New Zealand
Law Journal

Incorporating "Butterworth's Fortnightly Notes"

VOL. XXIX TUESDAY, NOVEMBER 17, 1953 No. 21

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

II.

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 answer turned, in the main, upon the 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.

In our last issue, we summarized the judgment of Mr. Justice Fair, who, with Mr. Justice Gresson and Mr. Justice North, held, in effect, that the defendant solicitor 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.

Mr. Justice Gresson, in his judgment, said that the language of s. 163 of the Land and Income Tax Act, 1923, is very wide and general ; the words in their natural and ordinary sense direct every person—without any qualification—on a demand made by or on behalf of the Commissioner " to furnish in writing any information or produce any books or documents " which " may be in the knowledge possession or control " of the person upon whom the demand is made, and which the Commissioner or his authorized officer " considers necessary or relevant for any purpose relating to the administration or enforcement of the Land and Income Tax Act " or " any other Act imposing taxes or duties recoverable by the Commissioner. " In short (His Honour added) the section appears to authorize the Commissioner to ask anybody, or to demand from anybody, anything at all which the Commissioner considers necessary or even relevant for his purpose.

The learned Judge went on to say that the Inland Revenue Department Act, 1952, goes even further ; and, in s. 14, which is in substantially the same terms as s. 163 of the Land and Income Tax Act, 1923 (as reenacted), it authorizes the Commissioner or his officers to require any written information or particulars furnished under that section to be verified by statutory declaration or otherwise. The learned Judge continued :

> If the words of the statute are to be construed literally and without qualification, they would operate to extinguish a privilege which has existed for many centuries and which has been recognised to be and has been supported as being in the public interest.
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> The unrestricted communication between parties and their legal professional advisers has been considered to be of such importance as to make it advisable to protect it even by the concealment of matter without the discovery of which the truth cannot be ascertained.
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> It was said by Brett, M.R., as Lord Esher then was, in *Pearce* v. *Foster*, (1885) 15 Q.B.D. 114, 119, that it is a privilege which " ought to be preserved and not frittered away . . . that there may be that free and confident communication between solicitor and client which lies at the foundation of the use and service of the solicitor and client."

His Honour then quoted the words of *Lord Brougham*, L.C., in *Greenough* v. *Gaskell*, (1833) 1 My. & K. 98; 39 E.R. 618, when, in pointing out that it was not to be confined to proceedings begun or in contemplation, His Lordship went on to say :

> It is not (as has sometimes been said) on account of any particular importance which the law attributes to the business of legal professors, or any particular disposition to afford them protection, though certainly it may not be very easy to discover why a like privilege has been refused to others, and especially to medical advisers.
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> But it is out of regard to the interests of justice, which cannot be upholden, and to the administration of justice, which cannot go on, without the aid of men skilled in jurisprudence, in the practice of the Courts, and in those matters affecting rights and obligations which form the subject of all judicial proceedings. If the privilege did not exist at all, every one would be thrown upon his own legal resources ; deprived of all professional assistance, a man would not venture to consult any skilful person, or would only dare to toll his counsellor half his case.

The client can waive the privilege ; the legal advisor cannot : *Proctor* v. *Smiles*, (1886) 55 L.J. Q.B. 527 ; *Minter* v. *Priest*, [1930] A.C. 558.

The learned Judge observed that a principle so long and so well-established and so essential in the interests of justice should be abrogated by the Legislature in an indirect way was not to be expected. The language used is of the widest kind, so wide that, if its full grammatical meaning were given effect to, it would nullify what the law has been at great pains to establish over the centuries as necessary in the public interest. Unless the language produces a conviction that it was the intention of the Legislature to effect what would constitute a most serious interference with the liberty of the subject and to perpetrate what can fairly be regarded as injustice, one should be slow to attribute such an intention to the Legislature. His Honour referred to *Brightman and Co., Ltd.* v. *Tate*, (1919) 35 T.L.R. 209, 211, where McCardie, J., in insisting upon the duty of the Courts to guard the common-law liberties and rights of the subject save so far as they should be restricted by clear enactment of the Legislature, and in emphasizing, too, that such principles should not be allowed to be "sapped by the passing pressure of national anxiety or even by the nearness of national peril", observed:

> Now, I imagine that no rule of law is better settled than the rule that statutes which encroach on the ordinary rights of the subject, whether as to person or property, are subject to a strict construction. The Courts are presumed to incline to such an interpretation of such statutes as will preserve the subject's rights unless express words or clear implication require the opposite result. The law regards with care the rights of individuals; and unless a statute restricts those rights by language beyond reasonable doubt they should be left untouched by the Courts.

Mr. Justice Gresson went on to say:

> There is just as great, or an even greater, necessity to-day to guard the principle from being sapped. I recoil from the proposition that it was the intention of the Legislature to trample underfoot in such an oblique fashion an old and cherished principle established for "the perfect administration of justice and for the protection of the confidence which exists between a solicitor and his client": *Bullivant* v. *Attorney-General for Victoria*, [1901] A.C. 196. In my opinion, this common-law right has been left untouched by the statute. If the Legislature had meant to alter this common-law right—it is to be expected that it would have done so expressly—plainly and unambiguously. Certainly it has not done so expressly, and I do not think it can be said to have been done by necessary implication. The section is capable of being interpreted on a supposition that the common-law right or privilege was not to be abrogated by it; and, in my opinion, it should be so interpreted.

His Honour was of opinion, therefore, that the Commissioner of Inland Revenue must exercise the powers given by the section subject to the common-law privilege protecting communications with solicitors, which has been established in order that legal advice may be safely and effectively obtained. He did not think that the statutory provision overrides the common-law rule.

It followed that, in His Honour's opinion, the answer to the question propounded by the case should be that the defendant in his capacity as a solicitor is privileged and excused in law from furnishing the information and producing the books and documents sought by the Commissioner to the extent that the privilege operates. It was not incumbent upon the Court of Appeal even to attempt to define the scope and limits of the privilege: it should not do more in the present case than to state that the privilege is not abrogated by the statute, and can, where the circumstances warrant, be asserted by a solicitor in answer to demands made by the Commissioner of Inland Revenue purporting to act under the authority of s. 163.

Mr. Justice Hay said that the language of s. 163, in its reference to "every person", is so clear and definite that, in his opinion, the Court would not be justified in reading into it an implied exception in the case of a particular class of persons. His Honour considered that the argument for the defendant was placed on a much more substantial basis in the defendant's counsel's secondary submission, to the effect that s. 163 applies to solicitors who are comprehended in the term "every person", but subject to the limitation that there continues to exist their common-law privilege and obligation not to disclose written and oral communications passing directly or indirectly between client and solicitor in his professional capacity, and in the legitimate course of professional employment. In His Honour's view, that submission was well founded. The principle is well-established that 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, and the application of that principle is well illustrated by *Duke of Newcastle* v. *Morris*, (1870) L.R. 4 H.L. 661, the reasoning of which appeared to the learned Judge to be as fully applicable to privilege from disclosure of information given by clients to solicitors as it is to the privilege of Parliament therein dealt with. There was no valid reason for distinguishing the present case from that of the *Duke of Newcastle*, when it is realized that the privilege in question is one applying to the client as well as to the solicitor.

His Honour continued:

> Much reliance was placed by the Solicitor-General on the principle of public policy that the object of the taxation laws is, *inter alia*, to give the Crown the fullest powers of investigation of a taxpayer's affairs to ensure that the revenue is not defrauded, but, as stated by the Lord Chief Justice in *Customs Commissioners* v. *Ingram*, [1948] 1 All E.R. 927, 929, no new principle is for that reason introduced into the law. It is difficult to see how the preservation of the privilege attaching to confidential communications between a solicitor and his client can to any substantial extent stultify the purposes of s. 163, having regard to the fact that the wide terms of the section can compel information from quarters where no question of privilege can arise. The limits within which the privilege can be deemed to operate are greatly narrowed by the sweeping language of the section.
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> Nor do I accept the contention advanced by the Solicitor-General that the privilege in question is one applicable only to legal proceedings, and is no more than a rule of evidence. The whole weight of authority is opposed to that view, as is demonstrated by Fair, J., in his judgment; and there is no doubt in my mind that the privilege applies as well to administrative inquiries authorized by s. 163 as to legal proceedings. Moreover, the privilege has its origin, not in the contractual obligations arising out of the relationship of solicitor and client, but in the principle of public policy that the confidential communications between a solicitor and his client shall not be subject to production.
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> I do not propose to discuss in detail the numerous authorities cited in the course of the argument, though I have examined them all. The whole subject is exhaustively dealt with in the judgment of Fair, J., with whose observations and conclusions I am in general agreement. I respectfully concur in his observations that a question of law should be submitted only upon a complete and accurate statement of all the relevant facts. I also concur with him as to the terms in which the question submitted should be answered.

His Honour Mr. Justice Stanton dissented from his brethren.

Mr. Justice North, in his judgment, said that the Solicitor-General had submitted that the very general words of s. 163 of the Land and Income Tax Act, 1923, had abrogated an ancient privilege which, since the days of Elizabeth I, had protected from disclosure communications between a solicitor and his client.

In order that the matter could be examined, it was, His Honour thought, desirable, first, to consider as far as was necessary for the purposes of this case just what the privilege is and to what it extends. He continued :

> In essence, it touches confidential communications passing between a solicitor and his client. It applies both ways. The position is, I think, correctly stated in *4 Wigmore on Evidence*, para. 2324 :
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> > The privilege being for the protection of the client in his subjective freedom of consultation, it would plainly be defeated if the disclosure of the confidences, though not compellable from the attorney, was still obtainable from the client. Accordingly, under the modern theory, it has never been doubted that the client's own testimony is equally privileged.
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> This privilege extends to documents which are brought into existence " for the purposes or in the course of professional communications between solicitor and client " ; but it does not extend to documents which are " already in existence *aliunde* ". It is immaterial that the privilege arose in other proceedings or in respect of some other occasion for " the rule is, once privileged, always privileged " : *Pearce* v. *Foster* (1885) 15 Q.B.D. 114, 119. It does not extend to communications which " are themselves part of a criminal or unlawful proceeding " ; but, subject to this qualification, the privilege is recognized on the broad ground that it is necessary " for the perfect administration of justice for and 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 " : *Bullivant* v. *Attorney-General for Victoria*, [1901] A.C. 196, 200, 201. The privilege can be waived by the client, for, while in earlier days, as *Wigmore* points out, the theory was an objective not a subjective one, " a consideration for the oath and the honour of the attorney, rather than for apprehensions of his client ", the modern view is to the opposite effect ; but the mere circumstance that the client may be obliged to give his own testimony or give information does not of itself exclude the privilege.

His Honour remarked that the Solicitor-General had claimed that this rule was only a rule of evidence, and, therefore, had no application to inquiries made by executive officers pursuant to statutory authority. The learned Judge did not agree. He said that it finds expression, it is true, in Court proceedings ; but it would be wrong to regard the rule as being of limited application. It is more than a contractual obligation. It rests on the wider ground of public policy ; and, therefore, it applies generally, unless the terms of a particular statute either expressly or by necessary implication remove the protection. The learned Judge continued :

> The root question then is whether it can fairly be said, as a matter of construction, that s. 163 takes away this privilege so that Mr. West-Walker was obliged to supply to the Commissioner or his officers all information which came to him from his client or details of advice given by him to his client in the course of the professional relationship. I say the " root question ", because so far as I can see either the privilege remains or has been abrogated. If it remains, then the question whether the requirements of the Act render it necessary to restrict the common-law rule is a matter for the Legislature and not for the Courts.

The learned Judge thought that it is not possible to place any limitation on the opening words of the section : " Every person . . . " There seemed to him to be great difficulties in the way of such an approach. First, because—as Adams, J., said in *R.* v. *Leonard*, [1922] N.Z.L.R. 721, 745—" the sweeping generality of the term ' every person ' " presents an initial difficulty ; secondly, solicitors are not protected in all circumstances from disclosing all information received by them about their clients' affairs, nor are they protected from the obligation to produce records and documents which do not fall within the scope of the privilege : *Minter* v. *Priest*, [1930] A.C. 558 ; and, thirdly, apart from solicitors, it might be necessary to exclude other persons as well.

