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THE SOLICITOR'S PRIVILEGE OF NON-DISCLOSURE OF CLIENTS' COMMUNICATIONS.

Members of the profession took great interest in the recent hearing by the Court of Appeal of a Case Stated under s. 4 of the Justices of the Peace Amendment Act, 1946, which arose out of the refusal of a solicitor to disclose to an Inspector of the Inland Revenue Department matters concerning professional work done by him for a client. On such refusal, the solicitor was charged on an information under the penal sections of the Land and Income Tax Act, 1923.

The matter came before the Court of Appeal, on removal from the Supreme Court: *Commissioner of Inland Revenue* v. *West-Walker* (to be reported); and the Court's consideration of it is of the greatest importance to all practitioners.

The question for the Court's determination was whether, having regard to the provisions of the Land and Income Tax Act, 1923, and its amendments, the defendant as a solicitor had a valid claim to be privileged and excused in law, and, if so, to what extent, from furnishing the information and producing books and documents sought by the Commissioner of Inland Revenue in exercise of the latter's authority under that statute, in the absence of any authority to the defendant from his client to do so.

The question was considered to be of such general importance to solicitors and to their clients that the New Zealand Law Society undertook the conduct of the defendant's case; and Sir Wilfrid Sim, Q.C., was briefed by the Society accordingly.

The answer turned, in the main, upon the scope and effect of s. 163 of the Land and Income Tax Act, 1923 (as substituted by s. 12 of the Finance Act (No. 2), 1948). The section now provides:

> 163 (1) Every person, whether a taxpayer or not (including any officer employed or in connection with any Department of the Government or by any public authority), shall, if required by the Commissioner or by any officer authorized by him in that behalf, furnish in writing any information or produce any books or documents which the Commissioner or any such officer considers necessary or relevant for any purpose relating to the administration or enforcement of this Act or any other Act imposing taxes or duties recoverable by the Commissioner, and which may be in the knowledge, possession or control of that person.
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> (2) Without limiting the foregoing provisions of this section, it is hereby declared that the information in writing which may be required under this section shall include lists of shareholders of companies, with the amount of capital contributed by and dividends paid to each shareholder, copies of balance-sheets and of profit and loss and other accounts, and statements of assets and liabilities.

The members of the Court, Fair, Gresson, Stanton, and North, JJ., Stanton, J., dissenting, held, in effect, that, notwithstanding the wide and general language of s. 163, the Commissioner of Inland Revenue must exercise the powers thereby given to him subject to the common-law privilege protecting clients' communications with their solicitors; and that the privilege can, where the circumstances warrant, be asserted by a solicitor in answer to demands made by the Commissioner, or by anyone on his behalf, purporting to act under the authority of the section.

Each of their Honours gave his reasons for his conclusions in great detail; and, as their judgments form a comprehensive review of a solicitor's common-law privilege and obligation not to disclose communications passing between client and solicitor in his professional capacity, we now proceed to summarize those judgments.

The question put to the Court was stated as follows:

> The question for the opinion of the Supreme Court is whether in the circumstances and notwithstanding the provisions of the Land and Income Tax Act, 1923, and its amendments the defendant in his capacity as a solicitor is privileged and excused in law, and if so to what extent, from furnishing the information and producing the books and documents sought by the Commissioner in exercise of his authority under the said Act until such time as he has his client's authority to do so.

Section 4 of the Justices of the Peace Amendment Act, 1946, provides:

> On the hearing by a Justice of any information or complaint which he has power to determine summarily, the Justice may state a case for the opinion of the Supreme Court on any question of law arising in the matter.

Mr. Justice Fair said that this procedure had seldom been invoked since the passing of the Act, and, in the circumstances of the present case, it seemed desirable to consider its scope and application. The conditions under which a question of law should be decided before the trial of an action under the provisions of R. 154 of the Code of Civil Procedure had recently been considered by the Court of Appeal in *Watson* v. *Miles*, [1953] N.Z.L.R. 958. In the course of that judgment the authorities on a similar power under R.S.C. O. 25 r. 2 were reviewed; and the same general principles had been applied in New Zealand in a more limited number of cases which are collected in *Stout and Sim's Supreme Court Practice*, 8th Ed. 148. His Honour continued:

> It would appear from those cases that it is but rarely that a clear-cut question of law can be usefully considered before all the relevant facts have been ascertained. This consideration is even more important in the case of the provisions of s. 4, as leave may be given by the Court of Appeal to either party to appeal from its decision to the Privy Council. Clearly, it is

highly desirable to avoid submitting questions of law upon an incomplete statement of the relevant facts with the possible result that it may reach the Privy Council, and yet the ruling may not finally determine or perhaps affect the action when it is finally heard. *Interest reipublicae ut sit finis litium*, and to seek a ruling without a complete and accurate statement of all the relevant facts may often result in increasing the delay and the expense that it is the object of the section to avoid.

Mr. Justice Fair, in his judgment, said that, as this case was brought before the Court without a complete statement of the relevant facts, it appeared that the Supreme Court and the Court of Appeal might properly decline to give a decision on an isolated question of law before the facts had been ascertained, and other relevant questions of law decided. In general, in cases stated under s. 4 all the relevant facts should be ascertained before the case is stated, and those questions of law upon which the opinion of the Supreme Court is not desired should be decided by the Magistrate before a question of law is reserved. The matter should not be brought before the Supreme Court (or the Court of Appeal) as a proceeding to obtain an advisory judgment which may, or may not, be necessary for the decision of the case.

The Court of Appeal in England in somewhat similar circumstances had definitely declined to decide a general question although it was of general importance to the public, and to the Transport Department in England. His Honour referred to *Tindall* v. *Wright* ((1922) 127 L.T. 149, 150; 38 T.L.R. 521, 522), where the Lord Chief Justice said:

> In these circumstances, if we were to enter upon the problem, however attractive it may be, whether this carriage was in fact a hackney carriage at this time within the meaning of the Finance Act, 1920, we should be offering a decision, at the request of the parties, which would be essentially in the nature of an *obiter dictum* and would not be binding upon any other Court. But in the first place the decision so given might easily lead not to enlightenment but to embarrassment for those who have to consider a similar problem afterwards. In the second place it is one of the duties of this Court to set an example to inferior Courts. If an inferior Court were to take the course which we are now being invited to take, it is not disputed that the decision of that Court might be, and ought to be, open to review, and it might well be removed by certiorari. In those circumstances, in my opinion, it is not desirable, even though there may be an occasional exception to the contrary, that we should in this matter depart from what I conceive to be a general rule binding upon this Court and observed by it when any question of this kind arises.

In the report in the *Times Law Reports* the Lord Chief Justice is reported to have said:

> If an inferior Court were to decide an academic question which actually did not arise in the case before it, such a decision would be quashed on a certiorari.

Mr. Justice Fair proceeded:

> The application of this authority to the present case is that the Court, owing to the absence of a full statement of the relevant facts, is unable to say whether the question arising is an academic one or not. It may be that all the documents and information which the defendant possesses are documents which he is bound to produce as not being entitled to professional privilege in ordinary proceedings. Moreover, the notice may be invalid and ineffective.

In the present case, it was desired to obtain a ruling for the guidance of the legal profession and the Commissioner of Taxes on a question of law of general importance. The question of law actually stated had been fully argued by counsel whom the Council of the New Zealand Law Society had chosen to argue it, and on behalf of the Crown; and the Court had considered the matter. Mr. Justice Fair said that, with some doubt and hesitation, he thought that it might, in the circumstances, give what amounted to a declaratory judgment as to the rights of the Commissioner of Inland Revenue and solicitors in relation to clients' documents. It seemed desirable, however, to make it clear that this was an exceptional course, and that it was unlikely that a similar course would be followed in similar circumstances in future. The other members of the Court concurred in this view.

I.

The notice requiring the defendant to furnish the information and produce the books or documents that the Commissioner of Taxes required from him under s. 163 of the Land and Income Tax Act, 1923, as enacted by s. 12 of the Finance Act (No. 2), 1948, demanded that he should "give all information and produce all books, correspondence and documents in (his) knowledge, possession or control relating to the income, financial position, financial transactions or trust account, and in particular relating to transactions in property" of the client.

Mr. Justice Fair pointed out that no period of time was stated in respect of which the information or documents sought were to be furnished. It was possible, he said, that this was so grave a defect in the notice that it was invalid, and that the defendant would have been entitled to disregard it on that ground.

Turning to the general question put in the case, Mr. Justice Fair said that a mass of authority has been cited to the Court on the origin of privilege from disclosure in the course of legal proceedings of information given by clients to solicitors, and communications for the purpose of obtaining assistance or advice. It seemed, however, unnecessary to examine the historical development of this doctrine that had been so thoroughly examined and discussed in detail in *4 Wigmore on Evidence*, 3193-3256.

The general principle and its reasons are clearly and concisely stated in the judgment of the House of Lords in *Bullivant* v. *Attorney-General for Victoria*, [1901] A.C. 196; 70 L.J. 645, where Lord Halsbury said:

> I think the broad propositions may be very simply stated: *for the perfect administration of justice*, and for the protection of the confidence which exists between a solicitor and his client, it has been established *as a principle of public policy* that those confidential communications shall not be subject to production. But to that, of course, this limitation has been put, and justly put, that no Court can be called upon to protect communications which are in themselves parts of a criminal or unlawful proceeding. Those are the two principles, and of course, it would be possible to make both propositions absurd, as is very often the case with all propositions, by taking extreme cases on either side. If you are to say, "I will not say what these communications are because until you have actually proved me guilty of a crime they may be privileged as confidential," the result would be that they could never be produced at all, because until the whole thing is over you cannot have the proof of guilt. On the other hand, if it is sufficient for the party demanding the production to say, as a mere surmise or conjecture, that the thing which he is so endeavouring to enquire into may have been illegal or not, the privilege in all cases disappears at once. The line which the Courts have hitherto taken, and I hope will preserve is this: that in order to displace the *prima facie* right of silence by a witness who has been put in the relation of professional confidence with his client, *before that confidence can be broken you must have some definite charge* either by way of allegation or affidavit or what not. I do not at present go into the modes by which that can be made out, but there must be some definite charge of something which displaces the privilege.

Lord Lindley, at p. 650, said:

> The privilege is founded upon the views which are taken in this country of *public policy*, and that privilege has to be weighed, and unless the people concerned in the case of an ordinary controversy like this waive it, the privilege is not gone—it remains.

(The italics are His Honour's.)

Mr. Justice Fair, after referring to the general law as set out in *10 Halsbury's Laws of England*, 2nd Ed. pp. 381 and 391, paras. 462, 463, and 473, cited the passages in Lord Buckmaster's speech in *Minter* v. *Priest*, [1930] A.C. 558, 568, where His Lordship said :

> In this case the contemplated relationship was that of solicitor and client, and this was sufficient. . . . The relationship of solicitor and client being once established, it is not a necessary conclusion that whatever conversation ensued was protected from disclosure. The conversation to secure this privilege must be such as, within a very wide and generous ambit of interpretation, must be fairly referable to the relationship, but outside that boundary the mere fact that a person speaking is a solicitor, and the person to whom he speaks is his client affords no protection.

The conversation under consideration in that case was held not to be the subject of privilege. Lord Atkin said, at p. 584 :

> If a person goes to a professional legal adviser for the purpose of seeing whether the professional person will give him professional advice, communications made for the purpose of indicating the advice required will be protected. And included in such communications will be those made on occasions such as the present where the parties go to a solicitor for the purpose of seeing whether he will either himself advance or procure some third person to advance a sum of money to carry out the purchase of real property. Such business is professional business, and communications made for its purpose appear to me to be covered by the protection, whether the solicitor eventually accedes to the request or not.

Later on, at p. 585, he discussed in his speech the type of communication that is not protected ; and he quoted at length from the decision of Lord Sumner in *O'Rourke* v. *Darbishire*, [1920] A.C. 581, a passage referring to " a properly framed claim of professional privilege ".

His Honour said :

> None of these authorities supports the view that it is only in respect of advice in the course of litigation that exists although the privilege has hitherto been invoked to exempt such communications from the common law obligation to furnish in evidence in Court all relevant information unless special grounds for exception (such as this) exist. The basis of the privilege is the public interest ; and the reason stated in *Bullivant's* case and the passage cited from *Halsbury* extend logically to protect such communications from all compulsory disclosure with the exceptions noted of participation in crime or fraud. The authorities negative the suggestion that it is merely a matter of contractual rights between solicitor and client. That is quite a different aspect and concerns solicitors' duties rather than clients' privileges.
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> The defendant's letter refusing to give the information required by the Commissioner of Taxes did not present a properly framed claim founded upon the professional privilege so existing showing that he had in his possession only such papers and information as were entitled to protection as being in his hands for the purpose of giving advice or assistance in his capacity as a solicitor. But, no doubt, he is entitled to raise such a defence in answer to the proceedings before the Magistrate. It may be that there were in his hands some information, or papers, that were entrusted to him for safe custody, or other non-professional business purposes, entirely apart from being used in relation to his position as a solicitor consulted by the client on professional matters. These papers he would be bound to produce. It is in respect of papers and books that record matters subject to the privilege that the case is stated.

