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NEGLIGENCE: NON-OCCUPIER'S DUTY.

RECENT authorities have shown that the duty owed by non-occupiers of land to persons who enter upon such land is a higher one than is owed to trespassers by occupiers of land. As the law stands, if the defendant was an occupier and the plaintiff a trespasser, then, in view of the decision in *R. Addie and Sons (Collieries), Ltd.* v. *Dumbreck*, [1929] A.C. 358, the plaintiff would have no cause of action, unless the case could be brought within the decisions in *Exelsior Wire Rope Co., Ltd.* v. *Callan*, [1930] A.C. 404, or *Mourton* v. *Poulter*, [1930] 2 K.B. 183, in each of which cases the defendants were found liable in negligence notwithstanding the fact that the plaintiff was a trespasser, because they had shown a reckless disregard of the presence of trespassing children.

The duty owed by non-occupiers of land to children who are or who are not trespassers is a higher one than the duty owed by occupiers of land to trespassers. To them, the principle of *Donoghue* v. *Stevenson*, [1932] A.C. 562, applies, if the presence of children on the site of the accident to one of them was so likely an occurrence that the non-occupier should have taken precautions to prevent the child, whether or not he was a trespasser, from suffering injury.

It will be remembered that, last year, in *Napier* v. *Ryan*, [1954] N.Z.L.R. 1254, a boy was injured while playing on a merry-go-round erected on a piece of vacant land temporarily in use by the defendants, who were found to be the occupiers of the land within the ambit of the merry-go-round. It was held by Sir Harold Barrowclough, C.J., that the plaintiff ,being a trespasser, had no cause of action against the occupiers. In the course of his judgment, he said that the case was distinguishable from *Buckland* v. *Guildford Gas Light and Coke Co.*, [1949] 1 K.B. 410; [1948] 2 All E.R. 1086, where the defendants were non-occupiers. The principle of *Buckland's* case has since been further explained and developed.

In *Buckland's* case, a girl, who was visiting a farm, was walking along a footpath through a field when she was moved to climb a tree which was some ninety yards away from the footpath on which she was walking. She climbed the tree, immediately over which some high-power electric cables, the property of the defendants, passed; and, when she reached the top of the tree, she came into contact with the cables and was electrocuted. In an action against the defendants for negligence, Morris, J. (as he then was), decided, in the first place, that there was no evidence to show that the girl was a trespasser. She might well have been, but the burden of proof was on the defendants to show that she was, and they had not discharged that burden. But, whether she was a trespasser or not, that, in his opinion, made little or no difference because the deceased girl and others in her position were people who ought to have been in the contemplation of the defendants when they put their electric wires where they did; and in those circumstances they owed a duty to the girl whether or not she was a trespasser. Morris, J., first dealt with the test which has to be applied, and cited Lord Porter, who, in his speech in *Bourhill* v. *Young*, [1943] A.C. 92; [1942] 2 All E.R. 396, in turn quoted the statement of Lord Atkin in *Donoghue* v. *Stevenson*, [1932] A.C. 562, as indicating the extent of the duty under which the defendant was. Lord Atkin in *Donoghue's* case said:

> You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who, then, in law is my neighbour? The answer seems to be—persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question (*ibid.*, 580).

In a later part of his judgment in *Buckland's* case, [1949] 1 K.B. 410, 417; [1948] 2 All E.R. 1086, 1092, Morris, J., said:

> Under most conditions the defendants would be entitled to assume that persons would not go unlawfully on land, and the defendants would not be under an obligation to provide against the contingency of persons trespassing. Though not occupiers of the land, the defendants are in a position closely analogous. The group of those who must be regarded as "neighbours" from the point of view of the defendant is, however, not of rigid necessity the same as the group of those who must be regarded as invitees or licensees from the point of view of the occupier of the land. The test to be applied in considering who is a neighbour is the test indicated by Lord Atkin in *Donoghue* v. *Stevenson* (*supra*). As a general rule, a trespasser on land would not be within the group of neighbours, but whether some particular person is a neighbour depends on the circumstances of a particular case.

The next of this line of cases is *Davis* v. *St. Mary's Demolition Co., Ltd.*, [1954] 1 All E.R. 578. The defendants were a demolition company who were carrying out the demolition of some houses under a contract with the owners of the premises, which had suffered bomb damage. Behind the houses was an open, cleared site where people were allowed to walk, and children were accustomed to play. By the end of September, 1950, all the houses had been demolished except one which had been taken down to the level of the first-floor ceiling. The rear wall of the house, which was over a hundred years old, had been damaged by bombing, but the upper part of it had been repaired with new brick work. On the afternoon of Sunday, October 1, 1950, the plaintiff, then aged twelve years, went on the site with some other boys of his own age. The plaintiff picked up a length of gas

piping and the other boys acquired similar implements from the premises. They started to pull away some loose bricks from a window opening in the rear wall. After they had been doing this for some time, the wall fell. One boy was killed, and the plaintiff sustained a compound fracture of his right leg. He claimed damages. The learned Judge, Ormerod, J., found that the plaintiff was a trespasser on the demolition site, and that the defendants' workmen had driven children away whenever they came on the site.

It was implicit in His Lordship's judgment that the defendants were not occupiers. He held that they had not been negligent in not erecting a hoarding around the premises, but that the wall had been left in an unsafe condition in that only a comparatively small amount of interference in removing loose bricks would cause it to fall; and the defendants, as experienced demolition contractors, should have been aware of that.

In applying the test formulated by Morris, J., in *Buckland* v. *Guildford Gas Light and Coke Co.*, (*supra*), Ormerod, J., after saying that it appeared to him to be the proper test to apply in the circumstances of the case before him, continued:

> I have to ask myself: Are the defendants in the same position vis-à-vis the plaintiff as they would be if they were the occupiers of the land in question? Do they owe no other duty to the plaintiff than the occupier of the land would owe to a trespasser, or are they, in the circumstances of the present case, in such a position in relation to the plaintiff that, in spite of the fact that he was a trespasser, they owe to him a duty to take care so far as this building was concerned? I think any decision, which puts a defendant who is not in the occupation of land in a different position from the occupier of the land, is one which must be considered with very great care and caution; but the position here is that the defendants knew that children were in the habit of coming on to this land. They knew that children were in the habit of playing in the neighbourhood and of using the cleared area which was behind these premises, so much so that the defendants' foreman had complained to the representative of the city corporation of the nuisance that the children were. In those circumstances, it appears to me that the foreman, in considering whether the premises were safe and against whom they had to be made safe, ought to have asked himself this question—a question which does not seem to me to call for any great exercise of the imagination: Are children likely to come on this site, and, if they do, are they likely to interfere with the brickwork and the building generally? That they were likely to come on the site, I think, could admit only of an answer in the affirmative. If boys of twelve years of age go on a building site where there are loose stones and bricks in a wall and pieces of old gas pipe and other implements of that kind about the place, it does seem one of the most likely things that in the course of an afternoon's play there will be interference in some way or other with some part of the building, which must offer a constant allurement and temptation to any child who is within sight of it.

In those circumstances, His Lordship came to the conclusion, that, although the plaintiff was a trespasser on this site, yet his presence, or the presence of the children, on this site was such a likely thing to happen that the defendants should have taken the necessary precautions to have prevented injury by a happening of this kind. In other words, the presence of small boys on this site was so likely as to put them in the class of "neighbours" as defined by *Lord Atkin* in his speech in the case of *Donoghue* v. *Stevenson* (*cit. supra*). Accordingly, the plaintiff was entitled to succeed.

The most recent case is *Creed* v. *John McGeoch and Sons, Ltd.*, [1955] 3 All E.R. 123, in which Ashworth, J., applied the *Donoghue* v. *Stevenson* principle, as applied in *Buckland* v. *Guildford Gas Light and Coke Co.*, [1949] 1 K.B. 410; [1948] 2 All E.R. 1086, to different circumstances, the common feature being the fact that the defendants were not occupiers.

The plaintiff was an infant; and, on August 1, 1953, the date when the accident happened, she was aged five years. The defendants carried on business as contractors; and, on the date in question, they were engaged on the performance of a contract dated June 21, 1951, made between them and the Corporation of Birkenhead whereby they agreed to construct certain roads, sewers and formations, and paths and verges, situated on the Woodchurch Estate, Birkenhead. One of the roads which the defendants agreed to construct was Home Farm Road. On August 1, 1953, the construction of this road was almost, but not quite, complete; there remained a short distance to be finished. The accident to the plaintiff occurred, not on the road itself, but within ten feet of the roadside kerb. The road immediately adjoining the scene of the accident had been completed and kerbed.

For the purpose of transporting kerbs, each of which weighed about half a hundredweight, the defendants used a two-wheeled trailer fitted with a towing bar. Its top was a flat surface of wood. Until a date in June, 1953, the defendants had allowed the trailer, when not in use, to remain in the open, near the place at which they were at the time carrying out the work of constructing Home Farm Road. On August 1, 1953, the trailer was about six feet from the roadside kerb.

The day in question was a Saturday and the accident to the plaintiff occurred in the afternoon when none of the defendants' employees was working on the site. There was no watchman on duty near the Home Farm Road. In the company of her brother aged nine and of a boy aged eleven and another child, the plaintiff, while walking along Home Farm Road, saw the trailer. They could not resist the temptation to amuse themselves on it, and by running or jumping from one end of the top to the other they contrived to make it into a form of see-saw. When the accident happened, the plaintiff was on the ground trying to lift and lower the towing bar so as to assist the see-saw motion. Unfortunately, the bar came down suddenly and caught the index and middle fingers of her right hand.

As similar circumstances may be in issue in other cases of this kind, we must devote some consideration to the facts, as the vital question was whether or not the defendants were occupiers in relation to the trailer.

On the other side of Home Farm Road, opposite the trailer, there was a concrete mixer belonging to the defendants, and not far away there were some heaps of aggregate and sand. About twenty-five yards away there was a builder's hut belonging to the defendants. No permanent building had been put up, or indeed begun, on either side of Home Farm Road near the trailer; and the nearest permanent building was estimated to be 300 yards away. The area flanking Home Farm Road within this distance of 300 yards was what may fairly be called waste land. It was the corporation's intention to build on it in due course, but, for this purpose, it was employing contractors other than the defendants.

Apart from Home Farm Road, however, the defendants had undertaken to do further work in this particular area, namely, excavations for the laying of main sewers alongside the road, and also the levelling of the waste land to a width of eighty feet on either side of the road. None of this further work had been started by August 1, 1953, and there was no fence or other line of demarcation to indicate the strip of eighty feet.

So far as the waste land was concerned, the learned Judge was satisfied that it was freely used by members of the public and that children played on it; no steps were taken by the corporation or by the defendant to prevent such user or to drive the children off. On the other hand, whenever the defendants' employees saw children playing on their works or with their equipment, they took prompt steps to drive them away. On a number of occasions the employees had seen children playing on the trailer, and had chased them off.

In these circumstances, it was contended on behalf of the plaintiff that the defendants were liable for her injury. The claim was framed both in negligence and in nuisance. So far as nuisance was concerned, it was said that the presence of the trailer close to Home Farm Road constituted a nuisance to the highway, but His Lordship ruled against that contention. In the first place, he said, although Home Farm Road was almost complete, there was no proof that it had been dedicated as a highway, or that the corporation had taken it over. Secondly, His Lordship did not consider that the presence of the trailer could be said to constitute a nuisance within the principles considered in *Jacobs* v. *London County Council*, [1950] 1 All E.R. 737. Thirdly, the conduct of the children in leaving Home Farm Road to play on the trailer would, in his view, amount to a deliberate deviation, even if the road were held to be a highway.

Much of the argument at the hearing was directed to the question whether the defendants were in occupation of the ground on which the trailer rested. A somewhat unusual feature of this case was that the defendants sought to establish that it was in occupation and owed no higher duty to the plaintiff than that imposed on occupiers in respect of infant trespassers; on the other hand, the plaintiff contended that whether or not she was a trespasser vis-à-vis the true occupiers, the defendants were not in occupation and owed a higher duty of the type illustrated in *Donoghue* v. *Stevenson* [1932] A.C. 562, and, more recently, in *Buckland* v. *Guildford Gas Light and Coke Co.*, [1949] 1 K.B. 410, [1948] 2 All E.R. 1086.

The measure of the defendants' obligation to the plaintiff depended on the answer to the question whether they were in occupation of the land. In *Davis* v. *St. Mary's Demolition and Exvacation Co., Ltd.*, [1954] 1 All E.R. 578, 580, Ormerod, J., said:

> I think any decision which puts a defendant who is not in the occupation of the land in a different position from the occupier of the land is one which must be considered with very great care and caution.

It seemed to Ashworth, J., however, that there was no escape from the conclusion that, as the authorities stand, the distinction, referred to by Ormerod, J., does exist.