His Honour concluded then that the correct approach is to determine whether the general words, " furnish . . . any information or produce any books or documents " should be given a restricted or limited meaning. That it would be proper to give these words a limited meaning, if all the circumstances of the case required it, cannot be doubted, but the difficulty is to lay down any general rule for arriving at the intention of the Legislature. After quoting the speech of Viscount Birkenhead, L.C., in *Viscountess Rhondda's Claim*, [1922] 2 A.C. 339, 368-370, His Honour said :

> There can, I think, be no doubt that there has always been a reluctance on the part of the Court to construe general words in a statute " 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 " : *R.* v. *Bishop of Salisbury*, [1901] 1 K.B. 573, 579. Then in *Duke of Newcastle* v. *Morris*, (1870) L.R. 4 H.L. 661, 671, the Lord Chancellor (Lord Hatherley), while feeling constrained to hold that the words " all debtors " included persons entitled to Parliamentary privileges, said : " This would not lead to the destruction of the privilege unless there was some special clause in the Act striking at and distinctly abolishing it ". It cannot, I think, be said that a limitation placed on the section preserving the privilege would have the effect of "stultifying the whole purpose of the section ", to adopt the words of the Lord Chief Justice in *Customs Commissioner* v. *Ingram*, [1948] 1 All E.R. 927, 929, because it is plain that the section is principally directed to the obtaining of information, records or other documents from sources where no privilege could exist. The provisions of subs. (2) provide a clear example of the nature of the information which may properly be sought. Then again, s. 149(c) (the penalty section) refers to a refusal " without lawful justification to truly and fully answer any question put to him or to produce any book or paper required of him ". Thus, there is in the statute itself a recognition that there may exist a lawful justification for refusing to answer questions or produce documents. For myself, then, I am not prepared to accept the view that this ancient privilege, so vital both to the administration of justice and to the public interest, has been taken away by a " side wind ", for so to hold would mean that the Commissioner could require a solicitor who had been consulted by a client on an income-tax matter to disclose admissions made to him by his client in the course of obtaining legal advice. There are, I think, to adopt the words of Lord Simon in *Nokes* v. *Doncaster Amalgamated Collieries, Ltd.*, [1940] A.C. 1014, 1022, " adequate reasons for doubting " whether the Legislature could have been intending so " wide an interpretation as would disregard fundamental " principles."

His Honour respectfully concurred in the observations made by Fair, J., with reference to cases stated under s. 4 of the Justices of the Peace Amendment Act, 1946 ; and he also agreed that the form of the question in the Case was unsatisfactory. His Honour did not feel disposed to say more than this :

> In my opinion, the defendant without his client's consent was entitled to decline to furnish information or produce documents which are protected by the common-law privilege which exists as between a solicitor and his client.

As all practitioners realize, the judgment is of great importance to them. While, owing to the manner in which the case was presented to the Court, there were difficulties in answering the question submitted, their Honours of the majority made it clear that their judgments confirm the generality of the common-law principle respecting non-disclosure of communications between solicitor and client. The result of the Court of Appeal's decision is that the Commissioner of Inland Revenue must exercise the powers conferred on him by s. 163 of the Land and Income Tax Act, 1923, subject to that privilege. The effect is that, where the circumstances warrant, a solicitor is privileged and excused in law from furnishing information and producing books and documents sought by the Commissioner, to the extent that the privilege operates.

SUMMARY OF RECENT LAW.

ACTS PASSED.

No. 28. Rehabilitation Amendment Act, 1953.
No. 29. Apiaries Amendment Act, 1953.
No. 30. Music Teachers Registration Amendment Act, 1953.
No. 31. Wildlife Act, 1953.
No. 32. New Zealand University Amendment Act, 1953.
No. 33. Canterbury University College Amendment Act, 1953.
No. 34. Maori Trust Leases Renewal Act, 1953.
No. 35. Amusement Tax Amendment Act, 1953.
No. 36. Dairy Products Marketing Commission Amendment Act, 1953.
No. 37. Patriotic and Canteen Funds Amendment Act, 1953.
No. 38. Fisheries Amendment Act, 1953.
No. 39. Electric Power Boards Amendment Act, 1953.
No. 40. Fencing Amendment Act, 1953.

ANIMALS PROTECTION AND GAME.

Offences—Killing Native Game except in Open Season or with Authority of Minister of Internal Affairs—Grey Duck menacing Farmer's Crop—Farmer shooting one such Duck—No Written Authority given—Farmer committing Offence—Animals Protection and Game Act, 1921-22, ss. 9, 32, 40 (1) (b). Under s. 9 of the Animals Protection and Game Act, 1921-22, native game may be killed only during an open season, with an exception permitted by s. 32 where damage to land is being caused, but provided even then that the necessary written authority has been obtained from the Minister of Internal Affairs. Consequently, a farmer whose crop was being ruined or at any rate seriously damaged by native game in great numbers constituting a serious menace, and who has not obtained such permission, commits an offence under s. 40 (1) (*b*) when he killed one grey duck, in an endeavour to frighten the birds away from his crop. *Manson* v. *Souness* (Dunedin. August 31, 1953. Willis, S.M.)

BY-LAW.

Dogs—Offence to keep Three or More Dogs without Licence from City Council—Two Dogs registered in name of Defendant's Wife, One in Daughter's Name, and Two in Defendant's Name—Defendant Liable for Breach—"Keep". The defendant was charged under s. 22 (1) of the Auckland City By-law No. 17 as amended by s. 6 of the By-law No. 35. Subsection (1), as amended, provided that: "No person shall keep for a period of fourteen days or more on any premises within the City of Auckland three or more dogs of the age of three months or more unless he shall be the holder of a licence for the purpose from the Council". Subsections (2), (3), and (4) provide for the application for and issue of a licence. The defendant was the occupier of certain residential premises and his wife and daughter (aged nineteen) lived with him. On the date referred to in the charge, January 5, 1953, there were five dogs, all over three months old, on these premises. These dogs were registered with the City Council: in the name of the defendant's wife, two dogs, one first registered in 1949 and one in 1952; in the name of the defendant's daughter, one dog first registered in 1953 (although she appeared to have had another dog registered in 1952); and in the defendant's name, two dogs first registered in 1953—making in all five dogs on the premises. On November 25, 1952, the defendant applied to the Council for a licence under the by-law but the application was refused by reason of unspecified objections from neighbouring residents. No objection apparently was taken to the actual premises in which the dogs were kept. The defendant submitted that he personally kept two dogs only; and that, accordingly, the by-law did not apply to him, as it was limited in its application to the one person as the keeper; *Held*, 1. That the word "keep" as used in the by-law was wide enough in its ordinary meaning to include a person who has the control of dogs kept, even though they are owned by another person or persons, and who, as the occupier of the premises, must be taken to be in control of those premises, and must assume liability within the meaning and purport to the by-law for any dogs he causes to remain there. (*Police* v. *Pederson*, (1942) 2 M.C.D. 363, referred to.) 2. That, the dogs were under the control of the defendant and were therefore kept by him for the purposes of the by-law, among which is the abatement or control of any nuisance occurring on or emanating from the premises where dogs may be kept; and the defendant had to assume responsibility within the meaning and purport as the by-law for any three or more dogs he causes or allows to remain or be kept on such premises. (*White* v. *Jameson*, (1874) L.R. 18 Eq. 303, referred to.) *Paull* v. *Clowes* (Auckland. July 1, 1953. Wily, S.M.)

CLUB.

Unincorporated Association—Golf Club—Club—Suspension by Committee of Member from "all Club fixtures"—Committee's Lack of Authority to act on behalf of Members generally—Unlawful Suspension—Unwarranted Restriction of Enjoyment of Right to participate in Club Matches—Such Right sufficiently related to Property Rights to justify Court's Intervention—Declaration that Committees' Suspension invalid, and Injunction restraining Enforcement of Resolution of Suspension. The jurisdiction of the Court to interfere at the instance of a member of a voluntary association to prevent his being improperly expelled therefrom is not limited to cases where the property of which the member is, as a result, being unjustly deprived, consists of a beneficial interest on land or chattels, as there are many rights which in such a sense cannot be called rights of property, which, nevertheless the law will protect. (*Osborne* v. *Amalgamated Society of Railway Servants*, [1911] 1 Ch. 540, and *Abbott* v. *Sullivan* [1952] 1 K.B. 189; [1952] 1 All E.R. 226, followed.) The plaintiff was a member of a Ladies' Golf Club, which was an unincorporated members' club, and, if it had ever possessed a written constitution or rules, these had been lost or destroyed. The ladies' club did not possess links of its own. It enjoyed playing rights granted by the men's club for which it paid a substantial yearly sum; and it had the right to use the clubhouse and the extensive use of a locker room. It owned its own furnishings and crockery, and its assets exceeded its liabilities by £432. The plaintiff had paid an annual membership subscription of £2 5s. 6d. and a match fee of 10s. (which entitled her to be entered as a contestant in all club matches, official or unofficial, arranged in the programme for the season.) On June 29, 1953, the plaintiff received a letter from the secretary of the club which read:—"I have been instructed by my Committee to inform you that we have received a written complaint from Mrs. F. Small about your conduct on the course on Wednesday afternoon June 24. As your conduct contravenes the ethics of Club membership the Committee request a written apology. This apology must be in the Secretary's hands not later than July 4, 1953." On receipt of this letter the plaintiff, through her solicitors, requested information as to the nature of the complaint and the authority of the committee to require an apology, but none of this information was supplied. On July 7, the plaintiff received a further letter from the secretary of the club, which was as follows:—"In view of your failure to accept the opportunity which the Committee gave you to apologise for your breach of conduct, the Committee has decided to suspend you from all Club fixtures as from today, July 6, until such time as an apology has been received." This resolution was not rescinded. The plaintiff, in an action against the acting-president, the vice-president, the acting-captain, the secretary, and the members of the committee of the club, who were directed to defend the action on their own behalf and on behalf of all the other members of the club, sought a declaration, injunction and damages. The defendants in their statement of defence acknowledged that the resolution suspending the plaintiff from "all club fixtures" was invalid, and no attempt was made to justify the Committee's action. *Held*, 1. That the words "all Club fixtures" referred exclusively to the weekly and other matches arranged within the club. 2. That, no rules having been produced the committee had no authority to act on behalf of the members generally in the matter of the plaintiff's suspension. (*Wise* v. *Perpetual Trustee Co.*, [1903] A.C. 139, followed.) 3. That the unlawful suspension of the plaintiff from enjoying the right to participate in club matches was an unwarranted restriction on, and in interference with, the enjoyment of the rights she possessed that were sufficiently related to her property rights to justify the Court's intervening to protect her interests. (*Osborne* v. *Amalgamated Society of Railway Servants*, [1911] 1 Ch. 540, and *Abbott* v. *Sullivan*, [1952] 1 K.B. 189; [1952] 1 All E.R. 226, applied.) (*Rigby* v. *Conol*, (1880) 14 Ch.D. 482, and *Lee* v. *Showmen's Guild of Great Britain*, [1952] 2 Q.B. 329; [1952] 1 All E. R. 1175, referred to.) 4. That the plaintiff was entitled to a formal declaration that the decision of the committee purporting to suspend her from "all club fixtures" was invalid; and to an injunction restraining the officers, committee, and members of the club from enforcing the resolution of suspension. *Millar* v. *Smith*. (S.C. Invercargill. September 16, 1953. North, J.)

CONTROL OF PRICES.

Motion-picture Entertainment—Three-dimensional Film—"Motion picture" within Exception from Removal of Price Control on Admission Charges—"Entertainments except motion-pictures"—Control of Prices Act, 1947, ss. 10, 15, 16. The price of admission to a picture theatre may involve the granting of a licence or the making of an invitation to the purchaser to enter and occupy a seat in the theatre for a specified time, but that is incidental to the chief purposes which are contemplated in each case by the Control of Prices Act, 1947—namely, the performance of a service or services by the picture theatre proprietor, the payment for which is subject to the scale of charges authorized by the Price Tribunal under that statute. (*Dwyer* v. *Hunter*, [1951] N.Z.L.R. 177; [1951] G.L.R. 20, applied.) A cinematograph film described as "3-D film," is within the general description of "motion pictures" excluded from the revocation of price orders and approvals in the Exempted Goods and Services (Control of Prices) Notice, 1950, No. 8, the intention of which was that the Control of Prices Act, 1947, and the price orders made thereunder would continue to apply to motion pictures. (*Hanfstaengl* v. *Empire Palace*, [1894] 2 Ch. 1, distinguished.) Consequently, the charge for admission to a showing of a "3-D film" was subject to compliance with the scale fixed by a special approval authorized by the Price Tribunal under the Control of Prices Act, 1947, and offering to charge admission in excess of such prices was an offence under that statute. *Director of Price Control* v. *Amalgamated Theatres, Ltd.* (Auckland. September 29, 1953. Astley, S.M.)

CONVEYANCING.

Enforceability of Voluntary Covenants. *97 Solicitors' Journal*, 582, 600, 618.

CRIMINAL LAW.