Section 163 of the Land and Income Tax Act, 1923, at the time the information was required, is as follows :

> (1) Every person, whether a taxpayer or not (including any officer employed in or in connection with any Department of the Government or by any public authority), shall, if required by the Commissioner or by any officer authorised by him in that behalf, furnish in writing any information or produce any books or documents which the Commissioner or any such officer considers necessary or relevant for any purpose relating to the administration or enforcement of this Act or any other Act imposing taxes or duties recoverable by the Commissioner, and which may be in the knowledge, possession, or control of that person.
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> (2) Without limiting the foregoing provisions of this section, it is hereby declared that the information in writing which may be required under this section shall include lists of shareholders of companies, with the amount of capital contributed by and dividends paid to each shareholder, copies of balance-sheets and of profit and loss and other accounts, and statements of assets and liabilities.

His Honour went on to say that as argued by the Crown, s. 163 is in very wide terms, and it is to be particularly noted that it extends to the Crown by making officers of State Departments liable to give information and produce documents in the same way as private individuals may be required to do. No doubt the operation of the wide terms of the section can be restricted, as similar phrases were in many of the illustrations cited by Sir Wilfrid Sim, if the nature of the provision, and the circumstances under which it is to be applied show that there should be exceptions and limitations upon its sweeping terms. That general principle of interpretation goes right back to the decision in *Stradling* v. *Morgan*, (1560) 75 E.R. 309, which has been repeatedly applied in cases of the highest authority which are collected in *Commercial Union Insce. Co., Ltd.* v. *Colonial Carrying Co., Ltd.*, [1937] N.Z.L.R. 1041, 1048.

The common law conferred the privilege, and the passage in *R.* v. *Bishop of Salisbury*, [1901] 1 K.B. 573, 579 (aff. on app. [1901] 2 K.B. 225, is apt :

> It is a familiar doctrine that when you have two Acts of Parliament, one special and the other general, the latter does not repeal the former unless there is clear evidence of an intention to do so. And the same principle must apply to a repeal of the common law. A general Act must not be read as repealing the common law relating to a special and particular matter unless there is something in the general Act to indicate an intention to deal with that special and particular matter.

Wills, J., at p. 577, said :

> And where an affirmative statute is open to two constructions, that construction ought to be preferred which is consonant with the common law.

Numerous other cases were referred to by counsel for the Crown exemplifying the grant of similar wide powers to assist in the administration and enforcement of laws by the Crown, including *Hewett* v. *Fielder*, [1951] N.Z.L.R. 755, and *Customs Commissioners* v. *Ingram*, [1948] 1 All E.R. 927. But, as Mr. Justice Fair said, each depends on the statute concerned and the circumstances to which those cases apply, although they afford useful illustrations of the application of the principle. He continued :

> As far as properly sought legal asistance and advice is concerned, the rule affording special immunity from the general liability to furnish all necessary assistance in the administration of justice does not directly apply. But, as I have said, the common law has granted this exemption on the grounds of public policy, which are more specifically referred to in citations in the judgments of other members of the Court. That this section was intended to deny a privilege which public policy requires should be extended in every case except to transactions in furtherance of crime or fraud would require, I think, very clear language.
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> The ordinary rules for the construction of statutes apply, I think, in construing it.
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> The Court has no evidence before it as to what extent the protection of privilege in this matter would " stultify " or embarrass the Revenue authorities. It is a matter of general knowledge that evasions of income tax have been numerous, and often for large amounts. The many prosecutions reported in the Press and the publication of the defaulters' names in the Gazette show this. But the number of transactions of clients requiring investigation, which are in the hands of solicitors as a result of their seeking legal advice of the confidential professional nature that alone confers the privilege cannot, I think, be large. Although the privilege is that of the client, and may be waived by him, it seems to me on a very different footing from the well-established exceptions to the rule against self-incrimination. In respect of matters other than crime or fraud the common-law principle is not recognized

for the personal protection of the client, but on the broad ground that it is to the public advantage that it should exist. It is to encourage the public to seek independent professional assistance unimpeded by fear of disclosure. It seems to me—to quote from *Stradling* v. *Morgan* (*supra*)—" consonant with reason and good discretion " to consider that this general principle affording special protection in respect of legal advice was not intended to be invaded by the general provision in s. 163. At best it is doubtful whether its wide terms were intended to extend to nullify, in effect, the general rule of public policy expressed by the recognition of this privilege, and so it cannot be held to have done so.

His Honour went on to say that the case of *Duke of Newcastle* v. *Morris*, (1874) L.R. 4 H.L. 661, 668, 671, 674, is a clear example of a privilege excepted from a wide general phrase "every debtor" because there were no words expressly revoking it. The Solicitor-General sought to distinguish that case on the ground that the present privilege was that of the client, and not that of the solicitor, and that the client had no privilege in respect of documents in his possession. But that seemed to the learned Judge to be fallacious. The protection is given to the client in respect of confidential professional advice or assistance by his solicitor, and the question is, as it was in *Newcastle* v. *Morris*, whether the wide terms of the section extend to destroy that privilege. It was much debated in the past whether it was in the public interest that the privilege should exist. It is, however, now established that it is definitely in the public interest that it should be maintained, and that case decides (though in a very different context) that, in general, express words are necessary to nullify a privilege of this type. It may well be that clear and cogent implication from the purposes of the privilege may also include it: *In re Buckingham*, [1922] N.Z.L.R. 771; *McDougall* v. *Attorney-General*, [1925] N.Z.L.R. 104, 110, 112, 115. Illustrations of the application of the principle are found in *Crafter* v. *Kelly*, [1941] S.A.S.R. 237, and the decision of Williams and Chapman, JJ., in *In re Wairau Election Petition*, (1912) 31 N.Z.L.R. 962, 963, on s. 202 of the Electoral Act, 1908. It was there said:

> Mr. Rogers was consulted by a client, who must, of course, have given information for the purpose of obtaining advice, and Mr. Rogers would, of course, give certain advice. If there is one duty more sacred than another on the part of a solicitor it is that he should not divulge what a client has told him or what he has advised a client. The Legislature and the Courts have always recognised this to be the case. It is not merely the privilege of a solicitor that he should not divulge what took place between his client and himself, it is a solemn obligation on his part. Section 202 of the Act, when it says that a witness should not be excused on the ground of privilege, can only, in our opinion, mean where the privilege is strictly a privilege of the witness himself, of which he could, if he wished in an ordinary civil suit divest himself and give evidence. But in an ordinary civil suit a solicitor cannot get rid of the obligation of silence.

His Honour added:

> This view seems also confirmed by a consideration of the provisions of s. 8 of the Evidence Act, 1908, conferring privilege on communications to physicians or surgeons and ministers of religion. That is a direct statutory privilege. The exact meaning of the " proceedings " in which it may be invoked has not been the subject of decision. Even if it be held not to extend to such powers as those under s. 163, it is unthinkable that the Commissioner of Inland Revenue would contend that a physician or surgeon could be compelled to furnish him with information, which might be of great value to the Commissioner in certain circumstances (e.g., the fixing of the permissible fee for services as a director of a company), as to the state of health of his patient when he saw him, and detailed information that he gave him as to the amount of work he was able to do in the conduct of his business affairs; or require a minister of religion to furnish the same information with regard to confessions made to him in his professional character.
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> It would seem most improbable that a specific privilege of this kind was intended to be overriden or withdrawn by a section in such wide general terms. If such special privileges, and special protection was intended to be withdrawn, the ordinary course would be specifically to refer to them as was held in *Newcastle* v. *Morris* (*supra*). The general principles governing the interpretation of this type of provision have been stated by Lord Simon in *Nokes* v. *Doncaster Amalgamated Collieries, Ltd.*, (1940) A.C. 1014, at 1022, where he said:
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> > where, in construing general words the meaning of which is not entirely plain there are adequate reasons for doubting whether the Legislature could have been intending so wide an interpretation as would disregard fundamental principles, then we may be justified in adopting a narrower construction. At the same time, if the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result.
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> As I have indicated there do not seem any sufficient grounds for considering that the maintenance of the privileges under consideration here would stultify, or indeed very materially impede, the effect of the far-reaching and unusual powers conferred on the Revenue authorities. The protection is extended only to matters in which public policy requires that members of the public should have some person skilled in the law whom they can consult about their position under the law with absolute confidence, and with the fullest disclosure of all essential facts necessary to enable proper guidance to be given in respect of the matters dealt with.

The learned Judge acknowledged that some assistance was also to be gained from the provisions of s. 149(*c*) of the Land and Income Tax Act, 1923, which contemplate that there may be " lawful justification " for a person refusing to attend, answer questions or produce books or papers when required to do so by the Commissioner. He added that the clearest instance of such justification in the state of the law under the new s. 163, which was substituted by s. 12 of the Finance Act (No. 2), 1948, may well be an officer of a State Department objecting on the ground that it is contrary to the public interest as certified by his Minister. But the original s. 163 in the Land and Income Tax Act, 1923, almost certainly did not extend to Crown servants, and these words may well have had reference to common-law privileges or statutory provisions conferring privileges.

Mr. Justice Fair continued:

> I have not overlooked that this privilege is primarily that of the client, and that, on the interpretation that I think is correct, it may be argued that it would exempt him from making such disclosure. That may well be so. It does not directly arise here except to the extent of supporting an argument that if he is not exempted then the solicitor should not be. It does seem to me that almost all, if not all, the reasons that I consider apply to confer exemption on his solicitor apply to him: and that he, too, is entitled to the protection to the same extent on the same grounds.
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> These considerations satisfy me that the defendant was entitled to decline to show matters covered by this common law privilege to the Inspector whom the Commissioner authorized to obtain such information. Having regard to this it is unnecessary to consider how the provisions of s. 37(*e*) of the Law Practitioners Act, 1931, and Reg. s. 20, 26, and 28 of the Solicitors Audit Regulations, 1931, made thereunder, bear upon the matter. They may be only illustrative of the importance attached to the preservation of the confidential relations between a client and his solicitor. Nor do I think the Court should attempt to deal specifically with the extent of the obligation to disclose entries in a trust account. It may be that the answer to this question is much the same as the general answer given above.

For these reasons, His Honour thought the question asked in the case should be answered as follows:

> The defendant was entitled to decline to furnish information, or to produce documents which would be protected against disclosure in ordinary legal proceedings by the common-law privilege which exists in relation to professional advice and assistance, unless his client had previously assented to his doing so.

The judgments of their Honours of the majority of the Court will be considered in our next issue.

SUMMARY OF RECENT LAW.

ACTS PASSED.

No. 26. Imprest Supply Act (No. 4), 1953.
No. 27. Land and Income Tax Amendment Act, 1953.

COMPANIES.

Private Company—Increase of Capital—Power to increase Capital exercisable by Entry in Minute-book—Companies Act, 1933, ss. 62, 300. A private company may increase its capital by entry in its minute-book in terms of s. 300 of the Companies Act, 1933, which is a special provision relating to private companies only. Section 62 is the general provision applicable to all companies, public and private, and its purpose is to enact that such things as an increase of capital may not be put into effect by the directors of companies generally without a general meeting; but s. 62(2) does not render s. 300 inapplicable in the case of a private company which desires to increase its capital. *Roach* v. *Roach's (1931), Ltd.* (S.C. Napier. September 8, 1953. Hutchison, J.)

CONTEMPT OF COURT.

Criticism of Court of Arbitration—Courts subject to Freedom of Criticism—Limits within which Such Criticism permissible—Use of Temperate and Reasonable Language appropriate to Proper Respect for Courts as Institutions established to administer Law in Interests of Order and Good Government—Punishment for Contempt to be used Sparingly and in Serious Cases only. The Courts of Justice should be subject to the freedom of criticism, which is a necessary accompaniment of the freedom of speech which is the right of all free men. But any publications which are calculated, or have a tendency, to impair confidence in the rule of law, and in the Courts charged with its administration, constitute contempt of Court unless they are made in temperate and reasonable language appropriate to a proper respect for Courts as institutions established to administer the law in the interests of order and the good government of the country. Extravagant and inflammatory language calculated not only to incite disapproval of particular decisions, but also to shake confidence in the Courts themselves and provoke discontent and ill-feeling, is so plainly contrary to the public interest as to constitute an offence calling, in proper cases, for the application of the summary power of punishing for contempt, which, however, is to be used sparingly and in serious cases only. (*Parashuram Detaram Shamdasani* v. *King-Emperor*, [1945] A.C. 264, followed.) Following on the making of a new award by the Court of Arbitration, the defendant, who was the secretary of the Wellington, Marlborough, Westland, Nelson, and Taranaki Local Bodies Officers' Industrial Union of Workers, and its representative on the application for the new award, dictated a circular letter, which was sent by post to the ten branches of the Union. A copy was also forwarded to the Registrar of the Court of Arbitration for communication to members of the Court, to the Secretary of the Department of Labour and Employment, to the Minister of Justice, and to the Acting Prime Minister. The terms of the circular letter appear in the judgment. On motion for the committal of the defendant to prison, or, alternatively, for the imposition on him of a fine for the contempt of Court in publishing the circular; *Held*, 1. That the Court of Arbitration is a body having judicial functions, and the ordinary rule as to contempt of Court applies to it. (*Attorney-General* v. *Blundell*, [1942] N.Z.L.R. 287; [1942] G.L.R. 23, followed.) 2. That the whole tenor of the document was calculated to excite public misgivings as to the integrity, propriety, and impartiality brought to the exercise of the judicial office by the Court of Arbitration and its Judges. 3. That, while criticism of the Court may be strong and forceful, it is not to be couched in the language of abuse and invective, and the language used in the circular had such a tendency and constituted the offence with which the defendant was charged. 4. That the defendant in his circular letter (which was issued in the course of his duty) indicated his confidence in the system of arbitration as the best method of settlement in industrial disputes, and, at the hearing, he reaffirmed his belief; and that was accepted as on genuine reflection of his attitude. 5. That, while the Court recognized that there were unusual and mitigating circumstances which palliated the offence, it was bound to mark the serious nature of criticism couched in such intemperate and inflammatory language and the defendant would be ordered to pay the costs of the proceedings which were fixed at £10 10s. and disbursements. *Attorney-General* v. *Butler*. (S.C. Wellington. September 8, 1953. Fair, Hay, JJ.)