The learned Judge in considering whether the defendants were occupiers of the relevant land or any part of it, said that it is important to keep in mind the principle that the occupation need not be exclusive. In *Hartwell* v. *Grayson Rollo and Clover Docks, Ltd.*, [1947] K.B. 901, 913, Lord Oaksey, L.J., said:

> In my opinion the true view is that when a person invites another to a place where they both have business, the invitation creates a duty on the part of the invitor to take reasonable care that the place does not contain or to give warning of hidden dangers, no matter whether the place belongs to the invitor or is in his exclusive occupation. Although the rule has generally been stated with reference to owners or occupiers of premises, it is indicated by Lord Wright in the case of *Glasgow Corporation* v. *Muir*, [1943] A.C. 448, 462-3, that the occupation need not be exclusive. He said there:
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> "Before dealing with the facts, I may observe that in cases of 'invitation' the duty has most commonly reference to the structural condition of the premises, but it may clearly apply to the use which the occupier (or whoever has control so far as material) of the premises permits a third party to make of the premises." Invitors, of course, do not as a rule invite others on business to premises in which the invitors have no business interest or control, but they may have an interest and control which falls short of exclusive occupation.

In both the last-mentioned cases, the Courts were dealing with alleged invitors; but, in the view of Ashworth, J., nothing turned on that point so far as the question of occupation was concerned.

Counsel on both sides sought to derive support for their arguments from the conditions incorporated in the agreement between the Corporation of Birkenhead and the defendants. For his part, the learned Judge did not think that the question whether, vis-à-vis the plaintiff, the defendants were to be regarded as occupiers or merely as persons carrying out work on land occupied and controlled by the corporation could be answered by reference to that agreement. In some cases, he said, it may well be that the terms of an agreement coupled with evidence as to the defendants' conduct with reference to the land will establish conclusively that they must be regarded as occupiers, but in the present case the terms of the agreement were not such as to lead to any conclusion either way on the problem now under consideration.

Moreover, His Lordship thought that there was substance in the alternative submission put forward by counsel for the plaintiff on the footing that the terms of the agreement were in the defendants' favour, namely, that the agreement should be treated so far as third parties are concerned in the same way as agreements whereby a servant of one employer renders services for another; see *Mersey Docks and Harbour Board* v. *Coggins and Griffith (Liverpool), Ltd.*, [1946] 2 All E.R. 345. He continued:

> The case of *Davis* v. *St. Mary's Demolition and Excavation Co., Ltd.*, [1954] 1 All E.R. 578, has undoubtedly a resemblance to the present case, in that in both cases the defendants at the material time were carrying out work as contractors on property owned by a corporation. In *Davis's* case, the work involved the demolition of bomb-damaged houses; and, in the present case, it involves the construction of roads and ancillary works on a building estate. It is not clear from the report of *Davis's* case, to what extent the question whether the defendants were occupiers was argued, and the judgment is founded on the premise that they were not occupiers. The list of cases set out in the report does not include more than one case (viz., *Buckland's* case) in which the issue as to occupation was considered, and I do not accept counsel for the plaintiff's submission that the decision in *Davis's* case is conclusive on that issue. In my judgment, the answer in each case depends on the particular facts of the case and especially on the nature and extent of the occupation or control in fact enjoyed or exercised by the defendants over the premises.

In *Hartwell's* case, [1947] K.B. 901, and in *Prenton* v. *General Steam Navigation Co., Ltd.*, (1944) 77 Ll.L.R. 174, the facts were sufficient to render contractors occupiers of part of a ship; *Davis's* case is an illustration of the converse result in relation to real property.

In His Lordship's judgment, so far as Home Farm Road was concerned, the defendants could only be described as occupiers of such land as was comprised in the length actually under construction. That is to say, on August 1, 1953, they were not in occupation of more than a relatively short length. The road had been completed and kerbed to a point between the trailer and the road junction, and, assuming in the defendants' favour that they were in occupation of

successive portions of that length during their construction, the defendants had completed that work, and, on August 1, 1953, were no longer in occupation of any part of it.

It is true, His Lordship added, that the defendants had still to carry out work of excavation alongside the roadway, in order that sewers might be laid; but this work had not been begun, at any rate in the area near the trailer, and in His Lordship's view the fact that the land on which the trailer was standing would in due course be excavated by the defendants was not sufficient to render them occupiers of it on August 1, 1953. Similarly, in regard to the strip eighty feet in width on either side of Home Farm Road, the defendants would, in due course, have to carry out levelling work; but this strip had not even been fenced or otherwise marked off from the remainder of the waste land; and in those circumstances he held that the defendants were not in occupation of it. The judgment proceeded:

> The position therefore is that when the plaintiff and her companions left the roadway of Home Farm Road and went on to the land whereon the trailer stood they were not trespassers vis-à-vis the defendants in relation to that land. Nor indeed do I think that they were trespassers vis-à-vis the corporation, since the evidence established that children frequently played on the waste land without let or hindrance on the part of the corporation. In my view the principles applied in *Buckland's* case and in *Davis's* case are equally applicable in the present case, and I refer in particular to the last two paragraphs of Ormerod, J.'s, judgment in the latter case (*cit. supra*).
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> In the present case, the defendants were fully aware of the risk of injury to children who might play on the trailer, and they also knew that it was attractive to children. Admissions to this effect were frankly made by all the witnesses called on behalf of the defendants. Moreover, Mr. Robert McGeoch, one of the directors of the defendant company, said that he had considered turning the trailer upside down as a measure of precaution, but had not taken this course as he thought that children might then sustain injury while playing with the wheels. It seems probable that in any event the defendants would not have had any occasion to make further use of the trailer in connection with Home Farm Road and it could have been removed.
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> In my judgment, steps could quite easily have been taken by the defendants to prevent such injury to children as occurred in this case either by turning the trailer upside down or by securing the towing bar in a fixed position, or by removing the trailer altogether. In these circumstances, I hold that they were negligent.

It was argued for the defendants that, even if the plaintiff was not a trespasser in regard to the land whereon the trailer stood, she was at least a trespasser in regard to the trailer itself. Reference was made to *Lynch* v. *Nurdin*, (1841) 1 Q.B. 29; 113 E.R. 1041, and it was contended that the plaintiff in that case would have failed as being a trespasser had it not been for the gross negligence of the defendant, and that no such negligence had been established in the present case.

For the plaintiff, reliance was placed on *Gough* v. *National Coal Board*, [1954] 1 Q.B. 191; [1953] 2 All E.R. 1283; and, although that case might be distinguishable in that the plaintiff was held to be a licensee of land occupied by the defendants, there were passages in the judgment which clearly indicated, in His Lordship's view, that the defendants' argument on this point should be rejected. He said:

> It scarcely lies in the mouth of a defendant, who is found to have negligently left a dangerous and attractive object in a place where children are known to play, to contend that a child who has done the very thing which forms the basis of the finding of negligence should fail because he was a trespasser on the object.
>
> I therefore hold that the present claim succeeds.

In fine, the defendants were not in occupation of the land on which the trailer stood, and it was not open to them, having left the trailer, which was dangerous and attractive to children, in a place where children were known to play, to contend that the plaintiff was a trespasser on the trailer as distinct from a trespasser on land. Accordingly, they were negligent in that they had failed to take reasonable care to avoid acts or omissions which could reasonably be foreseen to be likely to lead to such an injury from the trailer as that which had happened to the infant plaintiff.

It follows from the foregoing statements of principle that the standard of care owed by non-occupiers to a trespassing child is higher than that owed by an occupier to a trespasser, as the duty owed to such children by non-occupiers is to take reasonable care to avoid acts or omissions which could reasonably have been foreseen to be likely to lead to such an injury as had happened to each of the several plaintiffs: the electrocution of the twelve-year-old girl in *Buckland's* case; the injury to the twelve-year-old boy from the fallen wall in *Davis's* case; and the injury to the five-year-old girl from the overturned trailer in *Creed's* case.

SUMMARY OF RECENT LAW.

ANIMALS.

Liability for Cattle Trespass, *105 Law Journal*, 438.

BAILMENT.

Rental Car—Damage to Car while in Bailee's Custody—Prima Facie Presumption of Negligence against Bailee—Contract of Hire containing Clause indemnifying Bailor against Loss or Damage to Vehicle during Hiring, and limiting Bailee's Liability in Respect of Damage and Consequential Loss of Revenue—Prima Facie Presumption unaffected by Such Indemnity, but Bailee left with Absolute, but Limited Liability, for Damage and Consequential Loss. An agreement for hire of a rental car contained the following special provision: "8. The hirer will indemnify and keep indemnified the owner against all damage or loss which may happen to the said vehicle during the continuance of the hiring and until the said vehicle is returned to the owner and will compensate the owner for any depreciation, loss of revenue and costs that may be incurred as a result of any accident happening to the said vehicle during the continuance of the hiring and until the same is returned to the owner provided that save where such damage or loss follows or results from a breach by the hirer of any other agreement on his part herein contained, or is caused by the sole negligence of the hirer or any person driving the vehicle on behalf of or with the permission of the hirer, the liability of the hirer in respect of damage to the vehicle shall be limited to £20 and in respect of any consequential loss of revenue which may be suffered by the owner shall not exceed £3 per week over the period of such consequential loss of revenue, with a maximum of £15." Damage having been done to the car during the term of the hiring, the rental-car proprietor claimed from the bailee the cost of repairing the car and the sum of £15 for loss of revenue. A Magistrate gave judgment for the rental-car proprietor. On appeal from that judgment, *Held*, 1. That cl. 8 of the agree-

LEGAL ANNOUNCEMENTS.

Continued from page i.

Messieurs De Coek, Judd, and Hill, of Te Awamutu, Barristers and Solicitors, wish to announce that Mr. V. A. De Coek is retiring from the practice of law and that the partnership hitherto carried on by them is hereby dissolved as from the 30th day of September, 1955.

V. A. De Coek. R. C. Judd.
A. R. Hill.

Consequent upon the retirement of Mr. V. A. De Coek, Messieurs R. C. Judd and A. R. Hill wish to announce that they have admitted into partnership as from the 1st day of October, 1955, Messieurs Owen Munro Prichard, LL.M., Malcolm William Brown, LL.M., and Bevan David Kay, LL.B., formerly members of the staff of Messieurs De Coek, Judd & Hill.

The partnership will be carried on as Messieurs Judd, Hill, Prichard, Brown & Kay, Barristers and Solicitors at their premises "Redoubt Chambers," Roche Street, Te Awamutu.

R. C. Judd,
A. R. Hill,
O. M. Prichard,
M. W. Brown,
B. D. Kay.

ment, in addition to restating the common-law liability for loss or damage due to negligence, enlarged the liability of the bailee in that it imposed an absolute liability on him for all damage or loss occasioned to the motor-car, and for consequential depreciation, loss of revenue, and costs incurred and resulting therefrom, to a limit of £20 in respect of the damage or loss, and a limit of £3 per week with an overall limit of £15 for consequential loss of revenue. 2. That, the transaction being one of bailment, the common-law *prima facie* presumption of negligence against the bailee arising from the fact of injury occurring to the car while it was in the custody of the bailee remained unaffected by cl. 8 of the agreement; so that, if the bailee could displace that *prima facie* presumption, he was still left with the absolute, but limited, liability for damage and consequential loss. (*Fawcett* v. *Smethurst*, (1914) 84 L.J.K.B. 473, followed.) 3. That, it was not incumbent upon the bailee to explain precisely how the mishap giving rise to the damage occurred: it was sufficient if he showed that it occurred without negligence on his part. (*Bullen* v. *Swan Electric Engraving Co.*, (1907) 23 T.L.R. 258, and *Brook's Wharf and Bull Wharf, Ltd.* v. *Goodman Brothers*, [1937] 1 K.B. 534, 539; [1936] 3 All E.R. 696, 702, followed.) 4. That the appellant had not displaced the *prima facie* presumption of negligence raised by the fact that the damage occurred while the motor-car was in the bailee's custody. *Sumich* v. *Auckland Rental Cars, Ltd. and Others.* (S.C. Auckland. April 29, 1955. Shorland, J.)

COMPANY LAW.

Disclaimer by a Liquidator, *105 Law Journal*, 467.

CONTRACT.

