New Zealand
Law Journal

Incorporating "Butterworth's Fortnightly Notes"

VOL. XXX TUESDAY, FEBRUARY 16, 1954 No. 3

PRACTICE: COSTS: WHEN A "BULLOCK" ORDER IS INAPPROPRIATE.

WHAT has come to be known as a "Bullock' Order for costs is an order made, where an action is brought claiming relief against defendants in the alternative, that the plaintiff pay the costs of a successful defendant and such costs be added to the costs which the unsuccessful defendant has to pay to the plaintiff. Or, to put it in another and more modern way, it is an order requiring a defendant against whom judgment in an action has been obtained to pay the costs of a second defendant (against whom the action has been dismissed) direct to that defendant. Such an order may be made whether the action be in contract or in tort.

Recently, in *Mulready* v. *J. H. and W. Bell, Ltd.*, [1953] 2 All E.R. 215, the Court of Appeal, in a judgment delivered by Lord Goddard, L.C.J., pointed out when the making of a Bullock order is inappropriate.

It may be as well, therefore, to recall the circumstances in which the original Bullock order was made.

The case of *Bullock* v. *London General Omnibus Company and George Trollope and Sons, Ltd.*, [1907] 1 K.B. 264, came originally before Bray, J. It arose out of a collision between an omnibus belonging to the company and a cart belonging to Messrs. Trollope. The action was brought by a Miss Bullock, who was riding in the omnibus, to recover damages sustained by her through that collision. She alleged that her injuries were caused by the joint negligence of the two companies, or, alternatively, by the separate negligence of each of them. In such a case, the negligence alleged against the two defendant companies could not depend upon the same facts. No objection was taken to the joinder of the defendants. Bray, J., thought she acted reasonably in joining them both. In the result, there was a verdict in favour of Miss Bullock against the General Omnibus Company, and a verdict in favour of the other defendant with costs against Miss Bullock.

Application was made on behalf of the plaintiff that the costs payable by her to the successful defendants should be added to the costs which the Omnibus Company were ordered to pay to her, and the judgment as finally drawn up contained the following clause:

> It is adjudged that the plaintiff recover against the defendants the London General Omnibus Company, Limited, £150 damages and her costs of this action to be taxed, such costs to include all costs incurred against the London General Omnibus Company, Limited, by reason of there being two defendants, and further the costs she may have to pay the defendants George Trollope and Sons, Limited.

Thus, the omnibus company had to pay all the costs.

It had been contended that R.S.C. Ord. XVI, r. 4 (R. 61 of the Code of Civil Procedure) applied only to cases of contract, but the learned Judge held that it was within his discretion to apply it in an action founded on tort. And he was affirmed by the Court of Appeal.

It may be mentioned that, at the beginning of his judgment, Bray, J., said there was no case directly in point. Undeterred by that, he laid down a rule which may often be properly applied. If a plaintiff brings an action against Smith and Robinson, and gets judgment with costs against Smith and fails against Robinson, there is generally no reason why Smith should pay the costs of Robinson. But if Smith has done something to mislead the plaintiff on the question of liability, or if (as so often happens) Smith and Robinson were the drivers of two motor-vehicles which had been in collision, so that the plaintiff was genuinely at a loss to say which was, or whether both of them were, guilty of the negligence which caused him damage, then, if Smith or Robinson be held solely responsible, the Court may, in its discretion, make a Bullock order.

In his judgment in the Court of Appeal in *Bullock's* case, Cozens-Hardy, L.J., as he then was—after saying that where there is a judgment against the plaintiff against one defendant and a judgment in favour of the other defendant, costs follow in each case—referred to the judgment of Romer, L.J., in *Sanderson* v. *Blyth Theatre Co.*, [1903] 2 K.B. 533, 543, in the course of which he said:

> This jurisdiction has often been exercised in Chancery in proper cases, and can, of course, be exercised in the King's Bench Division. The costs so recovered over by the plaintiff are in no true sense damages, but are ordered to be paid by the unsuccessful defendant, on the ground that, in such an action as I am considering, those costs have been reasonably and properly incurred by the plaintiff as between him and the last-named defendant.

That, His Lordship concluded, was the principle adopted by Bray, J.; and, in His Lordship's opinion, that learned Judge had ample jurisdiction to make the order, and good ground for the exercise of his discretion in making it.

We may now turn to R.S.C. Ord. 16, r. 7, from which Bray, J., derived his jurisdiction to make the order for costs in *Bullock's* case. That rule is reproduced in R. 64 of our Code of Civil Procedure, as follows:

> 64. Where in any action, whether founded on contract or otherwise, the plaintiff is in doubt as to the person from whom he is entitled to redress, he may join two or more defendants, to the intent that in such action the question as to which (if

any) of the defendants is liable, and to what extent, may be determined as between all parties to the action.

As Reed, J., said, in relation to R. 64, in *Enderley* v. *Scott and Wanganui Corporation*, [1928] G.L.R. 313, 314 :

> It is not in any way incumbent upon a plaintiff to go to each of two defendants and endeavour to ascertain whether and to what extent each proposed to blame the other.

His Honour cited the judgment of Vaughan Williams, L.J., in *Besterman* v. *British Motor Cab Co., Ltd.*, [1914] 3 K.B. 181, 187, where he said :

> The proper way is do not join any defendant unreasonably ; if the facts are such that it is reasonable to join them both and reasonable to be in a state of uncertainty as to which of the two is the guilty one, then it is part of the reasonable costs of the action that the costs of the action which you have launched against one of those defendants, and who has succeeded in defending himself, should be borne by the man who is to blame.

It is now clear that, if a plaintiff is in doubt as to which of two (or more) persons is responsible in respect of his claim, whether the action be in contract (*Sanderson* v. *Blyth Theatre Co.*, [1903] 2 K.B. 533) or tort (*Bullock* v. *London General Omnibus Co.*, [1907] 1 K.B. 264), he may join both (or all) such persons as defendants to the intent that the question as to which, if any, of the defendants is liable, and to what extent may be determined as between all parties : R.S.C. Ord. 16, r. 7, or R. 64 of our Code of Civil Procedure. The object to be attained by the plaintiff in adopting this course is to gain protection as regards costs, because although he may be ordered to pay the costs of the successful defendant against whom the action has been dismissed, he may in a proper case be allowed to obtain recoupment in respect of such payment by adding those costs to the costs which the unsuccessful defendant is ordered to pay to him ; indeed, in *Sanderson* v. *Blyth Theatre Co.*, *supra*, the Court of Appeal went further. As it appears from the headnote, the Court has jurisdiction even to order the unsuccessful defendant to pay the costs of the successful defendant direct to him. This latter form of order is obviously much to the advantage of a plaintiff as it affords him complete immunity against payment of any costs ; and, it is, therefore, much more satisfactory than having to rely on recoupment, which, after all operates only by way of indemnity and conceivably may not be forthcoming. It is interesting to note that in *Mulready's* case, as appears later on, Lord Goddard defined a Bullock order as having the effect that the unsuccessful defendant has to pay the costs which the plaintiff has to pay to the successful defendant direct to the latter.

The trend in recent judgments seems to be away from the strict letter of the original Bullock order, and to make an order on the lines of that in *Sanderson's* case, *supra*. It is specifically referred to in R. 61 of our Code of Civil Procedure ; but it is a matter of discretion and not a matter of right.

It naturally requires a stronger set of circumstances to obtain an order absolving a plaintiff from paying the costs of a defendant against whom an action has been dismissed, instead of the alternative of allowing the plaintiff to add those costs to those payable to him by the unsuccessful defendant ; but that there is jurisdiction to do so is, as we have seen, undeniable. An example of such an order is to be found in *The Esrom and the Hopper Wills, No.* 66 ([1914] W.N. 81), where, as between themselves, each defendant threw the blame on the others. That case was followed in *Byron* v. *Woolnough Window Co., Ltd.*, [1932] N.Z.L.R. 1506, which was a claim for damages brought by a workman who was injured by a window-sash falling on him from one of the upper windows of a building in course of construction. The respective defendants were the contractor for the whole building and a subcontractor who supplied the windows. The plaintiff alleged that both defendants had been negligent, thus causing his injuries. The jury found against each defendant for damages, and judgment was entered against both at the trial. Each defendant moved, in pursuance of leave reserved, to set aside the judgment so and for judgment in its favour *non obstante veredicto*. In the final result, the judgment was confirmed against the contractor, with costs, and judgment was given in favour of the subcontractor, with costs against the plaintiff. Macgregor, J., said :

> The question now arises : What is the proper order to be made regarding the ultimate payment of the costs awarded to the successful defendant ? A similar question was discussed and determined by Reed, J., in *Enderby* v. *Scott and Wanganui City Corporation*, [1928] G.L.R. 313. In that case, it was held that the test to be applied was : Were the costs incidental to the joinder of the successful defendant reasonably and properly incurred as between him and the unsuccessful defendant ? Applying that test in the present case, it appears to me that it was not unreasonable to join the successful defendant along with the defendant against whom final judgment has been entered. On the facts as known to the plaintiffs and his advisers, before the trial it was impossible to be certain whose negligence it was that caused the accident. They were both charged by the plaintiff with that negligence. Each defendant at the trial, not unnaturally, endeavoured to throw the blame on the other. It was only after the evidence had been thoroughly elucidated during the hearing that it became fairly obvious that the contractor alone was legally responsible. In these circumstances, I think the rule laid down in *The Esrom and The Hopper Wills No.* 66, [1914] W.N. 81, should be followed. In that case it was decided by Bargrave Deane, J., that the usual and modern course now is that, where a plaintiff sues two defendants, who mutually throw the blame on the defendant other than himself, the unsuccessful defendant should pay the costs incurred by the plaintiff and by the successful defendant to them direct.

A Bullock order, as we have seen, has its limitations, one particular phase of which was illustrated by the recent decision of the Court of Appeal in *Mulready* v. *J. H. and W. Bell, Ltd.*, [1953] 2 All E.R. 215. The facts were that the plaintiff, a labourer employed by a subcontractor, sustained injuries while working on a roof during building operations which the first defendants had contracted to carry out in the construction of the second defendants' factory. The cause of action alleged against the second defendants, the factory owners, was failure to implement s. 26 of the Factories Act, 1937 (Eng.), by providing safe means of access and sutiable fencing, *i.e.* breach of statutory duty ; this claim, however, failed because the factory, not having been completed, was not a "factory" within the meaning of the statute. The cause of action against the first defendants, the contractors, was based entirely on a breach of the Building (Safety, Health and Welfare) Regulations, 1948 (Eng.). On that claim, it was immaterial whether the work was being done on a factory or on any other building. The plaintiff succeeded against the first defendants, but the action was dismissed against the second defendants, with costs.

In the Court below, Pearson, J., ordered the first defendant to pay the second defendants' costs ; and he gave leave to appeal on that point. On appeal, this order was set aside ; and the plaintiff was ordered to pay those costs, on the ground that a Bullock order is not an appropriate form of order to make where a plaintiff alleges independent causes of action against two defendants for breaches of duty, the two breaches alleged being

in no way connected with one another. In the case under discussion, each of the two breaches of duty alleged was statutory; but there the similarity ended, since, in fact, they were independent of each other.

In delivering the judgment of the Court of Appeal, Lord Goddard, L.C.J., said:

> We now have to deal with the costs of the action. The learned Judge made what is commonly called a Bullock order, the effect of which is that the first defendants have to pay the costs which the plaintiff was ordered to pay to the second defendants direct to the latter. In making this order, the Judge gave leave to appeal, presumably so that this Court could consider whether, in the circumstances of this case, it was proper to exercise his discretion in this matter. It is to be noticed that the cause of action alleged by the plaintiff against the second defendants is entirely independent of his claim against the first defendants. As against the second defendants, his cause of action was based on the Factories Act, 1937, s. 26, alleging that those defendants had failed to provide and maintain safe means of access and failed to provide any or suitable means by fencing or otherwise to ensure the safety of the plaintiff at his place of work. That cause of action was based on the assumption that the second defendants were the occupiers of a factory and failed because the factory had not yet been completed. The cause of action against the first defendants was based entirely on a breach of the building regulations, and there it was quite immaterial whether the work was being done on a factory or any other building.
>
> A Bullock order is appropriate where a plaintiff is in doubt as to which of two persons is responsible for the act or acts of negligence which caused his injury, the most common instance being, of course, where a third person is injured in a collision between two vehicles and where the accident is, therefore, caused by the negligence of one or the other, or both. It does not appear to us that it is an appropriate order to make where a plaintiff is alleging perfectly independent causes of action against two defendants where the breaches of duty alleged are in no way connected the one with the other. That the first defendants denied that they were responsible for the breach of reg. 31 was in effect putting the blame on Keating, but not on the second defendants; and we can see no ground on which the order should have been made; and we think, therefore, that the order that the first defendants should pay the second defendants' costs must be set aside, and the order must be that the plaintiff pay the second defendants' costs. The result is that the appeal is allowed and the order varied by reducing the damages to the sum of £6,492 10s., and the order that the first defendants pay the second defendants' costs is set aside, and the plaintiff is ordered to pay them.