CONTRACT.

Warranty—Advertisement offering Piano for Sale in "good order"—Evidence establishing Intention that Such Representation should be Contractual—Warranty that Piano in Good Order—Principles applicable. There can be no warranty unless the parties intended that the representation should be contractual: there must be the *animus contrahendi* with regard to the matter represented. Expressly or impliedly, the warranty must be offered and accepted as a contractual term, the representor not merely representing but promising its truth. This principle applies whether the warranty is put forward as an independent collateral contract or merely as a term of the contract. An affirmation at the time of the sale is, therefore, a warranty if the evidence in its entirety establishes the necessary intent. (*Heilbut, Symons and Co.* v. *Buckleton*, [1913] A.C. 30, followed.) In an action for damages in the Magistrates' Court, the claim arose out of the purchase of a piano by the plaintiff from the defendant, and was made, alternatively, on the grounds of alleged fraudulent misrepresentation and of breach of warranty. The representation relied upon as a warranty was made in a newspaper advertisement published in the *Auckland Star*, which was as follows: "PIANO, George Russell, iron frame, good tone, good order, looks as new; cash offer. 101 Taylors Rd., Mt. Albert." The plaintiff, then not quite seventeen years of age, read this advertisement and called on the defendant early that evening, saw and played the piano, and agreed to buy it; and on the next day, he saw the defendant again, paid the price and took delivery. At neither interview was there any reference to the advertisement, or to the representation that the piano was in good order, and no verbal representation was made on that point. Apart from playing the piano for a time, raising the lid, and, perhaps, removing part of the front, the plaintiff made no attempt to investigate the truth or otherwise of the statement that the piano was in good order. The Magistrate negatived fraud, but held that the defendant had warranted the piano to be in good order, and that it was not in good order. The defendant appealed. The question argued on the appeal was whether, in the circumstances, the representation was, not merely an innocent misrepresentation for which there would be no remedy, but a warranty. *Held*, 1. That, upon the whole of the evidence, there was a warranty that the piano was in good order. 2. That, once the warranty was found to have been given, the plaintiff was under no obligation to prove reliance on the representation. (*Schawel* v. *Reade*, [1913] 2 I.R. 64, applied.) 3. That, while the defendant swore that he did not intend to give a warranty, his subjective intentions were irrelevant; and they could not affect the construction to be put on the advertisement or the inferences to be drawn from his conduct. *Turner* v. *Anquetil*. (S.C. Auckland. November 26, 1952. F. B. Adams, J.)

CONVEYANCING.

Enforceability of Voluntary Covenants. *97 Solicitors' Journal*, 200.

Failure of a Purchaser to Complete: Difficulties of a Vendor, *216 Law Times*, 428.

COUNTIES.

Ridings Representatives—Readjustment of Representation in Election Year—Representation to be Proportionate to Rateable Value and Number of Electors at Time of Election—Counties Act, 1920, s. 60—Local Elections and Polls Amendment Act, 1946, s. 2(9). The purpose of s. 60 of the Counties Act, 1920, as amended by s. 2(9) of the Local Elections and Polls Amendment Act, 1946, is that the representation of the several ridings shall be, as far as possible, proportioned to the two factors: rateable value and the number of electors at the time of the election. The action is to be taken in the month of March preceding the immediately pending election, which normally takes place in November. Where there is a disproportion in the representation of the ridings, s. 60 requires the County Council to remove this disproportion by making such adjustment as it should decide upon; and it is for the Council to decide what steps should be taken to remove the disproportion. (*Attorney-General ex rel. Bradshaw* v. *Peninsula County*, [1951] N.Z.L.R. 328; [1951] G.L.R. 215, referred to.) *Semble*, That, if a Council gave fair and careful consideration to whether it ought to give more attention to rateable value or to the number of electors, if it could not produce a result fair to both factors, then its view could not be challenged. In the present case, an application for a mandamus against the defendant's Council to carry out its duty under s. 60 failed only because the learned Judge could not be sure that the Council could physically comply with an order if it were in fact issued. *Attorney-General, ex rel. Smith* v. *Cook County*. (S.C. Gisborne. August 26, 1953. Hutchison, J.)

Water-supply—Special Rating Area—Water-supply installed therein—Part of Block of Land within Such Area and Part Outside It but within County Boundaries—Water-supply connected to House on Block within Special Rating Area—Owner extending Water-connection to House on Block but outside Special Rating Area—Council Authorized to make By-laws, for Whole or Part of County, including By-law dealing with County's Water-supply—Owner of Block acting without Authority in Defiance of Valid By-law—Ordinary Supply of Water given for Purposes of Land within Special Rating Area—County not attempting to cut off Water-supply—County entitled to seek Injunction to Restrain Owner from Continuing to draw Extra-territorial Supply—Counties Act, 1920, ss. 109, 182, 248, 249—Municipal Corporations Act, 1933, s. 82. In 1939, the respondent County created a water-supply special rating area for that portion of the Te Horo Riding known as the Waimeha Township. Pursuant to the authority of a poll of ratepayers in that area, a loan of £3,300 was raised by the County under the Local Bodies Loan Act, 1926, the interest and other charges in respect of the loan being secured by a special rate of 2d. in the £ upon the rateable value (on the basis of the capital value) of all the rateable property in the special rating area as defined in the special resolution passed for the purpose. The water-supply was installed, and a special by-law, entitled the Waimeha Township Water Supply By-law, 1939, was made and ordained by the Council in relation thereto. An Order in Council was issued on December 17, 1929 (*1929 New Zealand Gazette, 3323*), pursuant to s. 182 of the Counties Act, 1920, conferring on the County Council all the powers with respect to the supply of water for domestic or industrial purposes exercisable by a duly constituted Borough Council under specified portions of the Municipal Corporations Act, 1920, and its Amendments. The powers so conferred are those now appearing in the Municipal Corporations Act, 1933, as ss. 82-84, 87, 88, Part XX (with the exception of ss. 251, 253, and 254), and s. 346. The appellant was the owner and occupier of a block of land (containing in all approximately 6 acres), a small portion of which was within the special rating area and the greater portion of which was outside the area, though within the boundaries of the County. On or about October 23, 1942, the appellant's predecessor in title made application to the respondent for a permit to make a connection to the water-supply system for an ordinary water-supply in respect of that portion of the land situated within the special rating area. A permit to make the connection applied for was granted, the permission being expressly limited to an ordinary supply. The connection of water not only served a cottage upon the land within the special rating area, but also led to and supplied certain standpipes upon the adjacent land (outside the area), to enable a market garden then operated upon such adjacent land to be watered. In 1948, the appellant extended the water-supply line from the then existing reticulation to a more distant part of his land, on which was erected another dwellinghouse, in order to provide a domestic supply to that dwellinghouse, which was situated at a considerable distance beyond the boundary of the special rating area. The Council wrote to the appellant drawing attention to what was called the unauthorized connections outside the special area, and notifying him that a disconnection would be made at the expiration of fourteen days from that date. In spite of the appellant's protest, the water pipe-line on the appellant's property was cut by the Council at a point just beyond the boundary of the special area. The appellant thereupon reconnected the supply. Notwithstanding his representations to the Council with the object of arriving at some arrangement which would ensure to him the use of the water for his house beyond the special area, the Council, on March 28, 1949, again cut the pipe-line at the same point as before, and again the appellant repaired it. On April 6, 1949, the Council for the third time cut the pipe-line at the same point. The appellant applied for an injunction to restrain the respondent's Council from trespassing by its servants or agents on the appellant's land, from interfering with the water-supply thereon, and from moving or removing any part of his property. His application was refused by *Hay*, J., who gave judgment for the respondent County: [1952] N.Z.L.R. 557; [1952] G.L.R. 400. On appeal from that judgment, *Held*, by the Court of Appeal, 1. That the appellant was obtaining a benefit to which he had no moral right: he was granted an ordinary supply of water in respect of the land which he owned in the special rating area, and, in terms of s. 82 of the Municipal Corporations Act, 1933, he paid for such supply by a rate calculated on the annual value of that land, and, without authority and in defiance of the County Council's by-law, he had extended that supply to service his land outside the special area; and this consideration would be sufficient to determine the present action against him, because the writ of injunction is an equitable remedy and will not be granted to a plaintiff to support an unconscionable claim. (*Litvinoff* v. *Kent*, (1918) 34 T.L.R. 298, followed.) 2. That s. 109 of the Counties Act, 1920, read in conjunction with s. 182 of that statute, authorizing the Governor-General to enable a County Council to establish a water-supply, and s. 18 of the Municipal Corporation Act, 1933 (which has, in effect, been incorporated in the Counties Act, 1920) are sufficient to authorize the making of by-laws to apply to the whole county or to any part of the county specified in the by-law, for various specified matters, including the making of by-laws dealing with the county's water-supply. 3. That the respondent County's water-supply by-law was not invalid, though it was not free from criticism. (*Everton* v. *Levin Borough*, [1953] N.Z.L.R. 134, distinguished.) 4. That the appellant could not justify his action in taking the extended supply, as the ordinary supply was, by the form of application in the by-law, related to specific premises, and it might not be used in or extended to other premises; and, further, the form of application contained an undertaking to observe "the by-laws relating to water-supply," and he had infringed clauses of those by-laws. (*Great Northern Railway Co.* v. *Bradford Corporation*, (1919) 83 J.P. 33, referred to.) 5. That the appellant had been given and had chosen to retain an ordinary supply of water for his inside area, the circumstances of the special rating area necessarily implied that, in the absence of a special contract, he must be prepared to hold and use it in accordance with the terms upon which he had obtained it within that area, *i.e.*, for the ordinary purposes of the land in the rating area; and that, if he persisted in disregarding that condition, he could be restrained by injunction, or, perhaps, be obliged to submit to the loss of his supply. (*Dominion of Canada* v. *City of Levis*, [1919] A.C. 505, applied.) 6. That, accordingly, the appellant had no right to use the respondent County's water as he was doing. *Quaere*, whether, in the present state of the County's by-law, the specific rights of cutting off his whole supply or of entering on his private property for the purpose of cutting off the extra-territorial supply were available. 7. The provisions of ss. 248 and 249 of the Municipal Corporations Act, 1933, do not give the respondent County a right to cut off a supply of water in the circumstances of the present case. 8. That, although the respondent County had contended for a right to cut off the appellant's water-supply, it had not attempted or threatened to do so over a period of three years; and this was an additional reason for refusing the appellant's application for an injunction. *Semble*, That, if the County had sought an injunction to restrain the appellant from continuing to draw the extra-territorial supply of water, its application must have been granted; and, if necessary, such action was open to it. (*Great Northern Railway* v. *Bradford Corporation*, (1919) 83 J.P. 33, applied.) Appeal from the judgment of *Hay*, J. [1952] N.Z.L.R. 557; [1952] G.L.R. 400 dismissed. *Crimp* v. *Horowhenua County* (C.A. Wellington. July 14, 1953. Fair, Stanton, North, JJ.)

CRIMINAL LAW.

Abduction of Girl under Eighteen, but over Sixteen Years—"Unlawfully and carnally known"—Meaning of "unlawfully"—Justices of the Peace Act, 1927, s. 209. The word "unlawfully", as used in s. 209 of the Justices of the Peace Act, 1927, in the phrase "with intent that any unmarried girl under the age of eighteen years should be unlawfully and carnally known by any man", means something like "illicitly", and the carnal knowledge is illicit or immoral because of the taking or detaining of the girl out of the care of her father and against his will. *The Queen* v. *Russo*. (S.C. Hamilton. May 13, 1953. Hutchison, J.)

DIVORCE AND MATRIMONIAL CAUSES.

Desertion—Husband in Mental Hospital at Time of Wife's Leaving Home—Petition by Him within Three Years of His Final Discharge—Wife's Intention to Desert Husband at Time of her leaving Home Established—Decree Granted—Matrimonial Causes Act, 1928, s. 10(b). In March, 1944, the petitioner was committed to a mental hospital. At the time, he was living with his wife and children in their home. In February, 1951, he was allowed to return to his home on probation. He found that his wife had disappeared in 1946, and that his children had been placed under the control of the Child Welfare Department. On January 15, 1952, the petitioner was finally discharged as recovered. He endeavoured for some months to ascertain his wife's whereabouts, but without success. Eventually, as the result of a newspaper advertisement he found her address. On October 1, 1952, he wrote to her and asked her to return. She received the letter, but did not reply. On petition by the husband, but within three years of his discharge from the mental hospital, for dissolution of his marriage on the ground of desertion, *Held*, That the evidence established that the respondent had deserted the petitioner when she left her home in 1946; and consequently she had left him continuously so deserted for three years or more. (*Sotherden* v. *Sotherden*, [1940] P. 73; [1940] 1 All E.R. 252, followed. *Pardy* v. *Pardy*, [1939] P. 288; [1939] 3 All E.R. 779, referred to.) The husband was accord-

ingly entitled to his decree. *Greig* v. *Greig*. (S.C. Invercargill. September 12, 1953. North, J.)