Evidence—Corroboration—Evidence of Child Complainant—Requirement of Corroboration of Evidence of Commission of Crime and of Identity of Accused as Its Perpetrator—Corroboration of One of Such Points may come from One Source and Corroboration in Other Point from Another Source—Both, taken together, furnishing Required Corroboration of Charge against Accused. Evidence of corroboration of the testimony of a child complainant must be independent testimony which implicates the accused, that is, which confirms in some material particular not only the evidence that the crime has been committed but also that the accused committed it. Thus, there is no such corroboration unless there is evidence confirming in some material particular the evidence of the complainant on both points. Where the corroborative evidence merely confirms the commission of the crime without confirming the identity of the accused as its perpetrator, or where it merely points to the accused as the perpetrator, without confirming the commission of the crime, it cannot in either case be said that there is the corroboration of the charge made against the accused. (*R.* v. *Baskerville*, [1916] 2 K.B. 658, followed.) Corroboration of the identity of the accused as the perpetrator of the crime can come from one source, and corroboration of evidence confirming the commission of the crime can come from another source. The corroboration of these separate points may have to be found in separate portions of the evidence; and, though those separate portions come from different sources, when taken together they may furnish the required corroboration of the charge as a whole, that is, of the charge made against the accused. The appellant was charged with indecent assault on a girl of six years eleven months. The learned trial Judge referred to the two matters on which corroboration was to be sought: the one as to whether the offence was committed, and the other as to whether the accused was the person who committed it. The medical evidence on the first point being unquestioned, he directed there was some corroboration on that point. He directed that there was no corroboration on the second point. The jury, however, was warned of the danger of convicting on the girl's uncorroborated evidence, and criticism of her evidence was put to the jury not only by counsel, but also by the trial Judge with the advice to give full weight to them. These matters and various other circumstances were all before the jury. The appellant was found guilty and was sentenced to a term of imprisonment. On an appeal against the conviction, *Held*, 1. That it would have been wrong for the trial Judge to say that there was no corroboration at all; it was sufficient to say, as he did, that there was no corroboration of the allegation that it was the accused who committed the assault; he did not usurp the function of the jury, and he was entitled to express his view on the strength or weakness of the case against the accused, and it was not misdirection for him to do so; and, if the summing-up were considered as a whole, there was no misdirection. 2. That the verdict was not "unreasonable or cannot be supported having regard to the evidence," within s. 4(1) of the Criminal Appeal Act, 1945; and it should stand. (*R.* v. *Hancock*, (1913) 8 Cr. App. R. 193; *R.* v. *Perfect*, (1917) 12 Cr. App. R. 273; and *R.* v. *Calandar*, [1947] N.Z.L.R. 290, followed.) The appeal was accordingly dismissed. *The Queen* v. *Farrelly*. (C.A. Wellington. July 22, 1953. Hutchison, Cooke, F. B. Adams, JJ.)

DEED.

Construction—Contract for Benefit of Third Party not named in Deed—Annuity to be paid by Two Parties to A., also Party to Deed, for Life and, after Her Death, to Her named Daughter for Life—All Parties to Deed deceased—Two Parties jointly liable for Payment—Survivor's Estate liable for payment of Annuity to A.'s Daughter during Her Lifetime—Property Law Act, 1952, s. 7. In 1909, the plaintiff's father F.H.B. deserted his wife by leaving New Zealand to live in Australia. He did not return to New Zealand, and was divorced on October 16, 1913. In 1915, H.R.B., the father of F.H.B., and grandfather of the plaintiff, died leaving a considerable estate, but making inadequate provision for the plaintiff's father and mother and the plaintiff. The plaintiff's mother claimed against the estate of H.R.B., and, in settlement of her claim, H.A.B. and F.C.B., the residuary legatees under the will of H.R.B., entered into an agreement with her for the payment of an annuity of £78 per annum to her and after her death to the plaintiff. The terms of this agreement were incorporated into a deed made on October 22, 1920, between the plaintiff's mother and the residuary legatees under the will of H.R.B. Clause 2 of the deed was to the following effect: "2. The [residuary legatees of H.R.B.] will pay to [the plaintiff's mother] an annuity during her Lifetime at the rate of £78 per annum as from the 1st June 1920 to be paid quarterly on the 1st days of September December March and June in each year and will from and after the death of [the plaintiff's mother] pay the said allowance to her daughter [the plaintiff] during her lifetime." After the execution of the deed, the annuity was regularly paid to the plaintiff's mother until her death on February 23, 1945, and, after her death, the annuity was regularly paid to the plaintiff in the manner provided. The last quarterly payment received by her was that which fell due on June 1, 1952. During the lifetime of the said H.A.B., the payment of the said annuity was shared equally between H.A.B. and F.C.B., the residuary legatees under the will of H.R.B. H.A.B. died on March 2, 1924, and, after his death, F.C.B. paid the annuity in full. The Public Trustee, as executor and trustee of H.A.B., did not admit liability under the deed. F.C.B. died on September 6, 1952, and the executors of his will denied their liability under the deed to continue payment of the annuity to the plaintiff. On originating summons for the interpretation of the deed, it was common ground that the document was a deed. *Held*, 1. That, by virtue of s. 7 of the Property Law Act, 1952, the plaintiff was entitled to enforce the provision relating to payment to her. (*Re Bastings, Leary* v. *Bastings*, (1909) 29 N.Z.L.R. 409; 12 G.L.R. 621, applied.) (*MacLeod* v. *MacLeod*, [1931] N.Z.L.R. 12; [1930] G.L.R. 630, and *In re Inglis Bros. and Co., Ltd. (In Liquidation)*, [1932] N.Z.L.R. 874; [1932] G.L.R. 508, referred to.) 2. That the liability created in cl. 2 of the deed in respect of the annuity was joint, and not joint and several, and there was nothing on the face of the document sufficient to create an ambiguity; and the liability of the survivor, F.C.B., descended to his estate. (*White* v. *Tyndall*, (1888) 13 App. Cas. 263; *Kirk* v. *Eustace*, [1937] A.C. 491; [1937] 2 All E.R. 715; and *Dalgety and Co., Ltd.* v. *Tulloch*, [1924, G.L.R. 573; *Boyce* v. *Edbrook*, [1903] 1 Ch. 836 and *In re Bayly*, [1944] N.Z.L.R. 868, referred to.) *Armstrong* v. *Public Trustee and Others*. (S.C. Wellington. September 15, 1953. Cooke, J.)

DESTITUTE PERSONS.

Maintenance of Child—Child born during Wedlock—Presumption of Legitimacy—Evidence in Rebuttal—Medical Evidence as to Period of Gestation—Standard of Proof—Child fully-developed at Birth—Period of 215 Days from Earliest Date of Intercourse—Impossibility of Husband's Paternity—Husband Remarrying Wife and Living with Her after Commencement of Pregnancy—Unawareness of Non-Paternity at Such Times—Such Conduct not Admission of Paternity on His Part—Husband not precluded thereby from Denial of Paternity in Maintenance Proceedings—Wife's Application for Child's Maintenance dismissed—Appeal from Refusal of Order also dismissed. A child born in wedlock is presumed to be the child of the husband, and, therefore, legitimate. The presumption of legitimacy is rebuttable by evidence; but it can, however, be displaced only by clear and satisfactory evidence, beyond a mere balance of probabilities, and conclusive beyond reasonable doubt. (*Preston-Jones* v. *Preston-Jones*, [1951] A.C. 391; [1951] 1 All

E.R. 124, followed.) (*Morris* v. *Davies*, (1837) 5 Cl. & Fin. 163; 7 E.R. 365, applied.) The parties were married on July 19, 1945, and a daughter, V., was subsequently born. The parties later separated. The wife brought divorce proceedings against the husband in 1950, alleging adultery. A decree *nisi* was granted at Napier in November, 1950. Towards the end of 1950, the husband went to live at Palmerston North, and he had V. with him. The wife then was living at Napier. Early in February, 1951, (the date was given by the wife as February 10 or 11) the wife went to Palmerston North to see the child and stayed at a private hotel. Her husband visited her there, and there was intercourse between them. A reconciliation took place; and the wife, after going to Napier for a few days, returned to Palmerston North, where on February 14, she and V. went to live at a private hotel. On February 17, the husband joined her there, living as man and wife. In the meantime, the decree *nisi* had come before the Court in Napier and had been made absolute on February 21, but without either party's knowledge. They were remarried on May 7, 1951, but soon separated. On August 27, 1951, an order was made by a Stipendiary Magistrate at Palmerston North directing the husband to pay maintenance for his wife and V. A child J., was born to the wife on September 13, 1951. The husband accepted without question the fact that the child was premature. Husband and wife were again reconciled, and lived together in Palmerston North from January to May, 1952. The husband, when interviewed by an officer of the Social Security Department, who was seeking to obtain particulars from him of an application for a deserted wife's benefit made by the wife, acknowledged that he had two children, V. and J. In a letter by his then solicitors, dated December 3, 1952, and addressed to the Maintenance Officer at Hamilton it was indicated that the husband at that time was prepared to consent to an order for £1 per week as maintenance for the child J. The wife claimed maintenance in respect of J. from the husband, who denied paternity of the child. The Magistrate dismissed the wifes' claim. On her appeal from that determination. *Held*, dismissing the appeal, 1. That, on the evidence, the earliest date at which there was intercourse which could have resulted in the conception of the child was February 10, and from that date to the date of birth the period was a maximum of 215 days. (*B.* v. *B.*, [1949] Ch. 108, referred to.) *Clark* v. *Clark* ([1939] P. 228; [1939] 2 All E.R. 59) distinguished. 2. That, on the uncontradicated medical evidence, the child at birth was fully-developed and it was highly improbable for her to be born after a maximum period of 215 days' gestation; and it could not be believed that the child was so remote from term as she would be were she conceived as late as February 10. 3. That, in view of the medical evidence, of the absence of any evidence in qualification of it, and of the surrounding circumstances, the child J. could not in fact be the child of the husband. (*Preston-Jones* v. *Preston-Jones*, [1951] A.C. 391; [1951] 1 All E.R. 124, applied.) 4. That the husband had never had any reason to doubt that the child was his until the wife made her application for maintenance, when he discovered that the medical evidence supported the view that the child was a full-time child. 5. That the conduct of the husband in re-marrying his wife in May, 1951 or in rejoining her and living with her from January to May, 1952, did not in either case amount to an admission of paternity on his part; and he was still competent to deny paternity in the maintenance proceedings. (*The Poulett Peerage Case*, [1903] A.C. 395, applied). 6. That the husbands' statement, when he was interviewed by the officer of Social Security Department, could not be regarded as of any probative value as an admission of paternity. 7. That the letter of December 3, 1952, addressed to the Maintenance Officer at Hamilton was written before the husband knew of the medical evidence as to the possibility of his not being the father of the child, it did not amount to anything in the nature of an unequivocal admission of paternity; and so it did not preclude him from taking the defence that he was not the father of the child. (*Nicholson* v. *Irving*, (1899) 2 G.L.R. 169, applied.) *Jones* v. *Jones*. (S.C. Palmerston North. August 24, 1953. Turner, J.)

Maintenance of Child—Grandfather "near relative"—Presumption of Legitimacy—Presumption applicable with Reference to Son and His Child respectively—Destitute Persons Act, 1910, s. 4(1).

Destitute Persons—Maintenance of Child—Liability for Maintenance—"Near relative"—Grandfather of Child—Parents of Child Married—Child's Father a Student completing University Course, and dependant on His Father's Financial Assistance—Mother of Child earning Wages and partly supporting it—Child's Grandfather liable to contribute to Child's Support while His Son remained Student—"Having regard to all the circumstances of the case"—Destitute Persons Act, 1910, s. 5(2). The presumption of legitimacy arises in respect of a child born in lawful wedlock on all occasions when the legitimacy of such child is in issue; and, consequently, the use of the word "grandfather" in s. 4(1) of the Destitute Persons Act, 1910, does not exclude the presumption. The presumption is rebuttable; but, where the child has been born in wedlock, it can be rebutted by clear and convincing evidence only. (*Hawes* v. *Draeger*, (1883) 23 Ch.D. 173, and *In the Estate of L.*, [1919] V.L.R. 17, referred to.) In order to prove that a person is or is not in law the grandfather of a child (and so within the definition of "near relative" in s. 4(1)), two steps in the child's pedigree require to be proved, and, where necessary, the presumption must be applied with reference to both. While, in general, no order for the maintenance of a child will be made against a "near relative" if there is a parent able to provide maintenance, no such rule is laid down in the Destitute Persons Act, 1910; and each case must depend on its own circumstances. The child's father, who was 20 years of age and had a bursary at the University, required help from his father in order that he might continue his studies in Civil Engineering. His wife was earning £8 10s. a week gross in normal employment, and a further £1 10s. a week by working at nights. She received 2s. 6d. a week for herself and 2s. 6d. a week for the child from her husband under maintenance orders. She was partly supporting the child and her mother. The son's father, as a "near relative" was ordered to pay £1 a week for the child's maintenance. He appealed from that determination. *Held*, 1. That the appellant was the child's grandfather by natural relationship, and, in consequence, a "near relative" within the meaning of s. 4(1) of the Destitute Persons Act, 1910, and the child was a "destitute person" within the meaning of s. 2 of the statute. 2. That the appellant's desire to have his son trained as a civil engineer was highly commendable; but, if the son was to continue in unremunerative studies for a further two years or more at the cost of failing to perform his duties to his wife and child, some part of the burden of maintaining the child might properly be allowed to fall on the appellant, and might be regarded as part of the assistance he was willing to give his son in order to establish him in professional life; the burden of maintaining the child should not be thrown wholly on the son's wife; and it was reasonable that a contribution of £1 per week should be made by the appellant so long as his son, with his concurrence, remained a student. *Franklin* v. *Franklin*. (S.C. Auckland. September 17, 1953. F. B. Adams, J.)

