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DEATH DUTIES: STREAMLINING THE SYSTEM OF COLLECTION.

THE Minister of Finance, the Hon. J. T. Watts, is to be congratulated on his first Budget, which he delivered on the evening of July 21. It is no doubt due to Mr. Watts's legal background, and to his experience as a general practitioner before he attained Ministerial office, that his Budget is clearly expressed, and eliminates the often too-wordy form in which the annual statement of the country's finances has so often been presented.

To the profession at large, the most interesting of the Minister's proposals for future fiscal legislation centre on the change he proposes to make by legislation in the existing two-way system of collecting death and succession duties. To that end, he proposes to simplify the whole method of taxation in this regard by instituting a single estate duty based on the final balance of the estate—a system, which, in the United Kingdom and in several of the Australian States has effected a great simplification, and has proved a general benefit to all concerned with this form of taxation.

THE FINANCE MINISTER'S PROPOSALS.

In presenting his Budget for 1955, the Minister of Finance said:

"Although substantial death duty concessions and exemptions have already been granted, I am nevertheless conscious of the burden these duties represent, and am concerned about the complicated system under which they are paid.

"Accordingly, legislation to be introduced this session will abolish succession duty and impose a single estate duty, calculated on the value of the estate, which will combine the two existing duties, but will effect a general concession throughout the whole range of estates.

"Estates not exceeding £1,000 in value will be entirely free of duty. Estates exceeding that value will attract estate duty at a commencing rate of less than 1 per cent. on the whole estate, rising in carefully-graduated steps until a maximum of 40 per cent. is reached at £100,000.

"The present exemptions from estate duty enjoyed by widows and infant children in estates not exceeding £12,000 in value will be preserved.

"The full scale of the new estate duty is printed as Appendix 'A' to this Budget.* It will apply to the estates of all persons dying on or after July 21, 1955. The cost to the revenue is estimated to be £1,500,000 for a full year. This amounts overall to a further reduction of 17½ per cent. in total death and succession duties.

"The rates of gift duty will also be liberally adjusted throughout the entire range of gifts.

"In future, where a gift exceeds £500 in value, but does not exceed £1,000, duty will be payable only on the excess over £500 at the rate of 5 per cent.

"Thereafter, duty will be levied on the full value of the gift at gradually increasing rates so that a rate of 6 per cent. will be reached at £2,000, 9 per cent. at £5,000, 14 per cent. at £10,000, 20 per cent. at £20,000, and a maximum of 25 per cent. at £30,000; but with a reduction in every case of the gift duty at 5 per cent. on the first £500.

"The violent increases in rates of duty and the substantial marginal balances which are objectionable features of the present system will be abolished.

"The new rates which are printed as Appendix 'B' to the Budget† will apply to gifts made on or after July 21, 1955. This concession, estimated to cost £200,000 for a full year, is equivalent to a 20 per cent. reduction in the total gift duties collected."

This is indeed good news for all practitioners, whose difficulties in advising on the present involved dual system of assessing and collecting death duties need no elaboration on our part. The new system will, of course, be of immense benefit to the large part of the community who are their clients, and who so frequently seek advice on their death-duty problems.

Later on, we propose to examine the Minister's proposals in detail, and, where thought advisable, to make some suggestions, generally, and for the removal of some of the existing anomalies when the new legislation is being drafted. We shall welcome suggestions, along these lines, from our readers.

In his deliberations regarding the simplification of the method of assessing death duties, the Minister sought the advice of a small committee on which the New Zealand Law Society was represented. Mr. D. W. Virtue, of the Wellington firm of Messrs. Young, Bennett, Virtue, and White, was the representative of the New

*Reproduced, for the convenience of practitioners, on p. 208, *post*.

† Reproduced on p. 208, *post*.

Zealand Law Society, and the profession is greatly indebted to Mr. Virtue for the great amount of time he has devoted to his task and for the valuable contribution he made to the discussions. It will be readily understood that the attention of the Committee was directed towards the simplification of the administration of the law relating to death duty, and did not extend to a consideration of the levels of taxation.

History of Death Duty in New Zealand.

It may be of interest to our readers to set out the background against which the Minister's statement, which we have quoted, was made. (We are indebted to Mr. F. R. Macken, the Deputy-Commissioner of Inland Revenue, and his officers for the historical matter which follows.)

Death duties were first imposed in New Zealand by Parts II to IV of the Stamp Duties Act, 1866, which came into force on January 1, 1867. They took the form of probate and administration duties, similar to those then operating in New South Wales, and legacy and succession duties similar to those then operating in Great Britain and Ireland. Probate duty was a duty of 1 per cent. levied on the sworn value of the estate of a deceased person who left a will, while administration duty was a similar duty of 1½ per cent. levied where the deceased had died intestate. Legacy and succession duties were levied on successions of a value in excess of £20 and varied in rate from 1 per cent. to 10 per cent. according to the degree of relationship of the successor, but the successions of the deceased's husband or wife were exempt. These duties were payable when the successor came into possession.

As a result of the recommendations of a Commission of Inquiry, set up in 1875, the Stamp Act, 1875, was enacted. This Act abolished the earlier duties and replaced them by a succession duty levied on successions exceeding £100 in value. The successions of the deceased's husband or wife were exempt, and so also were successions in trust for religious, charitable, or educational purposes. The duty varied in rate from 1 per cent. to 10 per cent. according not only to the degrees of relationship of the successor, but also to the value of the succession. Unlike the earlier duties, this succession duty was payable by the administrator in a lump sum within six months of the deceased's death.

The Deceased Persons Estate Duties Act, 1881, which was the first Statute devoted solely to death duties, replaced succession duty by an estate duty. This estate duty was levied on all estates where the value of the final balance exceeded £100, and it varied in rate from 2 per cent. to 10 per cent., according to the value. No duty was payable in respect of property to which the deceased's wife succeeded, and only half-duty was payable where the deceased's children succeeded.

This Act remained in force until 1908, when the various Acts dealing with death duty were consolidated by the Death Duties Act, 1908. This did not alter the incidence of duty in any way.

However, the incidence of duty was altered by the Death Duties Act, 1909, which provided for an estate duty and a succession duty. This Act closely followed the relative English provisions in force at that time. Estate duty was payable where the final balance of the estate exceeded £500. It varied in rate from 1 per cent. to 15 per cent. according to the value, the maximum being reached when the final balance of the estate reached £145,000. The former total exemption for the deceased's wife was replaced by an exemption of the wife's succession to the extent of £5,000 in estates where the final balance did not exceed £10,000. There were no other exemptions from estate duty. The succession duty varied according to the degree of relationship of the successor, but did not vary with the value of the succession. The successions of the deceased's wife, child or grandchild, or other descendant were exempt up to £20,000; but 2 per cent. was paid on the total value where their individual successions exceeded that amount. The successions of the deceased's husband had no exemption, but paid duty at the rate of 2 per cent. on the first £20,000 and 4 per cent. on the excess. The successions of other relatives within the fourth degree of relationship were liable to duty at the rate of 5 per cent. on the first £20,000 and 10 per cent. on the excess. The rate for other successors was 10 per cent. on the first £20,000 and 20 per cent. on the excess.

The Death Duties Amendment Act, 1911, provided that, in no event, would succession duty be payable where a succession did not exceed £200 in value.

The Finance Act, 1915, introduced an exemption from the estate and succession duties where the property in the estate of a deceased serviceman passed to near relatives. Also the exemption from succession duty of £20,000 in respect of children, grandchildren and lineal descendants was reduced to £5,000 and duty at 2 per cent. became payable on the excess over that figure.

The rates of duty were increased by the Death Duties Amendment Act, 1920. Estate duty now varied in rate from 1 per cent. to 20 per cent. according to the final balance of the estate, the maximum being reached when the final balance reached £100,000. No estate duty was payable when the final balance did not exceed £1,000. The exemption from estate duty in regard to a wife's succession was not changed. In regard to succession duty, however, the exemption of £20,000 for a wife's succession was reduced to £10,000. If the wife's succession exceeded £10,000, duty of 2 per cent. was payable and if it exceeded £20,000 the rate of duty became 4 per cent. Similarly, the exemption for a child's, grandchild's, or lineal descendant's succession was reduced from £5,000 to £1,000; and, on successions exceeding £1,000, they now paid duty ranging from 1 per cent., where the succession was over £1,000 to 4 per cent. where the succession exceeded £20,000. The succession of deceased's husband, on which he formerly paid 2 per cent. on the first £20,000, and 4 per cent. on the excess over that amount, was now liable to 1 per cent. on a succession over £500 ranging to 3 per cent. on a succession over £2,500. The successions of other relatives and of strangers also bore increased succession duty, although in no case was succession duty payable if a succession did not exceed £500 (formerly £200). Further still, an additional succession duty of 10 per cent. was imposed where the successor was a remote relative or stranger who was domiciled outside New Zealand.

The Death Duties Act, 1921, consolidated the 1909 Act and its amendments; but it did not alter the incidence or rates of duty, except that, for succession duty purposes, the successions of a father or a mother

were placed in the same category as brothers and sisters. Previously, they had been classed with remoter relatives.

Nine years later, the Finance Act, 1930, increased the maximum rate of estate duty by providing that where the final balance exceeded £100,000 estate duty was payable at 20 per cent. on £100,000 and 30 per cent. on the amount by which it exceeded £100,000.

Duties were not altered again until 1939, when Part III of the Finance Act, 1939, increased the rates of estate duty and succession duty. Estate duty now varied from 1.2 per cent., where the final balance exceeded £1,000, to 24 per cent. at £100,000. Where the final balance exceeded £100,000, estate duty was 24 per cent. on £100,000 plus 30 per cent. of the excess of the final balance over £100,000. The Act also provided that the wife's exemption from estate duty should diminish by pound for pound as the final balance exceeded £5,000, so that it disappeared at £10,000. The wife's exemption from succession duty was also decreased to £5,000. Under the new scale duty was payable at 1.3 per cent. on the excess over £5,000 to £10,000. Over £10,000 the rate became 2.5 per cent. and over £20,000 the rate was 5 per cent. In all other groups the rates were increased by approximately 25 per cent. This Act also introduced marginal balances.

The War Expenses Act, 1939, followed the Finance Act, 1939, and increased by one-third the rates introduced by the latter Act.

In 1940 the Finance Act, 1940, brought into effect new scales of estate duty and succession duty. Estate duty ranged from 1 per cent., where the final balance exceeded £200, to 40 per cent. where the final balance exceeded £100,000. Substantial increases were made in the rates of succession duty ; and, whereas previously the differences between the steps in the scales were either £5,000 or £10,000, under the new Act they were £1,000. Succession duty became payable at £200 in the case of successors other than husband, wife, child, grandchild, or lineal descendant. Provision was made for maximum rates of estate and succession duty varying according to the relationship of the successor.