Formation—Bottles—Aerated-waters' Manufacturer offering to Refund Deposits paid by Consumers as Reward for Return of Empty Bottles—Such Offer made to Consumers, and not to all the World—Manufacturer not bound thereby to reward Bottle-dealers on Return of Bottles—Right to Reward, a Chose in Action—Need for Proof of Bottle-dealers' Title, as Assignee of Consumer's Right of Refund in Respect of Particular Bottle or Group of Bottles, before Bottle-dealer entitled to receive Reward of Deposit paid by Consumer. The plaintiff, a bottle and scrap dealer, had for many years been receiving into his depot and paying for large numbers of bottles of all sorts brought in by bottle-gatherers and others. The defendant company, a manufacturer of aerated waters and cordials at Napier, owned bottles, whereon, in permanent form, were the words "This bottle remains the property of Gilberd and Co., Ltd., Napier". When it sold aerated waters and cordials, it did not sell the bottle. It sold the contents only. Its practice was to charge what it called a "deposit" (3d.) on each standard-size bottle, which was refundable on the return of the bottles. This was stated in its public advertisements. On September 18, 1948, the Hawke's Bay members of the Dominion Association of Carbonated Water and Cordial Manufacturers resolved that its members (including the defendant company) would pay to bottle-dealers 1s. 6d. per dozen for small bottles and 3s. per dozen for large bottles. This resolution was conveyed to the plaintiff. Since then, the defendant company had discriminated against dealers, in that the reward it paid to them was less than the amount of the deposit which it undertook to refund to its customers when they returned their empty bottles. This gave rise to an action by the plaintiff in which he claimed from the defendant company the amount of the deposits received by the defendant company from its customers in respect of its bottles collected and held by the plaintiff. The defendant company counterclaimed for an injunction, and for an order for delivery to it of its bottles in the possession or control of the plaintiff. The learned Chief Justice non-suited the plaintiff, and held that the defendant company was entitled to an order that, upon tender to the plaintiff of a reward of 1s. 6d. per dozen in respect of the smaller bottles and 3s. per dozen in respect of the larger bottles (in reasonably good order and condition), the plaintiff was to deliver up to the defendant company its bottles held by him. The plaintiff appealed. *Held*, by the Court of Appeal, 1. That the appellant could not avail himself of the offers which were contained in delivery dockets or invoices as these were made to the persons who received them and to no one else; and, similarly, the advertisements as to the reward for the return of empty bottles were directed to consumers and not to bottle-dealers, and did not constitute offers which the appellant was entitled to accept. (*Carlill* v. *Carbolic Smoke Ball Company*, [1893] 1 Q.B. 256 C.A., and *R.* v. *Clarke*, (1927) 40 C.L.R. 227, applied.) 2. That, on the facts, the appellant had not even acted on the offers, but primarily was seeking an increased reward for the services he was performing, and, at the most, he claimed the right to stand in the customers' shoes; and that he had had notice that the offer did not apply to him or to his fellow bottle-dealers. (*R.* v. *Clarke*, (1927) 40 C.L.R. 227, applied.) 3. That no question of estoppel arose. (*Curtis* v. *Perth and Fremantle Bottle Exchange Co., Ltd.*, (1914) 18 C.L.R. 17, distinguished.) 4. That, as the appellant had not proved his title as assignee of the customer's right to refund in respect of any particular bottle or group of bottles, his claim to recover the amount of the deposit as assignee of a chose in action under an equitable assignment or a claim of equitable assignments failed; and that the Court would not presume from a general set of circumstances the existence of a chose in action in any one particular case, or its assignment. (*Smith* v. *Perpetual Trustee Co.*, (1910) 11 C.L.R. 148, applied.) Appeal from the judgment of Barrowclough, C.J., dismissed. *McMahon* v. *Gilberd and Co., Ltd.* (S.C. & C.A. Wellington. August 15, 1955. Cooke, North, Turner, JJ.)

CRIMINAL LAW.

Conviction—Dismissal of Offender Without Conviction or Sentence—Extent of Magistrate's Discretion—Supreme Court's Power to Review Magistrate's Decision and to Exercise Discretion in Favour of Offender—Criminal Justice Act, 1954, s. 42. Section 42 of the Criminal Justice Act, 1954, which empowers a Magistrate in his discretion to discharge an offender without conviction or sentence, is silent as to the grounds on which such discretion may be exercised. The discretion, which must be exercised judicially, is a wider one than was conferred by s. 92 of the Justices of the Peace Act, 1927, or by s. 18 of the Offenders Probation Act, 1920; and it includes the ground, previously contained in s. 37 of the Crimes Act, 1908, on which the Court may exercise its discretion when it considers that the offence charged deserves no more than a nominal punishment, and it is unnecessary that a conviction should be obtained. It is open to the Supreme Court to review a decision of a Magistrate where he has declined to exercise the discretion given him by s. 42 of the Criminal Justice Act, 1954, and, in a proper case, to substitute its own discretion, and, where it considers it is unnecessary that a conviction should be obtained, to quash the conviction and sentence and direct that a discharge be entered. (*Jones* v. *McDonald*, [1939] N.Z.L.R. 928; [1939] G.L.R. 548, followed.) (*In re Taupo Totara Timber Co., Ltd.*, [1943] N.Z.L.R. 557, applied.) (*R.* v. *Smith*, [1923] G.L.R. 148, referred to.) *Halligan* v. *Police.* (S.C. Christchurch. September 22, 1955. McGregor, J.)

Practice—Murder—Delay in explaining Accident as Cause of Victim's Death—Defence of Accident first raised at Trial—Right to comment thereon generally—Justices of the Peace Act, 1927, ss. 151 and 156. The trial Judge may, in a proper case, comment upon the fact that the defence has not been disclosed at some date earlier than the trial, but observations thereon have to be made with care and with fairness to the accused person in all the circumstances of the case. (*R.* v. *Littleboy*, [1934] 2 K.B. 408; 24 Cr.App.R. 192, explaining *R.* v. *Naylor*, [1933] 1 K.B. 685; 23 Cr.App.R. 177, followed.) Sections 151 and 156 of the Justices of the Peace Act, 1927, do not affect the right to comment generally on the fact that a defence is raised for the first time at the trial. Such comment is by way of answer to the defence—a test applied in order to determine its truth or falsity—and differs essentially from any suggestion that silence is in itself evidence from which guilt may be inferred. (*R.* v. *Barker and Bailey*, (1913) 32 N.Z.L.R. 912; 15 G.L.R. 634, applied.) (*R.* v. *Naylor*, [1933] 1 K.B. 685; 23 Cr.App.R. 177, and *R.* v. *Littleboy*, [1934] 2 K.B. 408; 23 Cr.App.R. 192, referred to.) (*R.* v. *Hill*, [1953] N.Z.L.R. 688, distinguished.) Consequently, a warning by a Police officer or the administration of the statutory caution do not preclude reference to the fact that a defence is raised for the first time by evidence given at the trial, and a general comment on that fact need not be accompanied by reservations with reference to any specific occasions when such warnings were given. *Quaere*, whether comment specifically directed to the occasion when the statutory warning is given is ever permissible in New Zealand in view of the express words as to such comments contained in ss. 151 and 156 of the Justices of the Peace Act, 1927. *The Queen* v. *Foster.* (C.A. Wellington. June 24, 1955. Barrowclough, C.J., Stanton, Hutchison, F. B. Adams, McGregor, JJ.)

Probation—Application for Discharge from Probation before Expiry of Full Term of Release—Good Behaviour and Compliance with Terms of Release on Probation—Not a "change of circumstances"—Criminal Justice Act, 1954, s. 9 (1) (b) (3). Good behaviour and compliance with the conditions of the release on probation by an applicant for discharge from probation before the expiry of the full term of his release, do not establish

such a " change of circumstances since the offender was released " as is contemplated in s. 9 (3) of the Criminal Justice Act, 1954. *C.* v. *Caskie* (*Probation Officer*). (S.C. Gisborne. August 22, 1955. Barrowclough, C.J.)

Sentence—Offenders' Probation—Prisoner discharged without Conviction or Sentence on Earlier Offence—Court, when sentencing for Subsequent Offence, entitled to take into Consideration Fact of Earlier Offence—Further Matters for Court's Consideration—Offenders' Probation Act, 1920, s. 18 (2) (Criminal Justice Act, 1954, s. 42 (4)). The language used in s. 18 (2) of the Offenders' Probation Act, 1920,* does not preclude a Court when dealing with a subsequent offence from taking into consideration the fact, if it be a fact, that the prisoner had committed an earlier offence, provided it also takes into consideration the further fact that the circumstances of the earlier offence were such as to warrant a discharge without conviction or sentence. (*Sambasivam* v. *Public Prosecutor of the Federation of Malaya*, [1950] A.C. 458, distinguished.) *Higgins* v. *Hart*. (S.C. Wellington. September 19, 1955. Barrowclough, C.J.)

DIVORCE AND MATRIMONIAL CAUSES.

Condonation—Adultery—Husband's Condoned Adultery revived by Subsequent Intimate Association with Person Concerned—Divorce and Matrimonial Causes Act, 1928, s 17. Even if the adultery of a husband has been condoned by his wife, his subsequent intimate association with the person concerned revives the prior adultery, and the wife is entitled to a decree although no matrimonial offence (in the narrower sense) has been committed by the husband. (*Ridgway* v. *Ridgway*, (1881) 29 W.R. 612, followed.) (*Tilley* v. *Tilley*, [1949] P. 240; [1948] 2 All E.R. 1113, and *Perry* v. *Perry*, [1952] P. 203; [1952] 1 All E.R. 1076, referred to.) (*Collins* v. *Collins*, (1884) 9 App. Cas. 205, distinguished.) *Sundy* v. *Sundy*. (S.C. New Plymouth. September 5, 1955. McGregor, J.)

ELECTIONS AND POLLS.

Parliamentary Election—Election Petition—Lodging of Security within Prescribed Time, and, if given by Bond, with Sureties—Condition Precedent to Petitioner's Right to have Petition heard by Electoral Court—Electoral Act, 1927, ss. 200 (c) (d), 216, 217, 250—Election Petition Rules, 1951 (S.R. 1951/184), R. 68. Compliance with the conditions contained in paras. (c) and (d) of s. 200 of the Electoral Act, 1927, that the security on behalf of a petitioner be given within three days of the presentation of the petition, and that, if it be given by bond, there be sureties to the bond, is a condition precedent to the right of a petitioner to have his petition heard by an Electoral Court constituted under the statute. (*Williams* v. *Mayor of Tenby*, (1897) 5 C.P.D. 135, applied.) (*Wellington Election Petition*, (1894) 13 N.Z.L.R. 174, approved.) (*Wairarapa Election Petition*, (1897) 15 N.Z.L.R. 471, *Lee* v. *Macpherson (No. 1)*, [1923] N.Z.L.R. 1296; [1923] G.L.R. 245, and *Pease* v. *Norwood*, (1869) L.R. 4 C.P. 235, referred to.) The words to " the satisfaction of the Returning Officer " in s. 200 (c), while empowering a Returning Officer to decide whether in any particular case there need be one, two, or three sureties, do not empower him to dispense with sureties altogether; and, if a Returning Officer has approved a purported security, those words cannot be relied upon to validate as security a bond given by the petitioner alone without sureties. (*Williams* v. *Swansea Canal Navigation Co.*, (1868) L.R. 3 Exch. 158, applied.) *In re Lyttelton Election Petition, Goodman and Another* v. *Barnett and Another*. (F.C. Wellington. July 1, 1955. Stanton, Hutchison, McGregor, JJ.)

HUSBAND AND WIFE.

Locus Poenitentiae In Desertion, *105 Law Journal*, 422.

JURY.

Jury and Jurymen of the Past, *220 Law Times*, 33.

LAND AGENT.

Negligence—Duty of Land Agent, when preparing Sale and Purchase Agreement of Farm Land, to include therein Standard Approved Clause to comply with Provisions of Land Settlement Promotion Act, 1952—Breach of Such Duty—Award of Damages against Land Agent. When a land agent takes it upon himself to prepare an agreement for the sale and purchase of farm land, it is a breach of his general duty to his principal if he does not adopt the means usually adopted by land agents to protect their principals when selling farms. This duty includes the insertion in the sale and purchase agreement of a standard approved clause, which requires the purchaser either to make a declaration or obtain the consent of the Land Valuation Court, and limits his right to a return of his deposit to cases where he has complied, or done his best to comply, with those obligations. *McKenna* v. *Stark*. (S.C. Auckland. September 13, 1955. Stanton, J.)

LAW PRACTITIONERS.

Admission—Barrister—Unnaturalized Alien—Not " a fit and proper person to be admitted " as a Barrister—Law Practitioners Act, 1931, s. 6. An unnaturalized alien is not " a fit and proper person ", within the meaning of those words in s. 6 of the Law Practitioners Act, 1931, to be admitted as a barrister. (*In re Heyting*, [1928] N.Z.L.R. 233; [1928] G.L.R. 174, applied.) (*Ex parte Korten*, (1941) 59 N.S.W.W.N. 29, referred to.) *In re Scholer*. (S.C. Wellington. October 3, 1955. McGregor, J.)

LIMITATION OF ACTION.