The decision, therefore, is a clear authority for the proposition that it is inappropriate to make a Bullock order where the plaintiff has alleged separate causes of action against two defendants, and the two causes of action alleged are in no sense connected but are entirely independent of one another.

In any case, it must be remembered that the making of a Bullock order is not as of right; but is entirely within the discretion of the trial Judge, whose decision will not be interefered with by the Court of Appeal unless the Judge acted without any materials on which his decision could be properly exercised: *Hong* v. *A. and R. Brown, Ltd.*, [1948] 1 All E.R. 185. It must not be overlooked that overruling the exercise of discretion by a Judge is not permissible merely because the members of the appellate tribunal might individually be disposed to come to a different conclusion among themselves: *Charles Osenton and Co., Ltd.* v. *Johnston*, [1942] A.C. 130, 138; [1942] 2 All E.R. 646, 654, which was followed by our Court of Appeal in *Auckland Hospital Board* v. *Marelich*, [1944] N.Z.L.R. 596; and in *Davis* v. *Davis*, [1950] N.Z.L.R. 115, and in other Court of Appeal judgments. Consequently, the grounds on which that Court will interfere are well settled, and are perhaps as conveniently stated as anywhere by Bucknill, L.J., in *Fisher* v. *Fisher*, [1948] W.N. 138, where his Lordship said that the higher Court would do so if it was clear that the Judge "had either misapplied the law, or that he had misunderstood the evidence, or that he had put undue weight on evidence which had no weight, or had omitted to put weight on evidence which should be given weight"; and, see, also, *In re Totara Timber Co., Ltd.*, [1943] N.Z.L.R. 557.

Applying these principles to the Bullock type of order it must not be forgotten as shown by *Hong's* case (*supra*), that Ord. 16, r. 7, or our R. 64, is not imperative: it does not require joinder of parties where the determination of liability *inter se* is doubtful: it only allows it. Moreover, the rule itself makes no provision about the incidence of costs.

For a Bullock order in which the Court differentiated between costs on the amount claimed and costs on the amount recovered: see *Ronaldson* v. *Rankin*, [1948] N.Z.L.R. 850; [1948] G.L.R. 223, where the Supreme Court (Sir Humphrey O'Leary, C.J., and Smith, Kennedy, Cornish, and Gresson, JJ.) ordered that the successful defendant recover his costs against the plaintiff on the basis of the amount claimed; the plaintiff recover against the unsuccessful defendant his costs as plaintiff on the basis of the amount recovered; and that the unsuccessful defendant pay to the plaintiff a proportion of the costs the plaintiff had to pay to the successful defendant, such proportion to be the amount that would be payable as scale costs on the amount recovered by the plaintiff.

Another factor for consideration resulting from this case is that, although the joining of both parties against whom relief is sought may be reasonable at the time when the plaintiff issues his writ, it does not necessarily follow that the unsuccessful defendant should, as a foregone conclusion, be subjected to the penalty of being ordered to pay indemnity costs. These are all matters for the Judge to take into account in arriving at the conclusion in what manner he will exercise his discretion, to which end he will doubtless be helped by avoiding the pitfalls summarized in *Fisher* v. *Fisher*, *supra*, and in the other cases referred to in the same connection.

1954 DOMINION LEGAL CONFERENCE.

Conference Reminder.

All members of the profession should by now have received two circulars concerning the forthcoming Conference in Easter week at Napier.

It is imperative that all who wish to attend should immediately complete and forward to the Joint Secretaries the questionnaire supplied with the second circular.

If there is any practitioner desirous of attending the Conference who has not yet received the circulars, will he please communicate with the Joint Secretaries, Box 424, Napier.

SUMMARY OF RECENT LAW.

COMPANY LAW.

Borrowing by Companies from their Bankers, *97 Solicitors' Journal*, 754.

Winding-up—Voluntary Winding-up—Assignment of Lease for Value—Permitted Assignment—Future Performance of Covenants—Landlord's right to have Sufficient Assets of Company set aside to meet Future Rent and provide for Performance of Other Covenants. Where a solvent company, having resolved to be wound-up voluntarily, has assigned for value a lease which is beneficial to the assignee, the assignment being a permitted one, there is no absolute right to have a fund set aside out of the assets of the company to answer its liabilities under its covenants in the lease. The landlord's remedy in such a case is to prove in the winding-up. (*James Smith and Sons (Norwood), Ltd.* v. *Goodman* [1936] Ch. 216, applied.) (*Elphinstone (Lord)* v. *Monkland Iron and Coal Co.*, (1886) 11 App. Cas. 332, distinguished.) *Re House Property and Investment Co., Ltd.*, [1953] 2 All E.R. 1525 (Ch. D.).

CRIMINAL LAW.

Conspiracy—Conspiracy to effect Public Mischief—Conspiracy to effect Unlawful Purpose, defeat purpose of Statute, or Work to Prejudice of State—Conspiracy to Obtain and sell in England Pottery restricted to Sale for Export—Domestic Pottery (Manufacture and Supply) Order, 1947 (S.R. & O., 1947, No. 373), Art. 1, Art. 2, Art. 5 (as amended by S.I., 1948, No. 1616).

Trial—Summing-up—Summing-up Case of Each Defendant separately—Verdict on Each Defendant taken after Individual Summing-up and before Summing-up of Case against Next Defendant. The appellants were convicted on counts alleging a "conspiracy to effect a public mischief", the particulars being that they had conspired together by fraudulent means to obtain and sell in the home market decorated domestic pottery, contrary to the Domestic Pottery (Manufacture and Supply) Order, 1947, which forbade manufacturers to supply such pottery except for export. It was proved that the appellant obtained the goods from registered exporters or manufacturers under the false representation that they were to be exported, that the goods went to three firms controlled by one or other of the defendants, and that they were then sold to retailers under false documents and invoices describing them as frustrated or rejected exports. Persons who obtained from registered exporters or manufacturers decorated pottery, representing that it was for export, and then sold it on the home market were not dealt with specifically in the order of 1947 and no penalty was specified for making a false declaration. In summing-up at the trial the Judge first gave a general outline of the case and then proceeded to deal with the case of each defendant separately. After the summing-up of the case against each defendant, the jury was sent out to consider its verdict regarding him., and when that verdict had been returned the Judge proceeded to deal with the case of the next defendant. At no time were the jury separated when considering an individual verdict. *Held*, (1) the particulars sufficiently alleged the common law misdemeanour of conspiracy either to effect an unlawful purpose, or by dishonest devices to defeat the intention and purpose of an Act of Parliament, or to work to the prejudice of the State, offences long known to the common law. *Per curiam*: the right approach to "public mischief" cases is to regard them as part of the law of conspiracy and to hold the actions of an individual not committed in combination with others to be indictable only if they constitute what has been held in the past to be a common-law or statutory offence. (Dictum of Souldon Lawrence, J., in *R.* v. *Higgins* (1801) (2 East, 21) and *R.* v. *Manley* ([1933] 1 K.B. 529), criticized.) (2) the trial Judge acted properly in the method he adopted of summing-up to the jury, especially having regard to the length and complexity of the case, and, therefore, the appellants were rightly convicted. *R.* v. *Neal*, ([1949] 2 All E.R. 438,) distinguished. *R.* v. *Newland and Others* [1953] 2 All E.R. 1067 (C.C.A.).

Proceedings Preliminary to Trial on Indictment, *97 Solicitors' Journal*, 650.

DEATH DUTIES.

Dispositions: Gift or Sales? *97 Solicitors' Journal*, 841.

DEFAMATION.

Libel—Defamatory Words—Words Capable of Defamatory Meaning—Statement by Employer that Servant Dismissed—Practice—Preliminary Point of Law—Libel Action—Issue whether Words complained of capable of Defamatory Meaning—R.S.C., Ord. 25, r. 2 (Code of Civil Procedure, R. 154). The defendants stated in a circular letter addressed to their customers that they had dismissed the plaintiffs who had now no connection whatsoever with the defendant company. The plaintiffs sued for libel, alleging that the words used by the defendants meant that the plaintiffs had been guilty of some discreditable conduct, and the defendants contended that the words complained of were incapable of a defamatory meaning. On that issue, tried as a preliminary point of law under R.S.C., Ord. 25, 2, *Held*, The test to be applied by a Judge in deciding whether or not words were capable of a defamatory meaning was whether a reasonable jury would be justified in finding that the words complained of were defamatory, and, notwithstanding the various inoffensive meanings which the words complained of might be said to be capable of bearing, it was impossible to hold that they were not capable of a defamatory meaning. (*Dictum* of Lord Porter in *Turner (otherwise Robertson)* v. *Metro-Goldwyn-Mayer Pictures, Ltd.*, [1950] 1 All E.R. 454, applied.) *Per curiam*: the question here raised was not a proper subject to be raised and disposed of as a preliminary point of law under R.S.C., Ord. 25, r. 2. *Morris and Another* v. *Sandess Universal Products*, [1954] 1 All E.R. 47 (C.A.). As to Functions of Judge and Jury in Defamation, see *20 Halsbury's Laws of England*, 2nd Ed., pp. 433-436, paras. 521-525.

DESTITUTE PERSONS.

Maintenance—Wife obtaining Decree Nisi in Divorce on Ground of Husband's Adultery—Decree Absolute not made—No Application for Alimony or Maintenance made to Supreme Court—Power of Magistrates' Court to proceed with her application for Maintenance—Destitute Persons Amendment Act, 1951, s. 2. Section 2 of the Destitute Persons Amendment Act, 1951, empowers a Magistrates' Court to make either an interim maintenance order or a maintenance order, notwithstanding the filing of a petition in divorce by either of the parties. Where a wife has obtained a decree *nisi* in divorce on the ground of her husband's adultery, and neither party has made any application to the Supreme Court for alimony or maintenance, she may apply in the Magistrates' Court for maintenance and proceed with her application, by virtue of s. 2 of the Destitute Persons Amendment Act, 1951, and by reason of the fact that counsel has given an assurance that the issue of maintenance is not before the Supreme Court, as the Supreme Court in its divorce jurisdiction is not already seised of the same matter and the relationship of husband and wife has not been determined since the decree absolute has not been made. *Giles* v. *Giles*. (Auckland. December 9, 1953. Grant, S.M.)

DIVORCE AND MATRIMONIAL CAUSES.

Maintenance of Wife—Charge of Cruelty and of Adultery against Wife—Failure of Charges—Offer by Husband to resume Cohabitation—Refusal of Wife—Matrimonial Causes Act, 1950 (c. 25), s. 23(1). On January 15, 1951, the husband left the matrimonial home and on January 20, 1951, he wrote to his wife asking her to leave those premises. He filed a petition dated June 13, 1951, for dissolution of the marriage on the ground of the wife's adultery and cruelty, and on December 13, 1951, the petition was dismissed. The husband appealed against the dismissal of the charge of adultery, and on June 16, 1952, the appeal was dismissed. On June 20, 1952, the husband wrote to the wife: "You will no doubt have heard by now that my appeal has been dismissed. The Court decided that my suspicions were wrong. As that is the case, let us drop the matter now, once and for all, and I assure you it will never be raised again by me. The house is still here and we really must arrange a meeting and see if we can get together again". The wife refused to meet the husband or to discuss a reconciliation. On a summons by the wife for maintenance under the Matrimonial Causes Act, 1950, s.23 (1), *Held*, There being no suggestion that the husband was guilty of a matrimonial offence, the wife had to prove that he had been guilty of such grave and weighty conduct as to make married life impossible; the husband's charges of cruelty having been heard and disposed of, the wife could not for ever set up the fact that he had made those charges as providing her with just cause for refusing to live with him; the husband's offer in his letter of June 20, 1952, to meet the wife with a view to a reconciliation was genuine in the sense that he was prepared to take her back; the wife's refusal to meet the husband was not justified; and, therefore, he had not wilfully neglected to provide reasonable maintenance. (*Price* v. *Price*, [1951] 2 All E.R. 580n., applied.) *Dyson* v. *Dyson*, [1953] 2 All E.R. 1511 (P.D.A.).

HUSBAND AND WIFE.

Married Women's Property—Loan made to Debtor by Person who afterwards became His Wife—Such Person entitled, on Husband's Bankruptcy, to rank as Ordinary Creditor in His Estate—Married Women's Property Act, 1952, s. 15(1). Section 15(1) of the Married Women's Property Act, 1952, which is to be construed strictly, contemplates the case of a loan made by a person who, at the time of the loan, is the wife of the borrower. It does not apply to a loan made to the borrower by a person who was not his wife at the time of the loan, though she subsequently became his wife. Consequently, on the husband's bankruptcy while she is his wife, she is entitled to rank as an ordinary creditor of her husband's estate. (*In re Home*, (1885) 54 L.T. 301; *Haw* v. *Official Assignee of Haw*, [1927] N.Z.L.R. 366; and *In re Cronmire*, [1901] 1 Q.B. 480, referred to.) *In re Moller (A Debtor), Rawnsley* v. *Moller and Another.* (S.C. Auckland. November 19. Stanton, J.)

INCOME TAX.