DIVORCE AND MATRIMONIAL CAUSES.

Desertion—Constructive Desertion—Previous Suit charging Adultery and Cruelty dismissed—Allegations in Petition alleging Desertion same as those raised, or capable of being raised, by Earlier petition. The wife filed a petition, dated April 21, 1950, for divorce on the ground of the husbands' adultery with his half-sister, L.B.T., and cruelty. The allegations of cruelty were, *inter alia*, that in or about 1927 the husband threatened the wife with a revolver; that in or about 1928 he threw several of the wife's belongings out of the window and threatened to throw her out of the house; and that, in the early part of 1932, he threatened to attack the wife with a knife, broke a finger of her left hand, and punched her in the right eye. The charges were denied by the husband, and on January 22, 1952, the wife's petition was dismissed. The wife then filed a petition, dated October 2, 1952, for divorce on the ground of the husband's desertion, alleging, *inter alia*, that from about 1926 the husband frequently quarrelled with and abused the wife; that in 1927 she had become suspicious that the husband was carrying on an improper association with L.B.T., and that when she asked the husband to see less of L.B.T. their relationship became further strained.; that between 1927 and 1930 the husband kept her short of money and frequently told her that he no longer wanted her and wished that she would go; that in April, 1930, when the wife refused to share a bedroom with L.B.T., the husband left the house with L.B.T. to find alternative accommodation; and the wife repeated the three allegations in her former petition relating to the revolver, throwing her belongings out of the window, and breaking her finger, and said that by such conduct the husband had in April, 1932, driven her from the matrimonial home. The husband, by his answer, denied the charge of desertion and pleaded that the wife was estopped *per rem judicatam* from making any of these allegations. On these preliminary issues, *Held*, it was necessary in proceedings in the Divorce Division to distinguish between an estoppel as against a party charged with an offence and an estoppel as against a party putting forward a charge against the other party; in the latter event, as here, no interest of the public was infringed by saying that a party was estopped *per rem judicatam* from repeating allegations that had previously been the subject of judicial determination, and, therefore, the ordinary rules of estoppel applied: (*Hudson* v. *Hudson* ([1948] 1 All

E.R. 773), distinguished) and, accordingly, (i) since the allegation of adultery had been dismissed in the previous suit the wife could not now allege that she had reasonable grounds for belief in such adultery and the allegations relating to this would be struck out. (*Allen* v. *Allen* [1951] 1 All E.R. 724, applied.) (ii) the allegations of threats of violence and of actual assault, which repeated the allegations in the previous petition, would also be struck out since the acts alleged either did or did not amount to cruelty, and if, as had been held in the earlier suit, they did not amount to cruelty, they could not now be relied on as " grave and weighty matters " to support a charge of constructive desertion, for by their very nature the acts either constituted cruelty or amounted to nothing. (*Dixon* v. *Dixon*, [1953] 1 All E.R. 910, and *Foster* v. *Foster*, [1953] 2 All E.R. 518, distinguished.) (*Timmins* v. *Timmins*, [1953] 2 All E.R. 187 considered.) (iii) The allegations that the husband had quarrelled with and abused the wife, had kept her short of money, and had frequently told her that he no longer wanted her and wished that she would go, had not been specifically raised in the previous proceedings, but could and should have been raised in support of the charge of cruelty then made, and, therefore, those allegations would also be struck out. (*Hoystead* v. *Taxation Commissioner*, [1926] A.C. 155, applied.) (iv) The remaining allegation, that the husband left the wife in April, 1930, raised a case of simple desertion which had not been invesigated in the former suit, and, therefore, would not be struck out, and the wife would have leave to amend her petition to enable her to charge her husband with simple desertion at that date. *Bright* v. *Bright*, [1953] 2 All E.R. 939 (P.D.A.).

Insanity—Guardian ad litem—" *Person of unsound mind* "—*Need to Apply for Appointment of Guardian—No appearance by Person of Unsound Mind after Service of Petition—Matrimonial Causes Rules, 1950 (S.I., 1950, No. 1940), r. 64(9).* On October 5, 1951, the husband was received into a mental hospital as a temporary patient. On April 7, 1952, the wife filed a petition for dissolution of the marriage on the ground of the husband's cruelty. The petition, accompanied by the memorandum of appearance in duplicate, the form of acknowledgment of service, and the notice of petition, was served on the husband personally in the mental hospital. The husband refused to complete the form of acknowledgment of service and entered no appearance. On May 6, 1952, the wife's solicitors wrote a letter to the medical superintendent in answer to which the latter replied on May 17, 1952: " I think it is most unfortunate that at this stage he should have the stress and strain of dealing with a legal matter . . . I should be most grateful if you could postpone taking any action in the matter for, say six months, when I hope that [the husband] will be able to deal with the matter himself. Certainly as long as he is in hospital I think it would be inadvisable for him to deal with the matter . . ." On July 31, 1952, the petition was heard undefended, and a decree *nisi* made in favour of the wife. On an application by the husband for a re-hearing, *Held*: Rule 64(9) of the Matrimonial Causes Rules, 1950, which provided that " where a petition . . . has been served on . . . a person of unsound mind and no appearance has been entered . . . by or on behalf of the . . . person of unsound mind " the petitioner should apply for the appointment of a guardian *ad litem*, was mandatory, and, as there was sufficient information in the letter of the medical superintendent of May 17, 1952, to necessitate an application under r. 64(9), the decree would be set aside. (*Stanga* v. *Stanga*, (1953) (February 18, not reported) (in which a Divisional Court of the Divorce Division held that r. 64(9) was mandatory in the case of service on an infant), applied.) *Gore-Booth* v. *Gore-Booth*, [1953] 2 All E.R. 1000 (P.D.A.).

Separation (as a Ground of Divorce)—Verbal Agreement to Separate, reserving Right to Wife to return to Husband after Six Months if she Wished—Not " an agreement for separation "—Divorce and Matrimonial Causes Act, 1928, s. 10 (i). An agreement for separation does not come within s. 10 (*i*) of the Divorce and Matrimonial Causes Act, 1928, unless it is an agreement for permanent separation. (*Ducker* v. *Ducker*, [1951] N.Z.L.R. 583, 585; *Mckay* v. *Mckay*, [1949] N.Z.L.R. 217; [1949] G.L.R. 267; and *Wright* v. *Wright* (Unreported: New Plymouth, 1952, *Fair*, J.) followed.) On August 17, 1950, the parties entered into a verbal agreement to separate for good, and it was part of the agreement that a right was reserved to the wife to return to her husband after six months if she wished. On a petition by the wife for dissolution of marriage on the ground that she and her husband were parties to an agreement for separation which had been in full force for not less than three years. *Held*, That the preservation to the wife of a unilateral right to return to her husband prevented the verbal agreement from being an " agreement for separation " within s. 10(*i*) of the Divorce and Matrimonial Causes Act, 1928. *White* v. *White*. (S.C. Wanganui. August 14, 1953. Cooke, J.)

INFANTS AND CHILDREN.

The Tortious Infant, *97 Solicitors' Journal, 614.*

JUSTICES.

Information—Amendment—Defects of Substance—Information laid Six Months before Application for Amendment—Court's Power to Amend, notwithstanding Expiry of Time—Limitation, for laying Information—" Defect therein in substance "—Justices of the Peace Act, 1927, ss. 50, 79. Under s. 79 of the Justices of the Peace Act, 1927, an information does not become void by reason of a defect in its substance or form, and the Court may convict without amendment, or amend, if it thinks fit, and convict. The word " substance " as used in s. 79 applies to words used in the information which are descriptive of the contents of the charge, and if, with the deletion of the defective words, an offence is still shown in the charge, those defects are defects in substance only. Whether or not this is so must necessarily be affected by the facts of each case. The test is this: although the information does not completely and expressly disclose a legal offence or the whole ingredients thereof, is there an offence necessarily implied? If there is, then the defect is only in substance. (*District Man-power Officer* v. *Hogan*, (1944) 4 M.C.D. 67, followed.) (*R.* v. *Governor of Holloway Prison*, (1916) 85 L.J.K.B. 689, referred to.) An information charged the defendant that on March 7, 1952, at Wellington, being a seaman lawfully engaged to the sea service having signed on articles in the United Kingdom, he deserted his ship, the British ship, " Rangitane ", in contravention of s. 132 of the Shipping and Seamen Act, 1908. The information was laid on March 26, 1952, and came before the Court on August 24, 1953. Before the defendant pleaded, counsel for the informant asked leave to amend the charge by substituting " Nelson " for " Wellington " and the ship " Nottingham " for the ship " Rangitane."

A new information could not be laid as the period of time allowed under s. 50 of the Justices of the Peace Act, 1927, had long expired. On objection to such amendment, *Held*, 1. That, applying the foregoing test, the information was sufficient to disclose the elements of the offence created by s. 132 of the Shipping and Seamen Act, 1908; and the defects were defects of substance only; and, as such, there was power to amend the information. 2. That the power to amend was not affected by the expiry of the period of limitation under s. 50 of the Justices of the Peace Act, 1927. (*R.* v. *Wakeley*, (1920) 89 L.J.K.B. 97, applied.) 3. That the offence charged was " deserting his ship", and, to that extent, the exact words of the offence created by s. 132 (1) (*a*) of the Shipping and Seamen Act, 1908, were included in the charge in the information, and the defendant knew immediately that he was facing the charge so prescribed. 4. That the remaining words in the charge were descriptive or evidentiary, and, though material, were material only in proof to the establishment of a conviction; and, if the incorrect words were omitted from the charge, the remaining words embodied the elements of the offence which the defendant was called upon to answer, and, in such circumstances, the erroneous words were a defect in substance only, and, as such, they could be amended. *Curtis* v. *Morrison*. (Auckland. August 31, 1953. Wily, S. M.)

LAND TRANSFER.

Freehold Title to Flats, *10 Law Institute Journal*, 214.

LANDLORD AND TENANT.

" Letting ": A Single or Continuing Act?, *97 Solicitors' Journal*, 583.

LICENSING.

Offences—Sale of Liquor by Unlicensed Person—Information alleging Previous Conviction for Similar Offence—Penalty not entitling Defendant to Elect Trial by Jury—Practice not Condemned by Statute—No Defect in Substance or Form in the Information—More Desirable Practice indicated—Licensing Act, 1908, s. 195 (2) (b)—Justices of the Peace Act, 1927, ss. 77, 79. An information charged the defendant under s. 195 (2) (*a*) of the Licensing Act, 1908, with selling intoxicating liquor without a licence, having been once previously convicted of a similar offence. Counsel for the defendant, before pleading, asked for dismissal of the information on the ground that it ought not to allege the previous conviction as the defendant was thereby unfairly prejudiced in the eyes of the Court. *Held*, 1. That the allegation of one previous conviction increased the penalty prescribed for the offence charged but not to the extent of making it an indictable one at the defendant's election. (*Hedley* v. *Halim Kallil*, [1936] N.Z.L.R. 732; [1936] G.L.R. 579, distinguished.) 2. That there is a need for the defendant

to be informed either in the information or at some stage of the proceedings exactly with what he is charged. (*Curran* v. *O'Connor*, (1894) 12 N.Z.L.R. 442, applied.) 3. That, in view of the terms of s. 77 of the Justices of the Peace Act, 1908, that statute contemplates the fact of a previous conviction being referred to in the information, and does not expressly condemn that practice. 4. That there was not, in the adoption of the practice followed in this case, such a defect in substance or form in the information as to justify the exclusion of s. 79 of the Justices of the Peace Act, 1927. *Semble*, That the more desirable practice would be to inform the defendant charged with an offence under s. 195 (2) (*b*) of the Licensing Act, 1908, after conviction and before sentence, that he is charged with having been previously convicted, and, if that were denied, proof would be required. *Police* v. *P.* (Whangarei. July 22, 1953. Herd, S. M.)

LIMITATION OF ACTION.

Public Authority—Claim for Contribution by Joint Tortfeasor —Commencement of Period of Limitation—Length of Period— Law Reform (Married Women and Tortfeasors) Act, 1935 (c. 30), s. 6 (1) (c)—Limitation Act, 1939 (c. 21), s. 2 (1), s. 21 (1)— R.S.C., Ord. *16A, r. 1. Littlewood* v. *George Wimpey and Co., Ltd., British Airways Corporation.* [1953] 2 All E.R. 215 (C.A.) See *Tort.*

PROBATE AND ADMINISTRATION.