Title to Land by Prescription—Unalienated Crown Land in Occupation of Adjoining Owner for Over Sixty Years—Acquisition of Prescriptive Title to Such Crown Land—Principles Applicable—Declaratory Order Affirming, as Against Crown, Existence of Prescriptive Title—Form of Order—Limitation Act, 1950, ss. 6, 18—Land Act, 1948, ss. 58, 172 (2), 176. Practice—Declarations and Orders—Declaratory Order—Action Against Crown for Declaration as to Acquisition of Prescriptive Title in Crown Land—Order under Crown Proceedings Act, 1950, inapplicable—Declaratory Order, as against Crown, made under Declaratory Judgments Act, 1908, affirming Existence of Prescriptive Title to Such Land—Declaratory Judgments Act, 1908, ss. 3, 10—Crown Proceedings Act, 1950, ss. 5 (2), 17 (1) (b). There may be adverse possession against the true owner of a whole block of land even though it has been occupied by user of part of it only, if such partial user sufficiently evidences an *animus possidendi* in regard to the whole. (*Lord Advocate* v. *Blantyre*, (1879) 4 App. Cas. 770, followed.) (*Martin* v. *Brown*, (1912) 31 N.Z.L.R. 1084; 14 G.L.R. 407, referred to.) It is irrelevant that the true owner knew nothing of possesion by another, or that the land was of little value and capable of only a limited user. If the person in possession and his predecessors (if any), did, in fact, take and maintain possession, and thus excluded the true owner by assuming the occupation to themselves, there is no need to inquire whether they had any more specific intention to oust or exclude him. Possession with the *animus possidendi* automatically excludes the owner, even if it be possession with his consent, as in the case of a tenant at will. Discontinuance of possession by the true owner may occur even though he is unaware of the adverse possession. Although enclosure, such as fencing, is the strongest possible evidence of adverse possession, it is not indispensable. (*Seddon* v. *Smith*, (1877) 36 L.T. 168, followed.) (*Martin* v. *Brown*, (1912) 31 N.Z.L.R. 1084; 14 G.L.R. 407, and *Nesbitt* v. *Mablethorpe Urban District Council*, [1918] 2 K.B. 1, referred to.) (*Rains* v. *Buxton*, (1880) 14 Ch.D. 537, followed.) The facts that the public has used the land as a means of access, and that no rates have been claimed or paid cannot negative a *de facto* possession. (*Martin* v. *Brown*, (1912) 31 N.Z.L.R. 1084; 14 G.L.R. 407, referred to.) By s. 6 (2) of the Limitation Act, 1950, that statute is made subject to the Land Act, 1948, so far as it is inconsistent with anything contained therein; but, where there was no enactment dealing with the reservation by the Crown applicable to the land in question at the date of the Crown grant, the Crown grant withdrew the land from the possibility of further sale or disposition by the Crown; and, accordingly, s. 58 of the Land Act, 1948, and its predecessors could have no application. There is nothing in s. 176 of the Land Act 1948, and its predecessors, or, it was reasonable to conclude, in earlier enactments, providing that no prescriptive title could be acquired by acts done unlawfully in breach of their provisions; and the Court will not presume a lost grant, the existence of which would have contravened a public statute or a custom. A title to land which may be acquired by adverse possession is purely possessory, not resting on a presumed grant, but solely upon the statutory destruction of the true owner's remedy and estate. Such a title may be acquired notwithstanding the fact that the land is dedicated to statutory purposes, or that the true owner is debarred by statute from alienating the land. (*Bobbett* v. *South Eastern Railway Company*, (1882) 9 Q.B.D. 424; *Midland Railway Company* v. *Wright*, [1901] 1 Ch. 738; *Sampson* v. *New Plymouth Harbour Board*, (1908) 27 N.Z.L.R. 607; 10 G.L.R. 366, and *Whatatiri* v. *The King*, [1938] N.Z.L.R. 676; [1938] G.L.R. 379, followed.) Where the adverse owner is prohibited from occupying or alienating the land, the title may nevertheless be acquired by adverse possession. It is the fact of possession, and not its lawfulness, that is important; and, in general, title may be acquired under the Limitation Act, 1950, by virtue of unlawful occupation. Where a person has succeeded in acquiring a prescriptive title of land as against the Crown, a declaratory order, under the Declaratory Judgments Act, 1908, may be made affirming, as against

* See, now, s. 42 (4) of the Criminal Justice Act, 1954.

the Crown, the existence of the prescriptive title, so long as the order is in such form that it cannot be construed as an order made in pursuance of s. 17 (1) (*b*) of the Crown Proceedings Act, 1950. *Semble*, That a prescriptive title may be acquired in the bed of a river, whether the bed be owned privately or be unalienated Crown Land, provided there are no special statutory provisions rendering it impossible. From the year 1893, and, indeed, from a much earlier date, the plaintiff and his predecessors in title had continuously and openly used as part of their adjoining farm, a piece of unalienated land vested in the Crown, with an area of 23 acres, which, except for a comparatively small portion of it, was rough and overgrown and almost in a state of nature. On May 5, 1953, the Crown granted to a company a licence in pursuance of which the company, on or about the same date, entered into possession of part of the land in question, and proceeded to erect a gravel-crushing mill on the property. Since then, the company had continuously taken gravel from the bed of the river, transported it to the crusher, crushed it there, and transported it from the property. *Held*, That the plaintiff had become the owner of the land in question as, for sixty years and upwards, there had been such occupation and use as amounted to adverse possession against the Crown; and he was entitled to an order under the Declaratory Judgments Act, 1908, accordingly; but subject to: (*a*) The express preservation of the right of the Crown under s. 6 (3) of the Limitation Act, 1950, "to any minerals (including uranium, petroleum, and coal)". (*b*) The acceptance by the plaintiff of an order in such a form as would protect the interests of the licensee company under its licence in respect of the gravel-crushing plant. (*c*) The plaintiff's title is to be subject to any proprietary interests that may be vested in any Catchment Board or other local authority in respect of the land. (*Lord Advocate* v. *Blantyre*, (1879) 4 App. Cas. 770, and *Lord Advocate* v. *Young*, (1887) 12 App. Cas. 544, followed.) (*Attorney-General* v. *Leighton*, [1955] N.Z.L.R. 750, referred to.) The form of the declaration is set out in the judgment. *Robinson* v. *Attorney-General*. (S.C. Nelson. June 25, 1955. F. B. Adams, J.)

MASTER AND SERVANT.

Workers' Compensation—Employer's Liability Insurance—Employer insuring Worker with Insurance Company after Happening of Accident, but within Fourteen Days after the Commencement of Worker's Employment—Employer entitled to be indemnified by Such Insurance Company—"Default"—Worker's Compensation Amendment Act, 1950, ss. 8, 9, 20. An employer, by virtue of s. 9 of the Workers' Compensation Amendment Act, 1950, can, at any time within fourteen days from the commencement of an employment, call upon any insurer whom he chooses to select to insure him against workers' claims in respect of a period which has elapsed and during which an accident has already occurred. Such an insurer cannot refuse to accept the employer's statement of wages or stipulate for a higher premium. As, under s. 20, the liability of the Workers' Compensation Board does not arise unless an employer is in default in insuring against his liability to his employee, the Board is not liable in respect of an accident occurring between the date of the commencement of an employment and the date (within fourteen days thereafter) of the employer's delivering a statement of wages to an insurer. *Kennedy* v. *New Zealand Insurance Co., Ltd. and Workers' Compensation Board*. (S.C. Auckland. September 6, 1955. Stanton, J.)

MORTGAGE.

Discharge—Uncertainty as to Mortgagee—Application to Court—Determination as to Amount—Payment into Court—Nature of Order made—Property Law Act, 1952, s. 87. The registered proprietor of a mortgage was a limited liability company, which was wound up in 1925. At the final meeting of the company, it was agreed that the mortgage should be transferred to H., a shareholder, in part satisfaction of his share in the surplus assets. The liquidator was directed to transfer the mortgage accordingly, but he neglected to transfer it. Between 1920 and 1925, the mortgagor paid the interest on the mortgage to the company (the registered proprietor of the mortgage) and, thereafter, to H. or his executors, as he had been informed by H., approximately in the early part of 1926, that the company had been liquidated and that H. had taken over the mortgage, and he, the mortgagor, was to pay all future interest to him. During H.'s lifetime, the mortgagor obtained reduction of the principal sum from £750 to £425 and reduction of the interest rate to 4½ per cent. per annum, by an order of the Court of Review, under the Mortgagors and Lessees Rehabilitation Act, 1936. At the hearing in the Court of Review, H. was cited as mortgagee, and was represented by counsel. The mortgagor applied for an order under s. 87 of the Property Law Act, 1952, that the principal sum and interest remaining secured by the mortgage be paid into Court, and for it to be paid out of Court to H.'s executors. H.'s executors consented to the making of the order. *Held*, 1. That, having regard to the provisos to subss. (2) and (4) of s. 87 of the Property Law Act, 1952, the Court was justified, on the evidence before it, in making orders similar to those asked for in the notice of motion, notwithstanding the fact that all persons who might be entitled to be heard in opposition to the motion might not have been ascertained and might not have had notice of the application. 2. That the amount of the debt secured by the mortgage be ascertained from the facts disclosed in the affidavit of the mortgagor and in the certified copy of the order of the Court of Review (attached as an exhibit to it); that the amount of the debt was £425 for principal, together with interest thereon at the rate of 4½ per cent. per *annum* from May 5, 1952, to the date of payment into Court; and that the principal sum and interest moneys be forthwith paid into Court by the mortgagor pursuant to s. 87 (1) of the Property Law Act, 1952.

Note: For the purpose of registration, the certificate of title and the mortgage were surrendered to the Court; and, on the principal and interest moneys being paid into the Court in conformity with the order of the Court under s. 87 of the Property Law Act, 1952, the Registrar of the Supreme Court endorsed on the order a certificate that payment had been made into Court as directed; and there was then registered in the Land Transfer Office a sealed copy of that order, and that registration duly effected a discharge of the mortgage. *In re a Mortgage, Scott to Christchurch Brick Co., Ltd.* (S.C. Christchurch. July 21, 1955. Barrowclough, C.J.)

PRACTICE.

Removal of Proceedings—Reciprocal Enforcement of Judgments—Motion to register Judgment—Motion filed in Court Registry nearest Judgment Debtor's Forwarding Address, being Only Address available—Order removing Proceedings to Registry nearest to Judgment Debtor's Actual Residence—Code of Civil Procedure, R. 604—Reciprocal Enforcement of Judgment Rules, 1935 (1935 New Zealand Gazette, 3600), R. 5. An order may be made to transfer proceedings to the Supreme Court Registry nearest the residence of the judgment debtor, when an application to register a judgment under the Reciprocal Enforcement of Judgments Act, 1934, has been originally filed in another Registry of the Supreme Court, owing to the judgment creditor's then being unaware of the judgment debtor's address in New Zealand (all that was then available being a forwarding postal address which was nearest to that Registry). *Carters Tested Seeds, Ltd.* v. *Davies*. (S.C. Wellington. October 7, 1955. McGregor, J.)

Trial by Jury—Verdict—Jury's Verdict in Favour of Defendant—Court satisfied that Verdict for Plaintiff only Reasonable Verdict on Facts—All Facts ascertained and before Court—Verdict for Plaintiff to be entered. Judgment should be entered for the plaintiff without sending the case back for re-trial, where, in an action claiming damages for negligence, the jury's verdict is against the weight of evidence in the sense that no twelve reasonable men could properly come to a conclusion in favour of the defendant, and the Court is satisfied that a verdict for the plaintiff is the only verdict that could reasonably have been given on the facts, and it is satisfied that all the facts have been ascertained and were before the Court. (*Winterbotham, Gurney, and Co.* v. *Sibthorp and Cox*, [1918] 1 K.B. 625, followed.) (Dictum of *Lord Wright* in *Mechanical and General Inventions Co., Ltd.* v. *Austin and Austin Motor Co., Ltd.*, [1935] A.C. 346, 379 (to the effect that to enter judgment for a plaintiff might be tantamount to superseding the jury and exercising the function of affirmatively finding the facts), not followed.) *Attorney-General* v. *J. M. Heywood and Co., Ltd.* (*No.* 2). (S.C. Christchurch. September 22, 1955. F. B. Adams, J.)

PROBATE AND ADMINISTRATION.