The Finance Act, 1947, introduced an exemption from estate duty for successions of deceased's infant children to the extent of £500 each. This exemption was restricted to estates where the final balance was under £10,000 and the exemption was coupled with the existing widow's estate-duty exemption, and subject to reduction as the final balance exceeded £5,000 and approached £10,000. The Finance Act (No. 2), 1947, granted some relief to small estates by providing that no estate duty was payable where the final balance of the estate did not exceed £500 (previously £200).

In 1952, the Death Duties Amendment Act, 1952, introduced a rebate of 20 per cent. on all estate and succession duties payable in the estates of persons dying on or after 8th August 1952 (except for the surcharge in cases where successors are not close relatives of the deceased and are domiciled outside of New Zealand) and also made provision for increasing the widow's exemptions from estate and succession duties up to £6,000 (previously £5,000) and extended the graduated relief up to £12,000 (previously £10,000). The estate duty benefit for infant children was similarly extended within the same field.

It will be seen that there were originally two duties, Probate and Administration Duties and Legacy and Succession Duties. These were replaced, in 1875, by a single duty, Succession Duty, which applied until 1881, when it was replaced by another single duty, Estate Duty. No further major alterations were made until 1909, when two duties, Estate and Succession Duty were imposed; and this system has continued up till the present time.

Systems Operating in Australia.

In Australia, there are two taxing authorities, the Commonwealth authority and the State authorities.

The Commonwealth imposes an estate duty. This is payable on the final balance of the estate, and exemptions are allowed where the estate or part of the estate is left to widow, children, or grandchildren.

In Victoria there is a graduated scale, very much like the scale operating in respect of income tax in New Zealand, *payable on the final balance* of the estate. Rebates are allowed on the portion passing to the widow, children, grandchildren etc.

New South Wales imposes a duty which is determined *by the final balance of the estate*, and the relationship of the beneficiary to the deceased.

In Queensland, a succession duty is imposed ; but it is somewhat different from that applying in New Zealand as the *rate is determined by the final balance* of the estate, and also by the relationship of the beneficiary to the deceased, *viz.* each beneficiary pays duty on the benefit received by him at the rate determined, not on that benefit, but on the final balance of the estate. Queensland has a probate duty also, but the rate is nominal.

South Australia imposes a succession duty which is much the same as our succession duty, the rate being determined by the amount of the benefit received by the beneficiary, and the relationship of the beneficiary to the deceased. However, the scale is of a much simpler pattern and appears to be an adaptation of that operating in Victoria.

Western Australia has a probate duty, which is very much the same as the succession duty imposed in Queensland, *the rate being determined by the final balance* and by the relationship of the beneficiary to the deceased. *Where the estate is over £6,000, the relationship* qualification ends, and the rate is imposed regardless of relationship. Therefore, in the case of estates over £6,000, the duty is similar to our estate duty (except that New Zealand has a widow's exemption up to £12,000).

Tasmania has a duty similar to the succession duty operating in Queensland, the rate being determined by the final balance, and by the relationship of the beneficiary to the deceased. The Northern Territory also has a duty similar to the succession duty operating in Queensland ; *the rate being determined by the final balance*, and the relationship of the beneficiary to the deceased.

System Operating in the United Kingdom.

Since 1909, New Zealand, with its estate duty and succession duty, has followed the United Kingdom. However, in 1949, the United Kingdom abolished the two-duties system ; but, in order to augment the

revenue, it increased the rates of estate duty in the higher brackets.

The rates of succession duty in the United Kingdom were flat rates, as were the rates in New Zealand when first introduced. New Zealand broke away from the flat-rate system over the years, but the United Kingdom retained it and at the time of abolition the rates were :—

Husband or wife, 2 per cent. ; Lineal ancestor or issue, 2 per cent. ; Brothers and sisters or their descendants, 10 per cent. ; Any other persons other than Charities, 20 per cent. ; Charities, 10 per cent.

The following sets out the rates of estate duty in the United Kingdom applicable before and after the abolition of succession duty and taking into account an adjustment made in 1954 :—

Before.			After.		
Net Capital Value of total estate.		Rate per cent. of Duty.	Net Capital Value of total estate.		Rate per cent. of Duty.
Exceeding	Not Exceeding		Exceeding	Not Exceeding	
£	£		£	£	
—	2,000	Nil	—	3,000	Nil
2,000	3,000	1	3,000	4,000	1
3,000	5,000	2	4,000	5,000	2
5,000	7,500	3	5,000	7,500	3
7,500	10,000	4	7,500	10,000	4
10,000	12,500	6	10,000	12,500	6
12,500	15,000	8	12,500	15,000	8
15,000	20,000	10	15,000	17,500	10
			17,500	20,000	12
20,000	25,000	12	20,000	25,000	15
25,000	30,000	14	25,000	30,000	18
30,000	35,000	16	30,000	35,000	21
35,000	40,000	18	35,000	40,000	24
40,000	45,000	20	40,000	45,000	28
45,000	50,000	22	45,000	50,000	31
50,000	60,000	24	50,000	60,000	35
60,000	75,000	27	60,000	75,000	40
75,000	100,000	30	75,000	100,000	45
100,000	150,000	35	100,000	150,000	50
150,000	200,000	40	150,000	200,000	55
200,000	250,000	45	200,000	300,000	60
250,000	300,000	50			
300,000	500,000	55	300,000	500,000	65
500,000	750,000	60	500,000	750,000	70
750,000	1,000,000	65	750,000	1,000,000	75
1,000,000	2,000,000	70	1,000,000		80
2,000,000		75			

In the Financial and Economic Statement made by the Chancellor of the Exchequer (Sir Stafford Cripps) in the House of Commons on April 6, 1949, the Chancellor stated in regard to the proposed Death Duties amendments :—

> The next, and the major, simplification I propose is with regard to Death Duties. There are, as the Committee knows, at present three duties payable upon death ; the Estate Duty, which is charged on property passing on death, at rates graduated according to the total value of the property passing ; and the Legacy and Succession Duties, which are charged on the value of the bequests received by beneficiaries, and vary in amount according to the relationship of the beneficiary to the deceased. The two latter duties are complementary ; that is, they are charged at the same rates but on different classes of property. All three are separate duties, each with its own complicated legislative code.
>
> This method of imposing three separate taxes on death causes a great deal of unnecessary work, both to the Inland Revenue and to executors. Judged by modern standards of taxation, the Legacy and Succession Duties are most unsatisfactory, in their present form. The rates are unrelated to taxable capacity, but are flat rates, depending on the degree of consanguinity. Thus, a son is charged 2 per cent., a brother 10 per cent., and a distant relative 20 per cent., regardless of the amount of benefit received. For instance, an aged aunt, who receives what is, in effect, a charitable legacy of £1,000, pays 20 per cent. tax on it, whereas a son, who inherits £100,000, pays only 2 per cent.
>
> The Legacy and Succession Duties also have the drawback that they impose a proportionately heavier burden on the small than on the large estate. For example, an estate of £6,000, passing wholly to brothers and sisters, pays a total charge of 3 per cent. Estate Duty, 10 per cent. Legacy and Succession Duties, equivalent to a rate of nearly 13 per cent., or 10 per cent. over the Estate Duty rate, whereas, at the other extreme, an estate of £3 million would pay only 2½ per cent. over the rate of Estate Duty. It is, no doubt, because of this unequal incidence of the duty that testators, in fact, leave about two-thirds of the total legacies and bequests free of duty, and in all such cases the Legacy and Succession Duties merely become a wholly illogical, extra Estate Duty, falling upon the residue.
>
> The first major reform of the system of Death Duties was brought about by Sir William Harcourt in 1894, when he consolidated the Probate, Inventory, Account and Temporary Estate Duties into a single Estate Duty. This reform was an important land mark in our fiscal history ; I think it is now time to complete Sir William Harcourt's reform, by consolidating the three existing duties into a single Duty. The Legacy and Succession Duties will be repealed outright, and the Exchequer will be compensated by a moderate lift in the scale of the new duty, as compared with the existing Estate Duty.

It will be seen from these remarks that the Chancellor considered the institution of the one-duty system of death duty as a major step in the simplification of that type of taxation and there can be no doubt that most of his remarks apply with equal or even more force to New Zealand. One major point in which the United Kingdom differed from New Zealand was that, in some cases, the levying of Succession Duty was delayed until the successor was entitled to take possession—that is, until, say, a life tenant died. In New Zealand both Estate Duty and Succession Duty became payable on the death of the deceased.

Another point of difference was that, in the United Kingdom, there were flat rates of Legacy and Succession Duty (see the second paragraph in extract from Chancellor's financial statement quoted above), whereas New Zealand has graduated rates of Succession Duty which take into account the relationship of the beneficiary and the amount of the benefit received.

The United Kingdom imposes a single duty, estate duty, and this is based on the final balance of the estate. There are no rebates or exemptions for near relatives.

Estates in *Australia* are subject to two duties because of Federal and State taxation, but each taxing authority imposes a single duty, except Queensland which also imposes a token duty called probate duty. In contrast, the one taxing authority in *New Zealand* imposes two duties.

The foregoing review of the systems of death-duty taxation in countries with a system of general law akin to our own points to the inescapable conclusion that a single-duty system based on the final balance of the estate has been tried and has proved satisfactory under present-day conditions.

Our next inquiry must, therefore, be directed to the question whether such a system is the best for adoption in New Zealand.

THE SINGLE-DUTY SYSTEM IN A NEW ZEALAND SETTING.

When the present dual system was introduced into New Zealand, in 1909, the rates of duty were low, and did not impose any great burden on the estates of deceased persons. They had the appearance of spreading the incidence of the duties more widely, but, in substance, they did not achieve that purpose. Over the years, the rates of both duties have increased considerably and have reached a point where they are a definite burden. The result is that problems which were of small moment when the rates were low are now matters of serious concern and the amount of duty involved constrains the administrators of estates to enter upon difficult and protracted arguments with the Inland Revenue Department. They frequently find their way into the Courts.

Each of the two present duties has its own separate legal code, and each has a more or less separate legislative branch. The abolition of estate duty would not simplify matters because the provisions relating to estate duty would have to be retained in order to provide the foundation upon which the succession duty provisions would be built and applied. The abolition of succession duty, however, can be simply achieved by repealing most of the succession-duty provisions without affecting the estate duty provisions. There would be a definite reduction in the problems which the Department has to face. This advantage would be equally shared by the taxpayer, because any problem which besets the Inland Revenue Department has its repercussions on the tax-paying estate.

Simplification and Certainty.—One of the greatest advantages of a single-duty system is the factor of certainty as far as the taxpayer is concerned.

In the Inland Revenue Department, it means: (a) simplified forms of returns and assessment; (b) reduced printing; (c) easier handling and greater expedition leading to quicker release of estates; and, (d) simplified accounting.

So far as the taxpayer is concerned, it means that, in most cases, the man in the street would be able to compute with reasonable accuracy the duty payable in his estate, a matter which is at present beyond him.