Insolvent Estates—No Grant of Administration—Such Grant necessary before Order made under Part IV of Administration Act, 1952, ss. 67, 68.

Probate and Administration—Administration—Order made on Application for Administration, but Administration Bond not given—Order merely Direction authorizing Issue of Grant subject to Due Compliance with Legal Requirements—Lapse after Two Months—" Fresh Application "—Administration Act, 1952, s. 6 —Code of Civil Procedure, R. 531M. A grant of Administration by the Court in its probate jurisdiction is necessary before an order can be made under Part IV of the Administration Act, 1952. (*In re A Debtor*, [1939] 1 Ch. 594; [1939] 2 All E.R. 56, followed.) (*In re Sleet, Ex parte Sleet*, [1894] 2 Q.B. 797, referred to). The deceased died on June 15, 1952, and in the same month K, as residuary legatee, applied for letters of administration with the will annexed. The papers being irregular, the application was renewed in July; and, on August 14, 1952, it was granted, the word " accordingly " being written on the motion together with the Judge's signature. K. being unable to obtain the required sureties to the administration bond, no grant was sealed. A petition by a creditor of deceased under ss. 67 and 68 of the Administration Act, 1952, for an order for the administration of the estate under Part IV of the statute, was filed and served on K. towards the end of May, 1953, and before the re-grant; but the period of two months allowed under R. 531M for sealing that grant had expired before the petition first came to hearing. *Held*, 1. That there was an unfulfilled condition precedent to the actual grant of administration, in that the administration bond required by s. 6 of the Administration Act, 1952, was never given. (*Mohamidu Mohideen Hadjiar* v. *Pitchey*, [1894] A.C. 437, followed.) (*In re Milling (No. 2)*, [1916] N.Z.L.R. 1180 and *In re Hamilton*, [1937] N.Z.L.R. 880; [1937] G.L.R. 582, referred to.) 2. That, although the words " the application was granted " were used in the learned Judge's minute on the application for letters of administration, that did not amount to a grant of administration within R. 531M of the Code of Civil Procedure, but was merely a decision or direction authorizing the issue of a grant subject to due compliance with any further requirements of the law. 3. That the learned Judge's order made on the application was no longer of any force or effect, as the period of two months after the making of such order had been allowed to lapse; and, under R. 531M, a fresh application would be necessary. 4. That, accordingly, no bond having been given and no grant of administration having passed the seal, there was no grant of administration to the applicant for it, and she had never been an " administrator " within the meaning of the Administration Act, 1952. The petition was dismissed. *In re Sullivan (deceased)*. (S.C. Auckland. In Chambers. October 5, 1953. F. B. Adams, J.)

STOCK.

Sheep affected with Lice found in Pound or Sale-yards— Presumption of Owner's Knowledge rebuttable—Owner Entitled to show Lack of Mens rea*—Stock Act, 1908, s. 50 (1).* Under s. 50 (1) of the Stock Act, 1908, the owner of sheep affected with lice found in any pound, or in any land or other place at which sheep are offered for sale, is liable to a fine for exposing the sheep so affected. Where the owner of sheep is charged with an offence under s. 50 (1), it is not necessary for the prosecution to prove knowledge, but the defendant is entitled to show, as an answer to the charge, that he did not have *mens rea*. (*R.* v. *Ewart*, (1905) 25 N.Z.L.R. 709; 8 G.L.R. 22 followed.) (*C. L. Innes and Co., Ltd.* v. *Carroll*, [1943] N.Z.L.R. 80; [1943] G.L.R. 97, and *Nichols* v. *Hall*, (1873) L.R. 8 C.P. 322, applied.) (*Police* v. *Aitken*, (1930) 25 M.C.R. 152, referred to). *French (Inspector of Stock)* v. *Mason.* (Auckland. June 30, 1953. Astley, S. M.)

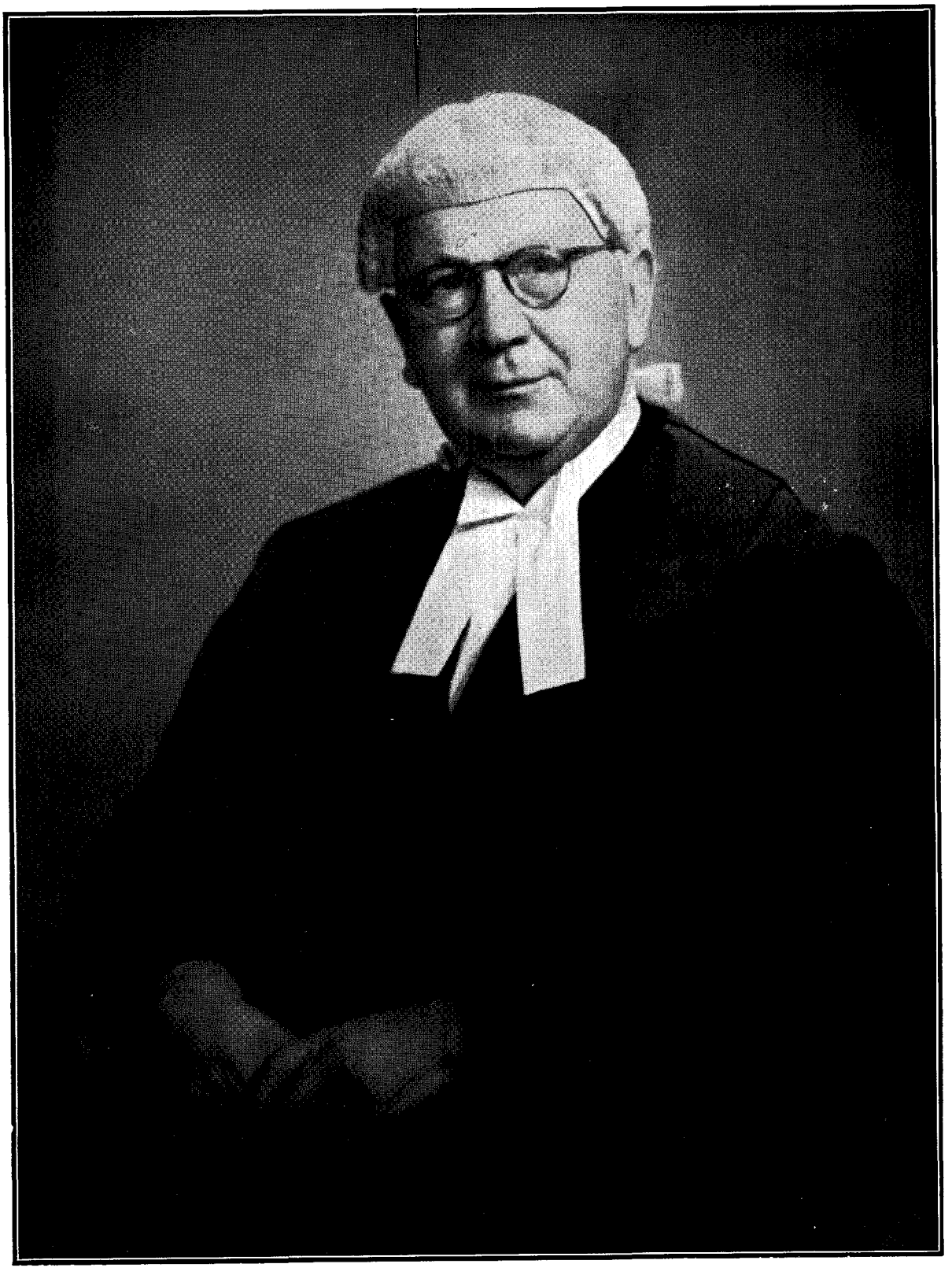
TRANSPORT.

Request made to Owner to give Information concerning Driver alleged to have Committed Offence—Obligation on Owner to give all Information in His Possession or Obtainable by Him— Allegation of Offence sufficient to give rise to Obligation—" Driver " Transport Act, 1947, s. 49—Traffic Regulations, 1936 (Serial No. 1937/86) Reg. 4 (7) (e). Section 49 of the Transport Act, 1949, is as follows: The owner of any motor-vehicle shall, on being informed of any offence alleged to have been committed by the driver of the motor-vehicle while in charge thereof (whether the offence is an offence against this Act or any other Act, or against any regulation or by-law), and on being requested so to do by any constable or Traffic Officer, give all information in his possession or obtainable by him which may lead to the identification and apprehension of the driver. The purpose of s. 49 is to facilitate the tracing of offenders who are alleged to have committed offences and to have some connection with a motor-vehicle. The offence need not necessarily have anything to do with motoring. Furthermore, the section is not concerned with whether an offence has in actual fact been committed: it is concerned only with alleged offences. Once the owner of a motor-vehicle is informed of any offence which it is alleged or claimed that the driver may have committed while in charge of the vehicle, there arises, upon a proper request being made, an obligation on the owner's part to give the information required of him. The owner's obligation is not limited to the name of the driver. It is extended to all information in the owner's possession, as well as to all information which may be obtainable by him, and not only that which may actually indicate the driver but that which may lead to his identification and apprehension. The owner of the vehicle has no right to be satisfied, or to decide for himself, whether or not an offence has been committed, before he gives the information. The allegation of the offence is sufficient to give rise to the obligation. (*Pulton* v. *Leader*, [1949] 2 All E.R. 747, applied.) The word " driver " in Reg. 4 (7) (*e*) of the Traffic Regulations, 1936, is used for the popular sense which will give effect to the legislation. Thus, for the purposes of Reg. 4 (7) (*e*), a person may remain the " driver " of a motor-vehicle, notwithstanding the fact that he has severed all physical connection with it, and has departed from the vehicle. (*Gough, Gough and Hamer, Ltd.* v. *Dansby*, [1940] G.L.R. 630, followed.) (*R.* v. *Yorkshire Justices*, [1910] 1 K.B. 439]; *Wallace* v. *Major*, [1946] 2 All E.R. 87; *Saycell* v. *Bool*, [1948] 2 All E.R. 83; and *Jones* v. *Prothero*, [1952] 1 All E.R. 434 applied.) The owner of a motor-vehicle parked it in a place where parking was restricted to 20 minutes, for a period much in excess of that time. A Traffic Officer formally requested him to supply the name of the driver. He did not comply with that request on the ground that there was no obligation on his part to give the Traffic Officer the name of the driver of the car at the time in question, as he contended the only possible offences which could have been committed in the circumstances were either parking offences, under Reg. 4 (7) of the Traffic Regulations, 1936, or under the city by-laws, neither of which involved driving a car; and that s. 49 of the Transport Act, 1949, did not apply, as the obligation created by that section arises only where there is an alleged offence committed by a driver in charge of a vehicle. On an information charging the defendant under s. 49 of the Transport Act, 1949, that, being the owner of a motor-vehicle, on being informed of an offence alleged to have been committed by the driver of such vehicle while in charge thereof, when requested so to do by a Traffic Officer, he failed to give all information in his possession which might lead to the identification and apprehension of the driver. *Held*, That, the Traffic Officer was entitled to ask the owner of the motor-vehicle the name of the person alleged to have permitted the vehicle to remain where it was in breach of the restriction, as that person was " the driver of the motor-vehicle " within the meaning of s. 49 of the Transport Act, 1949; and the defendant was accordingly guilty of the offence charged. *Auckland City Corporation* v. *Hillyer* (Auckland. July 25, 1953. McCarthy, S. M.)

VENDOR AND PURCHASER.

Sale of Goodwill, *10 Law Institute Journal*, 213.

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



Spencer Digby, photo

The Late Rt. Hon. Sir Humphrey O'Leary, K.C.M.G.
Chief Justice of New Zealand.
(1946 1953)

DEATH OF CHIEF JUSTICE OF NEW ZEALAND.

Tributes to the Life and Work of Sir Humphrey O'Leary.

THE profession throughout New Zealand received a severe shock when it was learnt that the Chief Justice, the Rt. Hon. Sir Humphrey O'Leary, K.C.M.G., had died at Auckland in his sixty-seventh year. It had been hoped that he would recover from the long illness which had kept him from his place on the Bench for some months, but this was not to be. The great affection in which he was held by his brethren in the law, and the esteem of the general body of citizens, were reflected in the tributes paid to him when his death was announced on October 16.

Solemn Requiem Mass.

On the morning of his funeral, Solemn Requiem Mass was celebrated in the Basilica of the Sacred Heart, Wellington, the parish church of the late Chief Justice. The large church was filled to overflowing.