Probate—Practice—Mutilated Will—Will on Single Sheet of Paper torn from Top to Bottom in Two Tears, and restored by pasting Paper over Whole Back of Original Sheet—No Evidence of Circumstances of Mutilation—Court's Inherent Jurisdiction exercised—Order for Proof in Solemn Form—Wills Act, 1837, s. 20—Code of Civil Procedure, R. 531z. An application, *ex parte*, was made for probate of a will, which was typewritten on a single sheet of paper and at some time had been mutilated by two complete tears from top to bottom of the sheet and by a third partial tear. The document had then been restored by affixing the torn pieces together by means of a sheet of paper pasted over the whole of the back of the original sheet. One of the complete tears passed through the signature of the testatrix, and one through the signatures of the attesting witnesses. There was little knowledge of the circumstances of mutilation. *Held*, That, in view of the lack of information before the Court, and of the fact that persons who might be

adversely affected by the mutilation of the will were not before the Court and might have no knowledge of the peculiar circumstances, the Court had inherent jurisdiction to order an action, and an order would be made for probate in solemn form of the will propounded. (*In re Annie Nissenbaum*, [1939] N.Z.L.R. 94; [1939] G.L.R. 45, referred to.) *In re Mair (deceased)*. (S.C. Wanganui. July 11, 1955. McGregor, J.)

Probate—Practice—Testator's Body not recoverable—Application for Probate in Common Form, supported by Certificate of Death, insufficient—Leave to swear Death necessary—Coroner's Finding in Proper Authenticated Form to be produced—Coroners Act, 1951, s. 8—Births and Deaths Registration Act, 1951, s. 31—Code of Civil Procedure, RR. 518, 531cc. Where the body of a testator cannot be found, and neither the executor nor any other person can, of his own knowledge, prove the fact of his death in terms of R. 518 of the Code of Civil Procedure, a certificate of death (following a coroner's inquest) under s. 8 of the Births and Deaths Registration Act, 1951, is insufficient to support an application for grant of probate in common form. In such a case, the Court should be asked to grant leave to swear death. A death certificate by itself is insufficient to support such a grant. Where an inquest has been held under s. 8 of the Coroners Act, 1951, the Court should have in support of the application, at least the actual words of the coroner's finding in properly authenticated form; but it is not necessary to re-assemble on oath the mass of circumstantial evidence received at the inquest. *Quaere*, Whether, in view of the terms of s. 31 of the Births and Deaths Registration Act, 1951, a Registrar of Deaths has power to issue a death certificate where no "inquest is held on the body of a deceased person"; and, furthermore, whether, even if he has power to issue such a certificate of death when the body has not been found, s. 8 of the Coroners Act, 1951, has partially taken away the protection given to life insurance companies by R. 531cc of the Code of Civil Procedure. *In re Moss (deceased)*. (S.C. Nelson. September 5, 1955. Turner, J.)

RATES AND RATING.

Rateable Property and Exemptions—Shingle-plant—"Machinery"—Main Sizing-Bins—Steel Movable Grading-plant—Foundations and Sides of Rod-mill Building—Whether "machinery"—Rating Act, 1925, s. 2. Main sizing-bins, used in shingle-plants, as described in the judgment, do not comprise "machinery" as that word is used in para. (1) of the exemptions from the definition of "rateable property" in s. 2 of the Rating Act, 1925. A complete grading plant in miniature, constructed almost entirely of steel and so as to be movable (the admitted machinery and the bins being inseparable and the bins, on account of their small size being auxiliary to the "machinery") is "machinery", as that word is used in para. (1) of the exemptions from the definition of "rateable property" in s. 2 of the statute. The foundations and sides of a rod-mill building, which were of special character for the sole purpose of supporting the machinery and deadening its noise, there being no roof other than the overhead bins, were auxiliary to the rod-mill machinery and were not "rateable property" within the definition of that term in s. 2 of the statute. *In re River Shingle and Sand (1935) Limited's Objection.* (Lower Hutt. July 8, 1955. J. R. Drummond, S.M.)

Valuation List—Amendment of List after Its Deposit and being Open for Inspection—Such Amendment not made by Assessment Court—Amendment and Notice given pursuant to It, Nullities—Rating Act, 1925, ss. 8 (4), 30. As soon as a valuation list, sent by the valuer for the district to the local authority under s. 8 (4) of the Rating Act, 1925, is deposited and is open for inspection of interested persons, no amendment thereto can be made no matter how defective the list may be, save by objection made by the local authority, the owner or occupier of the property, or any other ratepayer appearing on the list. Unless an amendment is made by the Assessment Court, after an open hearing, the amendment and the notice given pursuant to it are nullities. Consequently, an objection to the amendment made subsequently to the transmission of the valuation list to the local authority is not such an objection as would entitle the Court to increase the original valuation in terms of s. 30 of the Rating Act, 1925. (*Mayor, etc., of Auckland* v. *Speight*, (1898) 16 N.Z.L.R. 651, referred to.) *In re Naenae Hotel Limited's Objection.* (Lower Hutt. July 11, 1955. Drummond, S.M.)

TENANCY.

Rent Restriction—Jurisdiction to fix Fair Rent—Jurisdiction arising on Application by Either Landlord or Tenant during Existence of Contractual or Statutory Tenancy—Existence of Tenancy Fact going to Jurisdiction—After Such Fact decided, Jurisdiction not taken away by Act of Party—Tenancy Act, 1948, s. 8. The jurisdiction given to the Court, founded on s. 8 of the Tenancy Act, 1948, to make an order fixing the fair rent, on an application made by or on behalf of either the landlord or the tenant of any dwellinghouse or property, exists when a relationship of landlord and tenant exists between the parties to the application, whether that relationship be a statutory one or a contractual one. A tenant who gives notice to determine the contractual tenancy and who remains in possession after expiry of notice, is a statutory tenant, and he, as well as the landlord, is entitled to have the fair rent fixed. (*Moran* v. *Kirkwood Bros., Ltd.*, [1947] N.Z.L.R. 213; [1947] G.L.R. 56, and *Artizans, Labourers, and General Dwellings Co., Ltd.* v. *Whitaker*, [1919] 2 K.B. 301, applied.) The existence or not of a tenancy between the parties at the date of an application to fix the fair rent is a fact that goes to the jurisdiction of a Magistrate to determine the fair rent, and, if the Magistrate was in error in his determination of that jurisdictional fact, the Supreme Court has authority to interfere. (*Bethune* v. *Bydder*, [1938] N.Z.L.R. 1; [1937] G.L.R. 665, *R.* v. *Blakeley*; *Ex parte Association of Architects, Engineers, Surveyors and Draughtsmen of Australia*, (1950) 82 C.L.R. 55, and *Manawatu-Oroua River Board* v. *Barber*, [1953] N.Z.L.R. 1010, referred to.) Once the Magistrate has decided the fact requisite to his jurisdiction, his jurisdiction cannot be ousted by the act of a party, such as the giving by the tenant of a notice to determine the tenancy. *J. A. Hazelwood and Co., Ltd.* v. *Norton.* (S.C. Wellington. August 30, 1955. McGregor, J.)

TRANSPORT.

"In charge of" a motor-vehicle, *220 Law Times*, 63.

TRUSTS AND TRUSTEES.

Power of Advancement, *99 Solicitors' Journal*, 533.

VENDOR AND PURCHASER.

Land Sales Promotion—Agreement for Sale and Purchase of Farm Property—Such Agreement Valid, where Consent of Land Valuation Court not required, unless and until Failure of Purchaser to make and deposit Prescribed Declaration within One Month—Land Settlement Promotion Act, 1952, s. 24. An agreement for the sale and purchase of a farm property can be made, and is valid, under the Land Sales Promotion Act, 1952, where the consent of the Land Valuation Court is not required, unless and until the purchaser fails to make the requisite declaration that he does not own, and has not transferred, any farm land, and he fails to deposit it with the District Land Registrar within one month after the signing of the agreement. *McKenna* v. *Stark.* (S.C. Auckland. September 13, 1955. Stanton, J.)

WILL

Exemptions in Wills, *105 Law Journal*, 470.

WORKERS' COMPENSATION.

Accident arising out of and in the Course of the Employment—Farm-worker possessing Rifle, with Employer's Permission, for Shooting Rabbits—Duty to drive Cow and Calf from Distant Paddock—Worker taking Rifle with Him—While on most Convenient Route to Such Paddock, Worker looking around Gap in Boxthorn Hedge for Rabbits—Eye injured by Piece of Hedge—Employment not interrupted by Looking for Rabbits—Worker entitled to Compensation—Workers' Compensation Act, 1922, s. 3. D. was employed by S., who was a sharemilker. On the day of the accident, S. instructed his son to go with D. to the bottom paddock and to bring in a cow and a calf which were there. S. had given D. permission to have a rifle for shooting rabbits. D. took the rifle with him on his way across the farm in case he saw any rabbits. On his way to the bottom paddock, D. took the most convenient route. It crossed a paddock where rabbits were sometimes seen. As D. and S.'s son went through a boxthorn hedge, D. went close to the right-hand side of a gap in the hedge, and peered around the hedge to see whether any rabbits were in view. As he did so, a piece of boxthorn hedge injured his right eye. The two went on to the bottom paddock, and returned with the cow and calf. In an action by D. for compensation in respect of the loss of his right eye, *Held*, That the accident arose "out of and in the course of the employment", as D. was in the course of doing something he was employed to do; for, though he was not under a duty to shoot rabbits, he was, when the accident happened, proceeding to the bottom paddock in the course of doing something he was employed to do, and his effort to locate rabbits on his way, while in possession of a rifle for shooting rabbits with the approval of his employer, was not such a diversion from the course of duty as to interrupt the employment. (*Lancashire and Yorkshire Railway Co.* v. *Highley*, [1917] A.C. 352; 10 B.W.C.C. 241, referred to.) *Dutton* v. *Schwass.* (Comp. Ct. New Plymouth. August 18, 1955. Dalglish, J.)

THE COMMONWEALTH AND EMPIRE LAW CONFERENCE, 1955.

By D. I. Gledhill, *Secretary of the New Zealand Law Society.*

(Concluded from p. 300.)

Congestion in the Courts.

"Causes of Congestion in the Courts and Possible Remedies" was a subject which created considerable discussion in the Committee, which was chaired by Sir Garfield Barwick, Q.C., Sydney.

No papers having been submitted, the Chairman suggested the lines on which the discussion should follow and outlined in brief his views on the cause of the congestion in the Courts.

An unusual variety of reasons for the delays were given by the delegates.

One New South Wales Judge expressed the view that 75 per cent. of common-law actions in New South Wales concerned motor-cars, and that the delays were caused in these cases by the necessity for a jury and the fact that motor-car cases were nearly all handled by a limited group of solicitors.

The Chairman summed up the views of delegates as follows:

Ten delegates spoke, the majority from New South Wales. It was generally agreed that there was considerable congestion in all civil Courts in those parts of the Commonwealth represented at the meeting. The only exception appeared to be Alberta, where no serious congestion is said to obtain.

The main causes which were put forward appear to fall under two main headings:

(*a*) General increase in all forms of litigation; and

(*b*) Failure to provide an adequate increase in Judges and Court accommodation to meet the increased demand.

As to (*a*) the following causes were suggested:

(i) Increased population.

(ii) Increased rights.

(iii) The large increase in accident cases both on the roads and in industry.

(iv) The greater number of matrimonial disputes coming before the Courts.

(v) In England, the provision of legal aid.

(vi) The greater awareness by the citizen of his rights due to improved welfare services.

(vii) The possibly outmoded procedure in the Courts of some places.

(viii) Concentration of work in the hands of a few already overworked lawyers who are apt too frequently to seek postponements.

(ix) Increase in crime which takes up the time of Judges who would otherwise be available for determining civil actions.

As to (*b*) the general feeling was that an increase in the number of Judges and Courts and the necessary trained staff was essential if the problem were to be tackled. It was further suggested that the appointment of commissioners, particularly to hear matrimonial causes, on the lines adopted in England, would ease the situation.

Other remedies submitted by delegates included the curtailment of trials by jury, further co-operation between the Bench and Bar, the additional use of recording machines to avoid lengthy written depositions, and the cutting-out of all unnecessary eloquence on the part of advocates. The view was also expressed that much could be done to dispose with the number of expert witnesses called on both sides either by procedure similar to that laid down in Order XXX of the English Rules of the Supreme Court or by agreement between the legal advisers to the parties.

To summarize the matter: there emerged a general view that the requirements were more Courts, more Judges, greater professional competence, better co-operation between Bench and Bar in the administration of the Courts, and greater decentralization of the Courts themselves, both by increased use of circuits and by use of specialized jurisdiction.

Legal Education.

On the subject, "Standards of Education for Admission (a) as Law Students, and (b) to the Legal Profession", papers were submitted by: Professor A. G. Davis, Auckland University College; and Messrs. E. R. Dew, The Law Society's School of Law; H. E. Read, Dean of Dalhousie University Law School, Halifax, N.S., and W. Cleveland Stevens, Director of the Council of Legal Education, England.

The subject was one of great interest to members of the legal profession throughout the Commonwealth and Empire, and many attending the Committee session expressed their views which portrayed many differences of opinion.

