bottom of our hearts wish them well. They go through those gates with high hopes and great expectations, and, although the way is hard, the rewards are great for those who have the industry and ability to see out the course. I do not intend on an occasion such as this to set out to give advice; but, out of my experiences over a period of fifty years, there are some matters which may be worth mentioning.

"In the first place, continue with your studies not only in your books; but particularly in observing the work of those who are foremost in the Profession. For many years I was Law Reporter in Otago, and at that time the Otago Bar was probably the strongest Bar in New Zealand. One unconsciously absorbed invaluable and extensive knowledge by carefully observing the methods and technique of the masters in our craft. One also learnt how cases may be seriously damaged or irretrievably lost by careless language or ill-considered questions to witnesses. Do, therefore, try to acquire the art of expressing yourselves in plain and well-arranged language. The English language provides a beautiful mode of expression if it is carefully used, but sloppy and involved drafting not only creates a bad impression but may even be damaging for one's clients.

"My last word to you is: Don't be fearful of making decisions. When you are faced with a problem, go into it carefully and answer it plainly. Don't funk the issue by asking the opinion of someone else, unless you are right out of your depth; because, each time you do this, you will find it so much harder to decide for yourself on the next occasion. With all the goodwill in the world I wish all you young men well, and, if, fifty years hence, some of you may be in the position I am in today, may your recollections of fifty years in the profession of the law be as happy as mine have been."

Mr. David Horsley, speaking on behalf of the other guests, thanked the Council for inviting them to the function and the President for what he had said. The invitation had been appreciated deeply by the younger members who felt it was tangible evidence that those more senior in the Profession did not forget them entirely. He hoped that this would be the forerunner of many similar functions.

THEIR LORDSHIPS CONSIDER

By Colonus.

Photographs.—"The use in evidence of photographic pictures and the limits within which they are judicially receivable by way of proof of matters of fact has often come under consideration before English Courts. For instance, in a case of *Reg.* v. *United Kingdom Electric Telegraph Co.*, (1862) 3 F. & F. 73, in 1862, *Martin, B.*, after argument, received as evidence photographic views showing the configuration and general nature of the surface of a highway, where the matter in question was a nuisance by an alleged obstruction, and in a more modern case, in the appellate Court, in *Hindson* v. *Ashby*, [1896] 2 Ch. 1, 25, 27, *A. L. Smith*, L.J., and other Lords Justices demonstrated the necessity for careful delimitation of the uses for which, upon mere production of them, photographs can be accepted as means of proof of matters of fact. Clearly a photographic picture cannot be relied upon as proof in itself of the dimensions of the depicted object or objects, and cannot be made properly available to establish the relative proportions of such objects except by evidence of personal knowledge or scientific experience to demonstrate accurately the facts sought to be established": Lord Merrivale, delivering the judgment of their Lordships in *United States Shipping Board* v. *S.S. St. Albans*, [1931] A.C. 632, 641, 642.

Making Things Clear.—"Both parties agree that the lands in dispute lie in block No. 1, which, by the Chittahs of 1783, appears to have belonged to Johnson, and to have contained 46 beegahs 10 cottahs. The inference which the respondents draw from the Register Book at p. 213 is, that this parcel of 46 beegahs 10 cottahs, was subject to a jumma of Rs. 39. 13a.; that it had been transferred, before 1816, from Johnson to Green; that a fresh Pottah for it was then granted in the name of Green; and that it is identical with the joint holding mentioned in the Terij of 1833 under the head of Pergunnan Khaspore": The Rt. Hon. Lord Romilly, M.R., in *Gunga Gobind Mundul* v. *Collector of the Twenty-four Pergunnahs*, (1867) 11 Moo. Ind. App. 345, 365, 366; 20 E.R. 131, 138, 139. "You're a better man than I am . . . !"

IN YOUR ARMCHAIR—AND MINE.

By Scriblex.