His Excellency the Governor-General was represented by his official secretary, Mr. D. E. Fouhy. There were present the Prime Minister, the Rt. Hon. S. G. Holland, accompanied by the Attorney-General, the Hon. T. Clifton Webb; the Minister of Internal Affairs, Mr. W. A. Bodkin; the Associate Minister of Finance, Mr. C. M. Bowden; the Acting Chief Justice, the Hon. Sir Arthur Fair; Mr. Justice Gresson, Mr. Justice Hutchison, Mr. Justice Hay, and Mr. Justice Cooke; Judge Tyndall, of the Court of Arbitration, and Judge Dalglish of the Compensation Court, and Mr. F. Ongley, a former Judge of that Court; the Solicitor-General, Mr. H. E. Evans, Q.C.; Sir Wilfred Sim, Q.C.; the Hon. H. G. R. Mason, Q.C., and Dr. O. C. Mazengarb, Q.C.; all the Stipendiary Magistrates in Wellington; the President of the New Zealand Law Society, Mr. W. H. Cunningham, and a Vice-President, Mr. T. P. Cleary; the President of the Wellington District Law Society, Mr. E. F. Rothwell, and the Secretary, Mrs. D. I. Gledhill; and the Mayor of Wellington, Mr. R. L. Macalister, and the Town Clerk, Mr. B. O. Peterson.

There was a large attendance of members of the profession practising in Wellington.

The Coadjutor Archbishop of Wellington, the Most Rev. P. T. B. McKeefry, presided in the sanctuary, and the celebrant of the Mass was Monsignor T. F. Connolly. The Deacon was Father M. Branagan, C. SS.R., and the sub-deacon Father J. L. Kingan, S.M. The Master of Ceremonies was Father B. Tottman. The Mass was chanted by a choir of priests.

Chief mourners were Lady O'Leary, Mr. James Fay (nephew), Mrs. Helen Bradshaw (niece), and Mr. J. O'Leary, Masterton (brother).

The Noble Office of a Judge.

At the end of the Requiem Mass, Archbishop McKeefry addressed the large congregation. His Grace said:

"Here, before God's altar, this morning, rests in death one who has occupied the highest position in the Judiciary of our land. It was his joy in life to come frequently before this same altar to worship his Creator and to gain from Him that strength, those graces which he knew to be necessary were he to serve God faithfully and to give material proof of that service in serving his fellow-citizens, his brothers and sisters in God. And how faithfully throughout life he fulfilled his duties—in youth, when tenaciously he studied for what he felt to be his vocation; in maturer years, when his forensic career was marked with a fierce love for justice; and, in these last years, when with the wisdom of age and experience he served God and country as Chief Justice. Truly, it can be said of him that he discharged his duties with a real sense of responsibility, and graced the office with dignity.

"Of all the appointments that can come to a citizen, none is more important than that of a Judge, for upon that office and its rightful exercise depend the rights, liberties, property, and many times even the lives of the citizens. Other Departments of State may show imperfections, even failures; but the Judiciary requires men capable, virtuous, known for their integrity and wisdom, men bringing to their exalted office a true sense of responsibility, and discharging their duty in a manner eliciting the esteem and confirming further the confidence of the people.

"We in New Zealand have to be grateful to God that our country so young in years has found so many of its own sons worthy of the office of Judge, and likewise humbly proud that they have lived and worked with high ideals and added to the riches of its traditions. If there be satisfaction in this, and there is, let us remember that those who hold this high office are human like ourselves, subject to human frailties; and that it is upon their attitude to God in the exercise of His delegated authority that the whole good to be expected of the Judiciary can be preserved. Members of the Judiciary give executive effect to the laws of a nation—an onerous enough burden in itself; but, perhaps more responsible, is the interpretative process emanating from their Courts. Upon the one as upon the other there depends so much that is vital in a nation's life—the sacredness of its institutions, the soundness of its laws, tempering the impact of justice with mercy, and so fulfilling their duties that citizens shall be led by positive ways to good living and to seeking proper order in the community without which order neither peace nor tranquillity is possible.

"When we think of Judges there comes readily to mind what St. Augustine wrote to a Roman citizen elevated to this high office. In words somewhat like these, St. Augustine said: 'You have been called to an office that is surrounded with great dignity and honour. But greater than the dignity and its honour is the onerous, grave, responsibility that now rests upon you, for in your public actions you share in the delegated authority of God.' The Saint was living in times so much like our own, and while he was writing a disturbed world was a-tremble. Law and order were under threat, power was being usurped, despotism was receiving allegiance because of fear, and authority was by might not right. Looking on his then world, Augustine said: 'There is no power but from God and our help is in the Name of the Lord Who made heaven and earth'. Thinking of his friend, he said: 'No slight comfort has been sent us by Providence in these great troubles, for a man raised to your high office has no other purpose than to restrain abuse of power by the proper use of your

own power and goodwill. You act with the authority delegated by God, and when you administer justice you must decide to apply penalties with less regard for the gravity of crimes than for the exercise of Christian clemency. Allow those brought before you to be convinced and instructed by the clearest proofs of well-known facts to the end that those kept in custody by your order may bend their own obstinate will, if possible, to the better course, and may see in these proofs cause for amendment. When men act by reason of compulsion rather than conviction, the attempt to make them give up a great evil and hold to a great good is productive of more labour than profit.'

" Noble indeed is the office of a Judge, and worthy of it was he who rests before us in death. He was a man of rugged sincerity and simple faith, gifted with great breadth of human vision which made him love his fellow-men, and those fortunate enough to know him sought more and more his company. He had a passionate sense for justice, and it was based on true charity. Ever challenging in endeavour, untiring in energy, he gave generously of the gifts of mind and heart with which God had endowed him. He served God according to the full light of conscience, and in His service he was as humble as he was generous. Can we not apply to him, as to all Judges living worthily of their office, Augustine's words: ' Their office is the essence of the very law of God, which ever abiding fixed and unshaken with Him is transcribed, so to speak, on the souls of the wise so that they know they live a better and more sublime life in proportion as they contemplate it more perfectly with their understanding and observe it more diligently in their manner of living.' And, continuing, St. Augustine said: ' Let them do nothing half-heartedly, nothing rashly. Let them hate no one. Let them be not unwilling to correct vices. Let them take care especially not to be exacting in vengeance or stinting in forgiveness. In case of faults of their associates, let them either cast out anger or so restrain it that it will be like anger dismissed. Let them regard as their own fellow-men all those over whom authority has been given to them. Let them be so obedient that it would be embarrassing to give them commands, and let them rule so considerately that it becomes a pleasure to obey. In all circumstances of life, in every place, and at all times, let them have friends. Supported by faith, hope and love, let them have God the object of their worship, their thinking and their striving. Let them desire tranquillity and a definite course for their own studies and for those of all their associates; and for themselves and for whomsoever else such things are possible, a good mind and a quiet life.'

" Such were Augustine's ideals! Too high for achievement? No, and clearly sought by him who now lies in death, and most worthy of pursuit by all who would seek to emulate his life and living.

" The qualities he showed in life's activity were seen also in his months of sickness. Patient tranquillity and the strength he had found in God throughout the years gave him fortitude in suffering, and made acceptable whatsoever God asked of him in these last days.

" Generous as he was in serving God, he showed the full spirit of generosity in readily giving his son to the priesthood, there to share in the most exalted way in Christ's ministry of love and mercy. We have gathered to offer our prayers for Sir Humphrey O'Leary, but it is the priesthood we hold in common with his son that has brought us together in Solemn Requiem.

" May the good and merciful God, Judge of the living and the dead, have received our prayers offered in suffrage; and may He give to His faithful servant a place of everlasting light, peace, and rest."

Pall-bearers at the church were the Attorney-General, Mr. Webb, Mr. Cunningham, Mr. Rothwell, Mr. R. B. Burke, of the Wellington Rugby Football Union, Dr. J. Williams, principal of Victoria Univerity College, and Mr. Charles McDermott, representing Catholic societies.

The interment took place at the Karori Lawn Cemetery, Rev. Father Tottman officiating at the graveside. At the cemetery, the pall-bearers were Messrs. J. A. Fay, W. M. Bradshaw, R. S. V. Simpson, B. Webb, T. P. McCarthy, and H. R. C. Wild.

At The Supreme Court.

On the morning of October 21, the Supreme Court was filled to overflowing with members of the profession, who had met to join with their Honours the Judges in paying tribute to the memory of the late Chief Justice.

The Acting Chief Justice, Mr. Justice Fair, presided, and with him on the Bench were Mr. Justice Gresson, Mr. Justice Hutchison, Mr. Justice Hay and Mr. Justice Cooke. Also having places on the Bench were two former Supreme Court Judges, the Hon. Sir David Smith and the Hon. Sir Robert Kennedy.

Among those present were Judge Tyndall, Judge Dalglish, and Judge Stilwell, and all the Magistrates who act in Wellington.

The Judiciary.

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

" We, the members of the Bench and Bar, have assembled here this morning to express our deep sorrow at the death of our Chief Justice and to give public expression to our appreciation of his many virtues and our affection for him. He was personally known to most of us present for most of our lives. For many years past, he was one of the best-loved figures among us, particularly in Wellington. He has been taken from us with tragic suddenness after a short illness, and by his death we have lost an able Judge, a kindly and loyal colleague, and a great citizen. It is a heavy blow and a great personal loss, for, despite his outstanding ability and his public service in educational and legal matters and his great achievements, our most vivid recollection of him is of his innate and unvarying kindliness.

" Of his brilliant early career in scholarship, of his interest in sport and in his profession it is fitting that others should speak. I shall refer more particularly to his distinguished public service in the high office of Chief Justice which he filled with dignity and distinction for the past seven years. It is right to recollect that those seven years were most difficult ones. When he entered upon his office as Chief Justice, proposals were being pressed strongly for radical alterations in the judicial system, and vacancies on the Bench were not being filled. He was strongly opposed to the proposed changes as not being in the public interest, and over a considerable period of time he expressed fully to the Government his reasons and views on the question. After full consideration, and largely, I think, out of deference to his definite views, it was decided not to proceed with the proposals. One feels that it was largely owing to his efforts that we

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owe the continuance of the present constitution of our Supreme Court and Court of Appeal.

" Throughout this difficult period, he showed, in the performance of his duties and his association in the work of the Courts, the same unfailing kindliness and patience that have been characteristic of him in all his activities throughout his life; and this while bearing his full share of the normal judicial work as well and carrying out the many duties that fall to the lot of a Chief Justice. His great kindness and consideration that he showed his fellow Judges during this time continued throughout his seven years of service, and all of us recall with deep gratitude his many acts of kindliness, consideration, and thoughtfulness.

Upon being called upon to assume the duties of Administrator of the Government throughout the absence of and the vacancy in the office of Governor-General, he carried out the additional duties of that high office as cheerfully, capably and modestly as he did his other high duties.

" On the Bench, as well as in his practice at the Bar, his great ability was coupled with a profound understanding of human nature and a real and sincere sympathy for the weak and unfortunate. Neither his practice as an advocate, nor his duties on the Bench, weakened his human sympathies and understanding. He could be stern in his condemnation of crime and injustice. He could impose severe punishment when that was necessary in the public interest. But his heart inclined him to err—if he did err—on the side of mercy. He could not be harsh in any circumstances, and in all his relations with the Bar or in the ordinary affairs of life, I have never known him to utter a harsh word or show any kind of ill-feeling or bitterness. Such natures are in themselves rare. To retain that outlook unaffected by the heavy duties and responsibilities of high office is very exceptional indeed.

" He brought to the Bench a wide knowledge of criminal law and commercial law, and that sound judgment and good feeling that are the very spirit of the administration of justice. He leaves behind him a record of complete fairness and impartiality, of courtesy towards the Bar, of kindness towards the public, and of great ability and service. As I said earlier, the feature that will remain in our memories most vividly will be his great kindliness to all. With goodwill towards all, with ill-will towards none, he lived among us. He has passed from us, and we shall cherish his memory in the years to come as a good Judge who adorned his high office and whose memory will be long cherished by all who knew him.

" Throughout his whole career, as we all know, he was inspired and sustained by the companionship and affection of Lady O'Leary, whose cheerful courage helped him so greatly too in the last painful months of his illness. On her the great loss that we all feel must fall especially heavily, and to her and to his family and relatives in their great sorrow we offer our deepest sympathy."

The Attorney-General.

The Attorney-General, the Hon. T. Clifton Webb, addressing their Honours:

" When I called to see the late Chief Justice in hospital just six weeks ago on the eve of my departure for the United Nations, little did I realize that it would be the last time I should see him. He had, of course, been ailing for some time, and a stage had been reached in my mind where the hope, to which I had tenaciously clung, that we should see him back on the Bench again, had faded almost to vanishing point. But I was ill-prepared for the blow and shock that I received last Friday.

" I had been closely associated with the late Chief Justice during the four years almost that I have been in office, and during that period I saw a lot of him, particularly during the period when he was in hospital. Before that, I had not known him very much, but, as was only to be expected with a man like Sir Humphrey, an intimate association soon sprang up between us. We confided in each other in a way that betokened implicit trust on both sides, and out of that grew a friendship and, I may say, an affection. It is only natural, therefore, that his death should have dealt me, as I am sure it has to others, a stunning blow.