Profits—Stock-in-trade—Valuation—Base Stock Method—Fixed process Stock on Machines not in Trading Account—Spare Process Stock awaiting Process at Arbitrary Valuation. In arriving at its profits for income-tax purposes for the accounting period 1947-48 a company used the base stock method of accounting, under which, of the base stock, the fixed process stock (*i.e.*, cotton undergoing process on the machines) appeared at an indeterminate amount in the item "land, buildings, boilers . . . and fixed stock" in the balance sheet, but did not appear in the trading account or the profit and loss account, and the spare process stock (cotton awaiting process) was valued at an arbitrary figure of 28d. per pound at the beginning and at 30d. per pound at the end of the period. The base stock method was found to be recognized in the industry and to be sound commercial accounting, but evidence was accepted by the commissioners that in cases of changes in the level of stocks and of rises in prices, as had occurred here, it involved an understatement of profits and the creation of a hidden reserve. *Held*, The fixed process stock and the spare process stock were both stock to be turned into yarn and in the computation of profits for income-tax purposes their value should be taken into account at the beginning and at the end of the accounting period at actual cost or market price, whichever was the lower, and, therefore, the base stock method, however well recognized for company accounting purposes and satisfactory in normal times, was not the proper method of accounting. *Patrick* (*Inspector of Taxes*) v. *Broadstone Mills, Ltd.*, [1954] 1 All E.R. 163 (C.A.). As to Stock-in-trade in the Computation of Profits for Income-tax Purposes, see *Halsbury, Hailsham Ed.*, Vol. 17, pp. 122-124, paras. 227-232; and for Cases, see *Digest Supp.*

LAND VALUATION.

Land Suitable for Industrial Purposes—Land taken compulsorily—Proper Method of Valuation—Compensation for Disturbance or Reinstatement allowable—Allowance for Value of Buildings and Improvements to be removed on Subdivision of Land for Industrial Purposes—Topsoil—Demand therefor a Factor for Consideration—Amount Allowable for Value of Topsoil in addition to Amount allowed for Land—Land Valuation Act, 1948, s. 28—Finance Act (No. 3), 1944, s. 29. The soundest method of valuing an area of land, which appears to be capable of realization to the best advantage by subdivision and sale in separate sections, is that which arrives at the present value of the land by assessing the value of the sections in a hypothetical subdivision and deducting from the gross total the estimated cost of roading and subdivision, including an allowance for risk and for profit. When this method is applied to the valuation of land taken compulsorily the allowance for profit should be strictly limited. Section 29 of the Finance Act (No. 3), 1944, is not intended to debar a claim for compensation, in appropriate circumstances, for disturbance or reinstatement; but a person dispossessed of land by compulsory taking is bound to minimize his loss by virtue of disturbance, and his cost of reinstatement, so far as may be reasonable and possible in the circumstances. An area of about 6 acres of land in Lower Hutt City, without road access, was taken by the appellant corporation under the Public Works Act, 1928, to provide the access road to a new river bridge. The land was available as immediate subdivision for industrial use; and the principal matters in issue concerned its value for that purpose. The land had been used by the respondents for many years for the training, stabling, and breeding of trotting horses; an old house and stable were erected on it, and it was fenced. The respondent's claim for compensation was heard by the Land Valuation Committee, which awarded him the sum of £29,282 10s. On appeal from that determination, *Held*, 1. That the corporation was not entitled to take the respondent's land at a price which would enable it to make a substantial profit in its undertaking. 2. That, in assessing the value of land, regarded as available for immediate subdivision for industrial purposes, the old house, stables, and fencing upon it would have to be removed and demolished; and £1,500 would be a proper amount to be allowed as a reasonable additional sum to be paid on account of the buildings and other improvements. 3. That a proper assessment of the value of the land must be assumed to cover the land as it stands and to include the soil thereon; but, in view of the demand for topsoil, which may be a factor making the land more attractive to certain purchasers a further £1,500 should be added to the amount allowed for the land. 4. That the sum to be awarded as compensation should be £23,400. *Lower Hutt City Corporation* v. *Dyke.* (L.V.Ct. Wellington. November 30, 1953. Archer, J.)

LANDLORD AND TENANT.

Landlord's Liability to Passers-by. *97 Solicitors' Journal*, 846.

LICENCE AND LICENSEE.

Canvasser—Injury Suffered on Premises of Potential Customer—Liability of Occupier. The defendant was the owner and occupier of premises bordered by an unlighted country road. The only means of access to the dwelling-house from the road was a concrete bridge over a ditch and a drive leading to the house. The plaintiff entered the premises after dark with the intention of selling advertising space to the defendant who refused to do business with him. As he left the premises, the plaintiff tripped and fell into the ditch and thereby suffered injuries. He complained that the defendant had turned off a light too soon. In an action for damages for personal injuries, *Held*, On the facts, the bridge over the ditch did not amount to an unusual or a concealed danger by day or night, and there was no breach of duty on the part of the defendant in regard to it; the defendant was not negligent with regard to the light; and, therefore, the plaintiff was not entitled to recover damages. *Per curiam*, The plaintiff was a licensee and not an invitee because he was on the defendant's premises on his own business and not on any matter in which he and the defendant had a common interest. Per *Denning*, L.J.: A canvasser who comes on your premises without your consent is a trespasser. Once he has your consent he is a licensee. Not until you do business with him is he a invitee. *Dunster* v. *Abbott*, [1953] 2 All E.R. 1572 (C.A.). As to Duty of Occupier to Invitees and Licensees, see *23 Halsbury's Laws of England*, 2nd Ed. pp. 600-612, paras. 851-863; and for Cases, see *36 E. and E. Digest*, pp. 35-49, Nos. *208-306.*

LIMITATION OF ACTION.

Limitations on Proceedings for Rates. *117 Justice of the Peace and Local Government Review*, 786.

Postponement of Limitation Period—Action for Relief from Mistake—Claim for Account—Underpayment of Money due under Contract—Limitation Act, 1939 (c. 21), s. 26(c) (Limitation Act, 1950 (N.Z.), s. 28(c)). From 1938, when she was admitted as a solicitor, until 1950, the plaintiff was in the defendant's service as his assistant under an oral agreement by which she received a basic minimum salary plus a yearly sum based on the annual net profit of the practice. In 1951 a dispute arose over the amounts which the plaintiff had been paid, and on October 1, 1951, she issued a writ claiming an account from April 1, 1938, to March 31, 1950. At the end of each of those accounting years, the defendant had orally informed her of the amount due to her, and she was then paid that amount. The defendant contended, *inter alia*, that for each of the years in question, the account between them had been agreed and settled, and he pleaded the Limitation Act, 1939, which the plaintiff contended did not apply by reason of, *inter alia*, s. 26(c) of that Act, which provides that the periods of limitation prescribed by the Act shall not begin to run in a case where the action is for relief from the consequences of a mistake until the plaintiff has discovered the mistake. *Held*, (i) A settled and agreed account might be constituted by the parties orally agreeing a final figure for the account as distinct from agreeing a written account, but on the facts of the present case there was no agreement, oral or in writing, of an account, and, therefore, no settled and agreed account. (ii) Section 26(c) of the Limitation Act, 1939, applied only where the mistake was an essential ingredient of the casue of action, as, *e.g.*, where money had been paid or a contract entered into in consequence of a mistake and appropriate relief was sought; the present action was for an account to ascertain the amount still due to the plaintiff and was not an action for relief from the consequences of a mistake within the meaning of s. 26(c); and, therefore, the Limitation Act, 1939, s. 2(2), applied to bar any account in respect of any year before 1945-46. *Phillips-Higgins* v. *Harper*, [1954] 1 All E.R. 116 (Q.B.D.). As to Postponement of Limitation Period due to Mistake, see *Halsbury, Hailsham Ed.*, Vol. 20, p. 764, para. 1049; and for Cases, see *Digest*, Vol. 32, p. 518, Nos. *1758-1761.*

MENTAL DEFECTIVES.

Mental Defectives—Jurisdiction of Supreme Court—No Statutory Authority for granting Leave to create Easement on Land of Mentally Defective Person—Court's Inherent Jurisdiction—Power to give Leave for Creation of Such Easement if for Benefit of Patient—Judicature Act, 1908, s. 17—Statute Prerogativa Regis (Circa 1399) 17 Edw. 2 c. 12.

Mental Defectives—Disclosure to Court of Contents of Mental Patient's Will—Such Disclosure to Necessary Extent proper where Court invoked to authorize Transaction affecting those Dispositions.

Mental Defectvies—Farming Operations on Patient's Land—Public Trustee as Statutory Administrator—Leave of Court given to carry on Farming Operations for Period limited to Term of Public Trustee's Powers and Functions in Relation to Patient's Estate—Mental Defectives Act, 1911, ss. 100(x), *101*(d). Section 17 of the Judicature Act, 1908, confers on the Supreme Court, *inter alia*, the ancient inherent jurisdiction known as the Prerogative, and included in the Statute Prerogativa Regis (temp. incert.) 17 Edw. 2, c. 12 (*4 Halsbury's Statutes*, 2nd Ed., 52), to do what is for the benefit of a lunatic in respect of his lands; and this includes power to grant an easement over the land of a mental patient if it is for the benefit of the patient. (*In re Sefton*, [1898] 2 Ch. 378, applied.) (*In re Binnie*, (1886) N.Z.L.R. 4 S.C. 444, mentioned.) Disclosure to the necessary extent of a mental patient's testamentary dispostions is necessary and proper in cases where the Court is invited to authorize a transaction which may affect those dispostions, so that, in view of the consequences which may ensue in regard to the dissolution of the property when the mental patient dies, the Court should be informed sufficiently as to any testamentary dispositions which may be affected by its order. (*Attorney-General* v. *Ailesbury*, (1887) 12 App. Cas. 672, 695; and *In re Gist*, [1904] 1 Ch. 398, referred to.) After a period of absence on leave W. was discharged from a Mental Hospital as " unrecovered " on March 22, 1953, and the custody and administration of her estate was vested in the Public Trustee under s. 88 of the Mental Defectives Act, 1911. W. owned a farm of approximately 85 acres, on which she had resided since March, 1951; and it was managed by her two sons under the control and supervision of the Public Trustee. W. received a monthly allowance out of the profits, and a sum of £528, accumulated surplus profits, was in the Public Trustee's hands. Under s. 100(*x*) of the Mental Defectives Act, 1911, the Public Trustee had power, without the leave of the Court, to carry on the farming business for a period not exceeding two years. That period having expired, he sought an order under s. 101(*d*) authorizing the further carrying on of the business until March 22, 1958. The Public Trustee, as statutory administrator, also asked for an order that he be authorized to expend a sum not exceeding £550 towards the cost of the installing of a water-supply scheme, and the obtaining of a proper registrable easement therefor for the purpose of providing water to W.'s land, and the reticulation of water to paddocks on it, and, for that purpose to join in with any person or persons and to make contributions towards the cost of a common water-supply scheme with him or them, including the cost of the survey of the pipe-lines and the registration of pipe-line easements against the titles to adjoining lands, and the granting and registration of a similar easement over W.'s land for the benefit of adjoining lands upon such terms and conditions as the Public Trustee thought fit. *Held*, 1. That the Public Trustee, as the statutory administrator of W.'s estate be authorized to carry on farming operations on W.'s land for the period ending March 22, 1958, or with the earlier cessation of the powers, duties ,and functions of the Public Trustee as statutory administrator. 2. That there was no provision in the Mental Defectives Act, 1911, to enable the Court to authorize the Public Trustee to act in relation to the creation of the proposed easements over the mental patient's land, and with regard to the incidentals of that transaction. 3. That the proposed transaction was for the benefit of a mental patient, and the present case was an appropriate one for resort to the inherent jurisdiction of the Court, and an order in terms sought by the Public Trustee would be made. (*In re Sefton*, [1898] 2 Ch. 378, applied.) (*In re Binnie*, (1886) N.Z.L.R. 4 S.C. 444, mentioned.) 4. That the expenditure involved in the proposed transaction was outside the ordinary course of management, and might properly be regarded as an expenditure by way of permanent improvement, and it would substantially increase W.'s income from the farm. 5. That, as both the realty and the personalty were likely to share in the ultimate benefits from the proposed transaction, some part of the burden of the expenditure should fall on the realty. 6. That, on an estimate of what was fair and just, one half of the moneys expended should be borne by the realty without recourse to the personalty, and the remainder should be borne in the first place by the realty and recouped by annual payments out of the profits earned while the Public Trustee continued to have the custody and administration under s. 88 of the Mental Defectives Act, 1911. (*In re Gist*, [1904] 1 Ch. 398, applied.) 7. That the moneys expended, or so much thereof as remained from time to time unrecouped in the manner set out in the judgment, should be a charge on the land (subject to any existing mortgage or charge), the charge to be vested in the Public Trustee as trustee for the patient and to be held by him as part of W.'s personal estate; and he would be authorized and directed to embody the charge in an appropriate instrument registered against the title to the land. *In re W.* (*a Mental Patient*). (S.C. Auckland. November 5, 1953. F. B. Adams, J.)

PRACTICE.