The Docker Case.—One of the most expensive summonses of recent years to come before the Bow-Street Court in London was the charge against Sir Bernard Docker, Chairman of the £23,500,000 B.S.A. group of companies, of breaking the Currency Regulations between May, 1951, and October, 1952, during his cruises to the South of France. The case was heard by the Chief Metropolitan Magistrate, *Sir Laurence Dunne*, who considered that the particular offence lay in the defendant's spending of money outside the particular conditions that were attached by the Treasury. Regarding the offence as a trivial breach of the Regulations, he imposed a fine of £50 together with 250 guineas costs. Mr. Christmas Humphreys led a team of three counsel for the Director of Public Prosecutions, while Sir Bernard was represented by Sir Hartley Shawcross, Q.C. (the former Attorney-General), Mr. John Maude, Q.C., and a junior. The case lasted some three days, and, although only an excess expenditure of about £500 was involved, deferred costs were estimated at more than £5,000. "We have been virtually vindicated," Lady Docker announced to the Press; while Mr. Humphreys modestly described the verdict as "a great triumph for justice."

The Yellow Feeling.—The recent argument in a Supreme Court case of the effect upon the plaintiff of the contact, during a collision, of his head with a motor-car windscreen reminds Scriblex of an action in which Sir Frank Lockwood, Q.C., once appeared. Questioned as to a blow on his head, the witness said: "It made me feel quite sick." "Are you quite sure you were not actually sick?" he was asked. "No, I only felt sick." Whereupon the Judge remarked that there was some difference between being sick and only feeling sick. In his address to the jury, Lockwood commented upon this observation:

> Gentlemen, His Lordship was quite right just now in saying that there was some difference between feeling sick and being sick. For instance, I can tell from the face of my learned friend, Mr. Jelf, that he is feeling sick at my submission; but there is no evidence—as yet— that he has thrown up his brief.

The Two-headed Judge.—In England, the path to high judicial preferment is often through the political arena. The case of one E. J. Parris, prospective Socialist candidate for North Bradford and a barrister of Gray's Inn, shows that the path is not without its thorns. Parris defended the youth Craig who, at the conclusion of a trial before Lord Goddard, L.C.J., was sentenced to life imprisonment for the murder of Constable Miles at Croydon. Speaking later at Bradford during his electioneering campaign, Parris stated that it was unfortunate that the present campaign for the reintroduction of corporal punishment was largely, almost entirely, instigated by Lord Goddard whom he described as "being rather like a cat with two heads—one the Judge's, the other the politician's." He continued that he had to stroke the whiskers of one of these heads, but was entitled to twist the whiskers of the other; and what he said was of Lord Goddard, the politician, and did not arise from any case with which he was concerned. "Unfortunately," he said, "I am precluded from expressing in public the universal consensus of opinion in my profession as to the way he now conducts criminal trials; but I am entitled to say that many of his recent utterances in the House of Lords are sensational nonsense, so much so that many of the Members of that House now regard them with complete contempt." The members of Gray's Inn, at an assembly held on April 1, came to a different conclusion about his right to so sweeping and boorish a criticism. They found him guilty of conduct unbecoming a barrister of that honourable Society, and suspended him from practice for four months.

The Judges' Salaries.—Considerable disappointment is felt by the legal profession in England at the postponement of the second reading in the House of Commons of the Judges' Remuneration Bill, and no assurance is gathered from the Prime Minister's statement that "Her Majesty's Government have in no way departed from their resolve to increase the salaries of the high judiciary." The plain fact seems to be that the proposal to provide a £1,000 annual tax-free allowance proved unpopular, and the Party's Chief Whip was amongst the Government's own members who considered that the proposal should be scrapped and the Judges paid "the salary which, after taxation, will allow them appropriate remuneration"—even though, in the case of the Lord Chancellor, a salary increase of £30,000 a year would be needed to produce the equivalent of the tax-free £1,000 a year. It has been pointed out that Sir William Holdsworth, writing in 1931 on the temporary reduction of the Judges' salaries, suggested that "the true remedy is to go back to the precedent set by the Act of 1825 and give the Judges their salaries of £5,000 a year tax-free. (*48 Law Quarterly Review*, 33). Readers of A. P. Herbert's *Misleading Cases* will recall the footnote on p. 1 of his latest volume where he remarks that Judges' salaries had not been raised since 1832 "when they were free from income tax."