The Chairman, Professor T. W. Price, summed up the discussion in the following terms:

It was not perhaps surprising that there were many differences of opinion as well as some agreement, for it is well recognized that there is perhaps more argument and discussion on the subject of education than any other subject.

The chief differences of opinion were with regard to whether or not a Law Degree should be a compulsory requirement for entry into the profession, and whether a period of apprenticeship should also be compulsory.

It was the view of some speakers that the present standard of education for admission as Law Students was inadequate, bearing in mind that to become a good lawyer one must not only study the Law, but have a knowledge and understanding of people.

It was pointed out that in most countries a minimum standard of general education is required before admission as a Law Student, and it was suggested that this standard should be increased. In some countries it is possible to be admitted as a Law Student at the age of sixteen years, with the result that such students have not yet acquired an adequate command of the English language and the art of thinking. On the other hand the standard must clearly not be raised to such an extent that it resulted in depleting the ranks of the profession. One must, however, bear in mind that if one sets a minimum age for entry of, say, eighteen the result would be that a man or woman would be perhaps twenty-six years of age, taking into account the possibility of National Service, before being able to practise and earn a living.

Some speakers took the view that a fairly long period of apprenticeship was essential, while others took the view that this method was appropriate for the Middle Ages, but was now completely out of date and that for anyone with an education, apprenticeship for not more than one year should be adequate.

Other speakers took the view that service under articles, and during such service attendance at a Law School was the most desirable form of training.

It was pointed out that in some countries the possession of a University Law Degree was essential, while in other countries this was not so. One of the arguments against the requirement of a Law Degree was that many of our greatest lawyers had read classics and other subjects at their University and not Law. Another speaker, however, pointed out that it can never be known what contribution would have been made to Society by those lawyers had they taken a Law Degree, his view being that they would have been great lawyers in any event.

It was suggested that what Universities have to aim at is to replace dogmatic instructions by intellectual development, otherwise the Law would be out of touch with the needs and feelings of the ordinary man. Indeed, as had been said by a great lawyer, Law must lead mankind and not merely follow it.

It appeared that in several countries in the Commonwealth and Empire two courses of training were available, namely the acquirement of a Law Degree and service under articles. Some speakers were obviously uncertain how to marry these two to the best advantage. It is apparent, from what was said by a speaker from Scotland, that it has not been found possible to have a professional Law School there, and that in that country there are two places for legal training, namely the Universities and the lawyers' offices. There were difficulties with regard to the office training due to the decline in Scotland of the Managing Clerk whose work was now being done by the junior partners who had not always time to train an apprentice. A further difficulty was the attitude of mind of men returning from National Service. Frequently they were intolerant of office routine, and, as a result, were unlikely to benefit from a long term of apprenticeship.

On the whole it appeared to be the general view of those present that the most successful form of training was likely to be a period of full-time study at a University Law School followed by a period of full-time apprenticeship, or other practical training.

Reciprocity of Admission.

On the subjects "Reciprocity of Admission and the Desirability of Admitting Commonwealth and Empire Lawyers freely to practise in Other Parts of the Commonwealth", and "Overseas Relations and the Exchange of Visits by Practising Lawyers, Teachers of Law Students, etc.", papers were submitted by Messrs. M. I. Branchi, Malta; A. C. Des Brisay, Q.C., Law Society of British Columbia; T. G. Lund, The Law Society, in conjunction with the Under-treasurers and Sub-treasurers of the Inns of Court; and Professor J. L. Montrose, Queen's University, Belfast.

The following report of the Chairman, Mr. V. S. Perera, Secretary of the Law Society of Ceylon, fairly summarizes the discussions which took place:

The Committee had the advantage of five papers which had been submitted on these two subjects.

The Chairman pointed out to the meeting the importance of the matters which were due for discussion, stressing the fact that in many instances the status of countries had undergone a change during the past decade.

The Chairman stated that the right of a citizen to obtain the services of a lawyer from any part of the Commonwealth in the defence of his liberty and against the encroachment of his rights and liberties should be assured. He also desired that the Commonwealth Law Conference should meet at regular intervals of time, say once in three years, in the capital cities of the Commonwealth countries, in rotation.

Individual delegates gave information to the Committee upon the requirements for admission and practice in their own countries, and from this information it was clear that there were both difficulties and anomalies as between the various countries concerned. A suggestion was made and received support that some form of central house should be established at which all Commonwealth and Empire Bar Associations and Law Societies would be represented, the purpose of this body being to provide a clearing house and information centre. It was expected that, inevitably, difficulties would arise due to differences in local codes of law, but it was considered that these difficulties could be overcome.

On the rather wider subject of Overseas Relations and the exchange of visits of practising lawyers and teachers of law, students, etc., the Committee was unanimous in the opinion that the maintenance of good overseas relations was essential and that nothing but good could come of an interchange of visits between the lawyers of the Commonwealth and Empire countries. On the academic side it was pointed out that there already existed many facilities for interchange.

The Committee received and considered a suggestion that there should be established a Royal College of Barristers and Solicitors within the Commonwealth, and went so far as formally to recommend to the Plenary Session that the Bar Associations and Law Societies of each member country of the Commonwealth should be asked to consider the feasibility of establishing a Committee of Representatives from each country to investigate the creation of a Royal College of Barristers and Solicitors. The object of this establishment would be to encourage the study of law and research by practitioners, the creation of Fellowships, and improvement in the technical equipment of the lawyer and the strengthening of the bonds which bind the lawyers of the Commonwealth together.

The Committee, recognizing the unqualified success of the present Conference, wished to recommend to the Plenary Session that every effort should be made to ensure that similar Conferences be held in the future at regular intervals of three or five years.

Concluding Sessions.

This being the last discussion, the following resolution was passed unanimously, to be forwarded to the Final Meeting of the Conference:

That this Conference expresses its great debt of gratitude and profound thanks to the Trustees of the Nuffield Foundation for its tangible and very generous contribution to Commonwealth and Empire legal overseas relations in assisting financially the attendance of Secretaries of Bar Associations and Law Societies at a Conference of Secretaries, and at this Conference.

At all the discussions, with perhaps one exception, various delegates from New Zealand and the Secretary of the New Zealand Law Society made contributions.

Final Assembly.

At the final assembly of the Conference, reports of the various Committees were received. Views were expressed that it had been shown to be clearly well worthwhile holding a Conference of Empire representatives, not only from the point of view of discussing individual and collective problems, but also of learning something of the views and systems of other countries. Surpassing this advantage, was the opportunity it had provided of personal meetings, and the laying of the foundation of friendships which would continue.

Mr. Vroland, Melbourne, on behalf of the delegates and guests, referred to the social programme which had been surrounded by a background of tradition. He said:

"Our visits to these Halls, the Inns of Court, and to the homes of the lawyers, and the kindness and hospitality shown, have made us proud of our British heritage, and proud that we belong to such a noble profession."

He expressed thanks and appreciation to all who had provided such hospitality. He particularly referred to the organization of the Bar Council and The Law Society, and to the Law Society of Scotland, which had made the Conference possible. He said it should not be overlooked that it was in Scotland that a certain priming process began. He also thanked the number of articled clerks who had offered to act as guides to visitors desiring their assistance.

He specially made reference to the Secretary, Mr.

Thomas G. Lund, and to the wonderful contribution he had made to the success of the Conference.

Wherever the delegates had gone, whether to the private homes, professional offices, to the Halls or Inns of Court of London, or to the " bonny banks and braes " of Scotland, the same hospitality and friendliness abounded. He felt sure that, as a result, the ties which had already existed between the Empire countries would be greatly strengthened.

A member of the Canadian Bar, Colonel P. P. Hutchison, Q.C., Winnipeg, in seconding the vote of thanks, said many of their members had got to know London in one or two wars ; and, on this occasion, they had been enabled to renew their memories, and to strengthen the bonds of friendship which already existed between the countries of the Empire.

Owing to an indisposition, the Rt. Hon. Sir Raymond Evershed, M.R., was unable to be present to give an address. In his absence, Lord Radcliffe, a Lord of Appeal, said that, from the remarks of the speakers and from all that he had heard, it was clearly shown that the Conference had been a great success. He continued :

" We have been glad to have had you and could go on reiterating that statement as a gramophone record does when the needle is stuck."

He expressed the view of how fitting it had been that, a week previously, the Conference had opened in Westminster Hall, with the visible monuments around of life and centuries in which the common law was born—the law which has touched the life and legal systems of every country from which the visitors had come. In addition to the helpful discussions which had taken place, the visitors had had singular social opportunities and a taste of what an English summer can be like. He hoped the visitors had been able to see those things of which the people in England were so justly proud—St. Paul's, Westminster Abbey, and the Universities of Oxford and Cambridge, those cultured halls of wisdom. Hampton Court, a home of a great lawyer of his day, Cardinal Wolsey ; and Hadfield House which links up the statesmen of today and of the Elizabethan period.

His Lordship then spoke of the work of the Judicial Committee of the Privy Council. At various times, he said, the Committee had had the assistance of learned counsel from overseas. He referred to some who had sat with the Committee : Sir George Reid, Q.C., from Australia, Chief Justice Rinfret from Canada, and others. He was proud to think that the services of this Committee were still wanted.

Lord Radcliffe said that the Judicial Committee of the Privy Council had helped settlers overseas in achieving the difficult task of blending the common law with the law of their various territories. It might be that in the future it would be found inconsistent with local sovereignty. It might still have a useful future in deciding disputes between territories or in deciding large general questions affecting whole peoples. This it had done, for example, in the dispute between Ontario and Manitoba in 1884, and between Canada and Newfoundland in 1927. It could do this still. The problems of personnel, time, and place would solve themselves.

In his closing remarks, the Rt. Hon. Sir Hartley Shawcross, Q.C., expressed regret that he had not been able to take a more active part in the discussions of the Conference. He said he would like to see a closer association in legal matters between the members of the Commonwealth who were bound together by a common desire—the freedom of law. He added that, with the development of complete and independent sovereignty on the part of the member nations of the Commonwealth, there had naturally developed in some places a certain constitutional dislike of appealing to the Judicial Committee of the Privy Council, a Court composed mainly of British Judges. The question now was whether they could establish in its place a Supreme Court of the Commonwealth, and call it such, to avoid any idea of the exercise of merely British sovereignty. He suggested that the Court could then sit in various countries, and could be assisted by some of the Judges of the country concerned. He thought that great help could be given by holding Law Conferences of this kind in other countries, say, every five years. He would be sorry to think this was the end ; he rather thought that it must be the beginning of closer and warmer friendships than had ever before existed between the countries of the Empire.

The final speech was made by the President of The Law Society, Mr. W. Charles Norton, who joined with Sir Hartley in thanking Lord Radcliffe for his address. One of the results of the Conference had been to bring barristers and solicitors in closer touch with one another, and he thought that it was this which had made the Conference the success it had undoubtedly been, and which would produce further Conferences of this nature in the future. He referred to the work of the Executive Committee composed of representatives of the various countries. He was sure every one of the visitors would agree that the Committee's work, associated with that of the Secretary of The Law Society, his undersecretaries and staff, and the Secretary and Assistant Secretary of the Bar Council, had been an important factor in making the Conference such a success.

The New Zealand Representation.

The Council of the New Zealand Law Society were asked to nominate two practitioners as members of the Executive Committee of the Conference. Those appointed were Messrs. F. J. Cox and H. J. Butler, of Auckland. Each was asked to take the Chair at a Plenary Session, and both made valuable contributions to the success of those Sessions. Mr. Cox was Chairman of the Session which dealt with Land Tenure and the Land Transfer System, while Mr. Butler was Chairman of the Session at which " The Jury System : Criminal and Civil " was discussed. They proved to be excellent chairmen, and each was congratulated on his succinct and yet comprehensive report summarizing the views expressed at the Session over which he presided.

In addition, there were a number of New Zealand practitioners and their wives in London for the Conference. They were guests at all the principal Receptions and gatherings, and several took part in the tours arranged for the overseas visitors. They all agree that the Conference will be a long-remembered event in their professional lives.

General Impressions.

It would not be possible to close this Report without paying tribute to the work, the hospitality, and friendliness of the hosts, the members of The Law

Society and of the Bar, whose close co-operation and co-ordinated efforts had made the Conference the success it was enthusiastically proclaimed to be by all who attended.

One did not need to be told of the tremendous amount of organization and administrative and preparation work.

The efforts of a very large portion of the staff under Mr. J. F. Warren, an under-secretary of The Law Society, under the supervision of that indefatigable worker, the Secretary, Mr. T. G. Lund, made it very difficult for any inquiry or requirement of the guests not to have been anticipated.

As to the hospitality, it defied description. No one who attended the opening Reception given to the delegates and guests at the Common Room and Library of The Law Society on the first evening will ever forget it. Name labels worn by each of the guests, enabled introductions to be dispensed with.