Magistrates' Court—Judgment—Judgment of English Court of Appeal conflicting with Judgments of Supreme Court of New Zealand—Magistrates' Court bound to follow Judgment of English Court of Appeal.

Motion—Notice of Motion filed and served on Friday—Following Tuesday named as Day of Hearing—Saturday and Sunday not excluded from " at least three clear days before the day named in the notice for hearing the motion "—Notice not Short for Hearing on Such Tuesday—Code of Civil Procedure, RR. 395, 590. Saturday and Sunday are not excluded in the computation of the " three clear days before the day named in the motion for the hearing of the motion " which, by virtue of R. 395 of the Code of Civil Procedure, must elapse between filing and service of a motion and the day named therein as the day for the hearing of the motion. (*Defiance Churn Co.* v. *Tait*, (1894) 12 N.Z.L.R. 607 applied.) *Aliter*, in the computation of time under R. 590 *from* and *after* the date or event appointed or allowed for doing any act or taking any proceeding. (*Anderson* v. *Ziesler*, (1889) 7 N.Z.L.R. 116 and *McQueen* v. *William Tell Gold-mining Co., Ltd.*, (1890) 8 N.Z. L.R.478, referred to.) This case is reported on this point only. *Downes* v. *Downes*. (S.C. Wellington. December 8, 1953. Barrowclough, C.J.)

Service and Irregularity. *103 Law Journal*, 776.

PUBLIC REVENUE.

Income Tax—Travelling Expenses of Taxpayer—Assessable Income derived from Two or More Sources—Taxpayer deriving Income as Governing Director of Company in Wellington—other Income derived from Farm in Hawke's Bay—Presence in Wellington and in Hawke's Bay necessary to earn Total Assessable Income—Deduction claimed for Expenses of Travel between Wellington and Farm and of Travel to Stock Sales, Ram Fairs, and the Like—All Such Travelling Expenses " expenditure exclusively incurred in the production of assessable income "—Travelling Expenses properly deductible from Taxpayers' Total Income—Land and Income Tax Act, 1923, s. 80(2). A. was the governing director of a private company having its registered office in Wellington and carrying on business there as general merchants. He resided in Wellington and attended personally to the company's business there. He was the owner of a farm of 763 acres in Hawkes Bay, some 200 miles from Wellington. He had a manager resident thereon, but he himself made frequent journeys to the property for the purpose of generally supervising the farming operations, of doing certain work thereon, and of visiting stock sales, ram fairs, and the like. For the tax year under review, the appellant derived income from the farm. From his total income, he claimed to deduct for tax purposes the sum of £240, representing his estimate of the travelling expenses incurred in making the journeys to the farm from Wellington to attend to the work on the farm, and of travelling to stock sales and other places on farming business. The Commissioner of Inland Revenue disallowed the deduction, and A. appealed against that decision. *Held*, 1. That, on the facts, the appellant devoted substantial personal attention to both the business of the company in Wellington and to the farming operations in Hawke's Bay, and that the production of his total assessable income was materially dependent on that personal attention. 2. That the expenses of travel between Wellington and the farm, and of travelling to stock sales, ram fairs, and the like, were " expenditure exclusively incurred in the production of assessable income " within the meaning of s. 80(2) of the Land and Income Tax Act, 1923. (*Re Income Tax Acts*, (1903) 29 V.L.R. 298, applied.) ..(*Federal Commissioner of Taxation* v. *Green*, (1950) 4 A.I.T.R. 471, and *Case No. 76*, (1950) 1 C.T.B.R. (N.S.) 329, referred to.) (*Ricketts* v. *Colquhoun*, [1926] A.C. 1,

NOTICE OF PARTNERSHIP.

MESSRS. WILLIAM THOMPSON CHURCHWARD and FRANK WILMOT HORTON, who have for some years carried on the practice of Barristers and Solicitors at Blenheim under the style of BURDEN, CHURCHWARD & HORTON wish to announce that as from the 1st day of February, 1954, they have admitted into partnership MR. PAUL LOXTON MOLINEAUX, M.A., LL.B., who has been associated with them for some time past, and that henceforth the practice will be carried on at the same premises in Blenheim under the style of CHURCHWARD, HORTON & MOLINEAUX.

WANTED.

SOLICITOR aged 28, recently qualified, seeks position in town or city. Experience of conveyancing and estates. Please reply "CONVEYANCING," C/o P.O. Box 472, WELLINGTON.

LEGAL ANNOUNCEMENTS.

Continued from cover i.

OLD ESTABLISHED FIRM, AUCKLAND, requires Barrister and Solicitor with sound knowledge conveyancing estate and other branches legal work. PARTNERSHIP later available to suitable applicant. Reply with particulars to "ESTATES," C/o P.O. Box 472, WELLINGTON.

VACANCY 238 — GOVERNMENT OF WESTERN SAMOA—LEGAL OFFICER.

Applications are invited for the position of Legal Officer, Government of Western Samoa, Apia. Salary £860 a year, rising by increments to £960 a year Samoan Scale, plus expatriation allowance of £200 a year for a married man with dependent children under 16 years, £150 a year for a married man without children, and £75 a year for a single man. Term of appointment will be for three years and on completion of contract three months furlough on full pay is granted. Subject to completion of contract, fare (including wife and family under 16 years) is payable both ways. Married quarters with heavy furniture are available. Rent £66 to £72 a year. Applicant should be admitted as a Solicitor of the Supreme Court of New Zealand.

The appointee will be required to act as Land Registrar, Public Trustee, and Commissioner for Labour, and to assist the Attorney-General in the general legal work of the Territory. He will also be required to act as a Commissioner of the High Court and as Official Assignee. Applicants should have at least five years practical legal experience and a sound knowledge of conveyancing, estates administration, and Court work. Knowledge of bookkeeping is desirable.

Any further information (please specify) may be obtained from the Department of Island Territories, Hotel Cecil Buildings, Lambton Quay, Wellington.

Applications on P.S.C. 17A (from Post Office) with copies only of testimonials close on March 22, 1954, with the SECRETARY, PUBLIC SERVICE COMMISSION, WELLINGTON.

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LEGAL ANNOUNCEMENTS.

Continued from page v.

CROWN SOLICITOR IN TONGA.

Duties consist of those of legal advisor and legal draftsman. Appointee might be required to act as Judge of the Supreme Court for relieving periods. Salary from £920 rising to £1000 Tongan currency plus temporary exchange bonus 12½ per cent. and cost of living allowance 20 per cent. Free passages. Living quarters available. Generous leave. Thirty-six months' resident service with renewal if desired. Written applications with testimonials all in duplicate, and photograph to TONGA GOVERNMENT AGENTS, BOX 462, AUCKLAND.

PRACTICE—PARTNERSHIP.

SOLICITOR seeks purchase of practice or partnership share, in town North or South Island. Please reply to :

"PRACTICE"
C/o P.O. Box 472, WELLINGTON.

R. G. BRICKELL,

R. G. BRICKELL, M.I.C.E., M.S.I.N.Z., A.M.I. Struct. E., A.M.N.Z.I.E. Chartered and Registered Civil and Structural Engineer ; Registered Surveyor. Consulting in Foundation Investigations and Designs ; Highways ; Drainage and Water Supply ; Land Subdivision and Development. Postal Address : 20 Kotari Road, Days Bay. Tel : Eastbourne 122D. By appointment at : Paragon Chambers, Cr. Lambton Quay and Kelburn Ave., Wellington C.1. Tel : Wellington 46-627.

distinguished.) *A.* v. *Commissioner of Inland Revenue.* (Wellington. November 27, 1953. Marsack, S.M.)

PUBLIC WORKS.

Compulsory Acquisitions—Complexities. *216 The Law Times*, 625.

TENANCY.

Business Premises—Possession—No Suitable Alternative Accommodation Available—Onus on Landlord to Prove Preponderance of Hardship—Matters to be taken into Consideration—Comparative Hardship as between Plaintiff and defendant Companies, Their Shareholders, and Employees, and Interests of Public—Manner of determining whether Part of Premises "in excess of the reasonable requirements of the tenant"—Tenancy Act, 1948, ss. 24(1)(e)(h), *25(1)*(b). In order to find out what part of the premises, if any, is " in excess of the reasonable requirements of the tenant " in terms of s. 24(1)(*e*) of the Tenancy Act, 1948, it is first necessary to determine with some precision what the reasonable requirements of the tenant may be. This involves a careful consideration of the business carried on by the tenant in its part of the premises, how far that kind of business is necessary to the company's business as a whole, and what premises are the minimum necessary to enable that business reasonably to be carried on. The plaintiff company, a theatre proprietor, conducted, among others, the St. James theatre, Auckland, which is situated in one of the city's most valuable shopping areas. The foyer of the theatre runs through at approximately street level from Queen Street in the front of the building to Lorne Street at the back, the public being able to enter from either street. On the Queen Street frontage on the northern side of the theatre foyer there were, until recently, five shops. The one nearest the theatre itself was in process of demolition so as to enlarge the foyer. The next shop, proceeding northwards, was occupied by the defendant company which, for many years, has carried on a retail butchery. The defendant company's shop continued (widening behind the other shops) through the whole depth of the premises back to Lorne Street, thus consisting of a large area of floor space running from Queen Street to Lorne Street, with a total width of over 40 ft. at the back, fronted by a comparatively narrow shop on the Queen Street frontage, and backed by an effective street frontage of about 24ft. to Lorne Street. The plaintiff company applied for possession of the shop occupied by the defendant company on the ground that the premises were reasonably required by the landlord for its own occupation. Alternatively, it was alleged that a part of the premises—*i.e.*, the Queen Street shop only—constituted premises in excess of the reasonable requirements of the tenant, and an application was made for possession of that part only upon this ground. The learned Judge, weighing against each other the matters of comparative hardship, found, for the reasons given in the judgment, (*a*) that, as between the companies themselves, the plaintiff company had not proved greater hardship ; (*b*) that, as between the shareholders of the two companies, although the proof was not very satisfactory, such evidence as there was supported the conclusion that the balance of hardship was in favour of defendant ; (*c*) that, as between employees, while the importance of this factor was in the present case as great as in some other cases, such weight as it possesses supports the defendant ; and (*d*) that, as regards public convenience, the plaintiff company could not take its case further than the proposition that considerations of public convenience may be something like equal in the case of each company—it cannot definitely tip the scales in its own favour even here. *Held*, 1. That, on total balance, the plaintiff company had not satisfied the Court that the hardship caused to it or to other persons by the refusal of an order would be greater than the hardship caused to defendant company and to other persons by its refusal ; and, accordingly, the plaintiff had not satisfied the onus cast upon it as necessary for its success under s. 25(1)(*b*) of the Tenancy Act, 1948. An order for possession of the whole of the premises be refused. 2. That the " only part of the premises in excess of the reasonable requirements of the tenant, within the meaning of s. 24(1)(*e*) was a part (and perhaps a substantial part) of the premises at the back, including a reasonably substantial part of the Lorne Street frontage ; but no portion of the Queen Street part of the premises was in excess of the reasonable requirements of the tenant. An order for possession was refused, and judgment was given for the defendant company. *John Fuller and Sons, Ltd.* v. *Auckland Meat Co., Ltd.* (S.C. Auckland. October 8, 1953. Turner, J.).

Perdurability of Statutory Tenancies, *97 Solicitors' Journal*, 708.

TRADE MARK.

Registration—Distinctiveness—Deception—Mark Registered for Roses—Intended User as Variety Name—Trade Marks Act, 1938 (c. 22), s. 9(1)(d), *s. 11 (Trade Marks Act, 1953 (N.Z.), ss. 14(1)*(d), *16)*. In 1948 a rose registration scheme was introduced which was accepted by the rose growing and rose selling trade. A society keeping the register compiled a list containing one identifying name in respect of each known variety, and undertook to register any new variety submitted for that purpose. The respondents, a firm of rose growers, registered eleven new varieties of roses with the society which they supplied to the public and other growers either in the form of trees or bushes or of buds for propagation, and they registered the designation of each variety as a trade mark. Each trade mark so registered consisted of a word which, *prima facie*, had no direct reference to the character or quality of the roses. *Held*, (i) The name by which each rose was designated signified a variety and was not capable of distinguishing between examples of the same variety coming from different trade sources ; the trade marks did not consist of a word or words having no direct reference to the character of the goods ; and, therefore, under s. 9(1)(*d*) of the Trade Marks Act, 1938, they were not registrable. (ii) To persons acquainted with the rose registration scheme, the use of any name entered on the rose register as importing a reference to trade origin would inevitably cause confusion, and leaving the marks on the register of trade marks would impede the effort of other traders and embarrass them and their customers ; and, therefore, by virtue of s. 11 of the Act of 1938, the marks were not lawfully registered and they must be expunged from the register under s. 32(1). *Re Wheatcroft Brothers, Ltd.*, [1954] 1 All E.R. 110 (Ch. D.). For the Trade Marks Act, 1938, s. 9(1)(*d*), and s. 11, see *25 Halsbury's Laws of England*, 2nd Ed. pp. 1187, 1189.

TRAMWAYS.