FACTORIES.

Worker Engaged on Weekly Basis—Worker leaving Work after Four Days—No Wages lawfully recoverable—Penal Provisions not applicable to Employer—Factories Act, 1946, s. 34—Minimum Wage Act, 1945, s. 2(5). Section 34 of the Factories Act, 1946, does not require payment of wages which are not lawfully recoverable; and s. 2(5) of the Minimum Wage Act, 1945, applies only when wages are payable. (*Mickell* v. *Whakatane Board Mills, Ltd.*, [1950] N.Z.L.R. 48; [1950] G.L.R. 304, followed.) A worker, engaged on a weekly basis, started his employment on a Tuesday morning, did not work on the Wednesday, and brought the contract of service to an end when he failed to report for work on the succeeding Monday. He was not paid any wages. The award by which the parties were controlled stated: "14 (*a*) Except where otherwise provided herein, the employment shall be a weekly employment. 14 (*b*) One week's notice of termination of service shall be given by the employer or the employee." The employer was charged on an information alleging that, being the occupier of a factory, it employed the worker on November 13, 15, and 16, and failed to pay him wages, thereby committing an offence under s. 34(4) of the Factories Act, 1946. *Held*, 1. That the worker forfeited any right to payment for the part of the week in which he had worked, when, in defiance of the ordinary rule and of the terms of the award, he brought the contract to an end before the first week had concluded, and without notice to his employer. 2. That, as no wages were lawfully recoverable by the worker, s. 34(4) of the Factories Act, 1946, did not apply and the Minimum Wage Act, 1945, did not require a payment of wages which were otherwise not payable; and, consequently, no offence had been committed by the defendant company. *McGregor (Inspector of Factories)* v. *Woodward*. (Christchurch. June 4, 1953. Reid, S.M.) [Affirmed on appeal: 1953. August 31. *Northcroft*, J.]

FAMILY PROTECTION.

Widow Applicant—Testator leaving Wife and Six Children and living with Applicant, who had left Her Husband and Two Children—Testator and Applicant subsequently Married—Testator's Moral Duty to provide adequately for Widow—No Less Moral Duty than if Married in More Acceptable Circumstances—Testator's Division of Capital between Widow and Children—Indication of View as to Appropriate Provision to be made—Lump Sum Payment to Widow of Additional Share of Capital—Family Protection Act, 1908, s. 33(2). The testator, who died on February 20, 1950, left a widow, the present appellant, surviving him. He had been previously married, and by that marriage had six children, all of whom were, at the time of his death, of mature age, except the youngest son who was seventeen. The testator, while living with his wife and family became friendly with the appellant, who was also married and was living with her husband and two children. In 1942, the couple commenced to live together as man and wife, and so continued until April, 1948, when, both having been divorced, they married. They lived together until the death of the testator. By his will made in August, 1948, the testator left to his wife his business of a rabbit-skin merchant and all chattels, book debts, etc., belonging to the business, and the leasehold premises on which it was conducted. The balance of his estate he left to the children of his first marriage in equal shares. His first wife remarried in 1948. The amount which the testator's estate would realize was uncertain; but it was assumed that the widow would receive assets worth approximately £2,000 and that the children would receive about £2,500 between them. The appellant was forty-one years of age, and was not shown to be in ill-health. She had practically no assets of her own. She had a boy of eleven, a son of her previous marriage, wholly dependent upon her. She claimed assets of a total value of £2,950 under the specific gift to her in the testator's will. The executor admitted this claim to the extent of assets worth £1,873, and rejected it in relation to the balance amounting to £1,077. The testator in his life-time made gifts to two of his children amounting to £383, and advanced to one of his children £1,288 which was forgiven by his will. The widow's application for further provision out of the testator's estate was refused by *F. B. Adams*, J., on the ground that her conduct before her marriage to the testator was a relevant factor and one of the circumstances which the Court was entitled to consider; that it was decisive against her claim to any provision other than that which she took under the will; and that the testator had not failed to make such provision for her as it was his duty to make in view of all the circumstances. The widow appealed from that determination. *Held*, by the Court of Appeal (*Stanton* and *Hay*, JJ., *Fair*, J., dissenting), 1. That it was the testator's moral duty which had to be considered and assessed; and that a man who already had a wife and children but who took a woman from her husband and subsequently made her his wife had no less moral duty to provide for her adequately by his will than if they had been married in more acceptable circumstances. (*In re the Will of F. B. Gilbert*, (1946) 46 N.S.W.S.R. 318, applied.) (*E. v. E.*, (1915) 34 N.Z.L.R. 785, referred to.) 2. That, in considering what was adequate provision, the fact that the widow had an infant son dependent on her (though he was not the child of the testator) was a relevant consideration in assessing the testator's moral duty. 3. That the testator still had a moral duty to his children; but, in considering the relative claims of his widow and his children, the widow was entitled to receive that first consideration which the Courts have consistently extended to widows, especially when the children, though not affluent, were non-dependent. 4. That it was also a matter for consideration that the testator had by the terms of his will indicated himself that a division of capital between his widow and his children was, in his view, the appropriate provision to make. 5. That, conditional on the widow's withdrawing her claim to any further assets under the specific bequest to her, she should receive from the estate: (*a*) The assets claimed by her and admitted by the executor, or their proceeds if realized; (*b*) a sum of £750 out of the residue of the estate to be paid to her without interest *pro rata* as the residue is distributed; but, in all other respects, the provisions of the will should stand. Appeal from the judgment of *F. B. Adams*, J., allowed. *In re Worms: Worms* v. *Campbell*. (S.C. Hamilton. June 11, 1952. F. B. Adams, J.) (C.A. Wellington. July 14, 1953. Fair, Stanton, Hay, JJ.)

HUSBAND AND WIFE.

Husband-and-Wife versus Master-and-Servant: A collision of Concepts. (Professor G. Sawer) *27 Australian Law Journal*, 323.

INFANTS AND CHILDREN.

Child Welfare—Immigrant Child—Guardian appointed by Superintendent of the Child Welfare Division—Such Guardian petitioning Supreme Court to appoint Additional Guardians to act with Her—Order made—Sureties dispensed with—Child Welfare Amendment Act, 1948, s. 5(3)—Infants Act, 1908, s. 5. Where the Superintendent of the Child Welfare Division in pursuance of s. 5(2) of the Child Welfare Amendment Act, 1948, grants an application by a person for the guardianship of an immigrant child, although the Superintendent is not obliged to satisfy himself as to the protection of the child's financial interests, that person, by virtue of s. 5(3) is in the same position as if appointed guardian by the Supreme Court, and thus has the necessary authority to receive legacies and other personal property payable or due or belonging to the infant. (*In re M. G. Stuart-Forbes*, (1907) 27 N.Z.L.R. 458, applied.) The rules for regulating the practice and procedure of the Court in respect of applications for guardianship under Part I of the Infants Act, 1908, do not apply in respect of any such appointment by the Superintendent of a guardian under the Child Welfare Amendment Act, 1948. *Semble*, That, while the person appointed by the Superintendent may in every way be suitable to have the responsibility of bringing up the child, that person may have neither the business experience nor even the educational advantages which are usually regarded as being of some importance where matters of property are concerned. On a petition to the Court under the Infants Act, 1908, by the guardian appointed by the Superintendent of the Child Welfare Division, for the appointment of additional guardians to act with her, in the performance of her duties in relation to the child's property, the Court may dispense with sureties in a proper case, as the interests of the infant are more likely to be protected by the appointment of additional guardians than by the Court's placing difficulties in the way of their appointment. *In re Webster (Infants)*. (S.C. Timaru. In Chambers. September 24, 1953. North, J.)

LAND TRANSFER.

Caveat—Sale of Section in Subdivision of Land in Borough—No Approval by Borough Council of Plan of Such Subdivision—Caveat by Purchaser to protect Interest under Sale and Purchase Agreement—Contract of Sale prohibited by Statute—Caveat removed—Land Transfer Act, 1952, s. 145—Municipal Corporations Act, 1933, s. 332 Vendor and Purchaser—Sale of Land—Land in Proposed Subdivision in Borough—Approval of Borough Council to Plan not obtained—Contract of Sale Illegal—No Rights accruing to Either Party—Municipal Corporations Act, 1933, s. 332. On or about April 27, 1953, the respondent agreed to buy and the company to sell to him, for £300 a section of land described as Lot 22 on a plan of subdivision prepared by the company; and part of the land in a certificate of title. The

respondent purchased the section through a firm of land agents, to whom at the time of entering into the contract he paid the full purchase price. He was not informed that the plan of subdivision of the land of which the section formed part had not been approved by the Upper Hutt Borough Council, within whose boundaries the land was situated. At the time of entering into the contract, the respondent was informed by the land agents that the company was in a sound financial position, and was able to complete the contract by transferring the section to him. On May 14, 1953, the company's debenture-holder appointed a receiver, who in exercise of the power of sale created by the debenture offered for sale by auction the whole of the land included in the subdivisional plan of twenty-six sections, situate in the Borough of Upper Hutt. The Borough Council had not approved the plan. At the time of the hearing, the company was in the process of a creditor's voluntary winding-up, pursuant to a resolution passed on July 9, 1953. On July 3, 1953, the respondent lodged a caveat against the certificate of title, which included the land sold to him, claiming an estate or interest in that part of the land by virtue of his agreement for sale and purchase. The caveat forbade the registration of any memorandum of transfer or other instrument affecting that land until the caveat should be withdrawn by the caveator, or by order of the Supreme Court or some Judge thereof, or until the same should have lapsed under the provisions in that behalf contained in s. 145 of the Land Transfer Act, 1952. On summons by the company for removal of the caveat. *Held*, 1. That the sale of the section to the respondent constituted a subdivision of the company's land for the purposes of s. 332 of the Municipal Corporations Act, 1933, under which it is provided that a plan of a subdivision of land in a borough must be approved by the Borough Council before such a subdivision is made, and that no plan of any land in a borough which it is proposed to subdivide may be deposited under the Land Transfer Act unless, *inter alia*, the plan has been duly approved by the Borough Council. 2. That the contract for sale and purchase of the section was made in breach of the provisions of s. 332 of the Municipal Corporations Act, 1933, and was *per se* illegal; and no rights under it could accrue to either party. (*Re Mahmoud and Ispahani*, [1921] 2 K.B. 716, and *Bostel Bros., Ltd.* v. *Hurlock*, [1949] 1 K.B. 74; [1948] 2 All E.R. 312, followed.) (*George* v. *Greater Adelaide Development Co., Ltd.*, (1929) 43 C.L.R. 92, referred to.) 3. That the caveat could not stand by reason of the fact that it was lodged to protect a contract prohibited by statute, and, therefore, illegal; and the Court, in the circumstances, had no power to impose terms. An order for the removal of the caveat from the register was accordingly made. *Concrete Buildings of New Zealand, Ltd. (In Liquidation)* v. *Swaysland*. (S.C. Wellington. September 8, 1953. Hay, J.)

Effect of Judgments on Land in Australia. *27 Australian Law Journal*, 206.

LIMITATION OF ACTIONS.

Action in Respect of Bodily Injury—Period of Two Years for Bringing Action Exceeded—Intended Plaintiff not Mentally Normal during Such Period—Delay Excusable—Leave to bring Action granted on Terms—"Reasonable Cause"—Limitation Act, 1950, s. 4(7). On December 6, 1950, the intended plaintiff suffered serious injury in an accident while he was a servant of the intended defendant. As a result, he was not mentally normal for at least two years thereafter,. Late in December, 1952, certain information in relation to the cause of the accident was given by him to his solicitor for the first time; and it was not until March, 1953, that investigation of it could be completed, mainly by reason of the intended plaintiff's want of recollection and his emotional instability. On May 19, 1953, the intended plaintiff applied for leave, notwithstanding the effect of s. 4(7) of the Limitation Act, 1950, to bring an action at common law in respect of his accident, on the grounds that the delay in bringing the action was occasioned by mistake or other reasonable cause and that the defendant had not been materially prejudiced in its defence by the delay. *Held*, 1. That whatever delay on the part of the intended plaintiff's solicitor took place between December, 1952, and the date of the filing of the application for leave to bring the action, it was excusable in the peculiar circumstances of the case; and the intended plaintiff had discharged the onus upon him of showing that there was reasonable cause for the delay. 2. That leave should be granted to the intended plaintiff to bring his action upon the grounds that the delay up to the time of the filing of the application for leave was occasioned by reasonable cause for which there were substantial grounds, but upon terms as to commencement of the action within fourteen days after the delivering of this judgment. *Semble*, That the medical evidence was insufficiently strong to warrant the conclusion that the intended plaintiff was a person under disability within the meaning of s. 24 of the Limitation Act, 1950. *Quaere*. Whether, if the motion had fallen for decision on the alternative ground specified in s. 4(7) of the Limitation Act, 1950—namely, that the delay had not materially prejudiced the defendant or otherwise, the granting of leave would have been justified. *Glynn* v. *Taranaki Hunt Club (Inc.)*. (S.C. New Plymouth. September 3, 1953. Hay, J.)

OBITUARY.

The Rt. Hon. Sir Humphrey O'Leary, K.C.M.G., at Auckland, on October 16, aged 67 years.