Many had already had a foretaste of what to expect when delegates and their guests participated in the hospitality extended by the Law Society of Scotland, which took the form of a four days' tour of the Highlands, a visit to Glasgow and the Clyde, and covered various receptions.

The Law Society's reception in London on the first night, where the guests were received by the President and his wife, and by the Vice-President, Sir Edwin Herbert and his wife, was followed the next evening by 5 to 7.30 receptions at Gray's Inn and at the Middle Temple (where the guests were received by Mr. W. Cleveland-Stevens, Q.C., and Sir Hartley Shawcross, Q.C., and by Lord Oaksey, and Mr. Sydney Turner, Q.C., respectively).

On Friday, July 23, cocktail parties were arranged to precede the Reception given by the Government at the Royal Gallery of the House of Lords, where the guests were received by Lord Chancellor, Viscount Kilmuir, and Lady Kilmuir. It would be impossible to describe the brilliant scene in this historic setting. Later in the evening, the guests were shown over the House of Lords.

On the Saturday evening a Reception was given by the Government at the House of Commons, where Sir Reginald Manningham-Buller, Q.C., received the guests.

On Saturday and Sunday, many full-day coach tours were arranged for the selection of delegations. The tours included a visit to Stratford-on-Avon, where the guests were entertained to lunch at the Shakespeare Memorial Theatre, and then viewed the matinee performance of "The Merry Wives of Windsor". After the play, the party was entertained by the Mayor and Corporation of Stratford-on-Avon in the Mayor's Parlour.

Other coach-tours for selection included Beaulieu Abbey, and Lyndhurst New Forest, Warwick Castle, Blenheim Palace, Arundel Castle, Oxford and Cambridge, Hatfield House, Canterbury Cathedral, and Dover and other places of interest. At some point on each tour, the visitors were entertained by members of the local Law Society.

Far too many to enumerate were the Receptions given, some in Halls, some in Offices, one in H.Q.S. *Wellington*, Temple Stairs, Victoria Embankment, London House, and others at the homes of the High Commissioners of the various Dominions.

The reception on board H.Q.S. *Wellington* was given by the Worshipful Company of Solicitors of the City of London. This "ship" is also the Hall of the Company of Master Mariners. Other guests were invited to a Reception by the Great Livery Companies of the City of London at Fishmongers' Hall.

Those who attended the Conference Ball held at the Hurlingham Club on the banks of the Thames will long remember the magnificently illuminated lawns and gardens, and, more so the display given by the Band of H.M. Royal Marines (Portsmouth Group), whose playing of the Retreat deeply stirred the emotions of all onlookers. The guests were received by the Rt. Hon. Sir Hartley Shawcross, Q.C., M.P. and Lady Shawcross, and by the President of The Law Society, Mr. W. Charles Norton and Mrs. Norton.

A further entertainment was provided by a reception given at the County Hall, Westminster, by the London County Council, where the guests were received by the Chairman and Mrs. Prichard, and an interesting musical entertainment was enjoyed.

The climax was reached at the Conference Banquet, held at the Guildhall where a brilliant scene was enacted, the Joint Presidents of the Conference receiving the guests.

The official guests included the Lord Mayor and the Lady Mayoress, the Prime Minister and Lady Eden, the Archbishop of Canterbury and Mrs. Fisher, the Lord Chancellor and Lady Kilmuir, and the High Commissioners for Ceylon, South Africa, India, New Zealand, Pakistan, Rhodesia, and Nyasaland, and others.

A programme of music selected for the occasion was performed by the Orchestra of the Coldstream Guards.

The toasts were "The Queen and the Members of the Royal Family"; "The Lord Mayor and Corporation of London", proposed by the President of The Law Society, to which the Lord Mayor, Sir Seymour Howard, replied; "Freedom under the law" proposed by the Rt. Hon. Sir Hartley Shawcross, Q.C., responded to by the Prime Minister, the Rt. Hon. Sir Anthony Eden, K.G.; and "The Law and the Lawyers" proposed by His Grace the Archbishop of Canterbury, and responded to by the Master of the Rolls, Sir Raymond Evershed, and the Chief Justice of Ontario, the Hon. J. W. Pickup.

The beautiful and historic Hall and the colour provided by the guests, made this last function an unforgettable and unsurpassed scene.

Thus concluded the Conference on the highest possible level.

NAME OF A REGISTERED PROPRIETOR: CORRECTION.

Application to District Land Registrar.

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

Explanatory Note.

Clause 57 of the Land Transfer Regulations, 1948 (S.R. 1948/137) reads as follows:

> Where it appears to the satisfaction of the Registrar that a registered proprietor has changed his, her, or its name, or that the name of a registered proprietor is incorrectly stated in the Registrar's records, the Registrar may, on payment of the prescribed fee, endorse a memorial of such change of name or make the necessary corrections in his records, as the case may be: Provided that no fee shall be payable where the correction of the Registrar's records is rendered necessary by reason of a mistake made by the Registrar or by any of his officers.

The fee prescribed for entering change or correction of name is £1: see the Schedule to the Land Transfer Regulations, 1948, Amendment No. 2 (S.R. 1951/112).

The term "registered proprietor" in Reg. 57 of the Land Transfer Regulations, 1948, is not confined to the registered proprietor of the fee simple. For in s. 2 of the Land Transfer Act, 1952, the term "Proprietor" is defined as follows:—

> "Proprietor" means any person seised or possessed of any estate or interest in land, at law or in equity, in possession or expectancy.

Conveyancers should take care to ascertain the full and correct name of any person for whom they are acting, and who is about to become a "registered proprietor". It is astonishing the number of people in our community who appear to dislike disclosing their full names, especially any Christian names in addition to their first. More foolish still are those who in legal documents use their second or later Christian name, but omit their first. It is true that, since the Land Transfer Act first came into operation, there have been very few cases of impersonation of the registered proprietor; but that is not to say that there will not be more in the future. As our population increases, the risk of impersonation will also increase.

An interesting case of impersonation is *District Land Registrar* v. *Thompson*, [1922] N.Z.L.R. 627; [1922] G.L.R. 255. Hemi Paiki, a Maori, died on or about October 1, 1901. At the time of his death, he was the registered proprietor, under the Land Transfer Act, of an estate in fee simple as tenant in common with other Maoris in a block of land in the Pigeon Bay Survey District. In the year 1920, Hemi Tano Paiki, a son of deceased, agreed to sell Hemi Paiki's interest in the land to one Thomas Thompson. He received the purchase money for it, and signed what purported to be a transfer of the land from Hemi Paiki, the registered proprietor, to the purchaser. This transfer, after being confirmed by the Maori Land Board, was registered under the Land Transfer Act. On the subsequent application of the District Land Registrar, the Supreme Court ordered Thompson to deliver up the certificate of title to him in order that the memorial of the transfer to Thompson should be cancelled.

The legal position is that, although a forged transfer might become the root of a valid title in favour of a person who deals with the immediate transferee (who for the time being is shown as registered proprietor, the Register constituting conclusive evidence to all the world from day to day of the ownership), such immediate transferee does not himself obtain an indefeasible title: *Gibbs* v. *Messer*, [1891] A.C. 248.

Thus, in *Thompson's* case, if Thompson had mortgaged his interest whilst he was shown as a proprietor, the mortgage could not have been set aside: *In re Leighton's Conveyance*, (1936) 53 T.L.R. 273.

A further principle appears to emerge from *Attorney-General* v. *Odell*, [1906] 2 Ch. 47, which is thus referred to by their Lordships of the Privy Council in *Secretary for State for India in Council* v. *Bank of India, Ltd.*, (1938) 54 T.L.R. 770, 771.

> Similarly, in *Attorney-General* v. *Odell*, ([1906] 2 Ch. 47), the Court of Appeal, were, it seems, prepared to hold that a person who, acting in good faith, brought to the Land Registry a transfer apparently executed by the registered proprietor of the piece of land, but in fact a forgery, became subject to a contract implied by law to indemnify the person, whose duty under the Land Transfer Act it was to register transfers, against any liability resulting from the exercise of the duty.

A most curious case which led to much litigation arose out of the issue of a Crown Grant to a Maori woman called Kiri. The date of the grant was 1870. In 1903, a Maori, called Kiri, claiming to be the grantee, conveyed the land to Holmes, who, in 1908, sold to McKinnon, who thereupon entered into possession and remained in possession at the date of the litigation. Unfortunately, shortly after the issue of the Crown Grant, in 1870 or 1871, another Maori, also called Kiri, died. In 1910, a succession order was made by the Maori Land Court in favour of certain successors of this other Kiri: these successors sold the same block of land to Campbell, who contended that this other Kiri, who died in 1870 or 1871, was the Kiri mentioned in the Crown Grant, whilst McKinnon claimed that the true grantee was the Kiri who executed the conveyance to Holmes in 1903. Campbell asked the Supreme Court to state a Case for the opinion of the Maori Appellate Court under the Maori Land Act, as to which Kiri it was who was declared by the Compensation Court in 1867 to be entitled to a grant. The Full Court, however, declined to state a Case for the opinion of the Maori Appellate Court: *Campbell* v. *McKinnon*, [1916] N.Z.L.R. 251; [1916] G.L.R. 208. It was a matter for the Supreme Court to decide.

Subsequently, other proceedings were commenced in the Supreme Court. Cooper, J., held that the succession order made in 1910 was conclusive evidence of the title of the successors to the land, and, had this decision gone unchallenged, the later conveyance in favour of Campbell would have prevailed over the earlier conveyance dated 1903 in favour of Holmes. But this decision was reversed by the Court of Appeal, which held that the jurisdiction of the Maori Land Court to make a succession order does not depend upon the fact of the deceased's having an interest in the land, but, upon there being a claim or suggestion that he had an interest. A succession order is made upon the assumption that the deceased had an interest in the land, and is not evidence that he had an interest; and its effect is limited to ascertaining who, on this assumption, are the successors of the deceased: *McKinnon* v. *Craig*, [1918] N.Z.L.R. 414; [1918] G.L.R. 365. Unfortunately, the Law Reports do not disclose

how this particular problem of identity was solved. Which Kiri was the true crown grantee ?

It appears from the judgment of Edwards, J., that the *onus probandi*, where impersonation is alleged, lies upon the person making that allegation.

Usually, in an application to correct a name appearing in his records, the District Land Registrar will accept a statutory declaration, as in the following precedent ; but, in cases of substantial discrepancies, he would probably ask for production of the relevant birth certificate. In a contest between rival claimants, as in the Kiri case, he would require most coercive evidence before making any alteration.

CONVEYANCING PRECEDENT.

APPLICATION TO DISTRICT LAND REGISTRAR TO CORRECT NAME OF A REGISTERED PROPRIETOR.

I, A. B. C. of Wanganui, Grocer DO SOLEMNLY AND SINCERELY DECLARE as follows :—

1. I am registered as Proprietor of an estate in fee simple in that piece of land situate in the Land District of *containing [set out area] more or less being [set out here official description of land]* and being all the land comprised and described in Certificate of Title Volume Folio Subject to *[set out here encumbrances]*.

2. My correct name is, as stated above, A. B. C. and not A. C. as stated in the said Certificate of Title. I apply to The District Land Registrar at to have my correct name inserted on the said Title and Register Book AND I make this solemn Declaration conscientiously believing the same to be true and by virtue of an Act of a General Assembly of New Zealand intituled " The Justices of the Peace Act, 1927".

DECLARED at Wanganui by the said A. B. C. this day of , 1955, before me } A. B. C.

D. E.,

A Solicitor of the Supreme Court of New Zealand.

N.B.—*The outstanding certificate of title must be produced to the District Land Registrar.*

THEIR LORDSHIPS CONSIDER.

BY COLONUS.

Loan or Deposit ?—" Was this then a loan or was it a deposit payable on demand ? It should be remembered that the two terms are not mutually exclusive. A deposit of money is not confined to a bailment of specific currency to be returned in specie. As in the case of a deposit with a banker it does not necessarily involve the creation of a trust, but may involve only the creation of the relation of debtor and creditor, a loan under conditions. The distinction which is perhaps the most obvious is that the deposit not for a fixed term does not seem to impose an immediate obligation on the depositee to seek out the depositor and repay him. He is to keep the money till asked for it. A demand by the depositor would therefore seem to be a normal condition of the obligation of the depositee to repay." Lord Atkin, delivering the judgment of the Privy Council in *Mohammad Akbar Khan* v. *Attar Singh*, [1936] 2 All E.R. 545, 548.