Promoters' Duty to maintain in Good Condition and Repair Roadway extending Eighteen Inches beyond Tram-rails—Hole in Roadway adjacent to Tram-rails—Damage to Tyres of Motor-car caused thereby—City Corporation, as Promoter and Local Authority, liable for Breach of Statutory Duty—Tramways Act, 1908, Second Schedule, cl. 16(1). As the Supreme Court in New Zealand regards itself bound by a decision of the English Court of Appeal if such a decision conflicts with a decision of the Supreme Court, the Magistrates' Court in like circumstances is bound to follow the English Court of Appeal. (*Lysons* v. *Commissioner of Stamp Duties*, [1945] N.Z.L.R. 738, applied.) (*Clark* v. *Moore Wilson and Co., Ltd.*, (1946) 5 M.C.D. 195, referred to.) Clause 16(1) of the Second Schedule to the Tramways Act, 1908, imposes upon the tramway authority an unqualified statutory duty to maintain and keep in good condition at all times, so much of any road whereon any tramway belonging to them is laid, and so much of the road as extends 18 in. beyond the rails and on each side of the tramway, notithstanding there has been no indication of dissatisfaction from the local authority. (*Brown* v. *De Luxe Motor Services and Birkenhead Corporation*, [1941] 1 All E.R. 383, followed.) (*Morris* v. *Canterbury Tramway Co., Ltd.*, (1892) 10 N.Z.L.R. 524 ; *Dunedin City and Suburban Tramway Co.* v. *Ross*, (1895) 13 N.Z.L.R. 366 ; *Municipal Tramways Trust* v. *Stephens*, (1912) 15 C.L.R. 104 ; and *Invercargill Borough* v. *McKnight*, [1923] N.Z.L.R. 1044 ; [1923] G.L.R. 636, referred to.) Thus, where the owner of a motor-car suffered damage to his tyres through driving into a hole adjacent to a tram-rail in the City of Wellington, the Wellington City Corporation, which is both promoter and local authority, was liable for the breach of statutory duty imposed on it by cl. 16(1) of the Second Schedule to the Tramways Act, 1908. *Brown* v. *Wellington City Corporation*. (Wellington. November 9, 1953. Thomson, S.M.)

TRANSPORT.

Owner to give Information as to Identity of Driver of Motor-vehicle—"Owner" including person in actual possession under Hire-purchase Agreement, although Whole of Purchase-price not paid. The term " owner ", as used in s. 49 of the Transport Act, 1949, includes a person who has acquired the actual lawful possession of a motor-vehicle and the right to possess it under a hire-purchase agreement in respect of which the whole of the purchase-money has not been paid. *Police* v. *Hay*. (Whangarei. January 29, 1954. Herd, S.M.)

TRUST AND TRUSTEES.

Common Good Trusts. *97 Solicitors' Journal*, 857.
Trust for the Up-keep of Tombs. *97 Solicitors' Journal*, 846.

TO HONOUR THE CHIEF JUSTICE.

Enthusiastic Bar Dinner at Auckland.

There was a large and representative gathering at the Bar Dinner recently given by the Auckland District Law Society in honour of the new Chief Justice. In fact, the largest available dining hall in the city was filled to capacity, and there were many disappointed practitioners who were thus unable to attend. The Bench was represented by Mr. Justice Finlay, Mr. Justice Stanton, Mr. Justice Hutchison, and Mr. Justice F. B. Adams. All the local Magistrates were present, as was the Mayor of Auckland, Mr. J. H. Luxford, C.M.G. Among the visitors were the Attorney-General, the Hon. T. Clifton-Webb, and the President of the New Zealand Law Society, Mr. W. H. Cunningham.

Practitioners from the outlying towns in the Auckland district, from as far away as Tauranga, attended the dinner.

The gathering was a very happy one and the dinner itself was of a very high standard. The obvious sincerity and enthusiasm with which the new Chief Justice was greeted and with which references to instances of his distinguished career, and to his many qualities of mind and heart, showed the warm affection and great regard in which he is held by his Auckland brethren and former colleagues.

Altogether, the dinner was a very happy occasion, and it will linger in the memories of those present as one of the most successful legal functions ever held in Auckland. And, moreover, it was an historic occasion for the profession practising there.

The Toast of The Chief Justice.

The President of the Auckland District Law Society, Mr. G. H. Wallace, proposed the toast of His Honour the Chief Justice.

" This is an occasion unprecedented in Auckland and renews our pride in our calling. We all have the most profound respect for the most honourable office within the gift of the Government—the office of Chief Justice. We are also entitled to remind ourselves that it is from our ranks and our ranks only that the Chief Justice may be chosen. Before the community he stands, not only as head of the Judiciary but as the representative of the highest office in the province of the law. It is just with both these aspects of that appointment in our minds that we pay homage to him who has answered the call to serve in that high office.

" We, in Auckland, where His Honour has spent most of the maturer years of his life, have felt an especial pleasure in his appointment for he is the first Chief Justice appointed from Auckland. We are appreciative of the honour that he has brought to the Auckland Bar.

" The gratification that we have felt at his elevation is, however, based on far wider grounds than that. It is based on our respect for his character, on our recognition of his achievements, and on our confidence that in his hands the status and traditions of his great office will be maintained in the way in which we are proud to think they have been maintained throughout our history.

" His Honour ascends the Bench with a record of achievement behind him which has already made him a national figure. He has rendered great service to our Dominion and to the Empire. All of us are familiar with his record which is fresh in our memories and which will be written into our histories. I may be permitted to recall that, in the first World War, he was decorated with the Distinguished Service Order, the Military Cross, and the French Croix de Guerre. Then, in the second World War, he won a bar to his Distinguished Service Order ' for conspicuous bravery and brilliant leadership ' as the citation says, in the battle of Sidi Resegh, a battle which few of us will ever forget. May I recall also that he was also in action in the Pacific, and commanded the Third New Zealand Division. For ' his conspicuous leadership ' (I quote the very words), he was made a Companion of the Most Honourable Order of the Bath ; he was honoured by the award of the American Legion of Merit ; and the Greek Government conferred on him its Military Medal. The emphasis is on the two qualities that above all we admire in man—courage and bravery.

" I will only add this further to the records of His Honour's military career. When Major-General Barrowclough returned to civil life at the end of the last war, he had, according to my calculation, spent rather more than a third of his adult years on active military service with our Forces.

" The foundation of His Honour's career in the law was made in Dunedin, and his name must be added to the many of our Judges who have emanated from there. From Dunedin, he made a brief but successful foray into the Court of Appeal,; and his reputation as a barrister was established before he came to Auckland some twenty-odd years ago.

" In Auckland, for many years he has been recognized as one of our leading counsel. His practice has been wide and varied and his services have been called on for almost every type of litigation. In Court, he was as one would expect, a determined, but always courteous opponent ; and his whole practice has been conducted in accordance with our highest traditions.

" We of the law are proud that our profession has been able to furnish one so eminently fitted for this great office ; and it gives me very great pleasure to express to His Honour on behalf of all the members of the Auckland District Law Society our warmest congratulations on his appointment. We wish you, sir, a very happy term of office and we trust that at the conclusion of it you will be permitted to enjoy a period of leisure to which your great services to our country already entitle you.

" I give you the toast—the Chief Justice."

The Chief Justice's Reply.

His Honour the Chief Justice, who received a remarkable demonstration of esteem on his rising to reply to the toast, said :

" I should indeed be false to myself and to my inner feelings if I did not say at once that I am more than deeply moved by the very kind words that have fallen from your President. I am deeply moved and greatly encouraged by the fact so many of you have come here to join in my honour tonight. I cannot tell you how much I rely on that gesture of goodwill. It is no easy matter to move direct from the Bar into the position that I have been rash enough to accept ; and it is only the encouragement I have received from you and others

that has emboldened me to take up the responsibilities which have now fallen upon me.

" You, Mr. President, have referred to the fact that I have been a soldier, as indeed so many of you have been ; and I am very proud to acknowledge, what all of you know, that our profession took so prominent a lead in the two world wars in which we have been engaged. It is well known that many men in our profession attained high and distinguished positions in the Army and other Services of the Crown. I like to think that the training of a lawyer is good training for a soldier ; and I only hope the converse is true, and that the training I have had as a soldier will help me in my present appointment.

" Gentlemen, I have to thank you for a great many things. I was particularly touched by the letters the President read tonight. I mention especially the letter from Sir John Reed. One of the first letters of congratulation I had on my appointment was from Sir John. I was very gratified at his remembering me in that way. I had the honour to appear often before him, and much regret that he has perforce been compelled to retire from many of the activities in which he was known. I am extremely grateful to Sir John for his kind message, as indeed I am to all who have written to me. I have had numerous similar letters which have been extremely welcome, all of which I shall personally acknowledge as, and when, I get the time.

" I must also thank you for a very pleasurable dinner. I am indebted to you for your attendance here ; but principally I am indebted to you for giving me this opportunity of meeting you again after a very brief absence from you, and for the opportunity of thanking you personally for all the help and encouragement you have given me. Those are things that are very much appreciated ; and I can assure you that I shall ever be in your debt.

" I have, of course, many regrets at leaving Auckland. It has been my good fortune to have had the most happy professional relations with all the other members of my former firm. That is a great thing for any man to be able to say. I have enjoyed that happy partnership for over twenty-two years. I had the distinction of being asked to join the firm in which the late Robert McVeagh was then the common-law partner. I was told that on account of illness he was no longer able to carry on his work ; but, when I came here, I found that in that miraculous way that was so characteristic of him, he had, to use his own words, ' suffered a recovery ' ; and for a very brief time I was anxious as to what my position would be. I felt something like an interloper. In no time at all he had allayed all my fears. There could not have been a kindlier man than he : I owe a great deal to Robert McVeagh.

" I did not intend to tell you this story but I cannot resist it. At one stage in the war I visited the city of Florence, as so many of you have done ; and, on a hill from which there is a magnificent view of that city, I noticed a small but rather interesting-looking church. I went into the church, and was met by a monk who spoke to me in perfect English and showed me round. After he had explained the various architectural features of his church he asked me to sign the Visitors' Book. Being fairly conscious of the need for ' security ', I suggested he should let me see the book. I found that practically every officer of distinction in the 8th (British) Army and in General Mark Clark's Fifth Army had signed the book and added the name of the unit to which he belonged. I thought I might also sign without disclosing any information which would be of much value to enemy agents. I wrote : ' H. E. Barrowclough, Major-General, New Zealand Army.' When my guide learned that I was a New Zealander he asked me to write my name in another book, which turned out to be an illustrated brochure issued by the Government Tourist Department, and advertising the scenic attractions of Rotorua. There were pictures of geysers and so on, and every New Zealander who had visited the church had signed his name therein. On turning over the pages I saw ' Robert McVeagh, Avvocato ', and I had a great deal of pleasure in writing immediately under his name ' H. E. Barrowclough, Avvocato '. (Mr. L. P. Leary has just observed that there was a ' pear ' of us. I envy him his ready wit, and wish that I could have thought of that first.) I have told you that story because I feel, if I have any regrets tonight, they are that Robert McVeagh is not here with us, and I am sure you share that sentiment.

" I have said that I leave Auckland with regret, not only because it means an end to my active association with a firm in which I have been more than happy, but also because it means that I shall less frequently be able to renew the very many friendships I have made in this city. Auckland was very kind to me when I first came here—indeed I should say that Auckland was very kind both to my wife and to me. We had been brought up, for a good part of our lives at any rate, in Dunedin ; and we had been encouraged to look a little askance at the iniquitous city in the North. Neither of us has ever encountered the iniquity, and we have found the city a much more pleasant place to live in than we had hitherto had reason to suppose that it might be.

" I confess that the short period I have spent in Wellington has not been very encouraging from the point of view of finding a home. I have yet to get entirely used to the almost troglodyte appearance of some of the cliff-dwellings in the capital city. As I came back to Auckland this morning, I could not fail to observe how beautiful were the countryside and the harbour. I had the pleasure of travelling in the same train as the Attorney-General, and I remember drawing his attention to the charm and attractiveness of the approaches to the city. There is an exception perhaps in the area round Westfield ; but even that interruption in the pleasant scene is quickly forgotten when one passes through the tunnel to be met with the sparkling splendour of the Waitemata Harbour. I could not help thinking how pleasant a city Auckland is, and how well sited on that area to which the Maoris referred as ' Tamaki O Makau rau '—'Tamaki of the hundred lovers.' I have often thought that Auckland had as good a right as Wellington to the motto, ' Suprema a Situ '. Is there any site than can rival the site on the Tamaki Isthmus ?

" I do not want you to believe—and I do not say this only because we are privileged in having some Wellington visitors here—I do not want you to believe that Wellington has not treated me in a most generous and hospitable manner. I assure you that the capital city has been most kind to me ever since I went there. It may even be that Wellingtonians have been so friendly just because of the fact that I have come from Auckland. It may well be that, contrary to the beliefs of some less generously-minded persons, there is not the slightest degree of rivalry or jealousy between the two great cities. Nevertheless, attractive as Wellington may be, I confess

I entertain a certain amount of envy of my brothers, Finlay, Stanton, and North, who have so arranged matters that, although they were temporarily removed, they have now returned to Auckland with that homing instinct that I can so well understand. I shall not be able to respond to any such instinct, but I am quite confident that as I get to know it better the capital city will reveal more and more of its undoubted attractions.