Abuse of Present System.—A testator should not be able to dictate, by the terms of his will, the amount of tax his estate must pay. The present system allows room for him, particularly if he has a large estate, to do this. Much of the time of experts in this field is occupied in devising schemes under which the estate can be distributed with a minimum liability for duty. The single-duty system will ensure that persons of equal wealth pay a like amount.

Double Margins.—The introduction of the one-duty system would do away with the difficulty of double margins. Very often an estate with a marginal balance for estate duty also has a marginal balance for succession duty.

For example, in an estate with a final balance of £510 left to a husband, the £10 would be a marginal balance not only for estate duty, but also for succession duty and would result in duty of £16 (£8 estate duty, and £8 succession duty). The £10 in excess of £500 would mean that £16 in duty is payable, thus making that estate worse off than an estate of £500 which pays no duty. This is an extreme example, but the anomaly is present in less obvious form in many cases.

Tax on Tax.—A great deal of criticism is levelled at the present system because estates pay both estate duty and succession duty on the final balance. It is argued that this is "tax on tax". This is indeed so, although the result is to extract a stipulated proportion of the estate. That can be achieved simply and easily by a single tax.

Since the Minister of Finance has decided that a one-duty system should be adopted, the question arises as to the type of single duty which should be adopted here. In the United Kingdom, and in Australia, the system favoured is that in which the rate of duty is determined by the final balance, *i.e.*, a variation in one form or another of our present estate duty. Of the nine systems which have been examined, South Australia is the only State which does not determine the rate by the final balance. The others look at the estate accumulated during the deceased's lifetime, rather than at the amount when the beneficiaries receive it. This viewpoint is based on the premise that the laws of the State have enabled the deceased to build up and retain his property in times of peace and war, and have given him a subordinate right to dispose of such property on his death. The principle is clearly stated in the following extract from the Budget speech of Sir William Harcourt, as Chancellor of the Exchequer in 1894:

> Upon the devolution of property of all descriptions, the State takes its share first—before any of the successors in title are benefited. The reason on which this is founded is plain. The title of the State to a share in the accumulated property of the deceased is an anterior title to that of the interest to be taken by those who are to share it. The State has the first title upon the estate, and those who take afterwards have a subsequent and subordinate title. Nature gives man no power over his earthly goods beyond the term of his life. What power he possesses to prolong his will after his death—the right of a dead hand to dispose of property—is a pure creation of the law, and the State has the right to prescribe the conditions and the limitations under which that power shall be exercised.

Of the systems examined, that operating in the United Kingdom is without doubt the simplest. There they have a straight-out estate duty, without any rebates or exemptions. Once the final balance of the estate is determined, the duty can be calculated according to the scale, without reference to the will and without taking notice of the relationship of the successors to the deceased. This system is by far the best from the Revenue point of view, but it cannot be applied completely in New Zealand because of the need to preserve the existing estate-duty exemptions for widows and infant children. These exemptions, however, operate in small but well-defined limits, and they disappear when the estate reaches £12,000.

The Commonwealth of Australia and the Australian States all make some provision for near relatives, either in the form of exemptions or rebates, or in the rate of duty. These systems all entail reference to the will and the calculation of successions. Such a system would not be an aid to any great extent in the simplification of the system from the taxpayer's point of view. If successions must be calculated to determine the duty, then it is obvious that calculations of that nature make it difficult for any person to determine the future liability of his estate to death duty.

Finality of Assessment.—The system proposed by the Hon. Mr. Watts obviates the necessity for recalculating the duty in estates sometimes years after the death of

the deceased, owing to: (a) orders made under the Family Protection Act, 1908; (b) contingencies affecting the successions; or (c) orders resulting from testamentary promises.

The demand for further revenue in such circumstances often embarrasses the administrators of estates, and in some cases it operates harshly.

Quick Successions.—The provisions of s. 4 of the Death Duties Amendment Act, 1953, giving relief in cases of quick successions are more difficult to apply because of the incidence of succession duty. The procedure will be greatly simplified when that duty is abolished, and doubts and difficulties due to the uncertainty of human life will not be required to be taken into consideration.

Adopted Children.—The Adoption Bill, 1955, now before the House, which provides for the recognition of foreign adoptions will further accentuate our existing difficulty arising from the rather loose way in which many people take children into their homes with the intention of treating them as members of the family, but without the necessary formality of perfecting the relationship in law. The necessity to investigate such cases would almost disappear under a system of single estate duty.

Relationships.—A great deal of unnecessary suffering is created under the existing system where there are illegitimate relationships. Frequently the Department is forced into the position of bringing into the open for the first time information which would be better forgotten. Any system which reduces the occasions on which such action is necessary has much to commend it.

Interpretation of Wills.—The interpretation of wills is recognized as being a difficult branch of the law, and officers of the Department are regularly called upon to interpret wills and trust documents in order to calculate successions. This branch of the work is a fruitful source of disagreement between solicitors and the Inland Revenue Department. Occasionally, the Department must be represented in the Courts when beneficiaries institute proceedings to obtain an interpretation of a will. Interpretation of a will is strictly a matter for the executors and the beneficiaries, and, unless it is required to establish the value of an asset in the estate, it should not be the concern of a Revenue Department, which is interested only in the collection from the estate of the revenue which the State requires.

Complicated Calculations.—The calculation of successions can often involve long and complicated computations, especially where successive life interests arise or numerous trust funds are created. In many cases, these computations are so complicated that only experienced officers of the Department have the necessary knowledge and experience to make them. It does not add to good administration for the querulous executor to be suspicious of its assessment, seeing that the general body of tax-payers could work them out, or understand the results when they are worked out. Every time there is a change in the final balance, the whole of these abstruse calculations have to be repeated.

Artificial Factors.—In calculating life interests, the Inland Revenue Department has, up to the present, adopted the Carlisle tables of expectancy, and an interest rate of 5 per cent. This artificial basis for calculating these interests is frequently challenged. The adoption of one duty would materially reduce the occasions upon which such calculations are required.

Dissection of Assets.—Apart altogether from calculations, the computation of successions frequently involves a laborious dissection of the estate assets into relative successions for the purpose of calculating the duty. The occasions on which this is necessary are greatly reduced by the one-duty system advocated by Mr. Watts.

Estate Duty: Principal Duty.—When it is realized that all these difficulties arise out of the collection of less than 25 per cent. of the death-duty revenue, one is led to the view that, if one duty is to go, it ought to be the smaller and more complicated one; provided the needs of the revenue can be met by a suitable adjustment of the larger estate duty. It is strongly submitted that this can be done.

It is obvious that the abolition of the smaller duty and a slight adjustment of the larger will produce the same amount of revenue, if that is desired, while disposing of all the varied and complicated problems attached to the smaller duty. There is, of course, a wealth of legal authority in connection with estate duty; and, generally speaking, the law regarding that duty is well settled. It must be remembered, also, that, following the decision of the United Kingdom to retain estate duty as the only duty, there are advantages in our having the benefit of decisions made by the Courts on questions of law arising under a similar system.

Benefit to Remote Successors.

The only criticism likely to be levelled at the proposal to abolish succession duty is that it benefits most the remoter relatives and strangers, because the rates of succession duty are greater the remoter the relationship. At first sight, this appears to be a strong argument against the proposal; but a critical and analytical examination of the position shows that there is in fact very little in it.

It is self-evident that most testators leave their estate to close relatives. Only in the absence of these, do remoter relatives or strangers participate. Where they do, their moral claim on the bounty of the deceased is usually very much greater than the claim of immediate relatives.

The true position is that of the total death duty collected only 7.6 per cent. is represented by succession duty on the successions of remoter relatives and strangers. But these successions would have borne some succession duty if they had devolved upon the immediate family of the deceased. It is estimated by the Inland Revenue Department that the extra duty arising from the remote relationship is in the vicinity of 5 per cent. of the total duty.

A large proportion of this 5 per cent., although it is calculated on the successions of remote relatives and strangers, is in fact paid by the immediate family. The reason is that in most cases testators stipulate that the provisions for this class of beneficiary are to be free of duty; and the duty is charged on the residue of the estate which is left to the immediate family. In practice, therefore, the duty-charge is not borne by the successor but by the residue, and residue usually goes to a close relative or close relatives.

It is estimated that this result applies to two-thirds of the succession duty on the successions of remote relatives and strangers, so that the whole elaborate

system of succession duty, in effect, draws from such actual successions a total of a third of 5 per cent. of the total duty, or one and two-thirds per cent. The continuation of this elaborate framework is not justified by the results, and falls to the ground when the advantages of simplicity are weighed against it.

Charities.

The position of charities has frequently caused criticism and resentment. Some charities, because they operate beyond New Zealand, pay succession duty, while those which function wholly within New Zealand do not. Other charities which are domiciled outside New Zealand bear, in addition, the 10 per cent. surcharge. The abolition of succession duty would dispose of questions of this kind.

There is, however, a body of opinion that a "protective tariff" should be maintained to encourage testators, at least, to subscribe to the belief that "charity begins at home".

To opponents of a proposal to treat overseas charities on the same basis as New Zealand charities, it could reasonably be pointed out that the virtue of charity is not divisible. The world is a much smaller place now than it was when the present principles of differentiation were established. We are no longer so remote from these other countries that we are not concerned with alleviating their troubles (as, on a national basis, our contribution to the Colombo Plan testifies), and the time has arrived when we ought to reorient our ideas on this question. Indeed, in cases where the overseas charity has excited public or political sympathy, in New Zealand Parliament has not been slow to pass special legislation placing that appeal on the same basis as a New Zealand charity. Attention is directed to the gift-duty provisions dealing with Corso and various flood-relief appeals, but it would be a bold statement to say that these objects are more worthy than, say, the Red Cross or the New Zealand Lepers' Trust Board (Inc.), which are not so favoured.

A cognate matter which will cause an anomaly until it is corrected is the fact that a substantive amendment will have to be undertaken in respect of gift duty so far as it applies to charities which are not restricted to New Zealand objects. With the abolition of succession duty, charities will now all be on the same footing whether they relate to New Zealand objects or overseas objects, but the same position will not obtain if a gift *inter vivos* is made to a charity which is not restricted to New Zealand objects. This anomaly should now be disposed of by suitable amendment.

Some Points for Consideration.

In drafting the legislation which will give effect to the Budget proposals for the establishment of the one-duty system of death-duty taxation, the Minister of Finance may be open to some suggestions put forward by his brethren in the law. He, no doubt, has had practical experiences of difficulties besetting executors and their advisers in this branch of legal practice.

The arbitrary imposition of interest on to-be-assessed death duty does not allow a sufficient margin of time for the preparation of the accounts. It is physically impossible in dealing with the majority of estates in a community like ours to come to a final appreciation of the assets and liabilities of the deceased within the period of three months after his death. Take, for instance, the estate of a testator who has died overseas leaving New Zealand assets: he may have died over a year before probate is received in New Zealand for re-sealing; but the interest on the duty to be paid has been running for over nine months without any possibility of abatement on account of the special circumstances. A statutory enlargement of this time would be welcomed in every law office in the country. It is not beyond the resources of the Law Draftsman to provide sufficient safeguards so that this amendment of the existing law would not be abused through avoidable delay.