Making up One's Mind.—Both Bench and Bar are concerned with the niceties and refinements of language, and the verbal hair-splitting of the one is often a source of perplexity to the other. An interesting example is provided by Mr. J. H. Campbell, Q.C., who presided over the Ministry of Transport inquiry at Belfast into the loss of the British Railways ferry *Princess Victoria* with 125 passengers on January 31 last. During the hearing, counsel for the British Transport Commission protested at Mr. Campbell's interruption of the evidence of a witness with the remark that he was driven to the conclusion that there had been "very flabby management." To this protest, the President replied: "I have not come to a conclusion. I have simply said that, up to the moment on the evidence of Captain Reed, I am driven to a conclusion. I have not said that I have come to it." It may be that, when you come to a conclusion, you reach it in the same manner that you reach a lamp-post when you collide with it, but when you are driven to a conclusion there is always a chance that you may break down *en route*, as has happened more than once during the delivery of an oral judgment when the desire for expedition tramples ruthlessly over the mental processes.

LEGAL LITERATURE.

The Law Relating to Wills. By W. J. Williams. London: Butterworth & Co. (Publishers) Ltd. Price: £8 5s., post free.

Any lawyer will find it of great assistance to have this modern textbook, arranged in modern form, and (what is hardly less important) printed in the modern way. The learned author is conveyancing editor of the third edition of the *Encyclopaedia of Forms and Precedents*, and has drawn on his experience in that connection as well as in conveyancing practice. In a long and interesting preface, he explains why certain parts of the book have been arranged as they have been; for example, the choice given to readers in Vol. II, between following a precedent for a complete will or taking clauses piecemeal and putting them together. The learned author's view is that, when you are seeking help from precedents, it is better to take them here and there for single matters than to mould a complete will upon a precedent created as a whole by another hand.

Volume I is the expository portion, and consists of many short chapters arranged in logical order so far as possible, although, in a subject like this, logic is difficult to come by because there are so many different aspects of the subject to remember. These chapters are not grouped into parts, as is so often done in legal textbooks, for the reason (as the learned author explains) that the different topics which have to be considered in drafting or interpreting a will do not readily fall under a small number of main headings. As he says, the lawyer is concerned with any will at two different stages, first when the will is made, at which point the draftsman's all important duty is to discover what the testator wants, and then at the stage when the will is to be put into force when, in the nature of things, the testator can no longer tell anybody what he wanted. The problem for the draftsman, therefore, is to produce a document which will carry the testator's wishes forward, to be given effect by those who have survived him. Even at the earliest stage, however, the draftsman must bear in mind whatever rules of law and practice exist, for determining any doubtful point of interpretation, and must make sure (if he can) that the testator's wishes are expressed in such a way as not to be defeated by any technical rule after the testator's death. Moreover (and this point Mr. Williams rightly emphasizes) he must make the testator understand that rules of law may prevent some dispositions (*e.g.*, a perpetuity) that the testator wishes, and he may have to delve into things which the testator has regarded as irrelevant, *e.g.*, the testator's title to property, and the extent of his disposable interest.

It seems a little strange that the first chapter of the first volume is "contracts relating to wills," and that it is only after this that the book proceeds to explain the nature of a will. The first chapter is, however, short; and no doubt the learned author thought it desirable to bring to the attention of his readers in the very forefront that a person might have debarred himself from including some provisions in his will which he would have liked to include. The next group of chapter headings is comparatively obvious, but special attention should be drawn to the chapter "who may benefit under a will" since it covers such divers potential beneficiaries as animals, local authorities, and the testator's murderer. The chapter headings of the remaining hundred or so chapters of the main part of the book can obviously not be set out in detail: it must suffice to say that every point which we have been able to think of is to be found in the list of chapters, which in itself serves as a guide to the contents of the book.

Wherever notes in the text of Vol. I refer to cases, the learned author has endeavoured to give the points of distinction between one case and another, in contrast to the practice, so often followed, of lumping case-references together, and leaving the reader to look them up and disentangle them. There is also an admirable index.