" His Honour, Mr. Justice Fair, in what, if I may presume to say so, was a moving tribute, has dealt with a lot of the late Chief Justice's career on the Bench and to some extent at the Bar. My friends, Mr. Cunningham for the New Zealand Law Society and Mr. Rothwell for the Wellington District Law Society, will, no doubt, traverse somewhat the same ground. I shall deal more with his work in the administrative field, for it is there I was associated with him. The mental picture that I shall always retain of Sir Humphrey is of a man with a genial smile and an open countenance. A rugged sincerity, as I have heard it described, was one of his outstanding characteristics. He never dissembled, one never felt he was holding anything back or speaking with mental reservation, and for that reason it can be well understood that it was always a pleasure to work with him. I can testify to the fact that all dealings I had with the late Chief Justice have been marked by the utmost harmony and cordiality, and on behalf of the Government and for myself personally I want to take this opportunity of expressing our appreciation and my own appreciation for the loyal and conspicuous service that he has rendered to his country while he occupied the highest judicial post in this land; and, though he had reached to that high pinnacle, he never lost the common touch. He never simulated. It was just impossible for him to simulate. I remember that, not long before he entered hospital, he told me with understandable pride that a life-long colleague in the profession had paid him the compliment of saying that he had never ceased to be Humphrey O'Leary.

" He had a high sense of duty, and, while he was lying ill in hospital, he was continually concerned as to whether he was justified in retaining office; and I should like it to be known that he was willing to tender his resignation at any time but I invariably urged him to dismiss all such thoughts from his mind and to concentrate on regaining his health and strength. I should also like it to be known that he spoke very appreciatively and gratefully of his brother Judges for the way they shouldered his burden on the Bench.

" Viewing his work on the Bench from a distance so to speak, it was always characterized by outstanding ability, geniality, dignity, and fairness. He tempered justice with mercy, and if, as Mr. Justice Fair indicated, he may at times have tempered justice with a little too much mercy, we can at least say with Goldsmith that " e'en his failings leaned to virtue's side ".

" No account of the life of the late Chief Justice would be complete without a reference to his fondness for Rugby football. He was a familiar figure at Athletic Park, where he delighted especially in seeing his own Varsity team in action, the Club with which he had a life-long association and for which in his younger days he was a prominent player.

" He has been taken from us, but I am sure I voice the opinion of all when I say that his outstanding ability, devotion to duty and genial personality will ever be remembered by all who were privileged to know him. I join with His Honour Mr. Justice Fair in tendering to Lady O'Leary and the members of the family deepest sympathy in which I associate the Government."

THE NEW ZEALAND LAW SOCIETY.

Mr. W. H. Cunningham, President of the New Zealand Law Society, said that he desired to associate the members of the New Zealand Law Society in all parts of the country in the tribute being paid that morning to the late Chief Justice, The Right Honourable Sir Humphrey O'Leary, K.C.M.G. He added that he had received special messages from the Canterbury, Marlborough, Nelson, and Taranaki District Law Societies who also wished expressly to be associated.

"Although the late Chief Justice's condition for some months past had caused anxiety to those nearest and dearest to him, his death on Friday last came as a grave shock to his innumerable friends in the law in every part of New Zealand," the President continued.

" His early life and scholastic career have been referred to by Mr. Attorney, as also his brilliant career as a student at Victoria University College where he demonstrated the possession of qualities which were later to ensure his outstanding success at the Bar and his ultimate appointment to the highest judicial office in the land. He was a sound lawyer and a brilliant advocate in jury cases, whose services were in demand all over New Zealand.

" He was at the height of his career at the Bar when he was elected President of the New Zealand Law Society in March, 1935, but he had previously been a member of the Council as the representative of a District Law Society ever since 1921, and while a member of the Council had served on many select committees which handled matters of great importance to the profession.

" The Law Practitioners Amendment Act, 1935, passed on October 26, 1935, shortly after he became President, was probably the most important piece of legislation affecting the profession with which he was concerned. The establishment under that Act of the Disciplinary Committee of the New Zealand Law Society transferred the disciplinary functions of the Court of Appeal to the Society itself. Sir Humphrey was the first Chairman of that Committee, and retained office until his elevation to the Bench. Needless to say, as Chairman he displayed all those qualities which so eminently fitted him for high judicial office, and he shaped the functioning of that Committee during its initial stages, as the Act intended and the profession desired.

" During his term as President, the New Zealand Council of Law Reporting Act, 1938, became law, an Act which placed the ownership of the New Zealand Law Reports and the control of Law Reporting in New Zealand on a satisfactory basis and in the hands of an incorporated body. He served on that body as an *ex officio* member from its formation until his elevation to the Bench.

" He also had a seat on the Council of Legal Education, which was established in 1930, and at the time of his death he was actually its Chairman and had been since 1946.

" Sir Humphrey, during the term of approximately eleven years that he held the office of President, the longest term of any President except Sir Francis Bell who held it for sixteen years, proved a skilled administrator of the affairs of the profession and fully maintained the prestige of the New Zealand Law Society.

" He was an urbane and tactful Chairman, conducted the meetings of the Council with efficiency and despatch, and presided with distinction at the general conferences of the profession held while he was President. His irrepressible Irish wit did much to enliven meetings that might otherwise have been dull, and to smooth out difficulties in matters that might have proved contentious.

" The Society and the profession must be forever grateful for the splendid and unselfish services he rendered to them while a member of the Council for twenty-five years.

" When he left us to take his seat on the Bench, he brought to his high judicial office a wide knowledge and experience of human nature, a kindly heart, and a love of justice and fair play, as well as a sound knowledge of the law and a wide experience in the Courts. He was a man's man in every sense, and after his elevation to the Bench he remained unaffected and his natural self.

" While the country mourns the passing of a great man and a great Judge, those of us who were privileged to know him and be associated with him in the law, deplore the loss of a genuine and sincere friend.

" To Lady O'Leary and to the members of his family the profession tenders its respectful and sincere sympathy in their great loss."

THE WELLINGTON LAW SOCIETY.

Mr. E. F. Rothwell, President of the Wellington District Law Society, said it was his privilege on behalf of the members of the Wellington District Law Society to associate them with the tribute today paid to the memory of the late Right Honourable Sir Humphrey O'Leary. It would be difficult to add to, and wearisome to repeat, the details of his brilliant career already given ; but he wished to pay personal tribute on behalf of those members of the profession in Wellington who were associated with him at the Bar, and who later appeared before him on the Bench. Mr. Rothwell proceeded :

" The late Chief Justice became a member of the Wellington District Law Society in 1908, and in 1919 he joined the ranks of the Council of the Society as Treasurer. He was President in 1921, and continued to serve as a Council member until 1927. He again became a member of the Council in 1935, and in that year was elected President of the New Zealand Law Society, and from then until his appointment as Chief Justice he was one of the permanent representatives of the Wellington District Law Society on the New Zealand Council.

" While a student at Victoria University College, the young Humphrey O'Leary established himself in the affections of those with whom he came into contact and achieved a reputation in football and sporting circles, as

well as scholastically. He never lost his interest in Rugby football in particular, and was highly esteemed by the sporting world.

" Before I had any contact with the profession in Wellington, the name of Humphrey O'Leary was first impressed on my mind some thirty years ago when I was a very young practitioner fresh from Otago University, gaining experience in an office in Masterton. Owing to the fact that he had had his early education in that town, Masterton people in general, and Masterton lawyers in particular, regarded him as their personal property and were keenly interested in the progress he had already made and expected of him continued progress in the legal profession. The events of later years have proved that their confidence was warranted.

" Mr. O'Leary was at that time a member of the Wellington firm which is justly known as being a nursery for legal talent, having produced two Chief Justices, an Attorney-General, and a Solicitor-General. He was still practising with that firm when I myself commenced practice at Lower Hutt, and from that time on I, in common with other practitioners in Wellington, was privileged to enjoy his friendship and appreciate his warm and kindly nature. He was always helpful to and patient with the young practitioner, and in later years his elevation to the high office which he held until his death did nothing to diminish his friendliness, helpfulness, and consideration for those who appeared before him.

" The members of the Wellington District Law Society mourn the passing of Sir Humphrey O'Leary as the loss of a valued friend and wish to be associated with the expression of sympathy already extended to his widow and family."

THE RULE AGAINST PERPETUITIES.

The Conveyancing Origins of the Rule.

By Malcolm Buist, LL. M.

(*Concluded from p. 300.*)

II.

It is one of the difficulties arising out of the Rule against Perpetuities that there does not seem to be any sensible basis for the period of time allowed by the law. Why should a figure of twenty-one years be selected ? And why may it follow a life in being, instead of being counted from the coming of the instrument into effect in all cases ?

In *Cole* v. *Sewell*, (1848) 2 H.L.C. 186, 233 ; 9 E.R. 1062, 1081, *Lord Brougham* indicated as follows the direction in which an explanation of the formulae of the Rule might be sought :

> The law never meant to give a further term of twenty-one years, much less any period of gestation. The law never meant to say that there shall be twenty-one years added to the life or lives in being, and that within those limits you may entail the estate ; but what the law meant to say was this : until the heir of the last of the lives in being attains twenty-one, by law a recovery cannot be suffered, and consequently the discontinuance of the estate cannot be effected, and for that reason says the law you shall have the twenty-one years added, because that is the fact and not the law, namely, that till a person reached the age of twenty-one he could not cut off the entail.

The system of the estate in fee tail, then, may hold the key to the limits selected by the Rule.

The Growth Of The Entail.

The background of the great family settlements in tail of late English law, settlements which moulded the Rule by their conveyancing practice, is the *maritagium*, a kind of marriage settlement developed after the Norman Conquest. A man would give lands to him who wedded his daughter, but there was a rule that unless issue were born alive, the lands would revert to the donor after the wife's death. " This rule bears an obvious resemblance to the more general rule of ' curtesy,' but for our purpose its importance lies in the fact that until the birth of issue the husband's estate is very slender ; it would be quite easy for a husband to get the impression that as far as he was concerned the gift only became a really valuable one upon the birth of the issue. From this it would be a very short step to the theory that such a gift was really conditional upon the birth of the issue — and this idea was to play an important part in the future . . . The most striking feature of the *maritagium* was the reversion to the donor upon the failure of the descendants of those whom he wished to benefit, and the entail was an attempt to extend this characteristic to gifts which were not to be confined within the traditional bounds of the *maritagium*, and, indeed, which might be entirely unconnected with any marriage." (Plucknett : *Concise History of the Common Law*, 4th Ed., 118.)

Trouble followed these developments, and when in 1258 the Barons petitioned Henry III they complained that widows were alienating *maritagia* notwithstanding that no heirs had been born. In 1285, the Statute of Westminster II, De Donis Conditionalibus, remedied this. The Preamble recited that tenements were given on condition in certain cases,—namely,

(a) To a man and his wife and the heirs begotten of that man and woman, with an express condition added that if the man and woman die without heir begotten of that man and woman, the land thus given shall revert the the donor or his heir ;

(b) A tenement in free marriage, *i.e.*, a *maritagium* in which case there is an implied condition of reverter ;

(c) A gift to a man and the heirs of his body (being what was later known as the fee tail).

The condition in each of these cases is the birth of an heir, but, the Statute points out, the practice has grown up of treating the fulfilment of this condition as a mere prerequisite to complete freedom of alienation. In consequence, it says, the heirs can be disinherited, and the right of the reverter to the donor destroyed, by the donee, as soon as an heir is born, and this is " against the will of the donors and the express form of the gift." The alienation was therefore prohibited.

For practical purposes, the estate tail was now able to develop along lines that led to the "family settlement" or "strict settlement". Two great estates of inheritance, the fee simple and the fee tail, could soon be seen. From the passing in 1290 of the statute Quia Emptores, the tenant in fee simple could freely alienate. The tenant-in-tail was prevented from doing this. On the death of the tenant-in-tail, only those heirs who were issue of his body might take.

Breaking The Entail — At Twenty-One.

Now, what did *Lord Brougham* mean when he said that till a person reached the age of twenty-one he could not cut off the entail? At first sight, if the tenant-in-tail could not, under the Statute, De Donis interfere with the descent of the land in the manner fixed by the donor, there was a perpetuity, an inalienable estate. A solution was found, however, by giving the descendants nominal rights to claim other land in lieu of that with which the tenant-in-tail desired to deal. The proceedings were the "recovery" to which *Lord Brougham* referred, and we can recognize a part of our puzzle when we see that the tenant-in-tail had to be of age before he could take part in a recovery.