The Hon. Mr. Justice Northcroft, D.S.O., at Christchurch, on October 10, aged 69 years.

Mr. N. McN. Thomson, of Levin, on October 24, aged 51 years.

POLICE OFFENCES.

Vagrancy—Habitually consorting with Reputed Thieves—Facts to be proved—Mens rea—*Cumulative Weight of Evidence of Association determining Factor—Police Offences Act, 1927, s. 49*(d)—*Justices—Costs—Appeal from Conviction—Appeal by Defendant succeeding on Merits—Conviction Quashed—Allowance of Costs against Informant—Justices of the Peace Act, 1927, ss. 325, 328.* Where a person is charged under s. 49(*d*) of the Police Offences Act, 1927, the offence does not postulate any criminal activity. To secure a conviction, all that is required is proof that the accused habitually consorted with reputed thieves, and it is not incumbent on the prosecution to prove either that he refrained from earning his living by honest means or that there was a nefarious object in his association with the reputed thieves. This is subject only to the necessary requirement of *mens rea* in the form of knowledge that the persons consorted with were reputed thieves, which knowledge, in appropriate circumstances, may be inferred from habitual association. (*Dias* v. *O'Sullivan*, [1949] S.A.S.R. 195, followed.) (*Berry* v. *Ritchie*, [1932] N.Z.L.R. 1315; [1932] G.L.R. 604, applied.) (*Fell* v. *Gauntlett*, (1949) 6 M.C.D. 48, overruled.) The cumulative weight of all the incidents of the association with reputed thieves is the determining factor; and evidence which is insufficient in its separate parts when taken to pieces may nevertheless be sufficient to establish the charge. (*Reardon* v. *O'Sullivan*, [1950] S.A.S.R. 77, applied.) Consorting habitually with persons known to the accused to be reputed thieves in general is enough; and the prosecution is not bound to prove a habit of consorting with a particular thief or thieves. (*O'Connor* v. *Hammond*, (1902) 21 N.Z.L.R. 573; 4 G.L.R. 377, and *Stevens* v. *Andrews*, (1909) 28 N.Z.L.R. 773; 11 G.L.R. 713, followed.) There is power under s. 325 of the Justices of the Peace Act, 1927, to award costs against the informant; and, where an appeal from conviction succeeds on the merits, an allowance of costs is not prohibited by s. 328 of that Statute. Rare exceptions may be admitted to the rule of practice that costs are not allowed where a conviction is quashed. *Davis* v. *Samson*. (S.C. Auckland. August 13, 1953. F. B. Adams, J.)

POWER.

Power of Appointment—Special Power created by Will to be Exercised by Will of Appointee—Intention to exercise Special Powers not expressed in Appointee's Will—"The property real and personal . . . of which I have power to dispose by this my will." Two sisters by their respective wills created special powers of appointment in favour of nephews and nieces and their issue or remoter issue, which, in the events which happened, were exercisable by the testator, their brother. Both wills contained gifts-over in default of appointment. The testator, by his will, after making a specific bequest to a niece, provided as follows: "I give and bequeath all the rest residue and remainder ofthe property real and personal whatsoever and wheresoever situate of which I have power to dispose by this my will unto my trustee UPON TRUST as soon as conveniently may be after my death to sell and convert into money my real property and to sell call in and convert into money my personal property with power to effect any such sale either by public auction or private contract either together or in parcels either at one time or from time to time and subject to all such conditions and terms as to my trustee seems expedient and to make execute and do all such conveyances assurances writings and things as may be necesary for effectuating any such sale." By cl. 5, he directed his trustee "to stand possessed of the proceeds of such sale and conversion after payment thereout of my just debts funeral graveyard and testamentary expenses and the costs and expenses of such sale and conversion and all estate and succession duties payable in connection with my dutiable estate" upon trusts to pay to testator's housekeeper an annuity free of social security charges during her life, with power to set aside an annuity fund for the purpose, and to divide the balance of the net proceeds of sale and conversion into

five equal parts. The annual income arising from one part was given to a niece for life, without power of anticipation, with remainder to her children who should survive her and attain twenty-one years of age. Similar trusts in favour of another niece and her children were declared in respect of two other parts. The same two nieces were given similar life interests in respect of the remaining two parts jointly whilst both were living and solely during the survivor's lifetime, with remainder to the children of both nieces living at the survivor's death who attained twenty-one years of age. On originating summons, removed into the Court of Appeal, asking whether according to the true construction of the testator's will, he had thereby sufficiently exercised the powers of appointment conferred on him by the wills of his two sisters, *Held*, That the testator's will contained no sufficient expression of intention to exercise the special powers of appointment conferred upon him by those wills: for the reasons: Per *Fair*, J.: That the question was one of construction, and the other provisions of testator's will clearly indicated that the wide words of the residuary gift were not intended to apply to the special powers of appointment; and that, even if this were not so, they were so general that they did not establish the testator's intention to supersede the dispositions made in default of appointment. (*Henderson* v. *Constable*, (1842) 5 Beav. 297; 49 E.R. 592, applied.) Per *Stanton* and *Hay*, JJ.: 1. That the Court would not be justified in attributing to the expressions " my real property " and " my personal property " in cl. 4 of the testator's will anything but their plain and ordinary meaning; and that accordingly there was in those expressions alone a fairly clear indication that it was not the testator's intention that the trust funds under the sisters' wills should be brought within the purview of cls. 4 and 5. (*Price* v. *Price*, (1882) 46 L.T. 228, *Byrne* v. *Cullinan*, [1904] 1 I.R. 42, and *Goodere* v. *Lloyd*, (1830) 3 Sim. 538; 57 E.R. 1100, distinguished.) 2. That the expression " of which I have power to dispose by this my will " in cl. 4 was not only equivocal in meaning, but had never of itself been held sufficient to indicate an intention to exercise a special power of appointment. (*Re Beresford's Will Trusts*, [1938] 3 All E.R. 566; *Re Latta's Settlement*, [1949] 1 All E.R. 665, referred to.) 3. That, on an examination of the various provisions of the will, its whole scheme was consistent with no other view than that the testator was disposing of his own assets and those assets alone; and that there was accordingly no sufficient indication of the testator's intention to exercise the special powers of appointment. (*Re Mayhew*, [1901] 1 Ch. 677, 679, and *In re Ackerley*, [1913] 1 Ch. 510; and *Re Latta's Settlement*, [1949] 1 All E.R. 665, referred to.) *In re MacVean (deceased), Guardian Trust and Executors Co. of New Zealand, Ltd.* v. *Lees*. (C.A. Wellington. April 20, 1953. Fair, Stanton, Hay, JJ.)

PUBLIC WORKS.

Compensation—Claim for Compensation for Damage to Land by Public Work—Time-limitation for Bringing any Claim not applicable when Relationship between Two Portions of Public Work such that Damage not ascertainable until Whole Work completed—"Execution of the works"—"In itself (and without reference to any other part of the work) causes the damage"—Public Works Act, 1928, s. 45—Statutes Amendment Act, 1939, s. 63.

Land Valuation—Land Valuation Court—Jurisdiction—Claim for Compensation for Damage to Land as Result of River Board's Diversion Operations—Limitation of Time for Commencement of Action—Such Question a Matter Preliminary to or Collateral with Merits—Jurisdictional Fact—Court's Decision thereon reviewable by Supreme Court—Public Works Act, 1928, s. 45. The respondent lodged a claim for compensation under the Public Works Act, 1928, against the appellant Board in respect of damage alleged to have been caused to the respondent's property as the result of a public work undertaken by the appellant Board. This claim was heard by a Land Valuation Committee, which awarded the respondent £1,234. An appeal from that determination was taken to the Land Valuation Court, which held that the claim was out of time and that it had no jurisdiction to consider the claim: [1952] N.Z.L.R. 452; [1952] G.L.R. 335, where the facts are fully set out. The respondent then commenced proceedings for certiorari and mandamus in the Supreme Court, contending that the Land Valuation Court had wrongly decided the question of the time-limit, that its decision thereon was subject to review by the Supreme Court, and should be quashed; and that the Land Valuation Court should be directed to hear the claim for compensation on its merits. *Fair*, J., upheld this contention and directed that the decision of the Land Valuation Court should be quashed, and that the claim for compensation should be heard and determined by it. From that decision, the Board appealed. Counsel were agreed that, under s. 17 of the Land Valuation Court Act, 1948, the Land Valuation Court, in dealing with claims for compensation, has a status somewhat different from that of a Compensation Court under the Public Works Act, 1928; and its award or order can be reviewed in the Supreme Court on the ground of lack of jurisdiction. Counsel confined themselves to contending that the Land Valuation Court's decision was or was not made without jurisdiction. *Held*, 1. That the question of time-limitation under s. 45 of the Public Works Act, 1928, was jurisdictional as it was a matter preliminary to or collateral with the merits—in this case, to the occurrence and extent of the alleged damage; and that a decision by the Land Valuation Court on such a preliminary or collateral matter can be examined and reviewed by the Supreme Court, and, if considered wrong by it, corrected. (*R.* v. *Shoreditch Assessment Committee*, [1910] 2 K.B. 859; *Oborn and Clark* v. *Auckland City Corporation*, [1935] N.Z.L.R. 1; [1935] G.L.R. 126, applied.) (*Sullivan* v. *Mayor, &c. of Masterton*, (1909) 28 N.Z.L.R. 921; 12 G.L.R. 136, and *O'Brien* v. *Chapman*, (1910) 29 N.Z.L.R. 1053, referred to.) 2. That, even if the question of a time-limit under s. 45 of the Public Works Act, 1928, for the commencement of proceedings were not strictly a preliminary point, the jurisdiction depended upon a particular fact which was collateral to the actual matter which the Land Valuation Court had to try; and, in the present case, the determination of the Land Valuation Court was reviewable on matters both of fact and law. (*R.* v. *Blakely*, (1950) 82 C.L.R. 55, applied.) 3. That the Supreme Court will not disregard the Land Valuation Court's findings of fact unless they are clearly shown to be erroneous, except where that Court is dealing with matters of causation in relation only to the time for the commencement of proceedings, and it is the duty of the Supreme Court to examine the Land Valuation Court's findings and to determine as best it can whether it finds them justified. (*Stratford Borough* v. *Wilkinson*, [1951] N.Z.L.R. 814, followed.) 4. That, considering s. 45(2) of the Public Works Act, 1928, in the light of its history, the Legislature did not intend to bar claims arising from the execution of a public work until it was, or should have been, manifest to the claimant that his claim was ripe for determination; and that subsection has no application if the relationship between the first portion of a public work and the second portion is such that the final damage cannot be ascertained until the whole work is completed. 5. That the appellant Board had by its course of conduct linked all its river-diversion operations together in such a close association that it was impossible for it to say, or for a Court to hold, that the damage caused was other than damage from the execution of the works as a whole. 6. That, on the undisputed facts, the final fate of the appellant Board's scheme of river-diversion was uncertain, but, whether it had been abandoned in the form in which the appellant Board was attempting to carry it out, or whether it was only being postponed or modified, it was in either case an uncompleted work, which, regarded as a whole, had damaged the respondent's property; and his claim for that damage was not out of time, and it must be considered and determined by the Land Valuation Court. Appeal from the judgment of *Fair*, J., dismissed. *Manawatu-Oroua River Board* v. *Barber*. (S.C. & C.A. Wellington. June 26, 1953. Stanton, Hay, North, JJ.)

TENANCY.

Alternative Accommodation for Business. *97 Solicitors' Journal*, 602.

VENDOR AND PURCHASER.

Land Sales—Sale of Land—Consent of Land Sales Court not obtained—Purchaser in Possession—"Transaction shall be deemed to be unlawful and shall have no effect"—Meaning of " shall have no effect "—Servicemen's Settlement and Land Sales Act, 1943, s. 46 (Cf. Servicemen's Settlement Act, 1950, s. 26(1)).