There is no doubt that the Internal Revenue Department's view is that death duty is a debt due to the Crown from the date of death, and that notionally, at all events, interest should be payable from that date. Consequently, the allowance of three months before interest begins to run is a concession for which we should be duly grateful.

Since the period of three months was fixed by statute, estate work has become very complex and duties very much higher. In consequence, it is almost the rule nowadays that every estate has to pay interest in some shape or form, because it is impossible to get assessments made and assets realized within that period. In our view, it would not be any loss to the State, and would be of considerable benefit to practitioners and their clients, if the period were increased to, say, a minimum of six months, with a discretionary power vested in the Minister to extend the period in special circumstances.

As the Inland Revenue Department would be the first to admit, the new one-duty system of assessment on the final balance of the estate will result in relieving it of many of the administrative difficulties at present obtaining. An assurance by the Minister of a consequential speeding-up of assessments, and the reduction of requisitions to reasonable limits, would be reassuring to the profession, and would add to its appreciation of the Minister's streamlining of the death-duty legislation on the lines indicated in his Budget speech.

Another matter associated with the foregoing is also administrative in that there is very often a long delay in releasing probate to the executors, to enable them to realize assets for the payment of duty. The present compulsory procedure of giving a bond, generally supported by an insurance company, with a financial loss to the estate, is cumbersome. Some method should be provided which is more realistic and elastic; and, possibly, the Commissioner should be given a discretion to release probate immediately in approved cases. This would facilitate the early realization of assets, and a Commissioner should be easily satisfied where the assets are fixed in nature that no improper manipulation will occur. Possibly, if funds are readily available, the probate could be released on a lump-sum payment, on account of duties, being made.

To assist swift administration and access to assets, provision should be made (particularly as assessment under the new system will be so easy) for the executors to make a general assessment of duty, and to pay it at the same time as the administration accounts are lodged; and, on payment of such amount, the probate would be automatically released.

Consideration should be given to a review of the practice, in cases where an estate has overseas assets, of assessments of duty being made initially on both local and foreign assets, and a refund made later. This

makes for difficulties where the bulk of the assets in an estate are overseas. Consideration could be given to the remodelling of the administrative practice as to assume that duty will be paid overseas, and to make a *pro forma* assessment initially, which, in effect would restricts the assessment to duty on the New Zealand assets only.

The State now has a vested interest in the estate of substantially every taxpayer, and the question arises whether or not consideration should be given to some scheme for the pre-payment by a person of his death duties by transferring to the State, through an approved medium, of assets which he considers will be sufficient to take care of death duty. If such a scheme could be accomplished, and the assets transferred taken out of the dutiable estate, considerable relief to estates would occur in respect of the rate of duty. In addition, the State would probably have a corresponding benefit, because the duty, having been paid possibly years in advance, would be money in the State's hands which could be employed by the State during the lifetime of the person concerned. Such a scheme, however, has serious implications which would have to be carefully studied before any steps along that line are taken by the Government of the day.

We conclude by renewing our invitation to our readers to make, at any early date, any further constructive suggestions that may occur to them in the light of their experience in death-duty matters. Such suggestions should be helpful to the Minister of Finance when the drafting of the new legislation is under consideration.

SUMMARY OF RECENT LAW.

CHARITY.

Benefit to Community—Health and Welfare—Inhabitants of Named Parish—Provision of public Recreation Ground—Whether valid Charitable Gift. By cl. 4 of his will, a testator bequeathed to his trustees the sum of £3,000 "with a view to the maintenance and improvement of the health and welfare of the inhabitants of the parish of [J.] . . . by the purchase, equipment, and maintenance of a public recreation ground for amateur activities," and further provided that the trustees were to apply the sum in the purchase of a piece of land near J., and in the improvement and equipping of the same as a public recreation ground for amateur activities for the benefit of the said parish. On the question whether the bequest was a valid charitable gift, and on its appearing that the parish had a football field and cricket ground but needed a gymnasium or hall for indoor recreation, *Held*, A gift of money for the provision of a recreation ground for the inhabitants of a particular area was for a valid charitable purpose (dictum of Viscount Simonds in *Inland Revenue Commissioners* v. *Baddeley*, [1955] 1 All E.R. 525, 532, applied), and, accordingly, the gift contained in cl. 4 of the will was a valid charitable gift, and the money would be directed to be applied cy-près, to be applied according to a scheme for something in the nature of a playground, gymnasium or village hall. *Re Morgan (deceased). Cecil-Williams and Another* v. *Attorney-General and Another*, [1955] 2 All E.R. 633 [Ch.D.].

Crown's Jurisdiction over Charities, *105 Law Journal*, 341.

COMPANY LAW.

Directors' Discretion to Refuse Transfers of Shares, *105 Law Journal*, 342.

CONTRACT.

Penalty—Licence to make and use Patented Material—Compensation payable to Licensor on Sale or Use of more than Quota—Expiration of Patents—Compensation remaining Payable. By a licence and a deed, both dated April 2, 1938, the appellants granted the respondents a non-exclusive licence under British letters patent to import, make, use and sell certain "contract material", *viz.*, hard metal alloys made in accordance with the inventions which were the subject of the patents. The licence was to commence on June 1, 1937, and to continue until September 18, 1947, and thereafter until determined by either party on six months' notice in writing, and the respondents were to pay a royalty on the sale or use of contract material made in accordance with any patent in force. In addition, by cl. 5 of the deed, the respondents were to pay a sum called "compensation" if, in any one month during the continuance of the licence, the aggregate quantity of contract material sold or used by them (other than contract material supplied to them by the appellants or any licensees under the said patents) exceeded a named quota. After the outbreak of war in 1939, the payment of compensation was suspended, the appellants voluntarily forgoing the payment, it being contemplated that some new agreement, possibly not including provision for compensation, should be entered into after the war. No compensation was paid after December 31, 1939. The patents with regard to one of the grades of contract material (the iron grade) expired in 1941, so that the respondents could thereafter purchase the iron grade material from any manufacturers although cl. 5 would still operate in respect of their sale or use of such material so purchased. In September, 1944, the appellants submitted to the respondents the draft of the proposed new agreement which, however, the respondents did not accept. In July, 1945, the respondents commenced an action against the appellants claiming damages for fraudulent misrepresentation and breach of contract. In that action, the appellants, on March 26, 1946, delivered a counterclaim by which they claimed, among other claims, payment of compensation as from June 1, 1945. The counterclaim failed on the ground that it was premature, in that there had been no notice determining the suspension of compensation until the counterclaim itself. In the present action, the appellants claimed compensation from January 1, 1947. *Held*, 1. Although in view of the agreed suspension of payment of compensation under cl. 5 of the deed of April 2, 1938, equity required that any resumption by the appellants of their legal right to compensation should be effective only after reasonable notice to the respondents, yet the delivery of the counterclaim in March, 1946, constituted notice of the appellants' intention to stand on their legal rights under the deed in this respect, and the period of nine months which elapsed before January 1, 1947, from which date compensation was claimed, was a sufficient period of notice, and accordingly the appellants were entitled to compensation. (*Hughes* v. *Metropolitan Railway Co.*, (1877) 2 App. Cas. 439, considered.) (*Canadian Pacific Railway Co.* v. *Regem*, [1931] A.C. 414, explained and distinguished.) 2. Clause 5 was not void as being in unreasonable restraint of trade by reason of its continued application after the expiration of the patents relating to iron grade material, notwithstanding that its effect was to diminish the amount of iron grade material which the respondents could profitably sell in competition with the appellants, because the clause did not constitute an unreasonable protection of the appellants' interests, and, as there was nothing to show that the clause was likely to limit the total supply of the material available for sale or to have a substantial effect on the price that the consumer would have to pay, the clause was not contrary to the public interest. 3. Clause 5 did not impose, or purport to impose, a penalty on the respondents. 4. (Viscount Simonds, dissenting) cl. 5 was not rendered void by the Patents and Designs Act, 1907, s. 38 (1), because, although cl. 5 offered an inducement to the respondents to purchase contract material from the appellants or their licensees after the expiration of the patents, the clause did not constitute a condition the effect of which would be either to "prohibit or restrict" (within the meaning of the enactment) the respondents from using any article supplied by any person other than the appellants, or to "require" (within the meaning of the enactment) the respondents to acquire from the appellants any article not protected by the patents. Per Viscount Simonds: I would not have it supposed, particularly in commercial transactions, that mere acts of indulgence are apt to create rights, and I do not wish to lend the authority of this House to the statement of principle which is to be found in *Combe* v. *Combe*, [1951] 1 All E.R. 767, 770, and may well be far too widely stated. (Decision of the Court of Appeal, [1954] 2 All E.R. 28, reversed.) *Tool Metal Manufacturing Co., Ltd.* v. *Tungsten Electric Co., Ltd.*, [1955] 2 All E.R. 657 [H.L.]

CONVEYANCING.

Sales of Undivided Shares in Land, *219 Law Times*, 244.

DIVORCE AND MATRIMONIAL CAUSES.

Nullity—Consent to Marriage—Purpose to enable Wife, a German, to live in England with Another Man with whom She had been living as his Wife—No cohabitation between the Parties to the Marriage—Absence of Duress. In 1919, the petitioner, who was a German by birth, met and became engaged to be married to one A.S., an Englishman. In 1921, she discovered that A.S. was married and living apart from his wife. The petitioner and A.S. decided to live together in Germany as husband and wife. In 1925, A.S. returned to England. To enable the petitioner also to live in England it was arranged that she should go through a ceremony of marriage with the respondent, a step-brother of A.S. Accordingly, on November 13, 1925, they were married in Germany and travelled together to London, where they were met by A.S. A.S. and the petitioner then went off and lived together. Six months later, the petitioner went with the respondent to the Home Office to declare that they had cohabited for six months, so that it would not be necessary for the petitioner to return to Germany. She did not see the respondent again until after the death of A.S. with whom she lived as his wife until he died in June, 1948. In 1951, the petitioner met another German whom she now wished to marry. She met the respondent and discussed the possibility of divorce. In 1954, the petitioner discovered that the respondent had, since 1940, been living with another woman who had borne him three children. The petitioner now sought a decree of nullity on the ground that the purported marriage was null and void for want of consent, alternatively for a divorce on the ground of the respondent's adultery. *Held*, By the ceremony of marriage on November 13, 1925, the petitioner and the respondent intended to become man and wife, and, since there was no element of duress the prayer for a decree of nullity would be rejected (*dictum of Karminski, J., in H. (otherwise D.) v. H.*, [1953] 2 All E.R. 1229, 1234, applied); the petitioner would, however, be granted a divorce, in the exercise of the Court's discretion. *Silver (otherwise Kraft) v. Silver.* [1955] 2 All E.R. 614 [P.D.A.]

EXECUTORS AND ADMINISTRATORS.

The Appointment of Executors, *105 Law Journal*, 308.