In respect of the formation of the Rule, it is important that the entail established by this Statute remained for many centuries the normal mode of general conveyancing where future interests were to be provided for. It is also important that the "recovery" established in favour of the tenant-in-tail a new estate in fee simple, to the detriment of the original donor's reversionary estate in fee simple. This is why limitations following an estate in tail have not been subject to the Rule: the tenant-in-tail would dispose of them — within at least *twenty-one years*. So, as is said in *Nicolls* v. *Sheffield*, (1787) 2 Bro. C.C. 215; 29 E.R. 121:

> An executory devise, however remote, may be engrafted on an estate tail; for such an estate being an estate of inheritance, and the owner thereof being competent to defeat the executory limitation and to alien the fee-simple, the Rule against Perpetuities has no place, such rule only requiring that the absolute estate or interest in the subject-matter of the limitation be not kept in suspense beyond the allowed period.

Because the solution of the problem of perpetuities in respect of entailed estates laid the foundations of the Rule as we now have it, a formal entailing is the background required for a full understanding of the Rule, notwithstanding that s. 16 of the Property Law Act, 1952, has abolished entails.

Family Settlements In Tail.

The machinery of settlement is described in *Williams on Real Property*, 18th Ed., 98, as follows:

> In families where the estates are kept up from one generation to another, settlements are made every few years for this purpose; thus, in the event of a marriage, a life estate merely is given to the husband; the wife has an allowance for pin-money during the marriage, and a rent-charge or annuity by way of jointure for her life in case she should survive her husband. Subject to this jointure, and to the payment of such sums as may be agreed on for the portions of the daughters and younger sons of the marriage, the eldest son who may be born of the marriage is made by the settlement tenant-in-tail. In case of his decease without issue, it is provided that the second son, and then the third, should in like manner be tenant-in-tail, and so on to the others; and, in default of sons, the estate is usually given to the daughters. By this means the estate is tied up till some tenant-in-tail attains the age of twenty-one years; when he is able, with the consent of his father, who is tenant for life, to bar the entail with all the remainders. Dominion is thus again acquired over the property, which dominion is usually exercised in a resettlement on the next generation; and thus the property is preserved in the family.

Already the significance of the period of twenty-one years in relation to the tenant-in-tail has been noted. In the above outline, the interest preceding that of the tenant-in-tail is a life interest, that of the tenant for life. His is the "life in being" that must determine before the final period of a majority will begin. This is the other piece of the puzzle. The *maximum* period of normal settlement machinery would be just a life in being together with twenty-one years: the life of a father and that of his posthumous son are together the utmost limit within which an estate or interest expectant upon the determination of an estate tail could hope to vest, and, if it did not vest within that limit, the barring of the entail would destroy it. This is the situation *Lord Brougham* had in mind.

The original formula of our Rule is thus, "for the lifetime of the tenant for life, and until the first tenant-in-tail attains the age of twenty-one years."

Settlements, Old and New.

One of the main differences between a modern settlement and that quoted above from *Williams on Real Property* lies in the way the period of twenty-one years is treated in each case. In each instance there will be a life in being, but the modern form will almost invariably provide for a further period of twenty-one years. This could not be done in the old scheme, where this portion of time was not definite. The modern clause ends with a final vesting after a life in being plus an additional period of twenty-one years; the older clause ends with a final vesting after a life in being, with a possibility of an additional period of up to twenty-one years, varying according to the age of the tenant-in-tail at the time the tenant for life died, and not existing at all in practice if the tenant-in-tail were already of age, as he would act immediately. In other words, the Rule against Perpetuities as we now have it, has cut loose from the actual event of the tenant-in-tail's attaining his majority, and looks merely to the notional maximum period of time within which this event could, as an abstract possibility, take place. What was previously the limit, the greatest possible extension of time that the events might allow, has now become the norm. This is what *Lord Brougham* was stressing, in *Cole* v. *Sewell*, (1848) 2 H.L.C. 186; 9 E.R. 1062.

There is another difference. In the settlement outlined by *Williams*, the life in being was that of the person enjoying the fruits of the estate, the tenant for life. By contrast, modern practice permits a stranger to be the life in being. The life in being is now in gross, and, furthermore, a considerable number of persons may be nominated. Thus, a form marking out a period, "until the expiration of 20 years from the day of the death of the last survivor of all the lineal descendants of her late Majesty Queen Victoria who shall be living at the date of my death" was approved in *In re Villar*, (1928) 1 Ch. 471; (1929) 1 Ch. 243.

(concluded on page 336)

IN YOUR ARMCHAIR—AND MINE.

By Scriblex.

Waspish Note.—Scriblex notices the case of a man involved in a serious accident on the Turangi-Taupo highway because of a wasp, which first settled on his chest while he was driving, and then, being brushed from there, settled on his lap. Striking at the insect again, the driver looked up to find another car only a few feet away. According to the prosecuting Police sergeant, the correct procedure in the trying circumstances is for a driver to slow down and pull to the extreme left side of the road. "This summer" he declared, "there will be thousands of motorists on the roads. There will be millions of insects flying about. Imagine the confusion there would be if everybody adopted the same method of ridding their cars of insects." This is true enough, in a general sense; but the trouble with wasps is that people who encounter them in cars take an immediate dislike to them. Their reaction to a wasp, especially one on the chest, brooks no delay in speeding its departure. Possibly the remedy is to cure wasp allergy or to keep one's shirt buttoned at all times.

The Missing Watch.—The doctrine of quiet repossession is illustrated by a story told by Viscount Mersey in his *Journal and Memories* (Murray, 1953). This is of an English businessman who obtained from an acquaintance he had met at a cricket match a letter of introduction to the King of one of the Balkan States. On visiting the capital, he presented his letter whereupon the King kindly asked him to dinner. "At the Palace the Englishman met a large party, but during the meal he lost his watch. Afterwards he told H.M. of his loss. The King said, 'Whom were you sitting next to?' The Englishman said, 'It was the Minister of Agriculture.' The King said, 'Leave it to me.' He then went across the room to a group of people and soon came back with the watch. The Englishman thanked him effusively and boldly asked, 'What did the Minister say?' The King hesitated slightly and then replied, 'Well, I don't think he knows he's lost it yet'."

Delicate Questions.—The normal relationship of bonhomie and goodwill that has existed between solicitor and divorce-seeking client has been disturbed of late of the necessity to interrogate the client upon the legitimation (if any) of his children. If the petitioner is a female, then, unless the position is handled with consummate tact, she is already making tracks out of the office before the instructions are complete. It is relief to find that this delicate situation can arise in the testamentary as well as in the matrimonial field. According to "Escrow" of the *Solicitors' Journal* (and credit for this discovery must be given to him) Volume 8 of the *Encyclopoedia of Forms and Precedents* contains a series of questions to be put to an Intending Testator and of these No. 17 reads:

> "Have you any child who is mentally deficient? Is there any doubt as to the legitimacy of your children or any of them"?

Like Escrow, Scriblex confesses to a liking for the "any of them" touch, although as a common-law man he would add—"and, if so, which".

All Over But the Shouting.—Turner, J., is reported as saying, in his summing-up in *Painton* v. *Heibner and Milne*, that there were millions of reasons why a horse does not win a race and that the plaintiff had merely suggested one of them. The action was one taken by the owner of the two-year-old pacer, "Superior Lawn", against the owner and the driver of a motor-car which had collided with a trailer when the horse was being towed. It was contended that "Superior Lawn" was a "certainty" for the Welcome Stakes at Addington, but was so unnerved by the accident that it finished out of a place. "Although this is a most unusual case, there have been others where people who have been closely in the running for some prize in life have recovered damages. It is for the plaintiff to show that he did before the accident have such a substantial chance of winning that he was entitled to win." His Honour's use of the word "entitled" in this context rather indicates that he takes a warmer view of an owner's optimism than circumstances generally permit. There are owners who claim that they have a "mortgage" on a particular race, but the form of the mortgage is unknown to conveyancers. One famous owner whose classically-bred two-year-old had racing characteristics (it was thought, to perfection) yet stood on the mark when the others left the post. It was untrained in aeronautics, and stood and stared at a plane that was passing overhead at the time.

Casus Omissus.—The Licensing Amendment Bill (No. 2) purports to correct the anomaly pointed out by Hutchison, J., in *Grice and Howan* v. *Hanna*, [1952] G.L.R. 592, where areas that were formerly in no-licence districts, and, as such, enjoyed the right to restorations polls at general elections, now find themselves in ordinary licensing districts because of changes made in electoral boundaries between 1918 (when local option polls were abolished) and 1945 (when the boundaries of no-licence districts were fixed). The effect of the decision was that the grant of a licence in one of these areas (Johnsonville) was invalid because under s. 12 (*b*) of the Licensing Amendment Act, 1910, the areas retain the status they had before the change in boundaries. The Bill which runs to forty-one sections will no doubt contribute something to what MacGregor, J., once described as "the jungle of licensing legislation". It does not deal with one matter that the Licensing Control Commission has at times referred to: the desirability of a number of hotels that have accommodation available creating the demand for such accommodation by more extensive advertising. Scriblex notices that the Ashley Hotel of Jackson, Minnesota, expressly informs intending patrons on its letter-heads that "it is convenient to everything, including better hotels".

From My Note Book.—"Good feeling between gentlemen of the long robe has ever been one of the glories of the profession. Away from Court, they forget their forensic quarrels. It is not by accident that counsel always calls his opponent his learned *friend*."

"I was much impressed by something that fell from the lips of Sir Albert Cosanquet when he was Common Sergeant of the City of London. 'I have been listening to a long speech by a man at the Bar,' he said, 'I was dead against him at first, but I'm glad to think that I'm not yet too old to be convinced.'"

—Sir William Valentine Ball in "A Master's Memories".

THE RULE AGAINST PERPETUITIES.

(concluded from p. 334)

But, through these contrasts, likenesses can be traced. The " life in being " of the modern Rule against Perpetuities represents the tenant for life of the old settlement, the period of twenty-one years represents the minority of the tenant-in-tail, and the essential that the estate or interest vest not later than the expiration of the final period of twenty-one years represents the power of the tenant-in-tail to bar the entail on reaching his majority.

Thus, a gift of £100 to the *next present law-clerk* of a named firm who completes the degree of LL.B. is good, whilst the same gift to the *next law-clerk* will be void. The " present " law-clerk stands in the shoes of the old tenant for life: he is a life in being, whose interest was normally vested forthwith under the settlement and therefore not caught by the Rule. The " next " law-clerk is haunted by the shadow of the tenant-in-tail, a person who, on attaining the age of twenty-one years, might bar the entail and shut out all interests not then vested. The gift to the former will vest, if at all, within a life in being (here, his own, as he is " present "); in the case of the latter, the matter may not be settled either way for a very long time beyond the period of twenty-one years allowed: *In re Stratheden, Alt* v. *Stratheden*, [1894] 3 Ch. 265.

In *In re Humphries, McNeil* v. *Humphries*, [1946] G.L.R. 162, there was a gift to H. for life, income thereafter to H's *widow* for life, remainder to such of H's children as should *then* be living. Testator was survived by H., H's wife, and H's five children. Testing by the pattern of an old-style settlement, we look first for those who could become tenants for life, and these, of course, must be lives in being at the testator's death, ready to take forthwith. H. is such a person, but, as a contributor points out in 22 NEW ZEALAND LAW JOURNAL 232, H's widow may not be the wife H. had when the testator died, but may be a second wife, a person not even born at the testator's death. Secondly, we look for the place of the tenant-in-tail. The vesting of the remainder is postponed until the death of H's widow, which may not happen until more than twenty-one years after H's death. But a tenant-in-tail would have been able to destroy such a remainder, as *Lord Brougham* said. Viewed in this perspective, the remainder would seem to be too remote, *i.e., capable of being defeated by the tenant-in-tail in a corresponding strict settlement.* Such a perspective may provide a useful working tool.

The tenant for life and the tenant-in-tail are the ghostly figures that still control the scheme of the Rule against Perpetuities, and a devout pilgrimage to their ancient shrine, the settlement in fee tail, can bring blessings of light to our meditations upon the Rule.

THE CONVEYANCER'S BARGAIN DAY.

In a recent issue, *Ante*, p. 300, the common-law practitioner, B.C.H., voiced the views of his brethren on a recent pronouncement of the President of The Law Society (England).

We're asking you, Bryce,
Do you think it quite nice
To restrict all the Law's advertising
To Counsel who guide
On the Common Law side,
Whose opinions are merely surmising.

Conveyancing men
With a stroke of the pen
Can settle 'most any transaction.
We tell 'em for sure
That their title is pure,
But from fees there can be no subtraction.

A neat little par
In the *Herald* or *Star*
Would encourage a man to instruct one.
He normally squirms
But if costs were " on terms ",
From the guineas 'twould seem to deduct one.

To soften the bill,
Advertise that the pill
Will be sugared and easily swallowed.
(We don't say the fee
Of the Public Trustee
For the making of Wills should be followed.)

On settlement dates,
What with duty and rates,
We arrive at a staggering total.
Can anything show
That our fee is too low
We imagine our advertised quote'll.

A mortgagee lends,
His solicitor sends
Mortgage deed; not a bill, he may rue it.
We'd sign it " correct "
On a form that's bedecked
With a photograph showing who drew it.

—M.J.R.