" I have sensed, though no one has been so unkind as to press me unduly upon the point, that there is thought to be an immediate need for four resident Judges in Auckland. I know I shared that view a month or two ago when I was a member of the Bar here. I was quite convinced then that it was a very necessary thing. At the moment, I am not quite so sure. I am very conscious of the pressure of work here, and I know that something must be done about it. I am sure the Attorney-General realizes that too ; but what ought to be done requires a good deal of further consideration. I must not be regarded or quoted as having made any promise upon the matter. I have become too judicious or too judicial to make rash promises. From my new outlook I must consider whether the arrears of work here are not due to the shortcomings of the Bar and not to the shortages of Judges. May I suggest, only facetiously, of course, that perhaps we here of the Auckland Bar have been responsible for delays in the administration of justice by the length of the arguments we have addressed to the Courts.

" I came across a rather interesting passage in a report of a case many years ago in the Court of Appeal. One of the Lords Justices, when delivering judgment, said something to this effect : ' This case has been argued at great length and with great persistence by the learned counsel who appeared for the respondents and with reasonable brevity and great assiduity by the able counsel for the appellants, and we do not think it necessary to have any further assistance from counsel on behalf of the respondents.' Counsel on behalf of the respondents were a pretty tough team comprising Sir Henry James, the Attorney-General, Davey, Q.C., and Crossley, Q.C. ; but the Court of Appeal did not think it necessary to hear them any further.

" I think that the members of the Bar here assembled may well have reached the stage when they do not require to hear me any further. Before sitting down, may I thank you again, Mr. President and gentlemen, for your invitation to dine with you. May I tell you—alas, I cannot fully tell you because I do not command the words ; but I wish I were able to tell you how much I have appreciated the honour you have done me, and how much pleasure it has been for me to be here."

The Guests.

The toast of the guests was proposed by Mr. F. J. Cox, a member of the Council of the Auckland District Law Society, who spoke in a particularly happy vein to the great delight of his audience.

" It is my very pleasant task this evening to offer you the toast of our guests present on this really memorable occasion. It is both a goodly and distinguished list. As I look at the top table here I see a veritable galaxy of the Judiciary. In addition to His Honour the Chief Justice, whose toast we have just honoured, we have our own three Auckland Judges and Mr. Justice Hutchison. You will, therefore, see that, if necessary, we could hold a sitting of a full Division of the Court of Appeal. It is always a great pleasure and privilege to entertain our Judges at these functions. I think it would be your wish that I should make special reference to Mr. Justice Finlay, who has just returned from his sabbatical leave. I trust, sir, that you have returned like a giant refreshed, as well you may need to have done, judging by the number of causes that await you at the top of the Hill.

" I should also like to refer, and with great regret, to the impending departure of Mr. Justice Adams, who, during his term on the Bench in Auckland, has by his kindness and courtesy endeared himself to the Profession. I think it is true to say that no Judge is held in higher esteem and regard than is His Honour. Sir, it will be a very sad day when you leave Auckland to go to Christchurch ; we do wish you well.

" We of the Bar are justly proud of the high standard attained and maintained by our Judiciary in the administration of justice in this country, and I should be lacking in my duty if I did not refer to that fact tonight. The independence of the Bench is the great source of its strength. Here I am reminded of the American who while temporarily residing in England had occasion to brief learned counsel in a case in which he was plaintiff. When he was told by counsel that he had less than a fifty-fifty chance of success, he said : ' You know, in my country a case of champagne sent to the presiding Judge will usually turn the scales.' Of course, counsel held up his hands in horror and said that such a thing was just not done in England. The case went to trial, and, to the astonishment of counsel, the Judge accepted all his submissions and gave judgment for the plaintiff even, as it seemed to him, against the weight of the evidence. After the case was finished, counsel was talking the matter over with his client. He said ' I suppose you didn't send that case of champagne to the Judge ?' The American said : ' Sure, but I sent it with the other guy's compliments.'

" Recently I was reading John Buchan's *Homilies and Recreations*, and, when dealing with the highest qualities of a Judge, he said this : ' No Judge should lean too heavily upon the assistance of counsel appearing before him. The acme of judicial distinction means the ability to look a lawyer straight in the eyes for two hours and not heed a dammed word he says.' As a non-practising barrister, and with great respect and entirely without prejudice, I endorse that dictum.

" It is very fitting tonight that we should have with us the leader of the Bar, the Hon. the Attorney-General. I think that I can claim to have known the Attorney-General probably longer than anybody in this room. We went to the Grammar School together, were fellow-students at the University, and played in the College Rifles Football team together. As I am coupling the name of the Attorney-General with this toast, you will be hearing from him later. I believe that this is the first time that he has addressed the Bar in Auckland and I am sure that you will be anxious to hear what he has to say.

" According to Gilbert and Sullivan, ' A Policeman's Lot is not a Happy One.' I think that probably the modern counterpart might well be ' An Attorney-General's lot is not a happy one,' judging from the number of worries he had has on his plate of late—what with the proposed peripatetic Court of Appeal, the new Divorce Act, and his proposal to remove the old Bastille from Mt. Eden, stone by stone, to a new site.

Speaking of the Divorce Act, I am reminded of the Maori woman who consulted me some time ago about a divorce which she was seeking from her husband. I asked her what were her grounds, and she said: 'Oh, we got a hundred acres near Ngaruawahia.' I said 'That is good, but what are your reasons. Has your husband been unfaithful to you?' She replied: 'No, Hori not like that: we got the ten children.' I said: 'Has he not been giving you sufficient money?' 'No, he always brings the pay home on Friday.' I said: 'Well, is he cruel to you? Does he get drunk and beat you up?' When she denied that, I said: 'I am sorry but I'm afraid that you have no case for a divorce.' She then turned to me, and said: 'Mr. Cox, I have the suspicions.' I said 'What suspicions?' And she answered: 'I don't think Hori he the father of my last two children.'

"I now come to Mr. Sinclair and his six merry men of the Magistracy, and I should like here to say how very pleased we all are to have Mr. Grant back with us in Auckland. Mr. Grant was one of the old stalwarts on the Council of this Society before his elevation to the Bench. I think that you will all agree that we have in Auckland a very able and genial lower Court Bench. The reason for this may or may not be that no fewer than six of the Auckland Magistrates are Auckland Grammar School Old Boys.

"We are exceedingly glad to welcome Mr. W. H. Cunningham, the genial President of the New Zealand Law Society. I imagine that the general body of practitioners has no conception of the amount of work done for the profession in Wellington by the President and the Committees—especially the Standing Committee—of the New Zealand Law Society. I would like here, on behalf of the Profession in Auckland to pay a tribute to them; and, sir, I would ask you to carry that message back to your colleagues in Wellington. I know that the President is an ardent angler, and I had searched, but without success, for a piscatorial story with a legal flavour. However, he may or may not have heard of the school-boy howler concerning Presidents in general. The question was: 'What is the difference between a King and a President?' The answer given by one bright lad was: 'A King is the son of his Father, but a President isn't.'

"Mr. Barnett, the Secretary of Justice, is also with us. We are very glad, Mr. Barnett, that your visit to Auckland synchronized with this function. We can only hope that the purpose of your visit is to inspect the Magistrates' Court accommodation—or rather the lack of it—with a view to recommending to the Minister of Justice that three stories be immediately added to the building.

"The next names on my list are Professor Davis and Dr. Northey of the Faculty of Law at the Auckland University College. These two gentlemen rock the cradle of the profession in Auckland, and also, I understand, rock the students a little with their Saturday morning tests which keep them away from the golf links.

"I thought that the following excerpt from Punch might prove of academic interest to the Professor's evidence students. The *Evening Telegraph* of Alton Illinois reporting a certain case makes the following announcement: 'Also to be subpoenead for the defendant, it is reported, is Mr. Duces Tecum, who is to produce a document purported to have been executed by the plaintiff.' *Punch's* comment was: 'Last time we heard of Mr. Tecum, he was over in Absentia.'

"Mr. Registrar Pratt is also one of our guests. I am sure that we all owe a debt of gratitude to the Registrar and the staff of the Supreme Court for keeping us on the rails with our pleadings, and thus avoiding unnecessary raps over the knuckles from the Judges. If any practitioner here tonight has on hand a difficult probate application, I am sure that, if he were to see Mr. Pratt after this function, he would find him sufficiently mellow to grant his application 'accordingly'—without a minute—acting under R. 419.

"Mr. Pratt's name is the last on my list. I fully realise that the difficulty with raconteurs is that they are seldom raconterse. There are, however, so many distinguished guests present this evening that this Toast has taken longer to propose than I had hoped or desired. I recall the story of the Parson who said that he did not mind his congregation *looking* at their watches during his sermon, but, when they held them up to their ears and shook them, he thought it a bit 'over the odds.'

"And so, Mr. President and gentlemen, in case you begin shaking your watches, I will sit down. Before I do so I would ask you all to rise and honour the toast of 'Our Guests'—coupled with the name of the Hon. the Attorney-General."

The Attorney-General.

The Attorney-General, the Hon. T. Clifton Webb, replied to the toast. On behalf of the guests, he thanked those present for the manner in which they had responded to the toast which had been proposed by his old friend, Fred Cox. "We are grateful to him for what he has said", the Attorney-General continued, "but I should like to correct him on one thing. He said he has known me longer than anybody here; but that is not so. I was at school with Mr. R. M. Grant, S.M., many years ago when Mr. Grant was about five, and I was a few years older. I need hardly say on behalf of the guests that it gives us great pleasure to be here this evening when His Honour, the new Chief Justice, is receiving the congratulations and felicitations of his brethren of the Bench and the Bar.

"Although the toast to the Chief Justice has already been proposed and responded to, I would like to take this opportunity of saying, if I may, that it has given me very great gratification that the appointment which I was pleased to recommend has been so favourably received right throughout New Zealand. It would not have been altogether surprising if in one or two quarters there had been murmurs that favouritism is being shown towards Auckland; though, of course, that would not be correct. As I say, however, there has been nothing of that at all.

"This appointment has been received with great acclamation. I would like to say as I did when His Honour took the oath of allegiance and oath of service that he has had distinguished service in two World Wars; that he has had wide experience at the Bar; and that he has a courteous and dignified bearing and manner. I think these qualifications amply fit him for the distinction that has been conferred upon him. It is the culmination of the career of a man who has placed country before self, and it is good that a grateful country is able to offer him the highest judicial office in the land.

"I myself am pleased to be present here this evening. I do not mind telling you that I came specially last night

in order to be present at this function. I was coming up in any event at the week-end, but I made it my business to be here—not only to be present when the Chief Justice is being honoured as he has been this evening, but also to be amongst my brethren of the Auckland Bar. I can assure you that, although my residence is in Wellington and looks like being there for some time—or perhaps not —I have a nostalgic feeling whenever I am in Auckland. I want to endorse what the Chief Justice has said about the beauty of the countryside and of the coast around Auckland.

" I want to take this opportunity of saying to His Honour Mr. Justice Finlay how glad we are that he is back. I might add that, if he could peer into the hidden recesses of our minds and hearts, he might discover that this feeling was not actuated by entirely altruistic motives. I take this opportunity of thanking His Honour for curtailing his sabbatical leave in order to take his place on the Bench, when there is, of course, such congestion of work. There is no doubt whatever that the Bench has been having a tough time, and my ears burn whenever I have a thought of the thoughts that I thought were being thought about me.

" We have had the illness and untimely death of the late Chief Justice, Sir Humphrey O'Leary. Mr. Justice Northcroft was taken from us. We have had the illness of Mr. Justice North. So, for obvious reasons which I will leave to your imagination, I feel now like the impecunious Mr. Micawber and can look the whole world in the face.

" Some reference has been made to the Magistrates' Court. I am mindful of the need for improvement in the facilities in the Magistrates' Court. It is a difficult matter, however, when you have to consider the list of capital works requiring attention—housing, hospitals, schools, and so on. It does not sound so good when you say you want to extend a Court-house.

" Mr. President and gentlemen, I wish to say on behalf of the guests what a great pleasure it is to have been here this evening to join in the congratulations and felicitations which you have extended to the new Chief Justice. I can assure the Chief Justice of a very pleasant reception in Wellington ; and, finally, I hope that I have the privilege of attending more functions of this nature before my period as Attorney-General draws to a close. I thank you all for the manner in which you have responded to the toast.'

ACCRETIONS TO MORTGAGES AND CHARGES.

The Bringing Forward of Mortgages Encumbrances and other Estates and Interests on New Leases in Renewal of or in Substitution for Existing Leases, or on Fee Simple Titles on Acquisition of Fee Simple by Lessee.

By E. C. Adams, LL.M.