FACTORIES.

Fencing of Dangerous Machinery, *105 Law Journal*, 339.

FAMILY PROTECTION.

Time for Making Application—Testator's Estate distributed within Year of Grant of Probate—Application for further Relief made within Year, but After Distribution of Estate—No "estate of the testator" remaining in Executor's Hands on which Order could operate—Application dismissed—Family Protection Act, 1908, s. 33 (1), (6), (9). On April 22, 1953, probate of the will of the testator was granted to the Public Trustee, who had completed his executorial function by distribution of the estate (in this case, it was agreed, justifiably) before an application for further relief under the Family Protection Act, 1908, was filed and sealed on March 26, 1954, within a year of the grant of probate. *Held*, 1. That, at the time of the filing of the application there was no "estate of the testator", within the meaning of those words in s. 33 (1) of the Family Protection Act, 1908, remaining in the executor's hands out of which provision could be made. (*In re Donohue, Donohue v. Public Trustee*, [1933] N.Z.L.R. 477; [1933] G.L.R. 415, and *Public Trustee v. Kidd*, [1931] N.Z.L.R. 1; [1930] G.L.R. 595, applied.) (*In re Barlow, Barlow v. Wilkinson*, [1946] N.Z.L.R. 38; [1945] G.L.R. 420, distinguished.) 2. That the power conferred on the Court by s. 33 (6) is an ancillary power exercisable only after the Court has already made an order under s. 33 (1) (pursuant to an application brought within the one year after the grant of probate or any extension of the specified time), and has directed that the incidence of that order is to fall upon that portion of the estate in which a particular legatee or devisee is interested; and accordingly s. 33 (6) is not relevant when considering an application which, though not late, is made after the executor has parted with the estate. *Semble*, That it does not follow that the rights of potential applicants under the Family Protection Act, 1908, can be completely defeated by the carelessness, or whim, or deliberate intent of an executor who distributes his testator's estate before the expiration of a year from the grant of probate; because, though such conduct may deprive the Court of jurisdiction to make an order under that statute, an executor acting in such a way and without justification for so acting may be doing so at his peril. (*In re Simson, Simson v. National Provincial Bank, Ltd.*, [1950] Ch. 38; [1949] 2 All E.R. 826, referred to.) *In re Lerwill (deceased), Lankshear v. Public Trustee and Others.* (S.C. Wellington. June 9, 1955. Barrowclough, C.J.)

LIMITATION OF ACTION.

Actions against Public and Local Authorities—Delay in Giving Notice of Intended Action—Defendant "materially prejudiced in his defence or otherwise by the failure or delay"—Any Prejudicial Matter available to Intended Defendant—"Or otherwise"—Limitation Act, 1950, s. 23 (1) (b), (2). The words "or otherwise" in s. 23 (2) of the Limitation Act, 1950 (in the phrase "the intended defendant was not materially prejudiced in his defence or otherwise by the failure or delay") are used in their ordinary meaning, and any prejudicial matters may be put forward by the intended defendant. The prejudice, however, must arise from the delay beyond the period of one year referred to in s. 23 (1) (*b*). The observation of Streatfeild, J. (in *R. B. Policies at Lloyds v. Butler*, [1950] 1 K.B. 79, 81; [1949] 2 All E.R. 226, 229, adopted in *Henderson v. Stewart*, [1955] N.Z.L.R. 141, 144, and in *Madders v. Wellington Technical School Board of Managers*, [1955] N.Z.L.R. 157, 161, that it is a policy of the Limitation Acts that there shall be an end of litigation) in the context in which it was made, is applicable to the staleness of claims, and not to their not being well founded. A Proclamation taking part in the intending plaintiff's land was registered on December 17, 1953. The intending plaintiff suspected before the date of such registration that he had a right of action against the local authority; he took no steps thereafter to ascertain the position with any more clarity until eleven months later; and thereafter again he took no further action until six weeks after the twelve months had expired. He then gave the intended defendant notice of intention to bring an action on the ground that the Proclamation was invalid as being *ultra vires* the intended defendant's statutory powers, and that registration of the Proclamation against his land was procured by fraud. *Held*, 1. That there was no reasonable cause for the intended plaintiff's delay in bringing the action until a year and six weeks after the registration of the Proclamation, and leave to bring the action should be refused. 2. That such refusal of leave was without prejudice to any rights which the intending plaintiff, who alleged fraud on the part of the intended defendant, might have under s. 26 of the Limitation Act, 1950. *Meadows v. Lower Hutt City Corporation.* (S.C. Wellington. May 27, 1955. Hutchison, J.)

PRACTICE.

Appeal on a Point of Law, *105 Law Journal*, 259.

PRACTICE—APPEALS TO PRIVY COUNCIL.

Appeal as of Right where "matter in dispute" amounts to or is of the Value of £500 sterling or Upwards—Costs amounting to over £500—West African (Appeal to Privy Council) Order in Council, 1949, art. 3 (a). By the West African (Appeal to Privy Council) Order in Council, 1949, art. 3, an appeal to the Privy Council lies "(*a*) as of right, from any final judgment of the Court, where the matter in dispute on the appeal amounts to or is of the value of £500 sterling or upwards . . .". The petitioner, as plaintiff, succeeded in proceedings against the respondents to the petition for trespass and recovery of possession of certain lands, and an appeal by the respondents to the petition was dismissed. The petitioner submitted his bill of costs for taxation which included two items, amounting to some £870, incurred in the preparation of a plan. The taxing officer reduced this sum to £9 and the Judge on review refused to interfere. The petitioner appealed to the West African Court of Appeal, who allowed some £736 in respect of the two items of costs. Leave to appeal to the Privy Council from the order was granted to the respondents to the petition as of right under art. 3 (*a*) of the West African (Appeal to Privy Council) Order in Council by a Judge of appeal of the West African Court of Appeal. The petitioner now sought to dismiss this appeal. *Held*, The appeal would be dismissed since, having regard to the general rule of practice as to appeals on costs, the words "matter in dispute" in art. 3 (*a*) of the order meant matter in dispute in the proceedings other than costs, and, although in theory appeals as to the incidence and quantum of costs might come within art. 3 (*b*) of the order or be the subject of special leave by the Board, there were no such facts in the present case as would justify the granting of leave. *Per curiam*, The phrase "as to costs only" normally refers to the incidence of costs, but it would seem to cover disputes as to quantum on taxation unless there is some special provision dealing with the latter. Appeal dismissed. *Nana Atta Karikari and Another v. Nana Oware Agyekum II.* [1955] 2 All E.R. 654 [P.C.]

THE PROBLEMS OF CHILD LICENSEES.

A Consideration of Reardon v. Attorney-General, [1954] N.Z.L.R. 978.

By G. H. L. Fridman.*

Once a Licensee always a Licensee.

Some recent English decisions have stressed the tendency of the law to indemnify small children for harm suffered on, or as a result of, the state of premises on to which they have wandered. The Court of Appeal in *Gough* v. *National Coal Board*, [1953] 2 All E.R. 1283, and *Bates* v. *Stone Parish Council*, [1954] 3 All E.R. 38, made it clear that once a child was given permission to come on to land occupied by the defendant, then if the child was attracted by and went on to anything which was on that land, and was injured thereby, the defendant would be liable. The child would not become a trespasser because he or she left that part of the land to come on which he or she was given permission. This rule followed from the law relating to "allurements"; for if a child is lured by something which is on the land he either becomes or remains a licensee. In *Gough's* case the allurement was a truck on which the six-year-old boy stole a ride. In *Bates's* case, it was a chute in a children's playground, on which the four-year-old boy played, and from which he fell. From both these cases one might almost deduce the rule: "once a licensee always a licensee"—at least as far as concerns small children, who may not be expected to appreciate the dangers which are present on a given piece of property, dangers which are well within the foresight of the occupiers of that property, as was certainly true in *Gough's* and *Bates's* cases.

One exception to, or limit on this rule would seem to be where it is possible to construe the licence given to the child as being conditional, and the condition has not been fulfilled by the child. In *Gough's* case it was unsuccessfully argued that the licence was limited to the pathway, and did not include the trucks. In *Bates's* case it was unsuccessfully argued that the playground was open only to children under the control of a competent guardian (which the infant plaintiff was certainly not at the time of the accident).

The Doctrine of the Conditional Licence.

The idea of a "conditional licence" was, however, recently attacked by Devlin, J., in *Phipps* v. *Rochester Corporation*, [1955] 1 All E.R. 129, at pp. 142-144, although he sought to make use of it as an alternative ground for his decision against the infant plaintiff.

Before considering his criticism, however, it is worthy of note that neither *Gough's* case nor *Bates's* case was referred to by the learned Judge, who even said (at p. 144) that the doctrine "has not even been mentioned in the Court of Appeal in any of the cases in the last thirty years in which one might have expected it would have been discussed". In view of what the Court of Appeal actually said in the two cases already cited, this is a surprising statement.

In *Phipps's* case the plaintiff was a little boy aged five who with his seven-year-old sister was walking across the defendant's land when he fell into an open trench and was injured. Devlin, J., seeking to discover the true principle on which was based an occupier's liability to children, considered that four main lines of approach had been adopted to avoid the conclusion that licensors must make their premises safe for little children. The first was to say that such children must be treated like adults. This he rejected because it meant an inflexible approach. The second possible way to limit a licensor's liability was by saying that the child's parents could be guilty of contributory negligence of which the child could not. This was rejected because there was no English case in which the negligence of the parent had been visited on the child. This is true now that the doctrine of "identification" is not part of the law. But at one time it might not have been as clear as Devlin, J., makes out. However, it is clear now that a parent's negligence is not a good defence though it might make the parent a concurrent tort-feasor. The third method of limitation was that of the conditional licence, *i.e.*, that the licence was only granted on condition that the child was accompanied by a responsible adult. This formulation of the doctrine, it will be seen, is somewhat narrow. It does not take account of the possibility that the condition attached to the licence is not that an adult should be with the child, but, *e.g.*, that the child should not go on a certain part of the premises.

This failure to look at the wider application of the doctrine, it is respectfully submitted, led Devlin, J., to criticize it on the grounds that it would tend to produce legal fictions and would not get at the real need; he considered that "the general principle which governs the relationship between licensors and licensees can be made to work in the case of little children without the employment of any special device".

For these reasons the learned Judge thought that the general rule—without any new doctrine of conditional licence—would satisfactorily deal with children if it were framed "so as to compromise between the robustness that would make children take the world as they found it and the tenderness which would give them nurseries wherever they go. On this view, the licensor is not entitled to assume that all children will, unless they are allured, behave like adults; but he is entitled to assume that normally little children will, in fact, be accompanied by a responsible person and to discharge his duty of warning accordingly".