Turning to Vol. II, one finds, first, some two hundred pages of individual clauses for inclusion in wills. Each group of these is preceded by a general note, referring where necessary to probate practice. Then there are approximately two hundred pages of forms of complete wills and codicils. The "General Note on the Forms of Wills," is as good as anything one has ever come across, by way of general precept and apposite example, concerning the way to deal with the testator and ascertain his wishes. Most of this is not to be found in any other work.

It was in 1835 (before the Wills Act, 1837) that the famous Jarman wrote that "many works on wills, with the accompaniment of precedents, are already in the hands of the practitioner"; and we have seen some which, even then, were a century old. Jarman also remarked that a great part of the work of counsel came from faulty dispositions found in wills, attributable either to the niggardliness of the testator in not taking proper advice, or to the incompetence of the general practitioner. No doubt the latter is better equipped today then in the early nineteenth century, and *Williams on Wills* will assuredly play its part in ensuring that the desires of testators are not frustrated through oversight of their advisers.

Stroud's Judicial Dictionary, 3rd Ed. Vol. 1 (A—D) Vol. 2 (E—L). General Editor John Burke. Barrister-at-Law. Assistant General Editor, Peter Allsop, M.A., Barrister-at-Law. Vol. 1 (pp. 909 + xxvi), Vol. 2 (pp. 786 + xviii). London: Sweet and Maxwell, Ltd. Price: £4 10s. net each per Volume.

A new edition of this famous dictionary of a man remarkable for his learning and industry is a notable event. Stroud first published his work in 1890; and his second edition in 1903 was followed by supplements by different authors in 1906 and 1947. The author of the last supplement has now become the general editor of the whole work and with his team of editors has striven to produce a complete, workmanlike edition of the treatise. The editors have preserved as much as possible of the information made available by the scholarship of the original author, while adding a wealth of material based on modern statutes and judgments, some from overseas Dominions. The work has been made more readable by pruning the old profusion of capitals and italics and citing statutes by their names and dates (instead of by their regnal years), and the text has been regrouped in numbered paragraphs to facilitate the future issue of supplements keeping the work up to date. The complete work is to be published in five volumes: four volumes of text, and a volume of tables of cases cited and of statutes judicially construed.

A perusal of the first two volumes of the series, containing the words beginning with the letters from A to L, shows that the editors have performed with commendable skill their task of assimilating and clarifying the material selected from some four thousand pages of text. Where archaisms like "amerciament" and "bote" have been preserved, they will be found specially helpful to the student who, in the words of Coke, is enabled to "proceed to his reading with alacrity and set upon and know how to work into with delight these rough mines of hidden treasure." The practical reader will discover when "a" means "the," "any," "all," or "some." The query "What is a building?" is carefully elucidated. There is a reminder that the English day begins as soon as the clock begins to strike 12 p.m. of the previous day—and so on. If the remaining volumes are up to the standard of the two volumes now under review, the work will surely be appreciated by a wide field of readers.

Money in the Law, National and International, A Comparative Study in the Borderline of Law and Economics, by Arthur Nussbaum, Research Professor of Public Law, Columbia University; pp. xxxi + 618. Brooklyn: The Foundation Press, Inc.

This well-documented work deals in Book I with the law of money in general, while Book II treats of the law of money in its international aspects. The author says that the economic material found in his work has not been included for its own sake, but for the sake of legal analysis. This juristic treatment contributes in various ways to a better understanding of the priority of the economic approach in matters monetary, while the neglect of legal material has often impaired economic analysis. The author uses a large number of decisions of the highest Courts in all countries to illustrate his text, including among them *Mount Albert Borough* v. *Australasian Temperance and General Mutual Life Assurance Society, Ltd.*, [1937] N.Z.L.R. 1124, and *Wanganui-Rangitikei Electric-power Board* v. *Australian Mutual Providence Society*, (1934) 50 C.L.R. 581. For those interested in this branch of the law, the author has provided a plenteous feast.