Contract—Illegality—Principles applicable where Plaintiff's Cause of Action arising ex turpi causa—*Where Both Parties* in pari delicto—*Where Plaintiff not relying, or compelled to rely, on Illegal Transaction in Support of His Right—Where Contract still Executory.*

Practice—Question of Law—Order for Argument Before Trial—Question Hypothetical—Necessary Facts not before Court—Mixed Question of Fact and Law—Answer on Question of Law dependent on Ascertainment of Facts—Question Extending to Causes of Action not within Pleadings—Order Wrongly made in Position of Pleadings and Circumstances of Case—Order vacated—Code of Civil Procedure, R. 154. The proper interpretation of the

question, whether a purchaser could resist a claim by the vendor to possession that was referable solely to that contract, as the answer may depend on the dealings between the parties, and the resulting equities. Per *Gresson*, J. " And shall have no effect otherwise than as an unlawful transaction " ; and, upon such a construction, the whole body of law applicable to the case of an attempted recovery of property delivered under an unlawful agreement becomes applicable. Per *Hay*, J. " And shall have no effect in law to create rights and liabilities." Appeal from the judgment of *Stanton*, J. ([1953] N.Z.L.R. 154) on this point, allowed. The respondent (plaintiff in the Court below in a pending action claiming damages and other relief) filed a motion under R. 154 of the Code of Civil Procedure for an order that certain questions of law be argued before trial of the action. By consent of the counsel for the appellant (the defendant in the Court below), *Stanton*, J., ordered certain questions of law be argued. The question on which judgment was given can be expressed as follows: Can the respondent recover possession from the appellant of certain land of which the respondent was the registered proprietor, possession of which was given by the respondent to the appellant under an agreement dated September 2, 1947, if that agreement was—as was alleged—a device, plan or scheme to sell the farming property as a going concern amounting to an agreement for the sale and purchase of the property and one in contravention of Part III of the Servicemen's Settlement and Land Sales Act, 1943, and its amendments, since no consent under that statute had been obtained to the transaction. It was admitted that the appellant had paid moneys under the agreement and that he asserted a right of possession as beneficial owner by virtue of the agreement. Judgment was given by *Stanton*, J. ([1953] N.Z.L.R. 154), that the respondent could recover possession of the land described in the statement of claim if the appellant were in possession of it in pursuance of the alleged agreement and if that agreement were a transaction or part of a transaction entered into in contravention of Part III of the Servicemen's Settlement and Land Sales Act, 1943, as alleged in the statement of defence. From that decision, the plaintiff appealed. *Held, per totam curiam*, That the order for argument of a question of law in the wide form stated should not have been made under R. 154 of the Code of Civil Procedure, and it should be vacated on the ground that the Court below, in the position of the pleadings and the circumstances of the case, should not have made the order for argument before trial or given judgment on it; and the action should be allowed to proceed to trial with such questions of law as would arise not pre-determined. For the reasons, Per *Fair*, J. That the order should have been refused on any one of four grounds : (*a*) That the question of law as stated raised difficult questions of law and might require consideration of facts not before the Court ; (*b*) that it extends to causes of action not included in the action ; (*c*) that the case was presented as a hypothetical one ; (*d*) that it was presented on the basis of assumed illegality. (*Riley* v. *Brown*, (1929) 98 L.J.K.B. 739 ; *Taverner and Co., Ltd.* v. *Glamorgan County Council*, (1940) 57 T.L.R. 243 ; *Gander* v. *John Every, Ltd.*, (1942) 62 T.L.R. 605 ; *Stephenson, Blake and Co.* v. *Grant, Legros and Co.*, (1917) 86 L.J. Ch. 439 ; and *Commonwealth of Australia* v. *Zachariassen*, (1920) 36 T.L.R. 655, followed.) Per *Gresson*, J. 1. That the question of law raised by the hyppthetical case was dependent upon the facts that it could not be answered unless, and until, the facts were fully and properly ascertained ; and the question itself was a mixed question of law and fact, and a question of law should not be brought before the Court under R. 154 unless it can be expressed neatly and satisfactorily, and it ought not to be mixed up with questions of fact ; and, furthermore, the question did not arise upon the pleadings. (*Teira te Paea* v. *Roera Tareha*, (1896) 15 N.Z.L.R. 91, followed.) 2. That many decisions have established a general rule of law that, in respect of any illegal transaction where both parties are *in pari delicto*, neither party can succeed in any proceedings against the other party for the restoration of any property or for the repayment of any money which has been transferred or paid in the course of the illegal transaction, and there were other cases in which upon one pretext or another—the rule had been departed from; and whether or not this particular case could be brought within the exceptions could not in the absence of a fuller statement of facts, be determined with any confidence. Per *Hay*, J. That the Court was invited to determine a question of law based not on ascertained or agreed facts, but on an hypothesis involving the consideration of possible causes of action not covered by the parties' pleadings ; and it was important that there should be a full ascertainment of the facts before it was possible to determine what principle of law should be applied in the circumstances. *Further*, Per *Gresson*, J. That the principles of law emerging from the authorities in relation to illegal contracts are as follows: 1. If from the plaintiff's own stating, or otherwise, the cause of action appears to rise *ex turpi causa* or the transgression of a words " and shall have no effect " in the phrase, " the transaction shall be deemed to be unlawful and shall have no effect," in s. 46 of the Servicemen's Settlement and Land Sales Act, 1943, in relation to a transaction entered into in contravention of Part III of that statute, is to read them in their context as meaning per *Fair*, J., " And shall have no effect to confer any enforceable rights or impose any enforceable obligations thereunder on the parties to the transaction in contravention of s. 43(1) of the principal Act " ; but without expressing any opinion on the positive law, he has no right to be assisted. 2. Where both parties to an illegal transaction are *in pari delicto*, neither party can succeed in any proceedings against the other party for the restoration of any property or for the repayment of any money which has been transferred or paid in the course of the illegal transaction. (*Holman* v. *Johnson*, (1775) 1 Cowp. 341 ; 98 E.R. 1119, followed.) (*Taylor* v. *Chester*, (1869) L.R. 4 Q.B. 309, and *Bigos* v. *Boustead*, [1951] 1 All E.R. 92, referred to.) 3. Where the goods of one person have got into the possession of another in consequence of unlawful dealings between them, the owner may recover them by action if he founds his claim on his right to possess that which is his own, and he does not rely and is not compelled to rely, on the illegal transaction in support of his right. (*Bowmakers, Ltd.* v. *Barnett Instruments, Ltd.*, [1945] K.B. 65 ; [1944] 2 All E.R. 579, considered.) 4. While the contract is still executory, a plaintiff can recover property which he has delivered to the other party in pursuance of an illegal transaction by making out a case quite independently of the illegal transaction, the extent to which the alleged purpose has been carried out being an all-important consideration ; and the aid of the Court will sometimes be available to him when the contract is still executory ; but to determine what degree of performance will disqualify a plaintiff is a matter of great difficulty. (*Taylor* v. *Bowers*, (1876) 1 Q.B.D. 291 ; *Kearley* v. *Thomson*, (1890) 23 Q.B.D. 742 ; and *Pethermal Chetty* v. *Muniandi Servai*, (1908) L.R. 35 Ind. App. 98, referred to.) (*Bigos* v. *Boustead*, [1951] 1 All E.R. 92 ; *Perpetual Executors and Trustees Association of Australia, Ltd.* v. *Wright*, (1917) 23 C.L.R. 185 ; *George* v. *Greater Adelaide Land Development Co., Ltd.*, (1929) 43 C.L.R. 91 ; and *Harse* v. *Pearl Life Assurance Co., Ltd.*, [1904] 1 K.B. 558, mentioned.) The order of *Stanton*, J. ,[1953] N.Z.L.R. 154, was accordingly vacated. *Watson* v. *Miles*. (C.A. Wellington. July 14, 1953. Fair, Gresson, Hay, JJ.)

WILL.

Construction—Devises and Bequests—Parallel Bequests—"My money in Post Office Savings Bank "—"Any of my personal belongings "—No Residuary Gift—Testatrix also owning Money in Safe Deposit Vault—Such Money going as on Intestacy—"Belongings." The testatrix, by her home-made will bequesthed " my money in Post Office Savings Bank if any to my husband and any of my personal belongings to [named nieces] ". The husband of the testatrix predeceased her, and the bequest of the moneys in the Post Office lapsed ; and that bequest went as on an intestant. At the death of the testatrix she had money in her Post Office Savings Bank account, moneys in a safe-deposit vault, chattels in a room occupied by her, and small items of jewellery. On the questions asked in an originating summons, *Held*, 1. That, on the true construction of the will, the bequest relating to moneys in the Post Office Savings Bank and the bequest of " personal belongings " were parallel bequests in which the money in the Post Office Savings Bank was contrasted with the " personal belongings ". 2. That, in the absence of some special reason, there is no case for extending the ordinary meaning of " personal belongings " (personal goods and effects) where that expression occurs in a particular bequest. (*In re Yuill, Yuill* v. *Tripe*, [1925] N.Z.L.R. 196 ; [1925] G.L.R. 65, referred to.) 3. That the bequest of the testatrix's " personal belongings " was not a residuary gift ; and there was no special reason why any wider meaning should be given to the words than personal goods and effects, which was the meaning the testatrix intended them to be. 4. That, as the testatrix in her will intended to deal only with the money in the Post Office Savings Bank, the subject of the first bequest, and her furniture, jewellery, and the like as the subject of the second bequest, the money which was in the safe-deposit vault should go as on an intestacy. 5. That the surrounding circumstances (including evidence as to the disposable assets of the testatrix when she made her will) supported that conclusion arrived at on the construction of the will itself. (*Re Hynes, Knapp* v. *Hynes*, [1950] 2 All E.R. 879, followed.) (*Re Bradfield, Bradfield* v. *Bradfield*, [1941] W.N. 423, and *Re Mills' Will Trusts, Marriott* v. *Mills*, [1937] All 1 E.R. 142, distinguished.) *In re Stone (dec.) Martin and Others* v. *Johnson and Others*. (S.C. Wellington. September 24, 1953. Hutchison, J.)

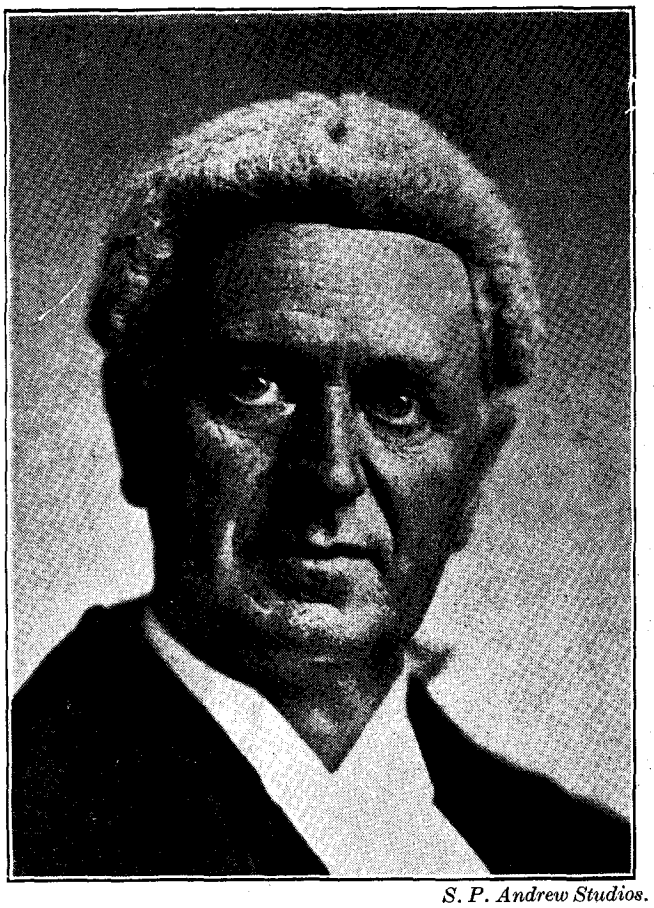
Continued from cover i.

DEATH OF MR. JUSTICE NORTHCROFT.

Bench and Bar pay Tributes to His Memory.

The death of the Hon. Sir Erima Northcroft, D.S.O., on October 10 at the age of sixty-nine years came as a sudden blow to members of the profession throughout the Dominion. They were saddened by the thought of his sudden passing almost on the eve of his retirement from the Bench and of his entering upon a deferred period of leave which he had earned so well. Through several trying years of service in Tokyo as the New Zealand representative on the International Military Tribunal, who tried the major Japanese war criminals, and more recently as a member of the Supreme Court Bench, sadly depleted by sickness, His Honour had asked that the leave which was due to him should be deferred. It is sad to think that he did not live to enjoy it.

The tributes paid to the late Judge in the editorial columns of the Christchurch newspapers, and the large attendance at his memorial service in the Cathedral, testified to the respect and affection in which he was held by the people of Christchurch whom he had served throughout his judicial career as their resident Judge.



S. P. Andrew Studios.

The Late Mr. Justice Northcroft.

The Memorial Service.

About six hundred people, from every walk of life, attended a memorial service in honour of the late Sir Erima Northcroft in the Christchurch Cathedral on October 13.

The Bishop of Christchurch, the Rt. Rev. A. K. Warren, conducted the service, and the Dean of Christchurch, the Very Rev. Martin Sullivan, read the lesson.

The coffin was borne into the Cathedral by pall-bearers from the Canterbury District Law Society: Messrs. E. C. Champion (president), A. I. Cottrell, E. B. E. Taylor, P. Wyn Williams, T. A. Gresson, and Dr. A. L. Haslam.

Mr. Justice Hutchison and Mr. Justice Cooke were amongst those present. The three Christchurch Magistrates, Messrs. F. F. Reid, Rex C. Abernethy, and Raymond Ferner, also attended after the morning's Court sittings had been adjourned.

Mr. D. W. Bain, acting-chairman of the Canterbury University College Council, Dr. R. S. Allan, deputy-chairman of the professorial board, and Mr. J. Logie, Registrar, represented the University.

Also represented were the Christchurch City Council and the Army, and Major-General G. B. Parkinson, who served with Sir Erima Northcroft at Paschendale, attended. Many prominent citizens were among the mourners.

After the service, members of Sir Erima Northcroft's family attended the funeral held privately at the Christchurch crematorium.

At The Supreme Court.

On the morning of October 14, almost every member of the profession practising in Christchurch assembled in the Court of the late Judge to do honour to his memory and to show their sorrow at his passing.

The Bench.

Mr. Justice Hutchison, addressing the assembled members of the Bar, said: "This is a sad occasion for all of us here assembled. We meet to pay our heartfelt tribute to the memory of the late Mr. Justice Northcroft. I am asked by the Chief Justice to express his deep regret at his inability to be present today. I represent here all the Judges.