This approach, though it gave the same result as the conditional-licence doctrine, was preferred by Devlin, J., because it meant expanding the general principle in a natural way rather than "restricting its influence and then having to give it artificial aids in order to make it work at all in the case of little children". To the present writer, however, the conditional-licence doctrine is an attractive one because it makes easier the task of fitting the problems of "allurements" into the scheme of occupiers' liability. It is submitted that the conditional-licence approach is not so very far from the approach favoured by Devlin, J., which could be called the "mutual reasonableness" approach, since it states that occupiers and guardians of children must each act reasonably and are entitled to expect each other

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to act reasonably. The conditional-licence approach is directed to discovering the *status* of the plaintiff; the mutual reasonableness approach is directed to the *performance of the duty* owed by the licensor.

But both stress the foresight of the occupier, as far as concerns appreciating the likelihood of danger from traps or allurements, having regard to the "'habits, capacities, and propensities' of those whom he himself has licensed, but not their individual peculiarities".

Reardon's Case.

In view of this discussion by Devlin, J., the recent New Zealand case of *Reardon* v. *Attorney-General*, [1954] N.Z.L.R. 978, is of interest, not so much for its decision, which turned on the inadequacy of the answers given by the jury to the trial Judge's questions, but for the discussion on a number of points arising from the law relating to child licensees.

The facts were as follows: The infant plaintiff, in common with a number of other children, was accustomed to go onto a part of a railway station and play with a turntable. Several people saw the children play in this way, including certain minor railway employees. The children were apparently not warned off the premises. During one such period of playing on and with the turntable, the infant plaintiff was injured. He sued to recover damages for his injuries, alleging that he was a licensee and the Railways' servants had been negligent in respect of him.

At the trial, the Judge (Hutchison, J.) put several questions to the jury, the answers to which amounted to the following propositions: (i) the plaintiff was a licensee; (ii) the turntable was not an attractive trap in the absence of unauthorized interference (which here meant that of the children themselves); (iii) the Railways Department had not permitted a dangerous allurement to exist on its land, because its turntable was "a necessary piece of railway equipment"; (iv) but the Railways Department had failed to warn the plaintiff of the existence of a hidden danger or trap on its land. Judgment was given for the plaintiff.

In the Court of Appeal, it was decided—and the examination of the above propositions will show that this was a perfectly proper decision—that the jury's answers were sufficiently unsatisfactory to merit the award of a new trial.

Criminality in a Civil Action.

One of the first points discussed was one which would seem to be peculiar to New Zealand. By New Zealand legislation, anyone trespassing on a part of a railway to which the public are not allowed access by law commits an offence, even before he is warned off, or refuses to quit. The infant plaintiff was in fact on a part of the railway to which normally the public were not allowed access. Did his technical commission of the criminal offence make him a trespasser for the purpose of the action?

Fair, J., was of the opinion that since a child under seven years of age could not commit a criminal offence the plaintiff could not be a criminal: hence the legislation was irrelevant for the purposes of the instant action. But North and Stanton, JJ., were not disposed to agree with this, for "the child in its civil rights would nevertheless still be affected by the illegality of the act of entry". However, since the section of the Act involved used the word "trespass" and not "enter", the defence of leave and licence would be open if it could be made out. Since there was no Regulation or Order in Council prohibiting access to the particular area involved, it was not shown that going onto the turntable amounted to a trespass. Hence all the Judges thought that the statutory point was irrelevant.

Acquiescence.

The next point was whether the plaintiff had become a licensee as a result of any implied permission on the part of the railway. Could such permission be shown by the acquiescence of the railway servants in the children's presence on the turntable? This was, of course, a question of fact, which required careful investigation and consideration at the re-trial. However, Fair, J., thought that in view of the evidence of repeated invasions by the children without protest by the railway servants, "no jury acting reasonably could have found it to amount to evidence of acquiescence in its use by anyone other than the train crews", who had in fact allowed children to remain about the turntable and take a hand in its turning. With this expression of opinion North and Stanton, JJ., were not in agreement.

But another point arose out of this. For Fair, J., approached the problem in the first place by asking whether the conduct by the train crews could bind their employer; and this raised an important issue on the nature of vicarious liability—recently a much debated subject in academic circles. The question can be posed thus: Did the train crews have authority to permit the children to use the turntable? Even if the train crews could not permit people to remain on the Department's premises, if they did so, not for the benefit of the railway, or at any rate for a purpose which was not inimical to the interest of the Department (*e.g.*, protection of children) but for a different purpose, "simply to indulge their desire to please the children" or as the "personal expression of good nature and kindness wholly unconnected with the method or course of performance of their duties or employment", then the Department would not be bound by the consent they gave to the children's continued presence. Fair, J., found that they were not acting within the scope of their employment, and so applied the principle which had been utilized by the Court of Appeal in that unsatisfactory case, *Conway* v. *George Wimpey and Co., Ltd.*, [1951] 1 All E.R. 363. But North and Stanton JJ., avoided the difficulties involved in such a conclusion by saying that the issue was not as Fair, J., had put it, but was whether the Railways Department had direct knowledge of the children's activity and had "no practical anxiety" to stop the practice. Hence, the vicarious liability issue was irrelevant.

But suppose it had not been. Would the abuse of their power by the train crews have absolved the Department of liability? On the principle of *Lloyd* v. *Grace, Smith and Co.*, [1912] A.C. 716, and *Limpus* v. *London General Omnibus Co.*, (1862) 1 H. & C. 526; 158 E.R. 933, it should not. But, on the *Conway* v. *George Wimpey and Co., Ltd.* view, it should. There is a real problem here for the Courts to settle some day.

The Importance of Allurements.

On the issue whether the turntable was an allurement, there was agreement between the members of the New

Zealand Court of Appeal. Fair, J., thought it was clearly decided as a matter of law that a turntable was a dangerous allurement. North and Stanton, JJ., found it difficult to see how the plaintiff could succeed unless the turntable did allure him to meddle with it, for the case was not one where a licensee had unexpectedly come upon a trap or unusual danger, and had injured himself. It is this point which brings *Reardon's* case into line with the English Court of Appeal decisions cited at the beginning of this article. For in the New Zealand case, as in the English ones, the problem turned on the application of this "principle", as explained above, of "once a licensee always a licensee". If the child in *Reardon's* case was in fact no trespasser as a result of acquiescence by the Department, then the fact that he unauthorisedly interfered with the turntable could not make him a trespasser, if in fact the turntable were an allurement. Whereas an adult who chose to play with a turntable would not be able to secure damages if he injured himself (see *per* Somervell, L.J., in *Hawkins* v. *Coulsdon and Purley Urban District Council* [1954] 1 All E.R. 97, at p. 101), a child of six could be expected not to appreciate the danger of such a delightful plaything. The whole point about such things is that they encourage small children into "unauthorized interference". Hence the fault is not the child's if he is injured; it is the occupier's, for allowing children on his premises when he has on them something which—as a reasonable man—he can or should foresee is going to attract them to meddling with it.

Along these lines, the rules about children could be made to fit in with the general principles which state the nature of the duty owed to licensees. Any inquiry into such duty "must commence by asserting whether in fact, a trap or unusual danger did exist on the premises. The next step is to ascertain whether the occupier had knowledge of the physical facts which constituted the trap or unusual danger. . . . And the final step is to ascertain whether the occupier had taken reasonable care to protect the licensee from the danger. If it so happens . . . that the injured licensee is a child of tender years, then the scope of the inquiry—but not its nature—is enlarged, for not only will the existence of danger not be as apparent to a young child, but the occupier who permits children to enter his premises is obliged to have regard to the possibility that an object on his land, which is perfectly safe if left alone, may act as a magnet to a child who will be tempted to meddle with it" (*per* North, J., [1954] N.Z.L.R. 978, 1003, 1004).

INTERNATIONAL LAW AND THE HIGH SEAS.

In the Maori Land Court.

Under the heading "Another Pacific Claim," Richard Roe, in *99 Solicitors' Journal* (London), 285, on April 23, last, had this to say of a recent claim in the Maori Land Court.

"Fascinated by the judicial blessing given by the Peruvian Courts to the Peruvian Government's claim to extend its authority 200 miles across the Pacific waters, most of us probably missed the report of some even more significant legal proceedings of equally wide import at the other side of the ocean. Unfortunately the Court applied to was not so accommodating—unfortunately, that is, from the point of view of international lawyers, since here was the potential starting point of a dispute which would have kept the jurists at The Hague prosperous and happy for an indefinite period. If one seeks the fundamental function of the International Court of Justice it is surely to assert that might is not right and that the small and weak shall not be brushed aside by the big and strong. Very well then, here was a test case and, though it finally went off on a point of jurisdiction, the claim has been deferred but not killed. It was quite a simple claim really, and one must not allow its magnitude to obscure its fundamental simplicity, although considerations of religion and history entered into it, and these are always delicate matters. Nor will a jurist properly impregnated with the spirit of law turn up his nose at a point of principle merely because it is originally raised in a court of somewhat limited jurisdiction in a rather remote locality. Therefore, the particulars are worth noting.

"The date was the 22nd March, 1955. The place was Rawene in North Auckland. The tribunal was the Maori Land Court presided over by Judge Clark. The claimants were the Ngapuhi tribe. Their claim was for the Pacific Ocean surrounding New Zealand—the great ocean of Kiwa. The ruling sought was that it should be vested in Maori trusteeship. The ground of the claim was that this was required by the respect due to the sea god Moana who had allowed New Zealand to be plucked from the sea. The learned Judge congratulated the claimants on the completeness of their historical researches, but held that the Court's maritime jurisdiction was limited to disputes regarding Maori fishing rights. In a very proper spirit the claimants accepted his ruling.

"Except that they are behaving with a courtesy and decorum rare on these occasions, you will notice that the Maoris are only doing what larger national groups have been doing for quite a long time. The Germans have at times quite seriously believed that the North Sea was the German Ocean, and the Mediterranean not so very long ago was known in influential circles in Rome as Mare Nostrum. It may well be only a matter of time and a sharp decline in the British Navy before Dublin finds historical and religious reasons for asserting jurisdiction over the Irish Sea. Already the jurists of more than one nation must be making out an irrefutable case for the annexation of the moon. But fundamentally all the arguments can be compassed into two syllables: 'Bags I.' But it is pleasant when it is said with the old-world courtesy of the Maoris."

RESTRICTIONS ON POST-TESTAMENTARY DISPOSITIONS OF PROPERTY.

Gifts to Charity: Powers of Appointment.

By E. C. ADAMS, I.S.O., LL.M.

I am sure that many of us have read with great interest and enlightenment the two recent articles by Mr. Malcolm Buist, "Wills and Powers," *ante*, pp. 151, 166, dealing with the conflict of concepts as disclosed by the judgment of His Honour Mr. Justice Gresson in *In re McEwen, McEwen* v. *Day*, [1955] N.Z.L.R. 575. In that case the crucial words were:

> UPON TRUST for such person or persons (including the said either jointly or severally for themselves personally and beneficially and absolutely free of any trust express or implied) as my Trustees may by any deed or deeds at any time or times within a period of ten years from the date of my death appoint AND in default of any such appointment or appointments and in so far as the same shall not extend UPON TRUST for my son Ronald Albert McEwen.