As a general rule, a legal (as distinguished from an equitable) mortgage may be effected only over property of which the mortgagor has the legal title. A person cannot mortgage what he does not own ; if the legal ownership is not vested in him, he cannot mortgage the legal title. This rule is based on logic, but, in modern commerce, it has its inconvenient results, especially with regard to mortgages of leases containing rights of renewal or rights of purchase.

Some of the exceptions to the above rule are set out below—all the creation of statute. These exceptions may conveniently be considered under the following headings :

A. General provisions in Land Transfer Act.
B. Mortgages affecting new leases.
C. Mortgages affecting small areas incorporated in Crown leases or licences.
D. Mortgages affecting freehold acquired by Crown lessees or licensees or lessees of Maori land, or purchasers of State houses.
E. Directions in Governor's warrants.
F. Proclamations affecting road deviations.
G. Joint Family Homes.
H. Special provisions in special Acts.

General Provisions in Land Transfer Act.

It is provided by s. 117 of the Land Transfer Act, 1952, that, where upon the registration of a lease the Registrar is satisfied that it is in renewal of or in substitution for a lease previously registered, and that the lessee is the person registered as the proprietor of the prior lease at the time of the registration of the new lease or at the time of the expiry or surrender of the prior lease, whichever is the earlier, he shall, if the lessee so requests and if the new lease is registered not later than one year after the expiry or surrender of the prior lease, state in the memorial of the new lease that it is in renewal of, or in substitution for, the prior lease. Existing encumbrances are recorded on the new lease.

This is a general provision, which may be availed of if there is no other special statutory provision applicable. The important point is that, under this section, the lessee himself must make the necessary application to the District Land Registrar, whereas in the statutory provisions hereinafter mentioned the District Land Registrar is expressly or impliedly commanded by the Legislature to bring the mortgages forward onto the freehold titles or new leases, thus constituting the mortgages of the old leases legal mortgages of the freehold or of the new leases. For the provisions of s. 117 to apply, the new lease must be in renewal of, or in substitution for, the old lease, and must be registered not later than one year after the expiry or surrender of the old lease. If the conditions of s. 117 are complied with, the new lease is deemed to be subject to all encumbrances, liens, and interests to which the old one was subject.

Section 116 of the Land Transfer Act, 1952, makes provision for the registration of a memorandum of extension of a registered lease before its expiry. Such an extension is, in fact, a new lease, and the statute directs that, upon the registration of the memorandum

of extension, the estate of the lessee shall be deemed to be subject to all encumbrances, liens, and interests to which the lease is subject at the time of the registration of the memorandum of extension.

Mortgages Affecting New Leases.

The following list is not to be regarded as exhaustive, although an endeavour has been made to bring it up-to-date. It refers to the Land Act, 1948, which brings within its scope leases and purchases of land formerly held under the following Acts—*e.g.*, Thermal Springs District Act, 1910, land which has become the property of the Crown under s. 76 of the Public Trust Office Act, 1908, land which has become the property of the Crown as *bona vacantia*, land purchased for general settlement by the Board of Maori Affairs under the Maori Land Act, 1931 (other than a road), land which has become the property of the Crown under the Land Subdivision in Counties Act, 1946, the Discharged Soldiers Settlement Act, 1915, the Land for Settlements Act, 1925, the Small Farms Acts, the Education Reserves Act, 1928, the Hutt Valley Land Settlement Act, 1925, and the Deteriorated Lands Act, 1925, and land acquired under Maori Townships Act, 1910: s. 20(1) of Land Amendment Act, 1950.

In the case of Crown and other similar leases, and mortgages to certain Government Departments, there are special statutory provisions that, where a renewal of an existing lease, or a new lease, is granted on the expiry or surrender of the existing lease, for that purpose the new lease shall be subject to all existing encumbrances, liens, and interests registered against the expired or surrendered lease, and that the District Land Registrar shall record on the new lease all such encumbrances, liens, and interests in order of their registered priority. The following are some of the principal classes of lease and mortgage provided for, with the statutory authority:

Crown Leases and Licences—Section 114(2) of the Land Act, 1948, provides as follows:

> Where a lessee or licensee surrenders his lease or licence and, pursuant to any right, power, or authority conferred on him by any Act for the time being in force, receives in exchange therefor a new lease or licence under this Act, or where a lessee purchases on deferred payments the fee-simple of land previously held by him on lease, or where on the expiration of any lease or licence the lessee or licensee is granted a renewal thereof, or a new lease or licence of the same land, pursuant to any right, power, or authority, the new lease or licence shall in each case be deemed to be subject to all existing encumbrances, liens, and interests (if any) registered against the surrendered or expired lease or licence, as the case may be, and the District Land Registrar shall record on the new lease or licence all such encumbrances, liens, and interests accordingly in the order of their registered priority.

This section also applies to building-line restrictions imposed by the Land Settlement Board: s. 8, Land Amendment Act, 1950.

Maori Township Leases.—Where the holder is granted a renewed lease after the land has been acquired by the Crown: Maori Purposes Act, 1931, s. 26.

State Advances Act, 1913, s. 39.—Mortgages issued in favour of State Advances Superintendent. This provision enures for the benefit of the State Advances Corporation: Mortgage Corporation of New Zealand Act, 1934-35, s. 37(1) (now cited as the State Advances Corporation of New Zealand Act, 1934).

State Advances Corporation Mortgages.—See s. 36 of the State Advances Corporation Act, 1936, similar in its effect to s. 39 of the State Advances Act, 1913 (*supra*).

Westland and Nelson Coalfields Administration Act Leases.—Where certain new leases are issued on surrender of the existing lease: Westland and Nelson Coalfields Administration Act, 1926, s. 9.

West Coast Settlement Reserves Act Leases.—Where a new lease is granted to a lessee on the surrender of an existing lease: Maori Purposes Act, 1931, s. 6(*b*).

West Coast Settlement Reserves Amendment Act, 1948, Substituted Maori Leases: s. 23.—Extension of leases may also be granted to which the provisions of s. 116 of the Land Transfer Act, 1952, *supra*, apply.

Coal Leases.—Coal Act, 1948, s. 42(11).—Persons claiming existing coal leases or prospecting or mining rights entitled to lease or licence under principal Act.

Maori Trustee Leases.—Maori Trustee Act, 1953, s. 50.—Memoranda of Extension of Leases executed by the Maori Trustee to which the provisions of s. 116 of the Land Transfer Act, 1952, apply.

Mortgages Affecting Small Areas Incorporated in Crown Leases or Licences.

Section 113 of the Land Act, 1948, as amended by s. 12 of the Land Amendment Act, 1950, reads as follows:

> (1) Where land is incorporated in or excluded from a lease or licence which is registered in the Land Transfer Office, or where any term or condition of any such lease or licence is varied, whether by increase or reduction of the rental value or yearly rent or otherwise howsoever, the Commissioner shall prepare and sign a certificate setting forth such particulars with respect to any alteration in area, rental value, rent, purchase money, instalments of purchase money and interest, or other matters as he may deem necessary in the circumstances of the case. The certificate shall, in any case where land has been incorporated in or excluded from the lease or licence, have endorsed thereon or attached thereto a plan of that land, and shall in every case be produced to the District Land Registrar, who shall thereupon endorse on the relevant lease or licence a memorial of the same.
>
> (2) Where any land is incorporated in a lease or licence as aforesaid, the land so incorporated shall, on the endorsement on the lease or licence of an appropriate memorial by the District Land Registrar, be held by the lessee or licensee on the same tenure and subject to the same terms and conditions as those on which the land with which it is incorporated is held.
>
> (3) Any land so incorporated in a lease or licence shall be subject to the same reservations, trusts, rights, titles, interests, and encumbrances as those to which the land with which it is incorporated is subject.

Mortgages Affecting Freehold Acquired by Crown Lessees, or Licensees or Lessees of Maori Land, or Purchasers of State Houses, or of Borough Houses.

In the case of Crown leases and in that of certain leases of Maori land, and the purchase of state houses by tenants and of houses from borough councils, there are special statutory provisions that a freehold estate acquired by the lessee shall be subject to all existing encumbrances, liens, and interests: Maori Townships Act, 1910, s. 22(2), added by ss. 25 and 26 of the Maori Purposes Act, 1931. [N.B. This section was repealed by s. 185 of the Land Act, 1948, but in this respect is kept alive by that section.]

Crown Leases. Section 114(1) of the Land Act, 1948, reads as follows:

> Where a lessee or licensee acquires an estate in fee-simple in land previously held by him under lease or licence which was subject to any encumbrance, lien, or other registered interest, the District Land Registrar, before issuing the certificate of

title in respect thereof, shall make all entries necessary in order to record on that certificate every then existing encumbrance, lien, and interest, in the order of their registered priority; and the estate in fee-simple shall be subject thereto in like manner as if they had been created in respect of that estate.

N.B.—Section 114(1) above embraces purchases under the various Acts referred to in the explanatory paragraph to B above (mortgages affecting new leases).

Purchasers of State Houses. Section 25(8) of the Finance Act, 1950, reads as follows:

Where the purchaser's estate or interest under any such registered agreement or under any such registered licence is subject to any registered encumbrance, lien, or other interest, the District Land Registrar, before issuing a certificate of title under the Land Transfer Act, 1915, in respect of the land, shall make all entries necessary to record on the certificate of title every existing registered encumbrance, lien, and interest, in the order of their registered priority; and the purchaser's estate or interest in the land shall be subject to every such encumbrance, lien, and interest as if it had been created in respect of that estate.

Purchasers of Houses from Borough Councils. Section 22(7) Municipal Corporations Amendment Act, 1953, contains a similar provision.

Directions in Governor's Warrants.

The Statutes Amendment Act, 1940, s. 48, provides that the Governor-General may direct titles granted in lieu of compensation to be made subject to existing encumbrances.

N.B. The consent of the grantee and the encumbrancee is necessary, but not required to be produced where a C.T. is issuing from a warrant. The warrant should show whether the land is to be subject to certain specified encumbrances, etc. Registrar is entitled to treat warrant as conclusive.

Proclamations Affecting Road Deviations.

Section 29 of the Public Works Amendment Act, 1948, repeals s. 12 of the Land Act, 1924, and its amendments, but it repeats its provisions as to the bringing forward of encumbrances on new leases issued in substitution for leasehold land taken for road. It also repeats the provision that, if freehold land is taken in exchange for a road, the land will be granted and all encumbrances brought forward if encumbrancees and owner consent.

(1) New Leases.

Section 29(4) reads as follows:

All lands disposed of under this section by way of lease or licence in exchange for lands held under lease or licence from the Crown shall be deemed to be incorporated in that lease or licence from the Crown, and shall, subject to any consequential adjustment of rent, be held on the same tenure and upon the same terms and conditions, and be subject to the same rights, titles, interests, and encumbrances, as the other land comprised in that lease or licence.

(2) Note also subsection (10) re incorporation in existing leases or licences. Freehold land taken in exchange for road—see subsections (9), (13), (14), and (15).

Subsection 15 reads as follows:

On the issue of a certificate of title for any land granted or otherwise disposed of subject to any registered encumbrance, lien, or interest as aforesaid, the District Land Registrar or the Registrar of Deeds shall enter in the appropriate Register and record on any relevant instrument a memorial setting out the effect in the circumstances of the last preceding subsection.

N.B. If encumbrances are to be brought forward they should be shown in the Warrant. Registrar is entitled to treat Warrant as conclusive.

Joint Family Homes under Joint Family Homes Act, 1950.

Section 6 of the Joint Family Homes Amendment Act, 1951, reads as follows:

(3) Where an additional, new, substituted, or different estate or interest in any land for the time being settled as a joint family home is acquired by the husband and wife as joint tenants or by the survivor of them and they become the registered proprietors, or the survivor of them becomes the registered proprietor, of that estate or interest, the Registrar shall forthwith thereafter, without payment of any further fee, register the Joint Family Home Certificate in respect of that estate or interest in the manner prescribed by subsection two of this section; and upon that registration all the provisions of this Act shall apply to that estate or interest as if it had been settled as a joint family home by the settlor or settlors specified in the Joint Family Home Certificate.

Special Provisions in Special Acts.

1. Rotorua Town Lands Act, 1920.—Confers rights on Crown Tenants in Town of Rotorua to acquire this Freehold. Licences to occupy or the fee-simple titles to be subject to all existing encumbrances: ss. 7 and 14.

(2) *Statutory Land Charges Resgitration Act*, 1928.

As a Statutory Land Charge often is to protect the cost of a *permanent* improvement to property it usually affects every estate, or interest, in the land, including a new lease: *Goodall's Conveyancing in New Zealand*, 2nd Ed., p. 714.

(3) *Electricity Agreements*: Section 4 of the Electricity Amendment Act, 1948.

This provides for the bringing down of Electricity Agreements on new leases issued in exchange for surrendered leases and on certificates of title issued for the fee-simple in land previously held by a lessee or licensee under lease or licence. In other words electricity agreements run with the land.

Concluding note:

The effect of all these statutory provisions is to make mortgages which, apart from statutory law, were recognized only in equity (see for example *23 Halsbury's Laws of England*, 2nd Ed. p. 283, para. 415, and *Boundy* v. *Bennett* [1946] N.Z.L.R. 69, 73) legal mortgages affecting the legal estate in the new lease or the fee simple, as the case may be.