Trade Mark—Geographical Name.—" But I would say that, paradoxically, perhaps, the more apt a word is to describe the goods of a manufacturer, the less apt it is to distinguish them, for a word that is apt to describe the goods of A, is likely to be apt to describe the similar goods of B. It is, I think, for this very reason that a geographical name is *prima facie* denied registrability. For, just as a manufacturer is not entitled to a monopoly of a laudatory or descriptive epithet, so he is not to claim for his own a territory, whether country, county or town, which may be in the future, if it is not now, the seat of manufacture of goods similar to his own. I do not ignore that some protection is given by s. 8 of the Act, but I accept the view frequently expressed in regard to this section and to s. 44 of the earlier Act [the Trade Marks Act, 1905] which it replaced—and, in particular, by Lord Maugham, Lord Atkin and Lord Russell of Killowen in the Glastonbury case, *Re Clark, Son and Morland, Ltd.'s Trade Mark*, [1938] A.C. 557 ; [1938] 2 All E.R. 377, that it should not afford a guide as to whether a name should be registered or not.

" I am led to suggest that it is, perhaps, easier to define ' inherent adaptability ' in negative than in positive terms : in other words, I would say that a geographical name can only be inherently adapted to distinguish the goods of A when you can predicate of it that it is such a name as it would never occur to B to use in respect of his similar goods. Of such names the classic examples are ' Monte Rosa ' for cigarettes or ' Teneriffe ' for boiler plates. There will probably be borderline cases, but there is, in my opinion, no doubt on which side of the border lies Yorkshire, a county not only of broad acres but of great manufacturing cities. If the *Liverpool Cable* case (*Re Liverpool Electric Cable Co., Ltd.'s, Applications*, (1928) 46 R.P.C. 99) was rightly decided, as I think it clearly was, *a fortiori* the registrar was right in refusing registration to ' Yorkshire.' And if it were a border-line case, which it is not, I think that a court to which an appeal is brought from the registrar, though, no doubt, it must exercise its own discretion in the matter, should be slow to differ from the experienced official whose constant duty it is to protect the interests of the public not only of today but of tomorrow and the day after. In uttering that warning, I only repeat what has been said more than once in this House." Lord Simonds, L.C., in *Yorkshire Copper Works, Ltd.* v. *Registrar of Trade Marks*, [1954] 1 All E.R. 570, 572.

Stare Decisis.—" It has been strenuously argued that the authority of *Smith* v. *Lambeth Assessment Committee*, (1882) 10 Q.B.D. 327, has stood so long that it should not now be overruled, and reliance has been placed on expressions of opinion in this House in certain cases that a decision of old standing should not be departed from. But there is no rule which debars your Lordships from doing justice even at the cost of reversing an old authority, that is an authority of a Court inferior to this House." Lord Wright, in *Westminster City Council* v. *Southern Railway Co.*, [1936] A.C. 511, 563 ; [1936] 2 All E.R. 322, 350.

IN YOUR ARMCHAIR—AND MINE.

By Scriblex.

The Handling of Witnesses.—A story is told of Mr. Gloag, afterwards Lord Kincairney of the Scots Bench, in a case heard before Lord Young, a very determined Judge who liked to run the proceedings himself. After one particular witness had left the box, Gloag stood still and did nothing until Lord Young looked up and said, "Proceed, Mr. Gloag. What are you waiting for?" "I was waiting," replied counsel, "for your Lordship to call your next witness." And there is the story of Thesiger, who found he had repeatedly to object to his opponent putting leading questions. "I have a right," said his adversary, "to deal with my witnesses as I please." "No objection to that," retorted Thesiger, "deal as you like, but don't lead!" A barrister noted for his wit, Thesiger, when he became Lord Chancellor, took the title of Lord Chelmsford because of the fact that it was in the town of that name that he achieved one of his early triumphs at the Bar—in an ejectment action.

Values and Personal Covenants.—Scriblex makes no pretence of fully understanding the mysteries of the conveyancer's craft, so it may well be that the judgment of Devlin, J., in *Eagle Star Insurance Co., Ltd.* v. *Gale and Power* appears less curious to them than to him. According to the report in the *Law Journal* (July 22, at p. 458) the plaintiffs agreed in January, 1952, to advance money to the prospective purchaser of a house on the security of a mortgage of the house and a personal covenant by the purchaser to repay the loan. The loan was to be for ninety per cent. of the purchase price, and it was unusual in that the plaintiffs could call in the mortgage at any time. Before making the loan, the plaintiffs instructed the defendants, who were chartered surveyors, to value the property. In their report the defendants put the value of the property at £3,350 and stated that the only defects were minor ones of decoration. Acting on this report, the plaintiffs advanced £3,015 to the purchaser. In September, 1952, the plaintiffs were informed that there were serious defects in the house, and that they had existed for some time. In fact, at the time when the defendants made their report, the house was not worth more than £1,600. The purchaser had no remedy against the defendants; but the plaintiffs brought their action, alleging that, as a result of the defendants' negligence, they had suffered damage because they had advanced £3,015 on the security of a mortgage of property not worth more than £1,600. The defendants admitted liability, but denied the damages. They said that, in granting the mortgage, the plaintiffs had also relied on the financial and personal standing of the purchaser and upon the collateral security provided by the personal covenant. The plaintiffs claimed that these matters were *res inter alios acta* and should not be taken into account in diminution of the damages. In his judgment, on the issue of damages, Devlin, J., said that the question was what action did the plaintiffs take in reliance on the defendants' report; if that action involved them in loss they were entitled to be compensated. The action they took was to advance money to the purchaser, which they would not have done but for the report. It was said that there were two transactions, the loan on the mortgage and the loan on the personal covenant, but in fact there was one advance; and, in deciding whether the plaintiffs had sustained a loss, he had to look at the whole position. The matter would have to be determined on the basis of what the plaintiffs would have got if they had realised their security. His Lordship held that, if the plaintiffs had called in the loan, they could have expected to be paid up; but he assessed the damages at a more than nominal figure of £100 to take into account the contingency of the house collapsing or the possibility of the purchaser falling ill. Fortunately, it is rarer for insurance companies to collapse than it is for houses; and, unlike purchasers, they never fall ill.

The Tribulations of a Magistrate.—At the annual dinner of the Wellington Law Society, J. S. Hanna, S.M., who followed the Chief Justice in replying to the toast of the Judiciary, said that the best advice he had received on his appointment to the Bench was not to talk too much, but the advice had not been always easy to follow. Scriblex is inclined to think that a reasonable credit allowance should be made to Magistrates for blowing-off of the hot steam of indignation, subjected as they are to daily irritations from a variety of very queer customers: indeed, the public is inclined to look with suspicion upon justice in the lower Courts dispensed in too cold and inexorable a manner. There are, of course, limits to such indignation. During the trial for forgery of Henry Fauntleroy, one of the most prominent of the private bankers in England of his time, a certain Hammersmith Magistrate who had been defrauded and whose position enabled him to get access, burst into the room at the Old Bailey where the prisoner, during an adjournment, was meditating upon crime and discomfort. The Magistrate soundly abused him, telling him to look to his soul and that he would shortly be hanged. He did, in fact, suffer this fate at Tyburn, although the public made a number of attempts to obtain a respite of the sentence, having no doubt a feeling of respect for a gay and unrestricted spendthrift, even though he improperly used £350,000 of the funds of the Bank of England to further his purposes.

The Torrens System.—At the recent Commonwealth and Empire Law Conference which numbered Gresson, J., amongst its guests, one of the criticized papers was by Theodore Ruoff (of the English Land Registry) who spent considerable time in New Zealand a few years ago investigating our system of land tenure, and did likewise in Australia. His view that the Torrens or some similar system was the best, met with considerable opposition from some of the conveyancing die-hards of Great Britain who were not appeased by Ruoff's opinion that they "loved the mysteries they had spent so much time in learning, and they did not like the rude hand which would wipe away the cobwebs, in spinning which they had spent their zeal." He backed up this piece of iconoclasm by a reference to a conveyance with which he had lately to deal where the vendor, in solemn and elaborate terms, purported to grant to a purchaser a right to pass sewage through the electric light meters on his neighbour's property. On the question of the ownership of communal flats which was introduced into the ensuing discussion, a Scots practitioner contended that the system of freehold flats was a retrogressive step, but that it was a fairly common sociological and anthropological phenomenon in Scotland which caused a lot of friction greatly enjoyed by all.

THE GIRLS OF YESTERYEAR.

By Advocatus Ruralis.

Recently Advocatus received a letter from the local Headmaster (incidentally signed Bill) who stated that he was preparing his Thanksgiving Speech for the end of the year, and that it would be nice if he could tell his pupils what employers expect of pupils when they first become employees. For the moment Advocatus looked down the wrong end of the telescope to the sudden descent of a gawky youth from the Olympian heights of a sixth form prefect, who associated freely with Cricket and Football Captains, to a Hey You in a legal office. Incidentally, the Junior Partner is of the opinion that Advocatus has too many of these moments.

On the walls of the typists' room it has been the custom of typists over the last twenty-five years to write their names and dates of arrival and departure, and, in order to clarify his ideas, Advocatus studied this roll. This was a mistake, rather akin to cleaning up the old letters and photos in the attic. Before 1914, there was a song about the Naragansett girls—"tall girls, slender girls, all sorts of tender girls"—and, as we gazed down the corridors of time, we remembered the blondes and brunettes, the bright and the dumb, the good and the not so good. There was another song—was it *The Rosary*?—"I count them every one apart." And as we gazed from ever further back there appeared—but, as Kipling has told us, "That is another story".

Advocatus remembered one girl, who, in 1940, was still looking after him. One morning she explained that she thought she ought to enlist before she was called up. We explained that, as our partner and one typist were already in the Army, we felt that we could keep her out; but she was not satisfied. We explained that we paid more than she would receive in the Army, but she replied that the Army would buy her clothes. Advocatus realized that he was much too old to argue with a uniform, and gave in. He had to admit later that the uniform suited her.

This was the same girl who, when she started, let two six-monthly rises pass because she was too shy to tell her sister who kept the books that she was underpaid. She finally went to Egypt and Italy as a head-quarters typist, and married one of those Kiwis.

Still endeavouring to answer the Headmaster's inquiry, Advocatus remembered some years ago an incident when he attended his provincial Stamp Office, but could not get near the counter. Calling on the Deputy-Commissioner (an ex-Major who went to the same war), we sought elucidation. "Damn it, it's Clementine again!" And he told us the story:

It appears that quite one of the nicest girls (both in looks and performance) of that University year had decided to study law. Her father wishing to do his best for Clementine placed her in a sober respectable office whose principal was later to grace the Supreme Court Bench for many years. Apparently in that office she was regarded merely as part of the office furniture, but a snake in the grass from a neighbouring office felt that the pearls should not be left in the sties. She was accordingly lifted to a higher salary by the snake, and appointed stamping and registration clerk. The ex-Major was of the opinion that this move cost the Stamp Office hundreds of pounds. On any morning, one might see six law clerks being handled by one seemingly lethargic clerk when suddenly Clementine would appear. Immediately from every corner of the office all grades of seniority converged on the counter. Reaching right over the the heads of the law clerks, who perforce resignedly made a lane for her, they asked, "Yes, Miss Clementine, can I take your documents?" The slowest junior was sent off to do the stamping, and all work stopped till Miss Clementine retired. This was not the worst of it, according to the Major, because some conscienceless junior practitioners, realizing the value of a diversion, entered into an arrangement with Clementine to stamp their more doubtful documents. The Major had issued instructions that her documents were to be more carefully perused, and if necessary referred to him. This outrageous use of his seniority got him nowhere. On their first encounter, Clementine spoke of the Major's war friendship with her father; and, having properly put him into his place, carried on with her eyes as if he were the most callow student.

But is this the sort of information the Headmaster wanted?

Limitation Act, Merits as Defence.—"The son, Attar Singh, said that in 1917 he had taken some land on mortgage from one Hamish Gul. He had acquired the land by pre-emption and Rs. 42,500 had to be deposited as pre-emption money, which was found by the defendant Attar Singh. He took a loan from the plaintiff for Rs. 43,900 at 5¼ per cent. interest, wrote a promissory note for this and gave it to the plaintiff himself. No mention was made of the money being placed on deposit. He made no agreement with the plaintiff after the expiration of two years to keep the money on deposit. After two years he repaid the money and the interest. His father and he both went to the plaintiff and his father paid the money.

The defendants' story about the payment of the money was not accepted by either of the Courts in India. The absence of any receipt, the non-return of the alleged promissory note, and the failure by the defendants to produce any books dealing with the transaction amply support the finding of the trial Judge in this respect. The defence therefore had to rest upon the Limitation Act, a defence meritorious enough where the defendant has been left in long enjoyment of property; or where from the lapse of time the original existence or the discharge of an obligation is left in doubt but void of all merit where, as here, an original obligation is admitted and a fictitious discharge is falsely alleged. Nevertheless it must be carefully examined, and the plaintiff's rights determined accordingly." Lord Atkin, in *Sir Mohammad Akbar Khan* v. *Attar Singh*, [1936] 2 All E.R. 545, 547.