His Honour, distinguishing *Attorney-General* v. *Charlton*, (1877) 2 Ex. D. 398, (in both cases there were *joint* donees of the power), held that a valid general power of appointment had been conferred by testator. Now, in my book on the *Law of Death and Gift Duties in New Zealand*, 2nd Ed., 93, I cite *Attorney-General* v. *Charlton*, as authority for my opinion that *joint* powers are not caught for death duty in New Zealand; but it would appear that a joint power, in the peculiar form of the power in *In re McEwen, McEwen* v. *Day*, would in any case be caught for gift duty in New Zealand, if the joint donees exercised their general power in favour of a person or persons other than themselves. In s. 2 of the Death Duties Act, 1921, we find "General power of Appointment" defined as including any power or authority which enables the donee or other holder thereof, or would enable him if of full capacity, to appoint or dispose of any property, as he thinks fit for his own benefit, whether exercisable by instrument *inter vivos*, or by will, but exclusive, etc. Section 39 of the Death Duties Act, 1921, defines the meaning of "disposition of property" for the purposes of gift duty: para. *(e)* of that section reads as follows:

> 39. In this Act the term "disposition of property" means—
>
> (e) The exercise of a general power of appointment in favour of any person other than the donee of the power.

Powers of Appointment were much more generally employed by conveyancers in the earlier days of British settlement in New Zealand than they are to-day: a search in the records of the various Deeds Registry Offices in New Zealand will prove this fact to the younger generation. Another thing which will surprise them, will be the high rates of interest charged in the early days on mortgages: there must have been then an acute shortage of currency in New Zealand. General powers of appointment were then more generally used for, I think, two or three reasons. First, a general power of appointment was not caught for death duty; secondly, the donee of a general power could also keep the property safe from the wreck of a bankruptcy; and, thirdly, it could be employed as a means of protecting the property of a married woman from her husband. They are now liable to death duty: s. 5 (1) *(h)* of the Death Duties Act, 1921, and a general power of appointment by will, reserved by a settlor in a disposition *inter vivos*, will, on the authority of the House of Lords' case, *Attorney-General* v. *Adamson*, [1933] A.C. 257, render the property the subject-matter thereof part of the settlor's notional estate, for death duty. Like the traditional marriage settlement, they now come within the very wide death duty net. In the case of the bankruptcy of the donee of a general power of appointment, the property will become available for the benefit of his creditors: Bankruptcy Act, 1908, s. 61 *(b)*. And, as regards the property of a married woman, since the Married Women's Property Acts, brought to a climax by the Law Reform Act, 1936, she has been in practically the same position as a *feme sole*; the husband's very extensive common-law rights in his wife's realty have vanished for ever.

That part of Mr. Buist's article which has interested me most is his able discussion of the limits of a testator's powers to delegate to others testamentary dispositions.

> The privilege of controlling by will the disposition of property after death is subject to the condition that such disposition must be made in favour of ascertained or ascertainable persons or objects. A testator is not permitted to delegate to others the disposition of his property, subject to this, that he may confer on his trustees a power of selection and apportionment among a definitely prescribed class of beneficiaries. In the case of charitable objects the law, by reason of the favour in which charity is held, has accepted such objects as constituting a sufficiently ascertained class notwithstanding its wide extent, and permits a testator to direct a fund to be distributed among such charities and in such proportions as his trustees may in their discretion decide. *But in all other cases the requirement of definite precision is enforced in the definition of the individuals or classes to be benefited.*

That is what their Lordships of the Privy Council said in the New Zealand case of *Attorney-General* v. *New Zealand Insurance Co., Ltd.*, [1937] N.Z.L.R. 33, 35. The italics are mine.

Mr. Buist explains several cases where, although there was undoubtedly a charitable intent, the intended gift failed on the ground of uncertainty. Most of the cases cited by Mr. Buist (*ante*, p. 166), would now be held to be good bequests by reason of s. 2 of the Trustee Amendment Act, 1935, as interpreted by the Court of Appeal in *In re Ashton, Siddall* v. *Gordon*, [1955] N.Z.L.R. 192. Section 2 reads as follows:

> 2. (1) No trust shall be held to be invalid by reason that some noncharitable and invalid as well as some charitable purpose or purposes is or are or could be deemed to be included in any of the purposes to or for which an application of the trust funds or any part thereof is by such trust directed or allowed.
>
> (2) Any such trust shall be construed and given effect to in the same manner in all respects as if no application of the trust funds or any part thereof to or for any such noncharitable and invalid purpose had been or should be deemed to have been so directed or allowed.
>
> (3) This section shall not apply to any trust declared before or to the will of any testator dying before the passing of this Act.

The first case cited by Mr. Buist (*ante*, p. 166) is *Morice* v. *Bishop of Durham*, (1805) 10 Ves. Jun. 522; 32 E.R. 947, which is really the leading case on this branch of the English law of charities. In that case,

it was held that a bequest for " such objects of benevolence and liberality as the trustee in his own discretion shall most approve " could not be supported as a charitable legacy.

Now very shortly after s. 2 of the Trustee Amendment Act, 1935, came into force, I had the temerity to write for this JOURNAL an article on that section : it will be found in (1936) 12 NEW ZEALAND LAW JOURNAL, 309. I adopted a construction which has recently been rejected by the New Zealand Court of Appeal in *In re Ashton*, (*supra*). I expressed the opinion that the intention of the Legislature was to validate intended trusts only where charitable purposes were mentioned by the testator or settlor. I thought that, although the *specific* charitable purpose or object was not necessary, there must be disclosed at least a *general* charitable intention. I went on to say :

> The reason why I think that the Legislature has not abrogated the rule in *Morice* v. *Bishop of Durham* is that the ground upon which the trust failed in that case was that the words were *too indefinite* : see *In re Smith, Public Trustee* v. *Smith*, (1932) 48 T.L.R. 44, 47, per Lord Hanworth, M.R. It is a general rule of English law that a trust will not be enforced, unless the persons or objects to be benefited thereby are *certain*, the only exception being trusts which disclose a general charitable intention : see, for example, *Houston* v. *Burns*, [1918] A.C. 337.

Several of the cases cited by Mr. Buist, after his citation of *Morice* v. *Bishop of Durham*, are really not the same type of case. Thus, in *Blair* v. *Duncan*, [1902] A.C. 37, *Grimond* v. *Grimond*, [1905] A.C. 124, *Houston* v. *Burns*, [1918] A.C. 337, *Attorney-General* v. *National Provincial Bank*, [1924] A.C. 262, *Attorney-General* v. *New Zealand Insurance Co., Ltd.*, [1937] N.Z.L.R. 33, and *Chichester Diocesan Fund and Board of Finance (Inc.)* v. *Simpson*, [1944] A.C. 341 ; [1944] 2 All E.R. 60, there was an expression of charitable purposes or objects as well as an expression of non-charitable ones : there can be no possible doubt that s. 2 of the Trustee Amendment Act, 1935, validates gifts of this nature. The reason why trusts of this nature are invalid in English law is that the settlor or testator has left his trustee with a choice of selecting between charitable and non-charitable purposes : he has made a charitable intent clear but he has not made it imperative. In cases such as *Morice* v. *Bishop of Durham*, he has not disclosed any charitable intent : it has to be inferred from the general words used by him—it is a mere matter for conjecture.

However, the Court of Appeal in *In re Ashton* (*supra*), has unanimously held that both classes of cases are rendered valid by s. 2 of the Trustee Amendment Act, 1935. There are similar statutory provisions in New South Wales and Victoria. In Victoria the narrower construction of the statute has been adopted, whereas in New South Wales, as in New Zealand, the wider construction has eventually prevailed. In this conflict of judicial opinion, the stage seems to be set for an appeal sooner or later to the Privy Council.

In *In re Ashton*, (*supra*), the crucial words were " to hand any surplus to the trustees of the Church of Christ Wanganui to help in any good work". The trust was not valid as a charitable trust under English law ; but the Court of Appeal (reversing Smith, J.) held that it was saved from invalidity by s. 2 of the Trustee Amendment Act, 1935. But the Court would not go so far as to hold that a trust such as the one *In re Hollole*, [1945] V.L.R. 295, would be validated (there, the words were " to my trustee and executor to be disposed of by him as he may deem best "). As Gresson, J., remarked, in *Ashton's* case (*supra*) at p. 199 : the bequest had not any charitable flavour at all, and as His Honour observed, at p. 197, " It may be that the section has no operation where there is one, and only one, completely undefined object and that object not charitable : but that is not this case."

LEGAL LITERATURE.

Tristram and Coote's Probate Practice.

Tristram and Coote's Probate Practice. 20th Ed. By C. T. A. WILKINSON, C.B.E., Registrar of the Probate and Divorce Division, H. A. DARLING, of the Principal Probate Registry, and T. R. MOORE, LL.B., of the Estate Duty Office. Pp. 1293 & Index (113 pp.). London: Butterworth & Co. (Publishers), Ltd. Price : 118s., post free.

In 1858, Mr. Coote produced his first work on non-contentious probate business entitled *Common Form Practice*, thereby revealing to the public a body of lore which had hitherto been locked in the breasts of the proctors, of whom he was one, or buried in the pages of the Ecclesiastical Reports. To later editions Dr. Tristram contributed an outline of contentious business, then branched out in a full separate volume on this subject and finally combined his own major work with Mr. Coote's in 1888. This fusion of separate and self-contained works on each of the two branches of probate practice has influenced the form of *Tristram and Coote* through its subsequent editions. Traces of this double source remain in the present edition and reflect both the delicacy which made Dr. Tristram refrain from transplanting or cutting out altogether portions of Mr. Coote's work and his tenderness towards the integrity of his own creation.

The editors of the present edition have not attempted to alter the traditional structure of *Tristram and Coote*, but significant progress has been made towards welding its two halves more closely together by a far more complete system of cross-reference than was achieved in earlier editions, and the index, which has been thoroughly revised, contributes to this object. Another characteristic of this work which has been retained in the present edition is the way in which the text is split up into short paragraphs under clear black headings. This fragmentation tends to sacrifice readability to facility of rapid reference, but it is, of course, as a work of reference that the book has its place in the practitioner's library. The editors, have, however, done something to make the 20th Edition more readable, notably by relegating to their proper place in the footnotes the statutory reference which so often cluttered up the text of previous editions.

Since the appearance of the 19th Edition in 1946, there has been much new case-law as well as significant changes in practice. The present edition brings *Tristram and Coote* up to date by incorporating all this new law. Moreover, the present editors have drawn from their wealth of knowledge and practical experience in the Probate Division and the Principal Probate Registry as well as in the Estate Duty Office to fill in many points of detail. In all, this 20th Edition is a worthy successor to its long line of forbears as the principal work on probate practice ; and, in addition, it is both easier to refer to and lighter to handle than the edition which it replaces. *Tristram and Coote*, in the office as well as in the Court, is indispensable to the practitioner.