"Mr. Justice Northcroft, born at Hokitika, practised with distinction in the North Island, first at Hamilton from 1907 to 1922, in the period when the town—now a city—was advancing in stature with the development of the surrounding country; and then in Auckland until 1935. He became a Judge in 1935, and it is as a Judge that we who practised before him came to know him so well and to love him.

"He was a man whose life was straight and upright to the highest degree. As a Judge, he was courageous and forthright; he had a sound grasp of the principles of the common law; he had the knowledge of the world that is essential to the successful Judge; he was humane to those who stood before him for sentence, and he was courteous to all who came to his Court as litigants, witnesses, counsel, and officers of the Court. Without ever losing the dignity that became him, both in his own person and by virtue of his office, he was the most friendly of men. Particularly did he like young people, and they him. He was very fond and very proud of the Bar that practised before him here, and of this old and dignified Court in which he sat.

"Ever since I came to this office, I have been a mem-

ber of the same Division of the Court of Appeal as His Honour was—except that in the first part of the time he was in Japan—and no one could have been a more helpful colleague to a younger Judge than he was. His sound judgment, his wealth of experience, and his robust common-sense were invaluable to us all.

" Though Mr. Justice Northcroft's life was primarily that of the barrister and the Judge, the State had in him a servant of outstanding quality in the military sphere. At the outbreak of the First World War, he, who was a Territorial Artillery officer, placed himself immediately at the service of the State. He was kept in New Zealand for some time in the capacity of Area Officer at Hamilton, but, later, he served overseas, where he commanded a battery in France, and was later engaged in Army Educational work. Between the wars he was D.J.A.G. and later J.A.G. New Zealand Military Force. He was returned to the active list in the Second World War, and was Director of Artillery S.M.D. and later Fortress-Commander of the Lyttelton-Sumner fortress area.

" His standing as a Judge, to which he could add the military background that he had, led to his choice as a member of the International Tribunal that sat at Tokyo for the trial of major war criminals. That onerous duty over a period of years, to which he applied himself with the utmost of his energy, taxed his strength, great as it was, as we all could see when he returned to New Zealand for a visit during an interval in the proceedings. His service on the Tribunal, on top of his other services to the State, led to the conferment on him of a knighthood in 1949.

" He has now departed from us suddenly, on the very eve of his well-earned retirement. He leaves a gap in the community which he served so well and, in particular, on the Bench that it will be hard to fill.

" To Lady Northcroft and her daughters we express our deepest sympathy in their grievous loss.

" On behalf of all those who were his colleagues on the Bench and his friends, as well as on my own behalf, as one who practised before him and was later his colleague, I speak, with the great affection that I bore him, these few and inadequate words."

The New Zealand Law Society.

The President of the New Zealand Law Society, Mr. W. H. Cunningham, was the next speaker. He said that, on behalf of the members of the legal profession throughout New Zealand, he wished to associate them with the tribute being paid that morning to the memory of the late Sir Erima Northcroft. The Wellington District Law Society in particular wished to be so associated.

The President continued: " The late Judge appears to have had two principal interests in his busy life " the law " and " soldiering," and to have devoted himself with equal enthusiasm to both.

" Your Honour has already dealt eloquently and fully with the details of his life and his distinguished career at the Bar and on the Bench.

" I should like to add that while he was practising in Hamilton, where he practised successfully for some sixteen years, he took his full share of the work, on the administrative side of the profession, and served on the Hamilton District Law Society, being its President for no less than three terms.

" Although the law had first call on his time, nevertheless he was able to take an active part in soldiering with the New Zealand Forces. He joined a volunteer Company before he was eighteen, and served for two years as a private. Then, when the Territorial system of training was inaugurated in 1911, he obtained a commission in the New Zealand Field Artillery as 2nd Lieutenant in the " G " Battery at Hamilton, and served with that unit until 1916, when he was commanding it with the rank of Major.

" In 1916, he embarked for service overseas with the New Zealand Expeditionary Force with the rank of Captain, proceeding to France in 1917, where he served with the Field Artillery until the Armistice in 1918. He was promoted to the rank of Major on January 18, 1918, and commanded a battery in the Field. After the Armistice, he was promoted to Lieutenant-Colonel and appointed Director of Education in the N.Z.E.F. in the United Kingdom.

" For his services in the Field, he was mentioned in despatches and awarded the Distinguished Service Order in 1919.

" Returning to New Zealand in January, 1920, he rejoined his old unit, the " G " Battery at Hamilton. He was almost immediately promoted to the rank of Lieutenant-Colonel and was given command of the 1st Brigade of the New Zealand Field Artillery, which command he retained for five years.

" After finishing his period of Brigade Command, he was seconded to the Army Legal Department and appointed Deputy Judge Advocate-General and ultimately Judge Advocate-General with the rank of Colonel. On his elevation to the Bench in 1935, he was posted to the retired list with the rank of Colonel.

" Sir Erima's enthusiasm for soldiering did not cease on his elevation to the Bench. In June, 1940, he made his past training and experience available to the Army authorities and he was recalled from the retired list. Between June, 1940, and April, 1942, he held successively in Southern Command the appointment of District Artillery Officer and Fortress Area Commander, Lyttelton.

" A fitting opportunity to make use of both his judicial and military experience and ability arrived when he was appointed as New Zealand's Representative on the International Military Tribunal which dealt with the Japanese war criminals. He served with distinction on that Tribunal in Japan for close on three years and received a well-earned knighthood for his services.

" Throughout his life, Sir Erima displayed in abundance those great qualities of heart and mind which go to the making of a sound lawyer, a just and upright Judge, and a good soldier.

" He justly earned the respect and affection of the members of the profession who appeared in his Court or before him in the Court of Appeal, just as he earned the respect and loyal affection of all ranks who served under him on service.

" Sir Erima Northcroft was one of New Zealand's Great Sons, who until the day of his death, served his Sovereign and his country faithfully and well, and without thought of self.

" We all regret that he has so tragically been deprived of that period of rest and retirement which he so richly deserved after his strenuous and useful life.

" To his widow and to his two daughters we respectfully tender our sincere sympathy in their great loss. "

THE CANTERBURY LAW SOCIETY.

The President of the Canterbury District Law Society, Mr. E. C. Champion, on behalf of the whole of the profession of law in Canterbury, asked leave to add a few words of tribute on the life and work and character of the beloved Judge whose death they mourned. The President said: "I feel, as did the Solicitor-General not so long ago when speaking of the passing of another Judge, that words of mine must be hopelessly inadequate to express our admiration for his gifts, the inspiration of his example, and the affection which his human qualities attracted from all who knew him.

"His career at the Bar, and on the Bench, is well known and has already been mentioned, as also has his selfless activity in other fields. Following his example and acting upon his oft-repeated advice, I shall not reiterate what has been said in this regard.

"It is less than two weeks since I was privileged to have a lengthy conversation with the Judge, when I called to seek his advice as to what the profession might do to mark his retirement from active work. His reply was typical of the man and indicative of his true nature. It was simply that nothing should be done. Indeed, it was a very definite refusal to permit anything to be done. He stated with sincerity and with complete modesty, that he liked the members of the profession here; and that he had been assured, and took it for granted, that those members liked him. This being so, there was no need at all to state the sentiments publicly.

"This, your Honour, in my view, is one of the marks of of a good and great man. It is consistent with his simplicity of spirit, his intellectual integrity, and his essential humility.

"Another small incident in my experience will perhaps serve to illustrate and emphasize this facet of his character. It is just this: when personally entertaining Lord Jowitt at a private dinner during the Lord Chancellor's visit to Christchurch, our Judge invited not only officials of the Law Society, and a few senior practitioners, but also three of the most junior members of the Bar.

"He was our dignified Judge, and our thoughtful and kindly friend. His complete disdain for anything in the nature of pomp and ceremony was perhaps best evident when he met us on social occasions. Here he shone and so won our earnest affection. As I said at our Coronation dinner just four months ago, he was always delightfully enthusiastic in accepting our invitations. He possessed a remarkable capacity to remove all embarrassment and formality on these occasions, so that conversation proceeded without restraint. He became, for the time, one of us and deliberately sought so to do.

"To my mind, the other most striking lesson to be learned from his life is that he was such an outstanding example of the true duty of all people, and in particular professional people—namely, to render service. His life throughout was a performance of this duty, willing and unsparing of self. His service in two World Wars, the latter involving a senior command while he continued to perform his judicial functions, together with his ready acceptance of the onerous duty of representing New Zealand on the International Military Tribunal for the trial of Eastern war criminals in Japan must have been, as your Honour has said, a severe tax on his strength. Yet, far from complaining, he gave the impression that he was doing only the least that might be expected of him.

"His work as a Judge I have not mentioned. It has already been referred to. I add merely our tribute in this regard that he was a good Judge, in the grandest sense of that expression. His approach to his duties was not narrow or technical. On every occasion it was governed by breadth of vision and simple humanity, and always with a desire to see justice done.

"It is a sad thing that, so near to retirement and looking forward to leisure and freedom from anxiety, he should be taken. May I join with your Honour, and the President of the New Zealand Law Society, in tendering to his widow and family respectful sympathy. May they be consoled to some extent by the certain knowledge that the Judge is now in the hands of the greatest of all Judges.

"I have been especially asked by the Presidents of the Otago, Nelson, and Westland Law Societies, and the President of the Timaru branch of the Canterbury Society, to say that they respectfully desire their societies to be associated with Canterbury in these remarks.

"The Westland Society has forwarded to me a special statement to be read on their behalf. It is as follows:

'The members of the Bar practising in the Westland Judicial District join with their Canterbury brethren in mourning the loss of their late Judge, who for eighteen years presided over the sessions of the Supreme Court in this District with conspicuous dignity, ability and integrity. This long period was broken only by his service in Japan on the War Crimes Court there. The late Judge had a special regard for Westland, the province of his birth; and his death will be mourned by people throughout the West Coast. His Honour carried out his judicial duties impartially, seeking always to do justice within the law. He was a strong, fearless and upright Judge, who graced the Bench by the dignified conduct of his Court; and it grieves us that his rich voice will no more be heard in the Courts of Justice.

'To Lady Northcroft and family we respectfully tender our sincere sympathy in their sad and sudden bereavement, and hope that their sorrow will be lightened by reflection upon the respect and esteem in which the late Judge was held by those who sat under him in the Courts of this country.'

"Lastly, the District Law Society of Hamilton, where the late Judge first practised, was to be represented here this morning by a member of its Council, Mr. E. F. Clayton-Greene, who had hoped to speak. Unfortunately, owing to difficulties in travel arrangements, he has had to leave Christchurch. He asks me to say that the Hamilton Society desires to be associated with Canterbury's tribute. It is a matter for regret that Mr. Clayton-Greene had to leave, because he had a long and intimate personal association with the late Judge, having served as a gunner in his battery in France, acted as his personal clerk while he was in practice, and later becoming a member of the crew of the late Judge's yacht."

AT AUCKLAND.

There was a large gathering of members of the profession practising in Auckland at the Supreme Court on October 13 to mourn the losss of the late Mr. Justice Northcroft, whose early years in the profession had been spent in that city.

Mr. Justice Stanton presided, and Mr. Justice Adams and Mr. Justice Turner were with him.

Mr. Justice Stanton said that the Chief Justice, Sir Humphrey O'Leary, regretted his absence, and had asked to be associated with the Bench in its tribute. He added that the Chief Justice highly appraised Sir Erima's judgment and admired his courage and legal capacity.

"Like many other New Zealanders, Mr. Justice Northcroft demonstrated how a brilliant lawyer can be a brilliant soldier," Mr. Justice Stanton said when referring to the late Judge's military services in two World Wars. "His judicial and military qualifications made him an obvious choice to represent New Zealand at Tokyo on the International Military Tribunal, which tried Japan's principal war criminals. In the course of that work, he had given difficult and trying service."

"Mr. Justice Northcroft's knighthood was a fitting recognition of his great services and practical sacrifices," Mr. Justice Stanton continued. "As a Judge of the Supreme Court, he was noted for his clear and logical grasp of any subject he had to consider, and for his industry and executive efficiency."

His Honour expressed the sympathy of the Bench with Lady Northcroft and her family.

The President of the Auckland District Law Society, Mr. G. H. Wallace, said that the Bar deplored Sir Erima's early death. "Dignified, courteous, impartial, seeking always after truth and justice, he was undoubtedly an admirable Judge. We shall remember him as one who by his life added lustre to our profession." The President asked that the profession in Auckland be associated with the Bench's sympathy with Lady Northcroft and the relatives of the late Judge.

At Wellington.

There was a large attendance of members of the profession at the Supreme Court, Wellington, on October 16 for the unveiling of the portrait of the late Sir Michael Myers, Chief Justice of New Zealand. The opportunity was taken of recording the sense of loss felt by Bench and Bar in the death of Mr. Justice Northcroft. Mr. Justice Fair presided, and with him on the Bench were Mr. Justice Gresson, Mr. Justice Hutchison, Mr. Justice Hay, and Mr. Justice Cooke. The Hon. Sir David Smith and the Hon. Sir Robert Kennedy, former colleagues of the late Judge, were present.

The Bench's Tribute.

Before proceeding with the morning's ceremony, Mr. Justice Fair said:

"The Judges present desire me to record their deep sorrow, which we know you all share, at the recent tragic loss of our brother and colleague, Mr. Justice Northcroft. Although he was a Judge of the Canterbury District, he attended the sittings of the Court of Appeal in this Court for some fifteen years. On many occasions, too, he willingly came here to assist with the Supreme Court work of this District.