In conclusion, it may be stated that a mortgage, charge or lien automatically affects an *accretion* to land subject to such mortgage, charge or lien, unless the accreted land is expressly exempted therefrom.

Subsidized Law.

And yet—in spite of all that medical science has done for each and everyone of us, in spite of the generous contributions by physicians of their time and skill to private charity—we find a large number of our people who believe they have a " right " to free medical services and who, to obtain that " right ", would socialize the medical profession here just as it has been socialized in England, regardless of the consequences on scientific research, medical skill and public health. So great is the hue and cry that some medical associations in this country [United States] are now advocating compromising plans that involve the payment of public funds to doctors, forgetting that the acceptance of Government subsidies will inevitably sound the death knell of the independence of the profession. (Hon. Arthur T. Vanderbuilt, Some Principles of Judicial Administration, an address delivered on October 5, 1950, on the Alexander F. Morrison Lectureship Foundation, at the Annual Meeting of the State Bar of California.)

IN YOUR ARMCHAIR—AND MINE.

By Scriblex.

Portia.—Dr. Frances Moran, Regius Professor of Laws in Trinity College, Dublin, who visited New Zealand last year (and attracted much less notice in legal circles than her distinguished career warranted) was entertained in Melbourne by the Legal Women's Association. She spoke on Shakespeare's Portia. According to the *Law Institute Journal* (Melbourne), she pointed out that the woman was not merely an impostor, impersonating the learned Dr. Balthazar, but she had the audacity to appear in Court without being qualified to do so. Not content with that, she usurped the functions of the presiding Judge, turned a civil action on a bond into an indictment for conspiracy, while the Judge, instead of committing her for contempt of Court, invited her out to dinner.

However, it is doubtful whether anyone from the Elizabethans onwards has been much impressed by the apparent skill of Portia both in equity and at common law. It will be remembered that Shylock has obtained judgment, and, having whetted his knife, is just about to make an incision when Portia raises the point that this is a felony which carries with it the death penalty and forfeiture of the goods of the deceased. She hoists Shylock with his own petard, and produces out of her hat, as it were, the dramatic highlight of the play. The most telling point against Portia is her proposal that she and Nerissa make a clean breast of all their machinations, and her suggestion to Bassanio and Gratiano that they "charge us there upon interrogatories, and we will answer all things faithfully". Dr. Moran might quite well consider that Portia was ratting on her sex.

Law and the Stage.—One of the most striking performances of the last London season was that of Sir Godfrey Tearle as Sir Francis Brittain, the enigmatic Judge with unusual ideas of morality, who, feared for the severity of his judgments, was himself to know the perils of perjury and the anguish of a man falsely accused of murder and found guilty. The public's love for the criminal scene is again demonstrated this year by the success of Agatha Christie's "Witness for the Prosecution", now at the Winter Garden Theatre. Here, we are given the dramatic portrait of a German wife turning witness for the prosecution at the Old Bailey and maliciously destroying the alibi set up by her husband, accused of the murder of an eccentric and wealthy old lady. There is the double twist on the solution familiar to the devotees of the Christie school of detection. One scene, however, that has caused professional criticism in England, deals with the purchase during the hearing of the case by counsel (Sir Wilfrid Roberts, Q.C.) and the instructing solicitor of a bundle of sensational correspondence made available by a mysterious young woman who calls at Sir Wilfrid's chambers. They pool their immediate funds and buy the bundle for £25. This couldn't happen in New Zealand—at least not without censure from the Price Tribunal.

Micklem, Q.C.—Scriblex recalls a note some years ago in this Journal claiming a record of endurance and longevity for T. J. Hill, of Christchurch, who had been seventy years a law clerk and spent fifty-seven of it in the office of Messrs. Lane, Neave, and Wanklyn. This is a praiseworthy performance; but it seems overshadowed by that of Nathaniel Micklem, a member of Lincoln's Inn, who celebrated his one hundredth birthday last November, and took silk in 1900 during the reign of Queen Victoria, the only other surviving Victorian Queen's Counsel being Viscount Cecil of Chelwood. A keen golfer, he no longer plays in the annual Golfing Tournament. Gave this up at eighty-four.

Solicitor's Negligence.—The dissenting judgment of Denning, L.J., in *Griffiths* v. *Evans*, [1953] 2 All E.R. 1364, will in all probability be more readily accepted than the judgment of the remainder of the Court. The plaintiff had sustained injuries when in a lift from fracture of a wire rope, and he consulted the defendant, who was a solicitor, with regard to an anticipated reduction of the workers' compensation damages he had been receiving. He was given advice as to his rights under the Workers' Compensation Acts but not advised as to whether he had a right to damages against his employers at common law, and he alleged that he had thereby lost the opportunity of making a claim for damages on this footing. Denning, L.J., considered it was not right for a solicitor to escape liability by saying that he had been consulted about workers' compensation and not about common-law damages since the plaintiff could not be expected to know the legal distinction between the one and the other. It was for the defendant to know and advise accordingly. Somervell, L.J., was of opinion that the case was a borderline one, but that the plaintiff had not successfully made out a case of negligence; and Romer, L.J., thought that it could not be said of the defendant that he was negligent in not applying his mind to another, and totally different, field as well as the one in connection with which he had been consulted. It would seem to the average practitioner, at least in New Zealand, that upon such facts the first logical inquiry was as to the liability of the employer.

Overloading.—In *Houghton* v. *Trafalgar Insurance Co., Ltd.*, heard by the Court of Appeal (Somervell, Denning, and Romer, L.JJ.) recently, the assured claimed against his insurers for the total loss of his motor-car which at the time of an accident contained two persons in front and four behind, one sitting on the knees of another passenger. The vehicle normally provided seating accommodation for five persons only, two in front and three behind. The policy contained an exemption from liability caused where the vehicle was conveying any load in excess of that for which it was constructed. Somervell, L.J., considered there was an ambiguity and that this must be resolved in favour of the assured. In his view, the words relied on only clearly covered cases where there was a weight load specified in respect of the vehicle. Denning, L.J., thought that the clause was almost in the nature of a trap, while Romer, L.J., said that, if the clause applied to a private car, he had not the least idea what it meant. No doubt the decision will be hailed with relief by Dunedin practitioners who are the owners of baby Austins.

LEGAL LITERATURE.

Company Law.

Introduction to Company Law in New Zealand. By F. J. NORTHEY, B.A., LL.M.(N.Z.), DR.JUR.(TORONTO), Senior Lecturer in Law, Auckland University College. Pp. xxvii + 246. Wellington: Butterworth & Co. (Australia), Ltd. Price: 40s.

A welcome addition to our text-books is the " Introduction to Company Law in New Zealand " by Dr. J. F. Northey, Senior Lecturer in Law at Auckland University College. and published by Butterworths. This work, written primarily for law and accountancy students, was originally intended to follow and be based on the new Companies' legislation contained in the Companies Bill prepared in 1952. The delay in passing this legislation, the criticism directed against many of its provisions, the opportunity afforded for public examination of the Bill—all these may, and it is hoped will, result in a better measure of reform. The immediate result of the delay, however, has been an embarrassment to teachers and students alike through shortage of textbooks. Dr. Northey and his publishers are, therefore, to be commended for their self-sacrifice in releasing this book, adapted to the existing legislation but intended to be replaced by a new and amended edition as soon as the new Bill is enacted.

Dr. John Charlesworth's text-books for students have always held a deservedly high place among lecturers and teachers of the law, and may well form a model for the aspirant in this field. Dr. Northey, I feel, has produced a work comparable to Charlesworth's " Principles of Company Law ", and that is high praise. He has brought to his task scholarship and clarity of expression, accuracy and freshness of approach, and, what is so important to the student, a wealth of explanation, case citation and references. The result is a well balanced and comprehensive text-book admirably adapted to the needs of all students of this important subject. Because of the general excellence of the book, criticism must be slight, and in view of the reason for this edition perhaps unfair. All that occurs to me is the possible inclusion of certain additional cases and the expansion of one or two passages. This can well await the promised second edition.

One final word. The publishers, in their preliminary circular, say:

> " Although written mainly for students, this book can be strongly recommended for members of the legal profession, accountants and business men who require a small book in which the main principles of Company Law are clearly discussed, and which presents in clear language a complete and comprehensive survey of Company Law in New Zealand."

This statement is, I think, justified. Apart from the student, the general practitioner should find this accurate and informative book useful as a work of first reference and this should be particularly so when the time comes for us all to become acquainted with the new legislation. Although written by a non-practising lawyer, Dr. Northey's book is practical in its approach and presentation. It deserves and should receive the warmest of welcomes to our growing body of New Zealand text-books.

—L.J.H.H.

Divorce.

Rayden's Divorce Law and Practice, 6th Ed. By C. T. A. WILKINSON, F. C. OTTWAY, and JOSEPH JACKSON, M.A., LL.B. (CANTAB.), LL.M.(LOND.). Pp. *clx* + 1123 and Index. London. Butterworth & Co. (Publishers) Ltd. Price: 108s., postage free.

The frequency with which " Rayden " is cited in the judgments of the Courts is the measure of its value in clear enunciation of principles in divorce law. Since its first edition nearly forty years ago, it has been an " essential " to all who practise in the Divorce jurisdiction. It is a text-book of such well-proven worth that a new and enlarged edition is to be welcomed.

Since the latest edition, the rule in *Russell* v. *Russell* has been abolished in England, five years after it had been abolished here by s. 15 of the Evidence Amendment Act, 1945. The result, in simplifying the presentation of evidence, is fully dealt with.

The principles applicable when allegations of cruelty and constructive desertion are raised have been amplified and explained in a great number of recent cases, and are fully discussed here. Then, too, valuable light is thrown on the modern principles guiding the Court in its exercise of discretion in matrimonial causes. The case-law includes all the relevant decisions of 1952.

A considerable portion of this edition is devoted to the practice side of divorce proceedings; and there should be very little the seeking practitioner will not be able to find, and adapt to our local procedure.

This Edition is in every way up to the high standard of its predecessors.

Crown Proceedings.

Crown and Subject: A Treatise on the Rights and Legal Relationship of the Crown and the People of New Zealand as set out in the Crown Proceedings Act, 1950. By A. E. CURRIE, M.A. LL.B. Pp. xxxiv + 220. Legal Publications Ltd., Wellington, 1953.

The modern expansion of Government activities is reflected in the law by the fact that the consideration of claims by and against Government Departments and public authorities generally forms an important element in present-day legal practice. The Crown is probably the largest litigant in the country. Moreover, since the enactment of the Crown Proceedings Act in 1950, litigation between Crown and subject has been put on an entirely new basis. For these reasons alone an orderly exposition of this branch of the law should commend tself to the profession.

The present work should be doubly welcome because of the special qualifications with which Mr. Currie was equipped for the task of its authorship. As a result of his many years' experience as a Crown Solicitor in the Crown Law Office, coupled with his painstaking scholarship, Mr. Currie possesses an unrivalled knowledge of this field of law; and he has now embodied that knowledge in a masterly treatise, which is a model of clarity and conciseness. A practitioner faced with a problem involving a claim by or against the Crown cannot do better than have immediate recourse to this work, for there he will find not only a luminous and succinct statement of the law, but also a complete collection, gathered together in a comprehensive footnote, of all the relevant authorities bearing on each topic dealt with in the text.

In an introductory chapter, Mr. Currie traces the development of the law before the passing of the Crown Proceedings Act. He then deals in separate chapters with the agents, officers, and servants of the Crown respectively. The next chapter is devoted to a discussion of " The Instrumentalities of the Crown ", a subject of considerable obscurity which has given rise to much difficulty and diversity of opinion. This is followed by chapters on the Crown in Contract, the Crown in Tort, Trusts and the property of the Crown, the Crown in relation to Land, the Crown and the Statutes, Court Proceedings, Acts of State and Crown privilege; and the book concludes with a final chapter in which there is set out an annotated version of the Crown Proceedings Act.

—E.J.H.

Practical Advice on Many Legal Topics.

Learning the Law. By GLANVILLE WILLIAMS, LL.D.(CANTAB.). 4th Ed. Pp. vii + 210. London: Stevens & Sons, Ltd.

This little book is a " gem " of legal literature. It is delightfully written, with its light touches of humour to brighten and illustrate many points. Its great appeal comes from the fact that it is packed with the kind of useful knowledge, not learnt in a University lecture-room, which makes many phases of the law more interesting and understandable to the student. But it is a mistake to call it simply a student's book; and, in that respect, its title is disarming. Nowhere else will the practitioner find such a valuable summary and explanation of technical terms, the uses of dictionaries, methods of legal research, and the pronunciation of legal terms. A chapter on case-law technique includes a most lucid exposition of the often very fine distinction between *ratio decidendi* and *obiter dictum*. Every lawyer would do well to read the chapter relating to Law Reports and the proper method of their citation. This is altogether a most satisfying little book; and its chapter on general reading, which sets out works of drama and fiction written by lawyers or with a legal setting is of interest to everyone of us.