IN YOUR ARMCHAIR—AND MINE.

By Scriblex.

"**Keep to the Right.**"—Some confusion to practitioners may have been caused by the recent message from Reuters that the Pakistan Government is giving rise to concern (and, no doubt, swearing as well) among Karachi's 2,000 camel drivers by its decision to change the rule of the road to "keep to the right" from January 1, 1956. It appears that from ancient times camels have been the main mode of transporting freight in Karachi, which lies on the fringe of the Sind Desert. Tired peasants give instructions to their faithful beasts and then proceed to go to sleep through their nightly journeys while the long strings of camels confidently find their way to the city markets. Trained to keep to the left, the sound of a horn is sufficient to make the camel realise its responsibility as a user of the highway, and it promptly proceeds to its left side of the road. The effect of the Government's decision means that the weary camel-driver must keep awake or re-train his camel, which is seemingly no easy thing to do when it reaches its forties and becomes set in its particular way of life. It may be that we are inclined to underestimate its intelligence since Will Cuppy writing, in "How to attract the Wombat", of the llama, a sort of first cousin of the camel, says that the llama "is good in arithmetic and will carry only a hundred pounds on his back: if you load him with more than that, he will lie down in the middle of the road and refuse to budge until the weight is checked and adjusted". At all events, the Pakistan Government may feel that it has some moral support from some of the Automobile Associations in this country which consider that a "keep to the right" rule would solve most of our traffic problems.

Place Limitations.—The intervention of Hutchison, J., in *Walker* v. *Khouri* in the Supreme Court at Wellington smoothed out what might have been an Anglo-American incident. A female witness gave evidence that when the testator's solicitor visited the house to read the will he had not recognized her as the testator's daughter; and, in reply, the solicitor deposed that this was unhappily true but "her hair had turned grey since I saw her last. She had been living in the United States". "I have recently read in *Punch*," observed the Judge, "of a police-sergeant prosecuting in Eire who said, 'The prisoner had a most unfortunate background. He has spent the last few years in England.'"

The Oft-speaking Judge.—In 1953, a prisoner convicted of forgery at the Bedford Assizes successfully applied that the conviction be quashed on the ground that the presiding Judge (Hallett, J.) interrupted so often that counsel for the defence was unable to put his case fairly to the jury. A similar plea, but this time without success, was put forward against the same Judge in May by a man convicted of murder at the Hampshire Assizes where Mr. Justice Hallett had asked on the trial no fewer than 275 questions—more than were asked by counsel themselves. An oft-speaking Judge, says Bacon, is an ill-tuned cymbal—a maxim for which the late Mr. Justice Ostler once expressed great reverence when speaking at a legal dinner in Wellington.

The Parking Problem.—A traveller informs Scriblex that Rio de Janeiro does not believe in prosecutions as a means of solving its parking problems. The method employed there is for traffic inspectors to let the air out of all four tyres of the offending car. Such deterrent immobility would no doubt create bottle-necks in many New Zealand towns, and the more effective method may be that practised in Washington D.C., where, when the improper parker returns to the scene of his crime, he finds that his motor-vehicle has disappeared. On his complaint that it has been stolen, the authorities reveal that they have deposited it in a car "pound" from which it can be withdrawn without conviction but on payment of a flat charge of twenty-five dollars. The customary immunity of diplomats avails them nothing; and, like other offenders, they have to pay to recover their missing property.

"**Vengeance is Mine.**"—The use by counsel in a recent murder case of that passage from Romans xii of "Vengeance is mine; I will repay, saith the Lord" reminds Scriblex that in the famous Ardlamont trial of 1893 (in which a man named Monson was charged with the murder of his pupil, Cecil Hambrough) these words were used as the closing words for the defence by Mr. Comrie Thomson, Sheriff of Forfar, an extremely able counsel. "He will not go unpunished if he is guilty," he told the jury. "There is One in whose hands he is, and He is infallible and omniscient." The Scottish jury took refuge in the verdict of "Not Proven" and for many years thereafter in *The Times* the parents of the victim inserted the following advertisement:

> In loving memory of our dear son, Windsor Dudley Cecil Hambrough, found shot dead in a wood at Ardlamont, Argyllshire, August 10th, 1893, in his 21st year. "Vengeance is mine; I will repay, saith the Lord."

Amongst the hundred witnesses called by the Crown was Dr. Joseph Bell whose habits of deduction suggested to young Conan Doyle, when a medical student, the immortal character of Sherlock Holmes.

Rents and Profits.—Stung to the quick by what it regarded as intemperate criticism of the liquor trade, New Zealand Breweries, Ltd. offered the Federation of Labour a lease of two four-star Wellington hotels—the Carlton and the Cambridge—at a nominal rental of 6d. (separately not jointly) weekly plus one-third of the amount weekly paid to the employees of the hotel. It was to be part of the contract that there would be no reduction of the high standard of meals and accommodation provided by the company. The Federation declined to do business although possibly for a reason different from that existing in the case of Thrale's brewery of which Boswell writes. Lord Lucan (he says) tells a very good story, which, if not precisely exact, is certainly characteristical: that when the sale of Thrale's brewery was going forward Johnson (who was an executor) appeared bustling about, with an ink-horn and pen in his button-hole, like an exciseman; and on being asked what he really considered to be the value of the property which was to be disposed of, answered, "We are not here to sell a parcel of boilers and vats, but the potentiality of growing rich, beyond the dreams of avarice."

THE NEW RATES OF DUTY.

Scale of Rates of Estate Duty.

(Operating in respect of persons dying on and after 21st July 1955.)

Final Balance From	To	Rate
£	£	
1000	2000	4% of excess over £1000.
2000	3000	2% of £2000 (£40), plus 5% of excess over £2000.
3000	4000	3% of £3000 (£90), plus 7% of excess over £3000.
4000	5000	4% of £4000 (£160), plus 9% of excess over £4000.
5000	6000	5% of £5000 (£250), plus 11% of excess over £5000.
6000	7000	6% of £6000 (£360), plus 13% of excess over £6000.
7000	8000	7% of £7000 (£490), plus 15% of excess over £7000.
8000	9000	8% of £8000 (£640), plus 17% of excess over £8000.
9000	10000	9% of £9000 (£810), plus 19% of excess over £9000.
10000	11000	10% of £10000 (£1000), plus 21% of excess over £10000.
11000	12000	11% of £11000 (£1210), plus 23% of excess over £11000.
12000	14000	12% of £12000 (£1440), plus 19% of excess over £12000.
14000	16000	13% of £14000 (£1820), plus 21% of excess over £14000.
16000	18000	14% of £16000 (£2240), plus 23% of excess over £16000.
18000	20000	15% of £18000 (£2700), plus 25% of excess over £18000.
20000	22000	16% of £20000 (£3200), plus 27% of excess over £20000.
22000	24000	17% of £22000 (£3740), plus 29% of excess over £22000.
24000	26000	18% of £24000 (£4320), plus 31% of excess over £24000.
26000	28000	19% of £26000 (£4940), plus 33% of excess over £26000.
28000	30000	20% of £28000 (£5600), plus 35% of excess over £28000.
30000	33000	21% of £30000 (£6300), plus 32% of excess over £30000.
33000	36000	22% of £33000 (£7260), plus 34% of excess over £33000.
36000	39000	23% of £36000 (£8280), plus 36% of excess over £36000.
39000	42000	24% of £39000 (£9360), plus 38% of excess over £39000.
42000	45000	25% of £42000 (£10500), plus 40% of excess over £42000.
45000	48000	26% of £45000 (£11700), plus 42% of excess over £45000.
48000	51000	27% of £48000 (£12960), plus 44% of excess over £48000.
51000	54000	28% of £51000 (£14280), plus 46% of excess over £51000.
54000	57000	29% of £54000 (£15660), plus 48% of excess over £54000.
57000	60000	30% of £57000 (£17100), plus 50% of excess over £57000.
60000	64000	31% of £60000 (£18600), plus 47% of excess over £60000.
64000	68000	32% of £64000 (£20480), plus 49% of excess over £64000.
68000	72000	33% of £68000 (£22440), plus 51% of excess over £68000.
72000	76000	34% of £72000 (£24480), plus 53% of excess over £72000.
76000	80000	35% of £76000 (£26600), plus 55% of excess over £76000.
80000	85000	36% of £80000 (£28800), plus 53% of excess over £80000.
85000	90000	37% of £85000 (£31450), plus 55% of excess over £85000.
90000	95000	38% of £90000 (£34200), plus 57% of excess over £90000.
95000	100000	39% of £95000 (£37050), plus 59% of excess over £95000.
100000		40% of the final balance.

Scale of Rates of Gift Duty.

(Operating in respect of gifts made on and after 21st July 1955.)

Value of Gift (together with value of all aggregated gifts)		Rate
Not exceeding	£500	Nil
Exceeding	£500 but not exceeding £1000	£1,000—5% of excess over £500.
,,	£1000 ,, ,, ,,	£2,000—£25 plus 7% of the excess over £1,000.
,,	£2000 ,, ,, ,,	£3,000—£95 plus 9% of the excess over £2,000.
,,	£3000 ,, ,, ,,	£4,000—£185 plus 11% of the excess over £3,000.
,,	£4000 ,, ,, ,,	£5,000—£295 plus 13% of the excess over £4,000.
,,	£5000 ,, ,, ,,	£6,000—£425 plus 15% of the excess over £5,000.
,,	£6000 ,, ,, ,,	£7,000—£575 plus 17% of the excess over £6,000.
,,	£7000 ,, ,, ,,	£8,000—£745 plus 19% of the excess over £7,000.
,,	£8000 ,, ,, ,,	£9,000—£935 plus 21% of the excess over £8,000.
,,	£9000 ,, ,, ,,	£10,000—£1145 plus 23% of the excess over £9,000.
,,	£10000 ,, ,, ,,	£11,000—£1375 plus 25% of the excess over £10,000.
,,	£11000 ,, ,, ,,	£12,000—£1625 plus 27% of the excess over £11,000.
,,	£12000 ,, ,, ,,	£14,000—£1895 plus 23% of the excess over £12,000.
,,	£14000 ,, ,, ,,	£16,000—£2355 plus 25% of the excess over £14,000.
,,	£16000 ,, ,, ,,	£18,000—£2855 plus 27% of the excess over £16,000.
,,	£18000 ,, ,, ,,	£20,000—£3395 plus 29% of the excess over £18,000.
,,	£20000 ,, ,, ,,	£22,000—£3975 plus 31% of the excess over £20,000.
,,	£22000 ,, ,, ,,	£24,000—£4595 plus 33% of the excess over £22,000.
,,	£24000 ,, ,, ,,	£26,000—£5255 plus 35% of the excess over £24,000.
,,	£26000 ,, ,, ,,	£28,000—£5955 plus 37% of the excess over £26,000.
,,	£28000 ,, ,, ,,	£30,000—£6695 plus 39% of the excess over £28,000.
,,	£30000	25% on value of gift, less £25.