"On the Bench, and in conference, he showed, over the years, the same keen desire to assist in seeing that justice was done in all the cases that came before the Court. His wide experience of men and the practical side of life, his broad-minded outlook and his strength of character were greatly valued by all of us. We feel that we cannot let this opportunity pass without expressing our appreciation of his able and generous assistance in the work of the Court of Appeal. By his death we feel we have lost not only a colleague, but a friend for whom all of us had a deep respect and affection.

"To Lady Northcroft and his family we offer our deepest sympathy in their great loss."

The Law Societies.

Mr. W. H. Cunningham, President of the New Zealand Law Society, said, on behalf of the profession throughout New Zealand, they desired to be associated with the tribute paid by His Honour and the expression of sympathy.

Mr. E. F. Rothwell, President of the Wellington District Law Society, on behalf of his Society asked that its members should be associated with what His Honour had said.

THEIR LORDSHIPS CONSIDER.

By Colonus.

Music hath Charms.—Judicial knowledge of music is not a common head of law, but, in one of the rare references to the personal accomplishments of a member of the Bench that can be found in the books, Lord Blackburn, in *Fairlie* v. *Boosey*, (1879) 4 App. Cas. 711, said: "No evidence of experts was given as to how much of the original opera these two arrangements contained. The two books were put in evidence, and produced at your Lordships' Bar. As far as I am personally concerned, I cannot read a note of the composition, and have no knowledge of music. I must, however, when any question comes to me to be decided by me, requiring some knowledge of music, acquire the necessary knowledge. In *Wood* v. *Boosey*, (1867) L.R. 2 Q.B. 340, the Court of Queen's Bench, of which I was then a member, had to decide a question requiring some knowledge of what an arrangement for the piano by one, of an opera composed by another, was. I, with diffidence, formed my opinion on the evidence and expressed it. The case was appealed, and came on before, amongst others, Lord Justice *Bramwell*, then Baron *Bramwell*, who is one of the few Judges who possesses a scientific knowledge of music, and is qualified to give evidence as an expert. He explained the matter in a judgment reported in the Law Reports, (1868) LR. 3 Q.B. 223, 231; and I am of opinion that the knowledge to be derived from what was proved in that case, and from the explanation of the matter there given by Baron *Bramwell*, is enough to enable me to decide the present case" (*ibid.* 727, 728).

THE LATE SIR MICHAEL MYERS.

Portrait Unveiled in Supreme Court, Wellington.

On October 16, there was a large gathering of Wellington practitioners in the Supreme Court, Wellington, to attend the unveiling of a portrait in oils of the late Rt. Hon. Sir Michael Myers, G.C.M.G., Chief Justice of New Zealand from May 3, 1929, until August 7, 1946. He died at Wellington on April 8, 1950, aged seventy-seven years.

The portrait, which was presented by Lady Myers, is the work of the late Mr. Archibald Nicoll, O.B.E. It is a striking likeness of Sir Michael, in his everyday judicial robes, in which he was such a familiar figure when he presided over the Court of Appeal, or sat in the Supreme Court, in the Court-room in which the portrait now hangs beside those of his predecessors, Sir James Prendergast (1875-1899) and Sir Charles Skerrett (1926-1929).

Mr. Justice Fair presided, and with him on the Bench were Mr. Justice Gresson, Mr. Justice Hutchison, Mr. Justice Hay, and Mr. Justice Cooke. Two judicial colleagues of the late Sir Michael Myers, the Hon. Sir David Smith and the Hon. Sir Robert Kennedy, were present.

District Law Societies were represented as follows: Auckland, Mr. J. B. Johnston; Canterbury, Mr. A. C. Perry; Hawkes Bay, Mr. M. R. Grant; Otago, Mr. A. M. Haggitt; and Southland, Mr. A. I. Arthur.

The Judiciary.

Mr. Justice Fair, addressing the assembled members of the Bar, said:

"The Bench and Bar assembled here to-day desire to dedicate a memorial to the memory of the late the Right Honourable Sir Michael Myers, a member of His Majesty's Privy Council, Knight Grand Cross of the Most Distinguished Order of St. Michael and St. George, who was a member of the legal profession for fifty-four years and, as we all know, crowned his career by holding the office of Chief Justice of New Zealand for eighteen years. His distinguished career, and his eminent service in all his high duties, are well known to all of you, and were the subject of eloquent tributes and appropriate appreciation at the great gatherings of the legal profession on the occasions of his retirement from the office of Chief Justice in 1946, and of his lamentably early death in 1950. Those tributes are fresh in our memories, and there is no need for me to repeat them. But we all recall how his great abilities throughout his life were devoted to maintaining the standards and preserving the highest traditions of the legal profession; and, as Chief Justice, in seeing that impartial justice was done to all His Majesty's subjects of whatever rank or condition.

"The greatest part of his high duties was carried out within these walls; and it was here in this Court that he presided with such distinction for so many years. No doubt many of you, like myself, have pleasant memories of occasions when, as Chief Justice, his keen intellect illuminated and encouraged a difficult argument in doing justice to a good case. Many also recall with pleasure witnessing on many occasions the exercise of his great ability as an advocate, and drawing upon his wisdom as a barrister.

"In all his work, and in his life, we know, too, that the companionship and sympathy of Lady Myers was an essential factor. Without that he could not have achieved all he did.

"It was therefore with the greatest pleasure that we received Lady Myers's generous offer to present a portrait of Sir Michael to be placed in this Court alongside those of his distinguished predecessors, Sir James Prendergast and Sir Charles Skerrett. When the portrait is unveiled, you will see that Mr. Nicoll produced an excellent portrait of Sir Michael that will preserve a speaking likeness of a personality that was a vital and integral part of the legal profession—whether at the Bar or on the Bench—during the whole of a very active life, and whose memory is regarded with both affection and admiration by those who had the pleasure of his friendship.

"I desire on behalf of the Chief Justice, who, as you all know, is prevented by illness from being present, and my colleagues to express our sincere gratitude to Lady Myers for her generous and handsome gift, which we shall treasure as one of our most valued possessions and a permanent record of Sir Michael's unstinted and distinguished service in the administration of justice."

The New Zealand Law Society.

The President of the New Zealand Law Society, Mr. W. H. Cunningham, on behalf of the legal profession, expressed to Lady Myers their thanks and gratitude for making available to be hung in this Court this valuable and excellent portrait of the late Chief Justice, Sir Michael Myers, P.C., G.C.M.G. Mr. Cunningham continued:

"On this occasion, I should like to mention that there are representatives here from Auckland, Southland, Otago, Canterbury, and Hawkes Bay, and messages have been received from other Law Societies conveying their thanks and appreciation.

"It is most fitting that the portrait should be hung in line with two former Chief Justices and in this very Court in which Sir Michael Myers fought so many of his forensic battles and achieved many of his triumphs when at the Bar. Here also he presided with such great distinction in the Court of Appeal. He must justly be accounted one of the greatest lawyers and one of the greatest Judges New Zealand has produced. To those of us who knew him well and appeared before him frequently, the presence of this excellent likeness of him in this Court should mean that, with his eye literally upon us, we should not come into Court with any matter on which we are ill-prepared and that we should not have dared to bring before him when he was on the Bench."

The Wellington Law Society.

The President of the Wellington District Law Society, Mr. E. F. Rothwell, said that his Society wished to express its particular thanks to Lady Myers.

"Although the Bench and Mr. Cunningham claim him for New Zealand, we in Wellington have a particular and peculiar claim to Sir Michael Myers," Mr. Rothwell continued:

"His career at the Bar is well known, and it can be said that he was one of the brightest stars when practising at the Bar. We are proud of his record; and I want also on behalf of the members of the Wellington District to thank Lady Myers for this generous gift."

Lady Myers then unveiled the excellent portrait.

IN YOUR ARMCHAIR—AND MINE.

By Scriblex.

Repairs and Maintenance.—What barristers say in public excites little comment, but, when conveyancing solicitors have something important to say about buildings, then it is time to sit up and take notice. G. H. A. Swan of the Wellington Chamber of Commerce has endorsed his President's lament that members of Parliament are housed in disgraceful conditions. That Parliament Buildings should remain in their present uncompleted state, he says, calls attention to the grave lack of capital in this country. Scriblex adds his small personal testimony to this assertion as to lack of capital. Where it all goes to, he is at a loss to know; and when our legislators have to suffer such an affront to their comfort and dignity it is a scandal indeed. On the other hand, R. C. Burton, a candidate for municipal honours, concerns himself with a different type of building. Mount Crawford Prison and the former women's borstal buildings at Point Halswell should be converted, he contends, into homes for aged people. These buildings, he urges, could be converted in the midst of a new suburb, and create " a really beautiful spot for those who have borne the heat and burden of the day ". But what of the prisoners themselves ? Someone should hold a brief for them in this matter. Their tenure is already rendered uncertain by the added powers of the Court of Criminal Appeal. And if they are to be dispossessed because of some visonary dream of a new suburb in place of their home, little encouragement will be offered to them to go there at all.

Defender's Tribute.—Praise for the Court by a losing litigant is a rare and exhilarating phenomenon. In the recent Supreme Court case (Fair and Hay, JJ.) against P. M. Butler, secretary of the Wellington Workers' Union, for contempt arising out of a circular letter written by him and describing a decision of the Arbitration Court as a travesty of justice and as ruthlessly disregarding the rights of the workers to a decent standard of living, the Solicitor-General objected to such intemperate criticism upon the mental processes of that Court in reaching its conclusion upon one of its awards. The defendant rejected the suggestion that he should withdraw the reflections and publish an apology; he maintained that his statements had been made in good faith and without malice, and that, fearing that decisions of the kind he criticized would undermine the whole system of conciliation and arbitration, he had felt it his duty to speak out plainly. In its judgment, the Full Court drew attention to the fact that the Court of Arbitration had given no reasons for refusing the alterations sought by the Union, and that " to any litigant with a strong belief in his case, such a course is bound to cause resentment." It has long been a recognized practice of the Courts of Justice in England and in this country, it added, where serious matters have been argued before them to endeavour to state as clearly as possible their reasons for the decision given: " That is highly desirable in order to maintain respect for, and confidence in, the Courts of Justice and the rule of law ". Amazing, even thrilling, is the description given to the judgment by the *N.Z. Clarion*, official paper of the Workers' Union. Irrespective of the circumstances and the clashing claims of the contestants, it says in an editorial, one thing emerges clearly and scintillating—that is, the Court's graceful fidelity to all that is glorious in the rule of law. The Court which is the recipient of the *Clarion's* bouquet is the Supreme Court and not the Court of Arbitration which does not hesitate, if occasion so demands, to confer a due meed of praise upon itself.

The Law's Delays.—Despite postponements of fixtures and difficulties in obtaining them owing to sickness and other human frailties of Judges, litigation delays in this country have always been less than in other parts of the Empire. In his *Book of Trials* (Heinemann, 1953), Sir Travers Humphreys refers in this regard to the case of *Belt* v. *Lawes*, productive of a verdict of £5,000 in favour of the sculptor plaintiff against his detractors and of the greatest forensic triumph of Sir Hardinge Giffard, afterwards Lord Halsbury. A special jury was empanelled, and the trial began on June 21, 1882. It proceeded for seven days and was then adjourned for four months, being resumed before the same jury for a further period of thirty-six days which included a short adjournment in December and one of five days at Christmas. The long period between June 28 and November 3 arose from the necessity for the trial Judge, Mr. Baron Huddleston, to take the Summer Circuit " owing to the indisposition of other Judges ". The short period from November 30 to December 5 was to enable the Judge to attend the opening of the new Law Courts in the Strand. The case was the last to be tried at Westminster Hall, where, during the recent Coronation period, the Queen at a Parliamentary Dinner presided at the precise spot that was occupied by the Judge at the trial of Charles I. The jurors in *Belt* v. *Lawes* were given tickets for the opening of the new Law Courts; but it is reasonable to assume that by November 30 most of them had seen sufficient of Law Courts for the time being.

Domestic Tribunals.—In *Lee* v. *Showmen's Guild of Great Britain*, [1952] 1 All E.R. 1175, plaintiff and defendant were both members of the Showmen's Guild; and the former was allotted by the local authority a site for his Noah's Ark. Despite the latter's claim that he was entitled to the site in accordance with a previous ruling of the Guild, the plaintiff continued to occupy the site, and eventually, having failed to pay a fine imposed by the Guild for " unfair competition " under its rules, he was struck, as it were, off the Guild rolls and ceased to be a member. In an action by the plaintiff for a declaration that the decision of a committee of the Guild was *ultra vires* and void, it was held by the Court of Appeal that the Court had jurisdiction to examine any decision of the committee which involved a question of law including one of interpretation of its rules, and that, as on the facts, the committee had misconstrued its rule in finding the plaintiff guilty of " unfair competition " it had acted *ultra vires*, and its decision to expel the plaintiff was void. The case is one of great importance, according to Lord Justice Morris, whose lecture to the University of London in March last on " The Courts and Domestic Tribunals " is reproduced as an article in the latest number of the *Law Quarterly Review*. It illustrates certain principles, says the author, whose pattern is clearly woven through this branch of the law. One of these is that the Courts do not allow barriers erected against access to them. Another is that limitations on their jurisdiction will be watchfully scrutinized. And a third is that the Courts will be alert to see that a domestic tribunal observes the law and follows the rules, which means the rules as correctly interpreted.